



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

Distr.: General  
16 June 2017  
English  
Original: French

**Committee against Torture**

**Decision adopted by the Committee under article 22 of the  
Convention, concerning communication No. 612/2014\*, \*\***

<i>Submitted by:</i>	A.N., represented by Trial (Track Impunity Always) and the Seruka Initiative for rape victims/Centre Seruka
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Burundi
<i>Date of complaint:</i>	24 March 2014 (initial submission)
<i>Date of present decision:</i>	2 May 2017
<i>Subject matter:</i>	Torture by members of the national police; use in a judicial proceeding of confessions obtained under torture; lack of effective investigation and redress
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Torture and other cruel, inhuman or degrading treatment or punishment; measures to prevent acts of torture; systematic review of arrangements for custody and treatment of detainees; obligation of the State party to ensure that the authorities promptly conduct an impartial investigation; right to file a complaint; right to redress; forced confessions
<i>Articles of the Convention:</i>	Articles 2 (1), 11, 12, 13, 14 and 15, read in conjunction with articles 1 and 16 of the Convention

1.1 The complainant is A.N., a Burundian national born in 1978 and from the municipality of Muyinga (Muyinga Province). At the time of the events, he was residing in Ngozi. He is single and has no dependent children. He claims that Burundi has violated his rights under articles 2 (1), 11, 12, 13, 14 and 15, read in conjunction with article 1 and, alternatively, with article 16 of the Convention against Torture. He is represented by counsel.

\* Adopted by the Committee at its sixtieth session (18 April-12 May 2017).

\*\* The following members of the Committee took part in the consideration of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Claude Heller-Rouassant, Sapana Pradhan-Malla, Ana Racu, Sébastien Touzé and Kening Zhang.



1.2 On 10 June 2003, Burundi declared that it recognized the competence of the Committee against Torture to receive and consider individual communications under article 22 of the Convention.

1.3 On 16 June 2014, in application of rule 114 (1) (formerly rule 108) of its rules of procedure (CAT/C/3/Rev.5), the Committee asked the State party effectively to prevent any threats or acts of violence against the complainant and his family, in particular for having submitted this complaint, while the complaint was being considered, and to keep the Committee informed of the measures taken to that effect.

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

2.1 The complainant is a teacher. He taught at Rwizirwe Community School. Since the events related in this communication, he has stopped working. At the time of the events, Burundi was in a serious post-electoral crisis. The complainant was communal representative of the National Liberation Forces (FNL), which opposed the ruling party.

2.2 On 23 April 2011, A.N. was arrested at his home by police officers. At around 4 a.m., some 20 officers surrounded his house. The police broke into the home at dawn and one of the officers instructed the complainant's apartment mate to knock on his bedroom door and to inform him that the police wanted to see him. A few seconds later, the complainant appeared in his bedroom doorway. Six heavily armed policemen suddenly broke into his room without speaking to him and began searching the premises without presenting a search warrant. A police officer ordered the complainant to stay in a corner of the bedroom and not to move. The search lasted about an hour. The police confiscated two computers, a printer and a scanner, a registry of the FNL party and two deeds for land plots in Kwibuye, Muyinga Province.

2.3 Following the confiscation, one of the officers, who was apparently in charge of the operation, told the others that the complainant should be arrested. The complainant had already been arrested several times at public demonstrations organized by the FNL. He was thus known and easily identified by the authorities.

2.4 The complainant was arrested and placed in the back of a national police van with about 15 police officers. During the trip, his apartment mate, who had also been arrested, was delivered to the jail at the Muyinga commune. A.N. was taken to the Muyinga police station, arriving at about 8 a.m. He was brought to the office of the provincial deputy commissioner. On the way to the office, the complainant saw six barefoot men sitting on the floor in the hallway, hands bound and with injuries to various parts of their bodies, their clothing stained with blood. There were clearly rope markings on their wrists.

