



# 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. 488/2012\*, \*\*

<i>Submitted by:</i>	L.M. (represented by counsel, Johanne Doyon and Philippe Larochelle)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Canada
<i>Date of complaint:</i>	10 January 2012 (date of initial submission)
<i>Date of present decision:</i>	11 May 2018
<i>Subject matter:</i>	Deportation to Rwanda
<i>Procedural issues:</i>	Failure to substantiate the complaint; incompatibility <i>ratione materiae</i>
<i>Substantive issue:</i>	Risk of torture
<i>Articles of the Convention:</i>	3 and 22

1.1 The complainant is Mr. L.M., a national of Rwanda. His asylum application was rejected by Canada, and, at the time of submission of the communication, he was facing forcible return to Rwanda. He claimed that, by deporting him to Rwanda, Canada would be in violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel.

1.2 On 11 and 12 January 2012, in application of rule 114 (1) of its rules of procedure, the Committee against Torture requested the State party to refrain from deporting the complainant to Rwanda. On 23 January 2012, one of the complainant's counsel informed the Committee that the State party had returned the complainant to Rwanda, despite the Committee's request for interim measures.

#### The facts as submitted by the complainant

2.1 The complainant is married to a Canadian citizen and is the father of five children, all of whom are Canadian citizens. At the time of the submission of his complaint, he had been living in Canada for almost 19 years. He and his family had fled Rwanda in December 1992 and had found temporary refuge in Spain. The complainant was recognized as a refugee under the 1951 Convention relating to the Status of Refugees and, as such,

\* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.



submitted an application for a residence visa to the Canadian Embassy in Madrid in March 1993. He received his permanent residency visa and arrived in Canada in August 1993.

2.2 In 1995, a report was submitted to the Minister of Citizenship and Immigration of Canada pursuant to article 27 of the former Immigration Act,<sup>1</sup> stating that the complainant should not have been admitted to Canada. The report was submitted to the Canadian Immigration and Refugee Board for analysis. On 11 July 1996, the Board decided that the complainant should be expelled from Canada in the light of the fact that he should not have been admitted to the country; the Minister had found that the complainant had committed the offences of incitement to murder, hatred and genocide and crimes against humanity, and had provided false testimony about an important matter in Rwanda. On 6 November 1998, the Board's Immigration Appeal Division rejected the complainant's appeal.

2.3 The complainant filed an application for judicial review of the Immigration Appeal Division's decision with the Federal Court. On 10 May 2001, the Immigration Appeal Division rejected the application for judicial review concerning the allegations of incitement to murder, hatred and genocide but accepted the application for judicial review of the allegations concerning crimes against humanity and providing false testimony about an important matter. The complainant then lodged an appeal with the Federal Court of Appeal. On 8 September 2003, the Federal Court of Appeal agreed to review all the allegations, thereby setting aside the order for the deportation of the complainant. On 28 June 2005, the Supreme Court of Canada overturned the decision of the Court of Appeal on the grounds that the latter had undertaken a general review of the case rather than a judicial review.

2.4 Seized of the matter by the Canada Border Services Agency, on 24 November 2011 the delegate of the Minister of Citizenship and Immigration concluded that, pursuant to article 115 (2) (b) of the Immigration and Refugee Protection Act, the complainant should not be present in Canada owing to the nature and severity of his past actions.<sup>2</sup> On 22 December, the complainant applied to the Federal Court for leave to have the decision of the Minister's delegate submitted for judicial review.

2.5 On 29 December 2011, the Canada Border Services Agency confirmed the complainant's deportation and scheduled it for 12 January 2012. The complainant asked the Agency to defer his deportation and to give him a reasonable amount of time to seek legal admission to another country. On 4 January 2012, the complainant filed a petition with the Federal Court for leave and judicial review of the Agency's decision to deport him. Having received no reply from the Agency, on the same date the complainant petitioned the Federal Court for a stay of removal until such time as the Court reached a final decision regarding the petition for leave and judicial review against the decisions of the Minister's delegate and the Agency.

2.6 On 11 January 2012, the Federal Court denied the complainant's petition. Since no appeal could be filed with the Federal Court of Appeal against the enforcement of the deportation order, all effective domestic remedies had been exhausted.

### **The complaint**

3.1 The complainant claims that the State party violated article 3 of the Convention against Torture when it returned him to Rwanda, where he ran a real, personal and foreseeable risk of being subjected to torture because he was considered to be a political opponent of the Government of Rwanda and an enemy of the State.

3.2 The complainant submitted a large number of documents to support his claims, including a letter dated 9 January 2012 from T., former Prime Minister of the Government of National Unity that took office after the genocide had occurred. The letter states that the

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<sup>1</sup> Now the Immigration and Refugee Protection Act.

<sup>2</sup> Article 115 (2) (b) of the Immigration and Refugee Protection Act provides for the following exception to the maintenance of refugee status: "on grounds of security, violating human or international rights or organized criminality if, in the opinion of the Minister, the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada".

complainant's return to Rwanda would amount to a death sentence, as it is impossible for anyone who denies that the genocide happened to be judged impartially in Rwanda. In an affidavit dated 3 January 2012, Ms. M., counsel for the defence before the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, stated that a public figure such as the complainant would undoubtedly run a risk of being tortured and being subjected to cruel, inhuman or degrading treatment or punishment in Rwanda. She further stated that no one would dare to defend him there for fear of reprisals. The complainant also cites a letter dated 3 January 2012, in which Mr. P., who was also involved in the work of the Tribunal, states that, given the current climate in Rwanda, returning a Rwandan refugee and political opponent such as the complainant to that country would constitute a serious violation of his fundamental rights.

3.3 The complainant refers to the decision of the Minister's delegate of 24 November 2011, in which the delegate acknowledges that the complainant is sought by the Rwandan authorities. According to the complainant, this means that he would undoubtedly be arrested upon his arrival in Rwanda.

