



**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. 549/2013<sup>\*</sup>, <sup>\*\*</sup>**

<i>Communication submitted by:</i>	Abdulrahman Kabura (represented by Philip Grant, TRIAL — Track Impunity Always)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Burundi
<i>Date of complaint:</i>	24 December 2012 (initial submission)
<i>Date of present decision:</i>	11 November 2016
<i>Subject matter:</i>	Torture committed by police officers; failure to investigate; lack of redress
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture and other cruel, inhuman or degrading treatment or punishment; measures to prevent acts of torture; systematic monitoring of custody and treatment of detainees; State party's obligation to ensure that its competent authorities proceed to a prompt and impartial investigation; right to file a complaint; right to redress; prohibition of the use of statements obtained under torture as evidence in proceedings
<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 Abdulrahman Kabura, who was born in 1975 in Burundi and currently lives in South Africa, where he has been granted refugee status. He maintains that

\* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).

\*\* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Sapana Pradhan-Malla, Ana Racu, Sébastien Touzé and Khening Zhang.



the State party<sup>1</sup> has violated articles 2 (1), 11, 12, 13, 14 and 15, all read in conjunction with article 1 and, alternatively, with article 16 of the Convention, and article 16, read alone. He is represented by counsel, Mr. Philip Grant of TRIAL (Track Impunity Always).

1.2 On 24 May 2013, in accordance with rule 114 (1) of its rules of procedure, the Committee requested the State party to adopt effective measures, for the duration of the Committee's consideration of the complaint, to prevent any threats or acts of violence against the complainant or his family, particularly for submitting the present complaint to the Committee.

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

2.1 Since the end of the civil war (1993-2006), Burundi has been in the throes of a power struggle that has led to a climate of instability, the removal of the president of the political party Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (CNDD-FDD) and the arrest of a number of its supporters.

2.2 On 4 May 2007, the complainant, who was the local representative of CNDD-FDD and a neighbourhood leader in Buyenzi, Bujumbura, was arrested by officers of the National Intelligence Service who wanted him to testify against the former president of CNDD-FDD and admit that he himself had attempted to destabilize the ruling party. The complainant refused to make any such admission. He was tortured for about four hours by intelligence officers and the Administrator-General of the Service. He was beaten with sticks on different parts of his body, particularly the back, face, feet and genitals. They squeezed his genitals with their hands and used a piece of electrical cable to tie a five-litre container of water to them. Under torture, the complainant succumbed to the pressure and signed a statement admitting his involvement in attempts to destabilize the ruling party.

2.3 The complainant was detained for two months and 20 days until 27 July 2007 in four different locations, namely, the premises of the National Intelligence Service, the headquarters of the criminal investigation police, Gitega prison (over 100 km from his home) and Mpimba prison in Bujumbura. During his detention at the headquarters of the criminal investigation police, he was held with 10 other detainees in a cell measuring 12 square metres, without windows or light and without water, food or medical treatment for the first 17 days. He was forced to drink water from the toilet in order to survive. He was also beaten all over his body with electrical cables by the officer guarding him.

2.4 On 17 May 2007, the complainant was brought before an investigating judge, who informed him that he was accused of attempted murder. During the hearing, he was not able to talk to a lawyer and was not afforded legal assistance.

2.5 After his transfer to Gitega prison, the complainant was able to see a lawyer who, on 12 June 2007, reported the acts of torture to the investigating judge and requested that he be transferred to a hospital. This was authorized, but the doctor who finally examined him was able to provide only basic care, as the complainant was immediately taken back to prison. From the beginning of his detention, the complainant and human rights associations repeatedly requested that he be represented by counsel and examined by a doctor. On 27 June 2007, the complainant's lawyer filed a formal complaint with the public prosecutor, with a copy to the Attorney General and the public prosecutor attached to the Court of Appeal in Bujumbura, concerning the complainant's arrest and torture. However, the complainant was never informed of the outcome of this complaint.