2.5 The deputy commissioner ordered the complainant to sit down and began to question him. He asked him where he planned to go with the other six persons that he had just seen. He told him they were all accused of starting a rebellion from the United Republic of Tanzania. The complainant replied that he did not know what accusations were being brought against him, adding that he did not know any of the persons he had seen, with the exception of one, who was a member of the FNL political party.

2.6 The deputy commissioner, who was obviously upset by the complainant's answers, then took his nightstick and a cast-iron rod and began striking A.N. on the legs and back. A.N. tried to protect himself using his hands, but the deputy commissioner hit him so hard that he collapsed under the force of the blows. The deputy commissioner, while dealing him blows, continually urged the complainant to confess his plans to foment a revolution. He grabbed him by the collar, pinned him against the wall and held his pistol to his ear, threatening to kill him "like the others" and to throw his body into the Ruvubu River.<sup>1</sup> The beating continued. In the end it was the noise of a nearby vehicle that distracted the torturer and made him leave the victim lying on the ground, in excruciating pain.

---

<sup>1</sup> The complainant notes that the deputy commissioner's reference was to the Muyinga massacre. <https://www.hrw.org/fr/news/2008/10/24/burundi-les-condamnations-pour-le-massacre-de-muyinga-sont-une-victoire>.

2.7 A judicial police officer was then assigned to continue the questioning, asking A.N. the same questions. Ten minutes later, the deputy commissioner reappeared and violently struck the complainant on his right arm, forcing him to sign a document by placing his mark on it.

2.8 The complainant's arm was broken. He still suffers from the serious physical and psychological scars of the abuse to which he was subjected.

2.9 During their visit to the Muyinga police station on the same day, observers from the United Nations Office in Burundi (BNUB) were able to meet with A.N. They noted marks of torture on his body, including the arm fracture.

2.10 The same day, around 10 a.m., the complainant was transferred to the Muyinga prison, where a nurse noted the injury to his right arm and dressed it, mentioning that it was possibly broken. It was only five days later that A.N. was taken to the hospital in Muyinga. However, as the doctor was not available, he was returned to the prison. In the following days, his requests to see a doctor went unheeded, despite the fact that he was in terrible pain. He was treated by other prisoners and kept the same bandage for two months.

2.11 During his detention, A.N. shared a cell with 80 other persons. The room had only a few small windows in the ceiling and was very poorly lit. He had to sleep on the cold cement floor, without a mattress.

2.12 On 3 May 2011, a pretrial court chamber was organized to determine whether the detention of the complainant was legal; the result was that he remained in detention. At the hearing, A.N. immediately reported the abuse to which he had been subjected during his questioning by the deputy commissioner, but his allegations were given absolutely no follow-up. Moreover, as the hearing took place so soon after the events and the victim still had obvious marks of the beatings on his body, the investigating magistrate was beyond any doubt able to see those marks for himself. Yet the investigating magistrate told A.N. that the fact that his arm was swollen was not evidence of torture, as there was no proof that he had sustained the injury at the police station.

2.13 On 10 May 2011, observers from the United Nations Office in Burundi met the Muyinga prosecutor and asked him to open an inquiry into the abuse to which A.N. and the six other detainees held on the same grounds had been subjected during questioning. At the insistence of the observers, the prosecutor's office launched a judicial investigation. The investigating magistrate heard A.N. and two other defendants on 12 July 2011, 79 days after the events. During the hearing, the complainant again reported the abuse to which he had been subjected at the deputy commissioner's office. He was also able to show visible marks of the beatings all over his body, and his still heavily swollen arm. However, no medical examiner's report was requested by the prosecutor.

2.14 On 14 July 2011, A.N. and two defendants filed a collective complaint against the Muyinga deputy commissioner and the police chief at the Buhinzuya police station. The case was transferred on 26 March 2012 by the Muyinga public prosecutor (as the persons cited in the complaint were exempt from jurisdiction) to the Ngozi Court of Appeal, where it was registered. However, no investigation was initiated. The persons cited in the complaint were never questioned and were never the subject of any sanctions. No medical examiner's report was ever ordered. Furthermore, according to information sent by the prosecutor to BNUB officials, the case file registered following the intervention by BNUB vanished after it was transferred to the Ngozi Court of Appeal. BNUB officials on several occasions requested that the file should be located, to no avail.