3.4 The complainant alleges that the domestic courts' decisions to return him to Rwanda are arbitrary. In particular, he criticizes the fact that the Minister's delegate based his decision on written diplomatic assurances provided by Rwanda while ignoring the fact that such assurances had also been given to the International Criminal Tribunal for Rwanda and to various countries but had been rejected as unreliable. Thus, before concluding that there was no evidence that such assurances had not been honoured in the past, the delegate should have examined the evidence contained in reports of non-governmental organizations (NGOs).<sup>3</sup>

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

4.1 On 28 February 2012, the State party asserted that it had not returned the complainant to a place where he ran the risk of being tortured. The State party takes its international obligations under the Convention against Torture seriously and had acted in good faith when considering whether it was appropriate to comply with the Committee's request for interim measures. After a detailed review of the case file, however, the State party concluded that the complainant had failed to establish that he would run a substantial risk of being tortured in Rwanda. It attaches a copy of the diplomatic assurances provided by Rwanda on 27 March and 24 December 2009. It also observes that requests for interim measures made in accordance with the Committee's rules of procedure are not binding.

4.2 On 26 July 2012, the State party submitted its observations on the admissibility and the merits of the complaint. The State party considers the complaint to be inadmissible because it is incompatible with the provisions of the Convention and is unsubstantiated. Regarding the merits of the complaint, the State party challenges the contention that article 3 of the Convention has been violated.

4.3 The State party asserts that, on 22 November 1992, when he was vice-president of the Mouvement republicain national pour le développement et la démocratie (National Republican Movement for Development and Democracy) in the prefecture of Gisenyi, the complainant delivered a speech in which he called for the extermination of the Tutsi ethnic group. A few months prior to the complainant's speech, a group of Tutsi had been massacred in Gisenyi. Following that speech, the Rwandan authorities issued a warrant for his arrest. He fled the country soon afterward with his family and sought refuge in Spain. In 1993, the Canadian Embassy in Madrid granted him refugee status.

4.4 On 13 January 1995, a new warrant was issued by the prosecutor's office in Rwanda that modified the original warrant. The new warrant stated that the complainant was wanted by the authorities for having conspired to commit genocide by inciting supporters of the

<sup>3</sup> The complainant also claims that his deportation would constitute a violation of the International Covenant on Civil and Political Rights and the Convention relating to the Status of Refugees.

Mouvement republicain national pour le développement et la démocratie and the Hutu population at large to kill Tutsi and throw their bodies into the Nyabarongo River.

4.5 The State party then reviews its internal procedures relating to the removal of the complainant. It refers to the decision taken by the Minister's delegate on 24 November 2011 and notes that he concluded that the complainant should not be allowed to remain in Canada owing to the nature and severity of his past actions and that he would not be at risk of torture if returned to Rwanda. The State party also notes that the Minister's delegate based his decision on the human rights situation in Rwanda and the Government's continued progress. As for the risk of persecution, the delegate stressed that there was no reasonable possibility that the complainant would be persecuted if he were returned to Rwanda because: (1) the Rwandan authorities actively pursue individuals who threaten persons suspected of having participated in the genocide; (2) the complainant could not receive a more severe punishment than life imprisonment, since the death penalty had been abolished in 2007, and the Rwandan Government had undertaken not to sentence the complainant to a life sentence; (3) the Rwandan Government had pledged to hold him in a prison that conformed to international standards, prison conditions had improved, and the International Committee of the Red Cross (ICRC) was monitoring 74,000 prisoners in order to ensure that prison conditions were acceptable; (4) given the complainant's high profile, he was the object of intense media coverage; and (5) there were no humanitarian grounds for concluding that his removal would give rise to unusual or undeserved hardship. He also emphasized that the complainant had never expressed remorse for what he had said and that he continued to deny that genocide had taken place in Rwanda.

4.6 The State party emphasizes that the complainant had ample opportunity to present his case to the Minister's delegate. The delegate had carefully considered all representations and evidence regarding the risk of torture and the human rights situation in Rwanda. After a thorough and detailed analysis of that documentation, the delegate had found that it did not reflect the current situation in Rwanda and could not be given very much weight as evidence, since the situation had changed a great deal, according to credible, objective reports.

4.7 Despite the absence of risk, the delegate also bore in mind the clear, precise diplomatic assurances that Canada had obtained as a precautionary measure from the Rwandan authorities regarding the treatment of the complainant in Rwanda. In particular, Rwanda had assured the State party that the complainant would be treated in a manner that would be in full accordance with the Convention and would be held in Kigali and Mpanga prisons, which, according to international observers, are in compliance with international standards.

4.8 The State party explains that, on 11 January 2012, the Federal Court of Canada rejected the complainant's petition for a stay of his deportation while his petition for judicial review of the opinion of the Minister's delegate was being considered. The Court held that the delegate's decision was not based solely on the diplomatic assurances from Rwanda, but also on his assessment of all the evidence in the case. The Court had ruled that the delegate had taken into account the diplomatic assurances provided, despite the claims by NGOs that they could not be relied upon, but had concluded that the Rwandan Government had made a determined effort to overcome the chaos that had prevailed in the wake of the tragedy and that the delegate had found no evidence that assurances given by the Rwandan Government in the past had not been honoured. The Court concluded that the complainant had failed to demonstrate that the Minister's delegate had overlooked given pieces of evidence during the proceedings.

4.9 As for the petition of 4 January 2012 to stay the execution of the deportation order, the State party notes that the arguments put forward by the complainant were essentially the same as those set out in his complaint before the Committee. The claims concerning a risk of torture in Rwanda that have been submitted to the Committee have thus already been rejected by the Canadian authorities following careful analysis.