2.6 During his detention in these various locations, the complainant received visits from members of human rights associations, who saw for themselves that he had been tortured

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<sup>1</sup> On 10 June 2003, the State party made the declaration recognizing the competence of the Committee to receive and consider individual complaints under article 22 of the Convention.

and publicly condemned his torture. The Association burundaise pour la protection des droits humains (APRODH), in a report and radio interview in May 2007, referred to the torture of the complainant and the injuries resulting from his ill-treatment that representatives of the Association were able to observe for themselves during their visit. In addition, representatives of the International Committee of the Red Cross (ICRC) visited him on four occasions. The United Nations Independent Expert on the situation of human rights in Burundi<sup>2</sup> and representatives of the United Nations Office in Burundi observed during their visit in May 2007 that the complainant had been tortured. The Independent Expert raised the matter with the Minister of Justice of Burundi in May 2007. In addition, the Inter-Parliamentary Union adopted a resolution on 21 October 2009 referring to the complainant's case.

2.7 On 24 July 2007, the complainant was released on bail. According to information provided orally to his lawyer, the proceedings against the complainant for attempted murder were discontinued for lack of evidence. To date, despite the lawyer's requests to the public prosecutor at Bujumbura city hall, no reasons have been given for the discontinuance of proceedings.<sup>3</sup>

2.8 After his release, the complainant had to go into hiding because police officers were actively searching for him and paying visits to his home, and the leader of the Communal Council had put up a wanted poster offering a reward.<sup>4</sup>

2.9 In January 2008, as the persecution intensified, the complainant fled to South Africa, where he applied for asylum. On 9 November 2009, he, his wife and their four children were granted refugee status in South Africa.

2.10 On 15 November 2012, the complainant's lawyer re-lodged the complaint for torture with the public prosecutor at Bujumbura city hall, but no action was taken in response to this new initiative. The complainant maintains that he attempted to invoke the available domestic remedies but that these proved ineffective and unreasonably prolonged. He further maintains that it was dangerous and impossible for him to take any other steps because of the intensive surveillance of his home before he was forced into exile.

### **The complaint**

3.1 The complainant claims that the State party 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, and article 16, read alone. Intelligence officers intentionally inflicted acute pain and suffering on him in an effort to make him confess. He maintains that the abuses he suffered constitute acts of torture, as defined in article 1 of the Convention.

3.2 The complainant adds that the State party has not taken the necessary measures, legislative or otherwise, to prevent the practice of torture in Burundi, as required under article 2 (1) of the Convention. The torture of the complainant has gone unpunished.

3.3 The Burundian authorities did not properly monitor the treatment of the complainant during his detention on the premises of the National Intelligence Service, his detention

<sup>2</sup> Letter of the independent expert, Akich Okola, addressed to the complainant and the Office of the United Nations High Commissioner for Refugees (UNHCR), mentioning that he had visited the complainant in May 2007 and noting that the complainant faced an imminent risk of torture if he was returned to Burundi. This letter was included in the complainant's file supporting his application for refugee status in South Africa.

<sup>3</sup> The case file includes a copy of the letter from the complainant's lawyer at the time, dated 13 February 2012, to the public prosecutor at Bujumbura city hall, requesting a copy of the reasons for the discontinuance of the proceedings.

<sup>4</sup> The complainant gives no specific reasons for his persecution.

being unlawful in the absence of an arrest warrant. In addition, there is no effective, systematic monitoring system for places of detention. The complainant therefore believes that there was also a violation of article 11 of the Convention.

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

3.5 No action was taken on the complaint submitted by the complainant on 27 June 2007, even though it was supported by photographs and a medical certificate dated 12 June 2007. In addition, the State party did nothing to protect the complainant, on his release from prison, from being intimidated as a consequence of the action he had taken before the judicial authorities. The case was not promptly and impartially examined by the competent authorities, contrary to what is prescribed by article 13.

3.6 The State party has not complied with its obligation under article 14, since, on the one hand, the crimes committed against the complainant have gone unpunished and, on the other, he has received no compensation or benefited from rehabilitation measures for the torture he suffered.

3.7 The Burundian authorities have not rendered null and void the confessions obtained from the complainant under torture; on the contrary, they have used them to open judicial proceedings against him for attempted murder and to keep him in detention for two months and 20 days, contrary to what is prescribed by article 15 of the Convention.