2.15 The case was also the subject of a report on Radio Isanganiro, one of the most listened to radio stations in Burundi.

2.16 On 12 July 2011 the complainant was heard at the Muyinga *tribunal de grande instance* (court of major jurisdiction) in the context of the criminal proceedings brought against him for participation in armed gangs and for State security offences. The judge questioned him about leaflets and the preparation of a rebellion. The complainant denied the accusations. He again complained of the torture to which he had been subjected, to no avail. The judge asked the complainant to provide medical evidence to support his allegations. He tried to obtain such proof, without success. The prison director refused to

provide him with the medical reports on his case. Despite the fact that the complainant informed the judge about the refusal, the court took no action to requisition those documents, nor did the judge request an expert opinion, notwithstanding the fact that it was within the judge's power to do so under article 199 of the former Criminal Code, in force at the time of the events.

2.17 On 3 January 2012, A.N. was given a criminal sentence of 11 years of imprisonment for participation in armed gangs and State security offences. He filed an appeal against the ruling. On 30 August 2012, the Ngozi Court of Appeal finally acquitted him, and he was released on 11 September 2012. A.N. had spent more than 16 months in detention.

2.18 On 14 January 2013 A.N. sent a letter to the Minister of Education requesting his reinstatement as a teacher. His reinstatement was only accepted in July 2013, and the complainant has since been unable to obtain a copy of the decision. The complainant emphasizes that he is in an extremely dire situation professionally and financially. He still does not know whether he will again be able to once again practise his profession as a teacher. He lives with friends, and in order to eke out a living sometimes works as a watchman.

2.19 A.N. still has physical pain and psychological problems as a result of the torture to which he was subjected. He adds that a medical certificate issued on 12 November 2013 noted a "functional disability" of his forearm, with "chronic pain"; the certificate also noted psychological after-effects, which manifested themselves in nightmares and forgetfulness.<sup>2</sup>

2.20 On 2 September 2013, the complainant once again filed a complaint, but no follow-up was given to it. Three years after the events, no inquiry and no investigative procedure had been carried out. Although they were identified, the presumed perpetrators were never questioned and no sanctions were taken against them. No medical examiner's report was ever ordered. Consequently, the acts have gone unpunished.

2.21 In the light of the steps taken, the complainant maintains that he attempted to exhaust the available domestic remedies, but they proved to be objectively ineffective, biased and futile. Moreover, they have been unreasonably prolonged: it was necessary to wait more than nine weeks, or 63 days, after the acts were first reported in the pretrial court chamber for an investigation to be initiated. Further pursuit of his efforts would be dangerous for the complainant; the Muyinga deputy commissioner had already threatened the complainant, warning him that if he reported the ill-treatment he would be killed.

### **The complaint**

3.1 The complainant claims that Burundi has violated his rights under articles 2 (1), 11, 12, 13, 14 and 15, read in conjunction with article 1 and, alternatively, with article 16 of the Convention against Torture.

3.2 The complainant claims to have been subjected to severe pain and suffering during extremely serious abuse inflicted by agents of the Burundian national police during his arrest and questioning at the Muyinga police station (see paras 2.4 ff., above). He was brutally beaten and subjected to a mock execution and death threats. Such acts were tantamount to torture, as they caused extreme anguish for the victim. State officials intentionally inflicted that suffering with the aim of obtaining a confession and intimidating the victim. Indeed, there is every reason to believe that A.N. was arrested because of his membership in the FNL political party, which was known to the authorities.

3.3 The complainant adds that the fact that he was deprived of the care that he required upon arrival at the Muyinga prison, along with his subsequent detention in deplorable conditions, resulted in a deterioration of his health, which must also be considered in the light of article 1 of the Convention.