4.10 On 12 January 2012, the complainant obtained an interlocutory injunction from the Superior Court of Quebec which directed the State party to stay his deportation until 20 January. On 23 January, the Superior Court of Quebec granted the authorities' request to set

aside the interlocutory injunction. Also on 23 January, the complainant lodged another petition for an interlocutory injunction with the Federal Court of Canada. That petition was rejected on the same day that it was filed, and the complainant was sent back to Rwanda that same day as well. On 3 April, the Federal Court of Appeal dismissed the author's petition for leave to apply for judicial review of the decision of the Minister's delegate, thus confirming the decision of the Federal Court of Canada of 11 January.

4.11 The complainant arrived in Rwanda in January 2012. According to articles published in the press, the complainant was arrested upon his arrival and held in Kigali prison. The complainant's arrest and detention alone do not, however, amount to torture and are insufficient reason in and of themselves to find a violation of article 3 of the Convention. Furthermore, at the time of the submission of the State party's observations to the Committee, the complainant had already met with his lawyers and contacted his family members in Canada; he had appeared before the Court more than once and had been granted a two-month period in which to prepare his defence. In March 2012, he asked the Court to conduct his trial in French, claiming that, *inter alia*, it would benefit his Canadian defence lawyers, but his request was not granted. In May 2012, he petitioned for an adjournment of his trial, citing health problems. The State party contends that, since the complainant is a high-profile figure who attracts intense media attention, the Rwandan authorities will take particular care to ensure that his rights are respected and that any violations thereof would quickly become public knowledge.

4.12 The State party is of the view that the complaint before the Committee contains no new claims or evidence to support the conclusion that the complainant would be exposed to a real and personal risk of torture upon his return, nor does it establish that the decisions of the Canadian authorities were in any way flawed. Thus, the State party invites the Committee to re-evaluate the findings of the Canadian authorities and assess whether their decisions were flawed in some way.

4.13 With regard to the subject of admissibility, the State party argues that the complaint is in part incompatible with the Convention, since the complainant is also claiming violations of the International Covenant on Civil and Political Rights and the Convention relating to the Status of Refugees. Furthermore, even if the alleged risks having to do with shortcomings in the Rwandan judicial process, lack of protection for witnesses, lack of judicial independence and prison conditions actually existed in Rwanda, which the State party denies, they would not constitute acts of torture, as the mere fact that a person is arrested or held in custody does not in itself constitute an act of torture within the meaning of the Convention.

4.14 As for the complainant's claim that he would be at risk of torture in Rwanda, as defined in article 1 of the Convention, the State party notes that he talks about the general situation that seems to prevail in Rwanda and about specific past cases that, in his view, amount to torture. However, according to the Committee's jurisprudence, a demonstration of the existence of human rights violations does not in itself constitute sufficient grounds for determining that a risk of torture exists. Contrary to the complainant's claims, torture is not endemic in Rwanda, and he has not demonstrated the existence of substantial grounds for believing that he would run a real, personal and foreseeable risk of torture in Rwanda. The State party therefore is of the view that the complainant has failed to substantiate his allegations. As for the complainant's claim that he is at risk of being subjected to cruel and unusual treatment or punishment, it is to be noted that the obligation of non-refoulement set forth under article 3 of the Convention does not apply in the present case.

4.15 In the event that the Committee finds the complaint to be admissible, the State party contends that it should be rejected on the merits. The Minister's delegate undertook a thorough, detailed analysis of the risks that the complainant might run if he were returned to Rwanda. In addition to the observations and evidence submitted by the complainant, the delegate examined recent reports on the situation in Rwanda. The State party asserts that the documentation provided by the complainant in support of his claims does not relate to the current situation in Rwanda, which has improved considerably. The complainant fails to show how the documents that he has submitted demonstrate that he is personally at risk of torture.

4.16 In his letter of 9 January 2012, T. refers in particular to the right to a fair hearing, the protection of defence witnesses, restrictions on freedom of speech and the use of torture in Rwanda. He does not however specify why the complainant would himself be at a personal risk of torture. No link had been established between the general situation in Rwanda and the specific case of the complainant.

4.17 The affidavit supplied by Ms. M. of 3 January 2012 refers to witness accounts dating back to 2004–2009 that did not reflect the current situation in Rwanda. Even if these reports were true, the affidavit provides no evidence that the complainant runs a personal risk of being subjected to torture in Rwanda. Any shortcomings in the Rwandan justice system with regard to ensuring a fair hearing and an effective defence, including the opportunity to call defence witnesses, do not amount to acts of torture within the meaning of article 3 of the Convention. Moreover, claims to that effect have been dismissed by the International Criminal Tribunal for Rwanda in its recent decisions. In the *Bernard Munyagishari* case file, the defence argued, on the basis of reports from NGOs, that attorneys representing defendants in sensitive cases had reason to fear for their safety. The Tribunal had pointed out that the reports in question had been published prior to the issuance of a decision in the *Uwinkindi* case<sup>4</sup> and the amendment of the Rwandan Criminal Code. According to the Tribunal, improvements have been made since that time, and Organic Act No. 11/2007 of 16 March 2007 concerning transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and other States now offers suitable protection for defence lawyers.

4.18 In his letter, Mr. P. refers to cases of persons who have been prosecuted in Rwanda in an attempt to show that the complainant would not have the right to a fair or impartial hearing. As previously mentioned, this issue does not fall within the scope of article 3 of the Convention.

4.19 The State party reiterates that the Minister's delegate evaluated all the evidence submitted to him and had the authority to give more weight to some pieces of evidence than to others. There was no aspect of his decision that was arbitrary. The State party asserts that the same can be said of the decisions of the Canadian courts.