3.8 The complainant repeats that the violence inflicted on him was torture, as defined in article 1 of the Convention. In the alternative, if the Committee did not agree to qualify it as torture, the abuse endured by the victim in any case constitutes cruel, inhuman or degrading treatment and, on that basis, the State party had the obligation, under article 16 of the Convention, to prevent and punish the commission, instigation or tolerance of such acts by State officials. In addition, the conditions of detention imposed on the complainant entail a violation of article 16, since they are tantamount to inhuman and degrading treatment.

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

4.1 On 15 July 2014, the State party submitted its observations on the admissibility and merits of the communication. The State party requests that the communication be declared inadmissible on the grounds that the complainant has not exhausted domestic remedies. After being granted bail, he disappeared from view, violating all the conditions of his provisional release and thus blocking the investigation of his case. The State party submits that it is impossible for the public prosecutor to conduct effective investigations and establish the truth about the torture allegations in the absence of the purported victim. The State party is of the view that there was no real, objective threat to the complainant's life and that if the authorities had wanted to kill him, it would have been no problem to do so rather than grant him bail while he was in detention.

4.2 The State party maintains that the domestic remedies the complainant claims to have used were rendered ineffective by the complainant himself, not by the authorities, and invites the complainant to return to Bujumbura, as there is no risk to his physical safety. The State party suggests that the complainant is relying on generalizations about the Burundian judicial system and on false pretexts to conclude that he would not be treated fairly by the justice system and that his remarks about the authorities and justice system of the State party verged on being contemptuous and insulting.

4.3 According to the State party, the complainant's historical analysis of the various events and political regimes in the country contains many errors, and the country's political past has no direct relationship with his isolated case. It adds that incidents of this kind are

found in every civilization in the world. The State party requests the Committee to take account of the impasse arising as a result of the complainant's departure from his country, after his release, to seek asylum in South Africa, and to give no credence to the serious accusations he has levelled without the benefit of an evidence-based public hearing. The State party rejects the accusations, which are not supported by any solid evidence.

4.4 According to the State party, effective measures have been taken to prevent acts of torture; in particular, torture has been defined as an offence in the new Criminal Code of 2009, which provides for tough, and therefore dissuasive, penalties for it. It invites the Committee to acknowledge that the accusation that there is no independent and systematic monitoring of places of detention and the treatment of detainees is mere speculation and shows a lack of awareness of how the legal system works. The State party maintains that there has been no violation of the obligation to conduct prompt and impartial investigations into the torture of the complainant, since he fled the country almost as soon as he was released on bail and since such investigations were automatically rendered impossible by his absence.

4.5 Regarding compensation for the complainant, the State party adds that it is premature to be claiming damages when no final judgment has definitively established that the offence of torture took place.

4.6 Finally, the State party notes that the interim protection measures requested by the complainant are inappropriate and irrelevant in light of his refugee status in South Africa and appeals to him to return to his home country, promising to guarantee his protection and that of his family once he returns. In conclusion, the State party rejects the complainant's claims and asks the Committee to declare them unfounded.

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

5.1 On 8 October 2014, the complainant submitted his comments on the State party's observations. He rejects the argument that he did not exhaust domestic remedies and repeats that, nearly seven years and five months after the events, no investigation has been opened. He points out that, for the purposes of admissibility of individual communications, the Committee requires the exhaustion of only effective, useful and available remedies. The complainant notes that, by granting him political asylum, the authorities of South Africa recognized the reality of the threats against him, and that the State party is downplaying the seriousness of the threats that compelled him to flee.<sup>5</sup> The complainant recalls the case of *Traoré v. Côte d'Ivoire*, in which the Human Rights Committee considered that a person who is forced to flee his country because of threats by the national security services is prevented by insurmountable obstacles from exhausting all domestic remedies. He reiterates that domestic remedies have proven to be useless and ineffective, were unreasonably prolonged and constituted a danger for him, and that no other remedy was available to him because of his forced exile.