3.4 In respect of article 2 (1) of the Convention, the complainant asserts that the State party has not taken effective measures to prevent acts of torture in its jurisdiction. A number of procedural guarantees that should be applicable for any deprivation of liberty

---

<sup>2</sup> The certificate is in the case file.

were not respected in this case. No warrant was presented for the search of the victim's domicile and for the search and seizure of equipment during his arrest on 23 April 2011, and he was not informed of the charges levelled against him. Furthermore, the time limit of seven days for detainees to be presented before a judge, established under article 60 of the previous Code of Criminal Procedure, applicable at the time of the events, was not respected: A.N. was arrested on 23 April 2011, but was presented to the pretrial court chamber on 3 May 2011, 10 days later. No other pretrial court procedures were subsequently organized. A review of the legality of detention should have taken place every three days according to article 75 of the former Code of Criminal Procedure, in force at the time. The complainant also notes that he was eventually acquitted by the Ngozi Court of Appeal after approximately 17 months of deprivation of liberty. It may thus legitimately be considered that the proceedings against him were unfounded.

3.5 The complainant adds that, upon his arrival in prison and during his time as an inmate, he did not receive the care required for his condition. It is thus clear that he was deprived of his right to receive adequate and prompt medical assistance from an independent doctor, in violation of article 2 (1) of the Convention.

3.6 According to the complainant, the State party also failed in its obligation to investigate the torture inflicted upon him so as to bring those responsible to justice. Furthermore, despite the reform of the Criminal Code in 2009, there are still legal obstacles blocking the effective prevention of torture. Aside from when it is committed in the specific contexts of genocide or crimes against humanity, torture as a criminal act is time-bound for 20 or 30 years, depending on the circumstances. Consequently, the complainant maintains that the State party has not adopted the legislative or other measures necessary under article 2 (1) of the Convention.

3.7 Clearly, given the critical condition of the complainant following the interrogation to which he was subjected on 23 April 2011, the Burundian authorities failed to duly monitor his treatment at the provincial police station in Muyinga. Several procedural irregularities have been identified, particularly in relation to his arrest and detention: the police searched his home and confiscated equipment, then arrested and incarcerated him, without presenting any warrants. The complainant was not informed of the charges against him. The legality of his detention was not verified in accordance with the legal requirements; the pretrial court chamber only took action 10 days after his arrest, and no other hearing was convened. Lastly, the complainant was held in deplorable conditions of detention (para. 2.11, above). Consequently, violations of articles 11 and 16 were committed.

3.8 In respect of article 12, the complainant submits that, although the torture to which he was subjected was reported during the first hearing before the judge, on 3 May 2011, at which time he complained of the treatment inflicted on him in the office of the deputy commissioner, and despite the visible marks of abuse on his body, the authorities did not initiate any investigation. It was not until nine weeks later that a judicial investigation case was finally registered, despite the fact that there were reasonable grounds to believe, on the basis of information from several sources, that an act of torture had been committed. The investigation cannot be considered to be prompt and impartial, as more than 2 years and 10 months elapsed since the first report of the incident without any effective investigation being conducted and without any charges being filed against the alleged perpetrators. Apart from the hearing of the victim on 12 July 2011, no other investigative procedures were carried out. The persons named in the complaint of 14 July 2011 were never interviewed and no expert medical report was requested. The lack of due diligence in the handling of the case was further highlighted by the "loss" of the case file when it was transferred to the Ngozi Court of Appeal. The complainant attempted to reinstate the complaint on 2 September 2013, also to no avail.

3.9 The complainant also points out that under Burundian criminal law prosecutors are not explicitly obliged to automatically prosecute perpetrators of torture or even to order investigations (see CAT/C/BDI/CO/1, para. 22). He invites the Committee to conclude that a violation of article 12 has occurred.

3.10 The complainant also invokes article 13, reiterating that, as described above, his case was not examined promptly and impartially.