4.20 With regard to the human rights situation in Rwanda, a number of decisions, particularly those issued by the European Court of Human Rights and the International Criminal Tribunal for Rwanda, attest to improvements in this regard and in the workings of the judicial system. The complainant's allegations have not been accepted by the European Court or the Tribunal and do not reflect the current situation in Rwanda. The State party refers, in particular, to the case of *Ahorugeze v. Sweden*, in which the European Court of Human Rights found that there was no evidence of widespread persecution or ill-treatment in Rwanda and that Kigali and Mpanga prisons were in conformity with international standards,<sup>5</sup> a conclusion shared by the Tribunal. The jurisprudence of the Tribunal also reflects developments in the human rights situation in Rwanda. In the *Uwinkindi* case, the Referral Chamber of the Tribunal found that issues that had been a cause of concern for the Tribunal's trial chambers in the past and had led to a refusal to authorize transfers to Rwanda, such as prison conditions and the lack of witness protection, had been dealt with satisfactorily.<sup>6</sup> The Referral Chamber's decision was confirmed by the Appeals Chamber of the Tribunal on 16 December 2011.<sup>7</sup>

4.21 The State party also refers to the Committee's concluding observations concerning Rwanda, in which it acknowledged the progress made in providing justice to victims of the genocide and in building a State based on the rule of law.<sup>8</sup> Although, in those concluding

<sup>4</sup> International Criminal Tribunal for Rwanda, *Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11bis (28 June 2011).

<sup>5</sup> European Court of Human Rights, *Ahorugeze v. Sweden* (application No. 37075/09), Judgment of 27 October 2011, para. 72.

<sup>6</sup> International Criminal Tribunal for Rwanda, *Jean Uwinkindi v. Prosecutor*, Case No. ICTR-2001-75-AR11bis (16 December 2011), para. 60, affirmed by the Appeals Court, para. 39.

<sup>7</sup> International Criminal Tribunal for Rwanda, *Prosecutor v. Jean Uwinkindi*, Case No. ICTR-2001-75-R11bis (28 June 2011), para. 224.

<sup>8</sup> CAT/C/RWA/CO/1, para. 3.

observations, the Committee still noted a number of human rights violations in Rwanda and said that prison conditions were poor, it did not state that torture was endemic in the country.

4.22 Even though the complainant did not face any risk, the State party nonetheless secured clear and precise diplomatic assurances from Rwanda as an added precaution on 27 March and 24 December 2009. It was in the interests of the Rwandan authorities to honour the diplomatic assurances they provided and to ensure the complainant's safety, given their commitment to do so and the importance that Rwanda attaches to maintaining good diplomatic relations with Canada and, among others, the European Court of Human Rights and the International Criminal Tribunal for Rwanda, which have, moreover, accepted and acted upon similar assurances offered by Rwanda in the past. A failure to honour its assurances could seriously undermine the country's future ability to receive and bring to justice persons accused of committing criminal acts in its territory. Although the State party has not put in place a specific mechanism for monitoring the situation of the complainant, it notes that ICRC monitors the prison conditions to which persons transferred to Rwanda are subject, including conditions in Mpanga prison. Moreover, as the Minister's delegate concluded, given the complainant's high profile and the intense media interest in his case, his situation will be closely monitored and the authorities will take particular care to respect his rights.

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

5.1 On 1 November 2012, the complainant submitted his comments on the State party's observations, noting that he had been extradited to Rwanda notwithstanding the interim measures requested by the Committee. The day after his arrival, he was taken to the prison in the city of Kigali. On 2 February, the complainant appeared before the High Court of Rwanda, where he was informed of the charges against him, including incitement to murder, hatred and genocide and planning the genocide.

5.2 The complainant clarifies that he is not asking the Committee to substitute its own findings for those of the Canadian authorities. What he seeks to show is that there has been a deliberate attempt to deny that he faces a risk of persecution, torture and ill-treatment. He recalls that the Committee is not bound by such findings, and "instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case".<sup>9</sup>

5.3 With regard to his situation in Rwanda, the complainant asserts that the risk of being subjected to torture that he faces stems not only from his arrest and detention but also from the fact that he has been classified as a political opponent and an enemy of the State and from the treatment that the State reserves for individuals in that category. It is not necessary for the author of a communication to have been subjected to torture in the past in order for that individual to be personally at risk; if it were otherwise, the objective of the Convention and the Committee of preventing acts of torture could never be achieved.

5.4 The complainant considers his personal circumstances to be such that he still runs a real, personal and foreseeable risk of torture in Rwanda. The Committee has specified that, for a risk of torture to be shown to exist, it does not have to meet the test of being highly probable.<sup>10</sup> The fact that the complainant is considered a political opponent and has received media attention increases the risk of his being subjected to psychological and physical torture.

5.5 The argument that the information contained in the declarants' affidavits is out of date is unfounded. The complainant presents the facts that occurred up to the end of 2011, which is relevant to the Committee's analysis because the Minister's delegate reached his decision in November 2011 and the complainant was sent back to Rwanda on 23 January 2012. In T.'s letter of 9 January 2012, he states that the complainant is considered to be a

<sup>9</sup> *E.L. v. Canada* (CAT/C/48/D/370/2009 and CAT/C/48/D/370/2009/Corr.1), para. 8.4, and *M.A.M.A. et al. v. Sweden* (CAT/C/48/D/391/2009), para. 9.4.

<sup>10</sup> A/53/44, Annex IX, para. 299.

political opponent and an enemy of the State, which places him personally at risk of torture and cruel, inhuman and degrading treatment given the Rwandan Government's policy of eliminating the opposition.