5.2 The complainant recounts all the legal steps he took, including the submission of a complaint of torture to the investigating judge on 12 June 2007 and to the public prosecutor at Bujumbura city hall on 27 June 2007, which met with no response. Objectively speaking, the initiation of legal action against the investigating judge and the public prosecutor for denial of justice and violations of procedural time limits had no prospect of success. Moreover, the State party does not provide any precise information or figures on criminal cases opened by the judicial authorities that would allow the effectiveness of domestic remedies to be confirmed and evaluated. The active efforts made by the police to track

<sup>5</sup> See communication No. 1759/2008, *Traoré v. Côte d'Ivoire*, Views adopted on 31 October 2011.

down and arrest the complainant a few weeks after his release on bail demonstrate the Burundian authorities' desire to hush up the affair. In addition, several human rights organizations, the United Nations Independent Expert on the situation of human rights in Burundi and the Inter-Parliamentary Union have denounced the torture of the complainant by officers of the National Intelligence Service. In conclusion, the complainant submits that he cannot reasonably be expected to wait seven years and five months for the outcome of a purported investigation that has not demonstrably taken place.

5.3 On the merits, the complainant maintains that his description of the Burundian context is in no way either insulting or erroneous and that it is not intended to discredit the State party. Rather, it is an account of the prevailing situation in the State party that is relevant to the consideration of the present complaint.

5.4 He reiterates that he has indeed provided evidence in support of his allegations of torture and adds that the State party does not refute this evidence. In addition, he points out that the State party has not opened an investigation to reject or confirm his allegations of torture.

5.5 In response to the State party's comments describing the treatment of the complainant as uncomfortable and unfortunate, and thus implicitly questioning whether he was actually tortured, he reiterates his earlier comments and adds that the acute suffering, going well beyond the threshold of discomfort described by the State party, was inflicted on him not only during his detention but also during his interrogation. He draws attention to the evidence, such as the photographs and medical certificate, which corroborate his story, as well as the findings of human rights associations and the United Nations Independent Expert on the situation of human rights in Burundi. In addition, he argues that his treatment in detention — i.e. the lack of medical treatment, the deprivation of water, food and access to a toilet — should be taken into account to conclude that he was indeed tortured.

5.6 He was tortured for unlawful motives, including to extract a confession and information from him, and the torture only ceased when the complainant confessed in writing to the acts of which he was accused. It was this confession that served as the basis for his pretrial detention. Moreover, the intent of the torturers to make the complainant suffer acutely was evident. The use of instruments and techniques of torture confirms that the acts were deliberate and planned.

5.7 The complainant also submits that the State party violated its positive obligations under articles 2 (1), 11, 12, 13, 14 and 15, and he repeats the arguments he advanced in his initial submission. As for the violation of article 2 (1), he points out that the adoption of legislation is not sufficient to effectively prevent torture. Burundian legislation does not explicitly deny the validity of confessions obtained under torture and applies no time bar to criminal proceedings in cases of torture committed outside the specific contexts of crimes of genocide, crimes against humanity and war crimes. He recalls that he was arrested without a warrant; his detention was extended illegally, and there was no effective remedy to challenge it; he was brought before the judge after the legal limits had expired; he was not allowed to receive visits in the first days of his detention or to receive prompt legal assistance; he did not receive adequate medical care; his complaint was not examined promptly with a view to opening an investigation; no medical evaluation could be established; and he never received any compensation.

5.8 With regard to the violation of article 11 of the Convention, the complainant refers to the arguments advanced in the initial complaint and notes that the State party fails to provide evidence or details on the operation of the prison system. He further maintains, with regard to the State party's obligation to conduct an investigation in accordance with articles 12 and 13 of the Convention, that the State cannot justify its inaction based on the fact that the complainant had fled, since his torture had been reported to the authorities

prior to his departure, and it was their responsibility to investigate the allegations without delay.

5.9 With regard to the claim for compensation, the complainant reiterates that the State party has an obligation under article 14 of the Convention to guarantee his right to adequate, effective and full reparation. He denies having made a claim for any sum of money and says he referred to international case law as a source of interpretation and comparison. He claims that he is now living in severe hardship because of his forced exile and that he has still had no access to rehabilitation measures.

5.10 Lastly, the applicant insists on the relevance of the interim protection measures granted by the Committee. He notes that his refugee status in South Africa does not protect his family, who stayed behind in Burundi, and points out that the situation in the country has deteriorated significantly and is characterized by rising tensions and increasingly volatile security conditions.