3.11 According to the complainant, by depriving him of a criminal trial, the State party has also deprived him of a legal channel to obtain compensation for the material and moral harm caused by a crime as serious as torture. The complainant has received no compensation, nor has he benefited from any rehabilitation measures. Given the passivity of the judicial authorities, other remedies, such as those to obtain redress through a civil suit for damages, have no realistic prospect of success.<sup>3</sup> He therefore cites a violation of article 14 of the Convention.

3.12 The complainant adds that the State party has also committed a violation of article 15 of the Convention. There is no doubt that A.N. was a victim of torture and that the torture was intended to obtain a confession; this is proven by the fact that the torture stopped when the victim, under duress, placed his mark on a record submitted by the police officers. It is precisely on the basis of those confessions that he was prosecuted for participation in armed gangs and threatening State security. The conditions in which the statement signed by the complainant was drawn up have never been verified and the confession was not rendered void. On the contrary, it was used in the court of first instance to convict A.N.

3.13 Lastly, while reiterating that the treatment to which he was subjected constitutes torture within the meaning of article 1 of the Convention, the complainant contends, alternatively, that the abuse constituted cruel, inhuman or degrading treatment, and that the State party is thus also under an obligation to prevent and punish the commission, instigation or tolerance of such acts by State officials and to provide compensation for the damage caused.

3.14 The complainant adds that the deplorable conditions of detention to which he was subjected for nearly 17 months at the Muyinga prison, which constantly had extreme overcrowding and unsanitary conditions endangering the health of its inmates, also constitute a violation of his rights under article 16.<sup>4</sup> The state of health of the complainant was already alarming when he arrived at the Muyinga prison, and he did not receive the care required by his condition, despite his clear requests. He still suffers from physical after-effects. The complainant concludes that the State party has violated his rights under article 16 of the Convention.

3.15 In conclusion, the complainant asks the Committee to find violations of the provisions cited above and to order Burundi specifically to: (a) conduct a prompt, thorough and effective investigation into the torture inflicted on him so as to criminally prosecute and punish the perpetrators; (b) provide appropriate reparation, including measures of compensation for the material and psychological injury caused, and restitution, rehabilitation, measures of satisfaction and guarantees of non-repetition; (c) ensure that confessions obtained under torture are rendered void; (d) amend its legislation to ensure that there is no statute of limitations for the prosecution of acts of torture; and (e) ensure that measures are taken so that the violations that it finds are not repeated.

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

4.1 On 27 March 2015, the State party submitted its observations on the admissibility and merits of the communication. It challenged the admissibility of the communication, invoking non-exhaustion of domestic remedies. According to the State party, the complainant dropped his complaint that was under way in the Burundian courts in order to bring it before the Committee. The complainant's allegations are also biased and are not supported by any evidence. His claim for compensation is thus unfounded, as the prejudice has not yet been established, and it will be for the courts of the State party to issue a decision on his claim on the merits, as well as on any possible damages to be paid.

---

<sup>3</sup> The Committee has expressed concern about the absence of any measures to compensate victims of torture in judicial practice in Burundi (see CAT/C/BDI/CO/1, para. 23).

<sup>4</sup> The complainant states that, in June 2011, over 600 persons were held at the facility, for a maximum capacity of 300.

4.2 On the merits, the State party maintains that it has adopted effective measures to prevent torture, as the crime of torture was established as a serious criminal offence in the new Criminal Code of 2009, with heavy, dissuasive penalties.

4.3 With regard to the measures of protection requested by the complainant to prevent potential reprisals, according to the State party they are inappropriate and pointless. The complainant has freedom of movement within the country and to date has not been troubled in any way.

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

5.1 On 1 July 2015, the complainant submitted his comments on the State party's observations. He notes, firstly, that the domestic remedies have been unreasonably prolonged. Furthermore, it would be dangerous for him to pursue such remedies. He recalls that the investigating magistrate heard him on 12 July 2011 (nearly 79 days after the incident); that despite the visible signs of torture on his body, no investigation was opened; and that the case file disappeared after it was transferred to the Ngozi Court of Appeal.