5.6 The facts presented by Ms. M. are not only known to her personally but are also corroborated by court documents and publications. She describes the judicial and prison conditions to which the complainant would be exposed and links them to the way in which the complainant is viewed by the Rwandan Government. As a lawyer accredited to argue cases before the International Criminal Tribunal for Rwanda, her comments can be taken to be impartial and truthful. Her comments reflect five years of close observation on the ground and describe a situation and practices that are firmly entrenched; in the light of those practices and recent reports on Rwanda from human rights organizations, it is reasonable to believe that the situation remains the same.

5.7 Mr. P. mentions cases in which political opponents of the Rwandese Patriotic Front were accused of involvement in the genocide in order to demonstrate how the Rwandan Government violates opponents' fundamental rights and thereby illustrate the personal risk faced by the complainant as a political opponent.

5.8 The complainant feels that these documents shed light on the flaws in the Rwandan judicial and prison systems. Deliberately preventing an individual from having access to a full and complete defence is liable to cause him or her psychological suffering that could amount to torture. Moreover, the improvements referred to by the State party concern only legislative measures.

5.9 The decisions which the State party cites as instances in which extradition was granted of persons accused in connection with the genocide to Rwanda are not binding upon the Committee; nor do those decisions have any probative value, since the evaluation of risk is specific to each case. Those cases must therefore be considered separately from the complainant's case. In addition, most of those cases were analysed with reference to the mechanism of the Act concerning transfer of cases and in the light of guarantees that are not applicable to the complainant. In *Ahorugeze v. Sweden*, the decision of the European Court of Human Rights to allow extradition was primarily based on a risk assessment conducted as part of the monitoring mechanism established pursuant to the Act, which does not apply to the complainant's case. The improvements referred to in relation to the rule of law essentially refer to legislative amendments and are therefore purely theoretical.

5.10 In the *Uwinkindi* case, the International Criminal Tribunal for Rwanda simply established the absence of risk and noted improvements in prison conditions as they related to the Act concerning transfer of cases, but it did not really evaluate the situation on the ground outside the framework of the mechanism provided for by the Transfer Act. No monitoring mechanism is in place that would ensure the appropriateness of prison conditions in the complainant's case.

5.11 In its concluding observations on Rwanda, the Committee expressed concern about the risk of torture, particularly in the case of political prisoners, and about prison conditions.<sup>11, 12</sup> The complainant refers to NGO reports which note an increase in the number of instances of unlawful detention during which acts of torture and other forms of ill-treatment are committed.<sup>13</sup>

5.12 The complainant does not consider diplomatic assurances to be reliable. For that matter, they have not been honoured with regard to guarantees of a fair trial, an effective defence or compliance with international standards in relation to the complainant's conditions of detention. Before the complainant was sent back to Rwanda, the Rwandan authorities had not been called upon to engage in any diplomatic undertaking of the sort, as national courts in States hosting Rwandan refugees accused of involvement in the genocide categorically refused to extradite them because of serious fears about the use of torture. It was therefore impossible for the State party to properly evaluate the likelihood that Rwanda

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<sup>11</sup> CAT/C/RWA/CO/1, para. 10.

<sup>12</sup> *Ibid.*, paras. 11, 12, 14, 15, 17, 19, 23 and 24.

<sup>13</sup> Amnesty International, *Amnesty International Report 2012: The State of the World's Human Rights*, p. 293.



would honour its commitments, given the lack of documentation in that regard. Moreover, Canada has admitted that it had not put in place any specific monitoring mechanism for the complainant to ensure that the corresponding diplomatic assurances will be respected. The Committee has previously found that assurances of a general nature unsupported by a monitoring mechanism are insufficient.<sup>14</sup>

5.13 The State party is incorrect in asserting that the fact that ICRC monitors prison conditions in the cases of persons transferred to Rwanda compensates for the failure by Canada to establish a monitoring mechanism. According to the ICRC rules of procedure, visits are confidential and its observations are conveyed only to the authorities concerned. There is thus no way of knowing whether ICRC has visited a particular prisoner or whether there has been any monitoring of the conditions under which a particular prisoner is being held. ICRC has no more than monitoring and advisory powers, which does not constitute an effective mechanism for redress in cases of torture.

5.14 The State party's failure to cooperate and to accede to the Committee's request for interim measures constitute a violation of article 22 of the Convention.

5.15 The treatment of the complainant since his return to Rwanda is in violation of the diplomatic assurances that were provided, given that several detainees in the same prison as him have been tortured in illegal centres before being handed over to the judicial authorities. He himself has received death threats and was subjected to humiliating treatment by a secret service agent in the prison who told him "You know I can shoot you down" when he tried to complain about the prison conditions. The complainant lives in constant fear of being assassinated because of his notoriety and other prisoners' and the authorities' attitude towards him. Moreover, as he is in pretrial detention and no longer under police supervision, he fears that the secret service will take him to an illegal facility and torture him in order to extract a confession. The complainant also claims that his right to contact his family is observed only sporadically. He says that the food provided to him is insufficient and that his health has suffered as a result. He also refers to irregularities in judicial proceedings in his case. Lastly, he claims that he does not have access to a place of worship and that his right to practise his religion is being violated.

5.16 On 4 February 2013, the complainant attached a letter from Mr. R., the Rwandan lawyer representing him, who alleges that his right to a fair trial in Rwanda has been violated.

5.17 On 1 May 2013, the complainant added that his request for legal aid had remained unanswered despite the diplomatic assurances given by Rwanda.

5.18 On 1 and 19 November 2013, the complainant provided additional material on the denial of appropriate treatment for his psychosomatic illness and the failure to uphold his right to a fair trial.