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

#### *Consideration of admissibility*

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

6.2 The Committee observes that the State party has challenged the admissibility of the communication on the grounds that the complainant has not exhausted domestic remedies. After having lodged a complaint of torture with the investigating judge on 12 June 2007 and a formal complaint of torture with the public prosecutor at Bujumbura city hall on 27 June 2007, the complainant reportedly disappeared from view, thus blocking the investigation of his case, since it was impossible for the public prosecutor at city hall to conduct effective investigations and verify the torture allegations in the absence of the purported victim. The Committee also takes note of the State party's position that the domestic remedies the complainant claims to have used were rendered ineffective by the complainant himself, not by the authorities. The Committee notes that the State party has not provided any information or evidence that might allow the Committee to confirm that an investigation had been launched, to assess the progress of the investigation and to judge its potential effectiveness, even though nine years have passed since the complainant's lawyer filed the above-mentioned complaints. 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 could 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 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, 15 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 the complainant's allegations that, on 4 May 2007, he was arrested by officers of the National Intelligence Service without a warrant and was taken to the premises of the Service, where he was questioned in an effort to get him to testify against the former president of CNDD-FDD and to admit that he himself had attempted to

destabilize the ruling party. The Committee further noted the complainant's claims that, after he refused to make any such admission, he was tortured for about four hours by intelligence officers and the Administrator-General of the Service; that they beat him with sticks on different parts of his body, particularly the back, face, feet and genitals, squeezed his genitals with their hands and used a piece of electrical cable to tie a five-litre container of water to them; that he succumbed to the pressure and signed a statement admitting his involvement in attempts to destabilize the ruling party; that he did not receive any medical treatment; and that the torture had caused him acute pain and suffering and had been intentionally inflicted in an effort to make him confess. The Committee takes note of the evidence provided, such as the photographs and medical certificate, which corroborate his story, as well as the findings of the human rights associations that visited him during his detention. The Committee also notes that the State party has not contested the fact that State agents were involved and has provided no relevant information or evidence to contradict the facts as presented by the complainant. In the circumstances, the Committee concludes that the complainant's allegations must be taken fully into account and that the facts as presented constitute torture within the meaning of article 1 of the Convention.<sup>6</sup>

7.3 The complainant also invokes article 2 (1) of the Convention, which requires the State party to take "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". The Committee notes that in the present case the complainant was beaten and then detained for two months and 20 days in four different locations — the premises of the National Intelligence Service, the headquarters of the criminal investigation police, Gitega prison (over 100 km from his home) and Mpimba prison in Bujumbura — without any contact with a lawyer or doctor. While in police custody, he was beaten all over his body with electrical cables by the officer guarding him. The Committee recalls its conclusions and recommendations, in which it called on the State party to take effective legislative, administrative and judicial measures to prevent all acts of torture and all ill-treatment and to take steps, as a matter of urgency, to bring all places of detention under judicial control and to prevent its officials from making arbitrary arrests and engaging in torture.<sup>7</sup> In the light of the foregoing, the Committee finds a violation of article 2 (1), read in conjunction with article 1 of the Convention.<sup>8</sup>

7.4 As for articles 12 and 13 of the Convention, the Committee has taken note of the complainant's claims that he was detained without legal grounds from 4 to 17 August 2007, when he was brought before an investigating judge and formally charged with attempted murder. Notwithstanding the fact that he had lodged a complaint on 27 June 2007 with the public prosecutor, with a copy to the Attorney General and to the public prosecutor attached to the Court of Appeal in Bujumbura; that the complaint was supported by photographs and a medical certificate dated 12 June 2007 and demonstrating that he had in all probability been subjected to torture; that the events were widely known and reported by various bodies; and that his lawyer had re-lodged the complaint of torture on 15 November 2012; no investigation has been carried out, nine years after the events. The Committee considers that this delay is manifestly unreasonable. It also rejects the State party's argument that the lack of progress in the investigation can be put down to a lack of cooperation on the part of the complainant, who was not in the country. The Committee draws attention to the State party's obligation under article 12 of the Convention to ensure that its competent authorities proceed ex officio to a prompt and impartial investigation wherever there is reasonable

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<sup>6</sup> See, for example, communication No. 514/2012, *Niyonzima v. Burundi*, decision adopted on 21 November 2014.

<sup>7</sup> See CAT/C/BDI/CO/1, para. 10.