5.2 The complainant further specifies that he never dropped his complaint, but that, as the acts remained unpunished almost three years after they took place, he was forced to take the case to international courts. He adds that the procedures are not mutually exclusive and that despite the fact that he has submitted his complaint to the Committee, it would be desirable for the Burundian authorities to initiate proceedings and to prosecute the perpetrators.

5.3 On the merits, the complainant reiterates all the arguments put forward in his initial communication. He adds that his request for protective measures is entirely justified and that such measures are absolutely necessary, as the persons responsible for the acts of torture in question are officials of the national police, including high-ranking officers, who wield power and can easily bring pressure to bear. His fear of reprisals is thus legitimate. The independent expert on the situation of human rights in Burundi noted in his 2011 report that torture victims who tried to report acts by members of the security services were subjected to threats (see A/HRC/17/50, para. 46). Moreover, in view of the pernicious security situation in the country, civilians are unsafe, especially those in the opposition, or who are perceived as such.

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

#### *Consideration of admissibility*

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

6.2 The Committee notes that the State party has contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies, inasmuch as an investigation case was opened by the prosecutor's office following the intervention of observers from BNUB. The Committee observes that following the registration of the complaint, the complainant was questioned by the investigating magistrate on 12 July 2011, and on that occasion was able to report the torture to which he was allegedly subjected at the Muyinga police station on 23 April 2011. Since this hearing, it is undisputed that no investigation was initiated and no criminal proceedings were initiated on the basis of the various complaints and reinstated claims filed by the applicant in the two years that followed. That is apparently also the case for the collective complaint filed on 14 July 2011 against the Muyinga deputy commissioner and the police chief at the Buhinzuya police station. The Committee further notes that the State party provided no additional information that might allow it to assess the progress made in the investigation of this case, while the case has apparently remained on the docket of the Ngozi Court of Appeal for more than five years (since its transfer to the Court on 26 March 2012). 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 by article 22 (5) (b) of the Convention.

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

#### *Consideration of the merits*

7.1 The Committee has examined the complaint in the light of all information made available to it by the parties, in accordance with article 22 (4) of the Convention.

7.2 The Committee notes that, according to the complainant, on 23 April 2011 he was arrested at his home by police officers, taken to the Muyinga police station, where he was accused of participation in a planned rebellion against the regime, questioned and then brutally beaten by the Muyinga deputy commissioner, who allegedly also threatened to kill him in a mock execution. Despite the fact that he had serious injuries and a broken arm, he was reportedly transferred on the same day to the Muyinga prison. Despite his requests for medical care, he received none.

7.3 In respect of article 1 of the Convention, the complainant added that the conditions of detention at the Muyinga prison, where he was deprived of care, subjected to prison overcrowding and forced to sleep on the floor, also were forms of treatment constituting torture.

7.4 The Committee notes that the State party has not replied to the author's claims. In these circumstances, and on the basis of the information made available to it, the Committee concludes that the complainant's claims must be taken fully into account; that the abuse inflicted upon him was committed by officials of the State party acting in their official capacity; and that those acts constitute acts of torture within the meaning of article 1 of the Convention.

7.5 Having found a violation of article 1 of the Convention, the Committee will not consider the grievances raised by the complainant, on a subsidiary basis, under article 16 of the Convention.