#### **Additional comments by the State party**

6.1 On 22 October 2013, the State party reiterated that the issue before the Committee was simply to determine whether there were substantial grounds for believing that the complainant was personally at risk of torture. Since the obligation of non-refoulement assumed under article 3 of the Convention does not apply to allegations of cruel or unusual treatment or punishment or of violations of rights not covered by the Convention, such as the right of defence, it considers that the complaint is thus inadmissible *ratione materiae*. The State party is not under an obligation to ensure that all the rights guaranteed by the International Covenant on Civil and Political Rights are respected in the country of return.<sup>15</sup>

6.2 The State party also notes that the complainant supports his arguments by citing documents that were issued after his extradition and that he complains of how he has been treated since he was returned to Rwanda. It recalls that, according to the Committee's

<sup>14</sup> *Kalinichenko v. Morocco* (CAT/C/47/D/428/2010), para. 15.6.

<sup>15</sup> The State party refers to general comment No. 31 of the Human Rights Committee on the nature of the general legal obligation imposed on States parties to the Covenant (CCPR/C/21/Rev.1/Add.13, para. 12).

jurisprudence, any assessment of the risk of torture must be carried out in the light of the information that was possessed, or ought to have been possessed, by the authorities of the State party before the expulsion took place, while information obtained thereafter “is relevant only to assess what the State party actually knew, or could have deduced, about the risk of torture at the time the complainant was expelled”.<sup>16</sup> The evaluation of the risks of torture made prior to a person’s deportation should not be confused with any ill-treatment that the complainant claims to have suffered after he was handed over to the Rwandan authorities. The complainant has not provided the Committee with any new evidence regarding his treatment since his arrival in Rwanda that might lead to the conclusion that the State party actually knew, or could have deduced, that there was a risk of torture at the time of his expulsion.

6.3 The State party reiterates that its national authorities conducted a thorough analysis of the risks that the complainant claimed that he would face and that it is not the role of the Committee to act as a fourth instance, unless to demonstrate arbitrariness or a denial of justice.<sup>17</sup>

6.4 On the merits, the State party reiterates that the complainant’s allegations do not indicate a violation of article 3 of the Convention, given that a risk of torture was not established or foreseeable prior to his extradition and that, thereafter, the material that he has submitted does not support the finding of a violation of the prohibition of torture within the meaning of article 1 of the Convention. The claims that he has received death threats and fears for his life have not been corroborated.

6.5 The State party specifies that it obtained assurances from Rwanda that the complainant’s case would be considered and handled as a transfer under article 24 of the Act concerning transfer of cases. Consequently, when the complainant was returned, the State party expected him to enjoy the same guarantees and safeguards as those provided for by the Transfer Act for defendants transferred by the International Criminal Tribunal for Rwanda. The State party recalls that, as an additional precautionary measure, it received clear diplomatic assurances from Rwanda before returning the complainant, even though the Canadian authorities had concluded that he would not face a risk of torture. Furthermore, in his comments, the complainant provides no credible evidence that Rwanda has failed to honour its diplomatic assurances since then.

#### **Additional comments by the complainant**

7.1 On 16 May 2016, the complainant submitted his comments on the State party’s observations of 28 February 2012. He maintained that his trial in Rwanda started on 12 September 2012. On 15 April 2016, the High Court of Rwanda sentenced him to life imprisonment for public incitement to genocide and persecution and inculcation of hatred based on ethnicity, and acquitted him of the charges of conspiracy to commit genocide and complicity in genocide.

7.2 The complainant challenges the decision of the Minister’s delegate to return him to Rwanda on the grounds that he disregarded evidence of the risk of torture and failed to use objective criteria in the risk analysis; he further asserts that the decision to expel him was emotional in nature. He considers the decision to return him to Rwanda to have been arbitrary and is of the view that it was taken without considering the real, personal and foreseeable risk of torture that he faces, especially in view of the systematic and flagrant commission of mass violations of human rights. In choosing to determine whether he was “highly likely” to face a risk of torture, the State party failed to follow the guidance of the Committee, according to which it should simply have determined whether the complainant was “likely” to run a risk of torture. The complainant further maintains that the risk of torture was foreseeable for the State party, particularly in view of the arbitrary detentions and abuse of prisoners that have occurred in Rwanda, the fact that torture was not punishable under the Rwandan Penal Code at the time of his removal and the complainant’s status as a political opponent. The State party should have prosecuted him in Canada under

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<sup>16</sup> *Sogi v. Canada* (CAT/C/39/D/297/2006), para. 10.8.

<sup>17</sup> *P.E. v. France* (CAT/C/29/D/193/2001), para. 6.5.

the Crimes against Humanity and War Crimes Act. Diplomatic assurances from Rwanda are unreliable, particularly since there is no monitoring mechanism in place. The complainant states that no one from the State party accompanied him to his place of detention, visited him or attended his hearings, in violation of the diplomatic assurances that were received. He adds that the Committee has admonished the State party for its failure to institute interim measures.<sup>18</sup> He is of the view that, in deporting him, the State party acted in bad faith.

7.3 The complainant contends that, in the light of the Committee's concluding observations on Rwanda, the human rights situation remains a cause of concern.<sup>19</sup> With the exception of Sweden, which agreed to extradite a person in 2009, no country has extradited persons suspected of having participated in the genocide to Rwanda because of concerns about the possibility of having a fair trial in that country.<sup>20</sup> The complainant then repeats his allegations of a violation of his right to a fair trial and contends that the refusal of the High Court of Rwanda to have his indictment translated into English and French for his lawyers prevented him from mounting a proper defence. He underscores the absence of legal aid and the failure to meet his medical and nutritional needs, in violation of the diplomatic assurances that were given.

#### **Additional comments by the State party**

8.1 On 19 October 2016, the State party reiterated its previous submissions. It adds that the complainant's submission of 16 May 2016 does not contain any new claim or evidence that would support the conclusion that he was exposed to a real and personal risk of torture in Rwanda at the time of his deportation. The complainant has not succeeded in proving that there were substantial grounds for believing that he would be subjected to torture.