7.6 The complainant also invokes article 2 (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 observes, in the present case, that the complainant was arrested without being presented with a warrant; that the legality of his detention was not reviewed within the established legal time frame (see para. 3.4, above); and that he was denied medical care, which was nonetheless required owing to his condition. He was subjected to serious abuse at the Muyinga police station, which he reported on several occasions, and the acts in question have gone unpunished. Accordingly, the Committee finds a violation of article 2 (1) read in conjunction with article 1 of the Convention.<sup>5</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. Specifically, he stated that his arrest and detention did not take place with the procedural safeguards and monitoring that was required; that he was denied medical care, despite the fact that his condition was critical; and that he was detained in deplorable conditions. The Committee once again recalls its concluding observations on the second periodic report of Burundi, in which it expressed concern about: the excessive length of police custody; the numerous cases in which the allowable period of police custody was exceeded; failure to keep registers, or to keep complete registers, of persons in custody; failure 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

---

<sup>5</sup> See, inter alia, communication No. 514/2012, *Niyonzima v. Burundi*, decision adopted on 21 November 2014, para. 8.3; and communication No. 522/2012, *Gahungu v. Burundi*, decision adopted on 10 August 2015, para. 7.6.



assistance for persons of limited means; and the excessive use of pretrial detention in the absence of regular reviews of its legality and of any limit on its total duration (see CAT/C/BDI/CO/2, para. 10). The Committee observes that the complainant in this case appears to have been deprived of any form of judicial oversight. In the absence of any evidence from the State party that it did supervise the complainant's detention, the Committee finds that the State party has violated article 11 of the Convention.<sup>6</sup>

7.8 Regarding articles 12 and 13 of the Convention, the Committee reiterates its preliminary observations (see para. 6.2) and takes note of the undisputed facts, that notwithstanding the registration of two successive complaints in 2011, i.e., a judicial investigation procedure and a collective complaint against the Muyinga deputy commissioner addressing the same acts, no prosecution has been initiated, despite the fact that the complainant reinstated his claims in September 2013. The State party has challenged the application to the Committee by arguing that the complainant "dropped" his complaint in the domestic courts, but it has not provided any explanation for such a delay. The Committee considers that such a long delay is clearly in breach of 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 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>7</sup>

7.9 With regard to article 14 of the Convention, the Committee has taken note of the complainant's claim that he has not benefited from any form of rehabilitation to ensure that he recovers as fully as possible. 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 concludes that the State party has breached its obligations under article 14 of the Convention.

7.10 With regard to article 15, the Committee has taken note of the complainant's claim that the judicial proceedings initiated against him and his subsequent conviction on 3 January 2012 for participation in armed gangs and for State security offences (charges for which he was subsequently acquitted) were based on confessions that were extracted under torture on 23 April 2011. The State party has provided no argument to counter this claim. The Committee recalls that the generality of the terms of article 15 of the Convention derives from the absolute nature of the prohibition of torture and therefore implies an obligation for any State party to verify that statements included in proceedings under its jurisdiction have not been made under torture.<sup>8</sup> The Committee notes that the complainant on numerous occasions brought to the attention of the judicial authorities the ill-treatment to which he was subjected, without success. The State party, which does not refute any of the complainant's claims, was under an obligation to verify the substance of the author's claims that his confessions had been obtained under torture. By not carrying out such verification and by using those confessions in the judicial proceedings against the complainant, in which he was eventually acquitted, the State party violated its obligations under article 15 of the Convention.

8. The Committee, acting under article 22 (7) of the Convention, is of the view that the facts before it disclose a violation of article 2 (1), read in conjunction with article 1, and of articles 11, 12, 13, 14 and 15 of the Convention.

9. The Committee urges the State party to: (a) complete the investigation that had been initiated on the incidents in question, with a view to bringing to justice all those responsible for the treatment inflicted upon the complainant; (b) provide the complainant with appropriate reparation, including measures of compensation for the material and

<sup>6</sup> See, for example, *Gahungu v. Burundi*, para. 7.7.

<sup>7</sup> *Ibid.*, para. 7.8.

<sup>8</sup> See communication No. 419/2010, *Ktiti v. Morocco*, decision adopted on 26 May 2011, para. 8.8; communication No. 193/2001, *P.E. v. France*, decision adopted on 21 November 2002, para. 6.3; and *Niyonzima v. Burundi*, para. 8.7.

psychological harm caused, and restitution, rehabilitation, measures of satisfaction and guarantees of non-repetition; and (c) take all necessary measures 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. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the present decision.

---