8.2 The State party maintains that the communication is inadmissible *ratione materiae* and by virtue of the failure to substantiate claims of a risk of torture in Rwanda. The Committee reiterates that the Minister's delegate followed the procedure established by law for assessing the risk of torture on the basis of the criteria set out in the Convention and, in so doing, considered both the general human rights situation in Rwanda, which has improved considerably since 2004, and the applicant's personal situation. His analysis was confirmed by the higher courts. The fact that the authorities reached a different conclusion from that of the applicant does not render their decisions unreasonable. Despite the absence of a risk of torture, the State party obtained diplomatic assurances as a precautionary measure, which the Federal Court deemed sufficient to rule out any risk of torture. It was reasonable to accept those assurances following a full, detailed and thorough review of the specific circumstances of the complainant and the documentary evidence, all of which formed part of a fair process, and taking into account the commitment of Rwanda to abide by those assurances and the importance it attaches to maintaining good relations with Canada. In his comments of 16 May 2016, the complainant continues to assert simply that there was a possibility of a risk of torture, whereas the risk assessment was based on the information of which the State party was aware or could have been expected to be aware. The complainant has not provided the Committee with any evidence concerning his treatment since his arrival in Rwanda that might lead to the conclusion that the State party actually knew, or could have deduced, that there was a risk of torture at the time of his expulsion. The complainant's comments do not alter the outcome of the risk assessment made by the authorities at the time in question.

8.3 The State party is of the view that the complainant has not substantiated his allegations, which are, moreover, immaterial inasmuch as the decision of the Minister's delegate was based on all the evidence that was relevant to the assessment of the risk of torture. The complainant has not demonstrated the existence of a real, personal and foreseeable risk of torture in Rwanda. Nor has he demonstrated that his claims of a violation of his right to a fair trial and defence entail suffering of a sufficiently severe nature to be regarded as amounting to torture. The ill-treatment to which he alleges he has

<sup>18</sup> CAT/C/CAN/CO/6/, para. 10.

<sup>19</sup> CAT/C/RWA/CO/1, paras. 4–7.

<sup>20</sup> Amnesty International, *Amnesty International 2011: The State of the World's Human Rights*, p. 294.

been subjected since his arrival in Rwanda does not constitute acts of torture within the meaning of the Convention, and the diplomatic assurances provided by Rwanda are sufficient and reliable; they were subjected to judicial review by the Federal Court, and their observance is subject to monitoring by ICRC. Furthermore, the State party rejects the complainant's claim that he should have been tried in Canada under the Crimes against Humanity and War Crimes Act on the grounds that it is devoid of any substantiating argument or evidence as to its relevance or to a finding of a violation of article 3 of the Convention.

8.4 On 11 April 2018, the State party indicated that it would not submit any additional comments.

#### **Additional comments by the complainant**

9.1 On 27 April 2017, the complainant provided additional comments. He recalled his earlier claims and reiterated that he had submitted evidence to demonstrate that his removal to Rwanda had exposed him to a real and personal risk of torture and that Canada had deported him despite being aware of these risks, the existence of which was well-documented. The fact that the State party sought diplomatic assurances constitutes an implicit recognition on its part that torture is practised in Rwanda. The State party lifted its moratorium on returning people to Rwanda on 23 July 2009 despite the fact that the Rwandese Patriotic Front, which is suspected of committing serious crimes against humanity, has controlled the courts, the press and political life in Rwanda since 2004.

9.2 Now being held in prison in Rwanda, the complainant claims that he has been subjected to forms of ill-treatment such as deprivation of food, sleep and medical assistance and poor conditions of detention. He maintains that the cruel, inhuman and degrading punishment referred to in article 16 of the Convention is supplementary to the concept of torture as set forth in article 3 of the Convention. Given his vulnerability as a detainee, he is continually exposed to a risk of torture, including death threats and humiliation by secret service agents, and violations of his procedural rights, which would not have been the case if he had been tried in Canada. He notes that access to counsel and to his family has been restricted and that he has not been provided with legal aid.

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

##### *Consideration of admissibility*

10.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a), that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

10.2 The Committee notes that the State party has contested the admissibility of the complaint on the grounds that it has not been substantiated and that it is incompatible with the Convention because the complainant claims violations of the International Covenant on Civil and Political Rights and the Convention relating to the Status of Refugees. It also submits that the alleged risks do not constitute acts of torture within the meaning of the Convention.

10.3 Although the Committee may examine a complainant's allegations in the light of other human rights instruments, its mandate is to monitor compliance by States parties with the Convention. The complainant's claims regarding provisions of the International Covenant on Civil and Political Rights and the Convention relating to the Status of Refugees are therefore inadmissible under article 22 (1) of the Convention.

10.4 The Committee considers that the complainant has sufficiently substantiated for the purposes of admissibility the portion of his complaint regarding the risk involved in the event of his return to Rwanda.

10.5 The Committee concludes that the complaint is admissible under article 22 of the Convention and proceeds with its consideration of the merits.

*Consideration of the merits*

11.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 22 (4) of the Convention.

11.2 In accordance with article 3 of the Convention, the Committee must determine whether or not there are substantial grounds for believing that the complainant was in danger of being subjected to torture upon his return to Rwanda. The Committee observes, at the outset, that in cases where a person has been expelled prior to the consideration of the complaint, the Committee assesses what the State party knew or should have known at the time of expulsion. Information obtained after the person's removal is relevant only to the assessment of what the State party actually knew, or could have deduced, about the risk of torture at the time the complainant was expelled.<sup>21</sup>

11.3 In order to determine whether or not there were substantial grounds for believing that the complainant would be in danger of being subjected to torture upon his return to Rwanda, the Committee must take account of all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass human rights violations. However, the aim of its deliberations is to determine whether or not the individual concerned would be personally at risk of being subjected to torture in the country to which he was to be returned. Additional evidence must therefore be adduced to show that the individual concerned would be personally at risk. It follows that the existence of a pattern of gross, flagrant or mass human rights violations in a country does not, in itself, constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; there must be additional grounds for concluding that the risk of torture was of a personal nature. Conversely, the absence of a consistent pattern of flagrant human rights violations does not mean that a person might not be considered to be at risk of being subjected to torture given his or her particular circumstances.<sup>22</sup>

11.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, wherein it states that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to be shown to be "highly probable", the burden of proof generally falls on the complainant, who must present an arguable case establishing that he or she is at "foreseeable, personal, present and real" risk. The Committee further recalls that it gives considerable weight to findings of fact made by organs of the State party concerned, while, at the same time, it is not bound by such findings and instead has the power, under article 22 (4) of the Convention, to make a free assessment of the information available to it, taking into account all the circumstances relevant to each case.<sup>23</sup>

11.5 The Committee notes the complainant's assertion that he is considered to be a political opponent of the Government of Rwanda and that the risk of torture was thus real, and that the Canadian authorities, including the Minister's delegate, made a deliberate decision to deny that he would face a risk of torture in Rwanda and relied too heavily on the diplomatic assurances that they received. The Committee also takes note of the contents of the documentation provided by the complainant to support his claim that he is at risk of torture and that the right to a defence of persons charged with genocide is not respected. The Committee further takes note of the author's claim that the fact that his case has received so much attention in the media increases his risk of torture. Lastly, the Committee notes that, since his return to Rwanda, the complainant alleges that his right to a fair trial has been violated, that his access to counsel and to his family has been restricted, that he has been deprived of food, sleep and medical assistance and that he has been subjected to poor prison conditions and to intimidation from secret service agents in the prison.

<sup>21</sup> *Sogi v. Canada*, para. 10.8; *Tebourski v. France*, (CAT/C/38/D/300/2006), para. 8.1; *Agiza v. Sweden* (CAT/C/34/D/233/2003), para. 13.2; and *Kalinichenko v. Morocco*, para. 15.2.

<sup>22</sup> *S.P.A. v. Canada* (CAT/C/37/D/282/2005); *T.I. v. Canada* (CAT/C/45/D/333/2007); and *A.M.A. v. Switzerland* (CAT/C/45/D/344/2008).

<sup>23</sup> See general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, paras. 11, 38 and 50.

11.6 The Committee notes the State party's assertion that all the evidence submitted to the Canadian authorities was examined by, *inter alia*, the Minister's delegate and the Federal Court; that, at the time of the complainant's removal, it had been determined that he would not face any risk of torture; and that, the absence of risk notwithstanding, as a precautionary measure the State party obtained diplomatic assurances from Rwanda, including assurances that any treatment that would be in violation of the Convention was prohibited. The Committee also notes the argument that the complainant's allegations are general in nature, that he has not submitted any evidence of the existence of a foreseeable, real risk and that the violations that he claims have occurred since his return do not constitute acts of torture under article 1 of the Convention. The Committee further notes the argument that the media interest surrounding the complainant's case is an additional guarantee that he will not run the risks that he claims that he faces.

11.7 In the light of the information made available to it, the Committee considers that the State party has not violated its obligation under article 3 of the Convention. Article 3 concerns the principle of non-refoulement, which, under the Convention, applies only to treatment that is contrary to article 1 of the Convention. The information supplied by the complainant, which was examined extensively and thoroughly by the Canadian authorities, offers no evidence of a real, personal and foreseeable risk of torture in the event of extradition to Rwanda. The supporting documentation provided by the complainant is primarily based on the presumption that the complainant, who had been accused of genocide and was wanted by the Rwandan authorities, would automatically have been at risk of torture. The information made available to the Committee does not, however, contain any reference to allegations of torture following the return (or extradition or transfer) to Rwanda of persons to be tried for acts of genocide. Moreover, although the treatment of the complainant after his return cannot, as previously mentioned, be regarded as a decisive consideration, the allegations submitted to the Committee by the complainant following his return to Rwanda fall outside the scope of article 1 of the Convention and are therefore merely supplementary considerations that lead the Committee to conclude that no violation of article 3 of the Convention has been committed in this case.

11.8 The Committee recalls that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, has undertaken to cooperate with the Committee in good faith in giving full effect to the procedure for examining individual complaints established thereunder. The Committee also notes that article 18 of the Convention vests it with competence to establish its own rules of procedure, which, once they have been instituted, become inseparable from the Convention insofar as they do not contradict it. The Committee also notes that the State party's obligations include observance of the rules of procedure adopted by the Committee, which are inseparable from the Convention, including rule 114, which is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, since those articles would otherwise offer no more than partial, if not purely theoretical, protection to asylum seekers claiming that they run a serious risk of torture.<sup>24</sup> Consequently, the Committee is of the view that, by sending the complainant back to Rwanda despite the Committee's request for interim measures, thereby presenting the Committee with a *fait accompli*, the State party has violated its obligations under article 22 of the Convention.

12. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Rwanda by the State party does not constitute a violation of article 3 of the Convention. Nevertheless, his removal to Rwanda on 23 January 2012, notwithstanding the interim measures requested by the Committee on 11 and 12 January, constitutes a breach of article 22 of the Convention.

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<sup>24</sup> *R.S. et al v. Switzerland* (CAT/C/52/D/481/2011), para. 7; *Dar v. Norway* (CAT/C/38/D/249/2004), para. 16.3; and *Tebourski v. France*, para. 8.6.

13. In conformity with article 118 (5) of its rules of procedure, the Committee urges the State party to take all necessary steps to prevent similar violations of article 22 from occurring in the future and to ensure that, in all cases where the Committee has requested interim protection measures, contested decisions are not implemented by the national authorities.

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