<sup>8</sup> See communications No. 503/2012, *Ntikarahera v. Burundi*, decision adopted on 12 May 2014, para. 6.3; and *Niyonzima v. Burundi*, para. 8.2.



ground to believe that an act of torture has been committed. In the present case, the Committee finds a violation of article 12 of the Convention.

7.5 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>9</sup> In addition, the Committee notes that the complainant and his family received threats and that, on the complainant's release from prison, the State party did nothing to protect him from being intimidated for the action he took before the judicial authorities. The State party has not provided any information to refute this part of the communication. The Committee therefore also finds a violation of article 13 of the Convention.

7.6 As for the complainant's claims under article 14 of the Convention, the Committee recalls that this article not only recognizes the right to fair and adequate compensation but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee recalls that redress should cover all the harm suffered by the victim and should encompass, among other measures, restitution, compensation and guarantees of non-repetition of the violations, taking into account the circumstances of the individual case.<sup>10</sup> In the present case, the Committee notes that the complainant claims to suffer from trauma and serious physical after-effects of the torture, and that he cannot stand up for more than an hour without feeling severe pain in his back. In spite of this, he has not benefited from any treatment or rehabilitation measures. The Committee is of the view that the failure to conduct a prompt and impartial investigation has deprived the complainant of the possibility of availing himself of the right to redress, as provided for in article 14 of the Convention.<sup>11</sup>

7.7 With regard to article 15, the Committee takes note of the complainant's claim that the judicial proceedings against him for attempted murder were brought on the basis of confessions extracted from him under torture, as certified by a medical examination. 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 were not made under torture.<sup>12</sup> In the present case, the Committee notes that the statements signed under torture by the complainant served as the basis for his indictment and as justification for his continued detention for a period of two months and 20 days (from 4 May 2007 to 27 July 2007); that the physical abuse he suffered was confirmed by a doctor; that the complainant was released on bail on 24 July 2007 for lack of material evidence; and that, through the intermediary of counsel, he challenged the probative value of the confessions he signed under torture, though without success. The Committee notes that the State party has neither refuted any of these allegations nor included any information on this question or on the subject of the discontinuance of the proceedings against the complainant in the observations it submitted to the Committee. The Committee considers that the State party was under an obligation to verify the substance of the complainant's claims that his confessions had been obtained under torture, even if the complainant was absent from the national territory, and that by not carrying out such verification and by using those confessions in the judicial

<sup>9</sup> *Ntikarahera v. Burundi*, para. 6.4.

<sup>10</sup> *Ibid.*, para. 6.5. See also communications No. 376/2009, *Bendib v. Algeria*, decision adopted on 8 November 2013; and *Niyonzima v. Burundi*.

<sup>11</sup> For a similar approach, see, for example, *Niyonzima v. Burundi*.

<sup>12</sup> See communications No. 419/2010, *Ktiti v. Morocco*, decision adopted on 26 May 2011, para. 8.8; No. 193/2001, *P.E. v. France*, decision adopted on 21 November 2002, para. 6.3; and *Niyonzima v. Burundi*, para. 8.7.

proceedings against the complainant, in the course of which he was released on bail, the State party was in breach of its obligations under article 15 of the Convention.

7.8 With regard to the claim under article 16, the Committee has taken note of the complainant's allegations that during his detention at the headquarters of the criminal investigation police he was held with 10 other detainees in a cell measuring 12 square metres, without windows or light and without water, food or medical treatment for the first 17 days. He was forced to drink water from the toilet in order to survive; he had to sleep on the floor in appalling sanitary conditions and had no access to a doctor until 12 June 2007, despite asking for one and despite his worrying state of health. He further claims that on 3 July 2006 he was transferred to Mpimba prison, which was extremely unhygienic and overcrowded at all times. The complainant also highlighted the manifest absence of any mechanism for monitoring the cells at the National Intelligence Service detention centre, the central prison in Gitega and Mpimba prison, where the complainant was detained, which undoubtedly increased the risk of his being subjected to acts of torture. In the absence of any pertinent information from the State party in this respect, the Committee concludes that the facts disclose a violation by the State party of its obligations under article 16, read in conjunction with article 11 of the Convention.<sup>13</sup>

8. The Committee against Torture, 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 12, 13, 14, 15 and 16, read in conjunction with article 11 of the Convention.

9. Pursuant to rule 118 (5) of its rules of procedure, the Committee urges the State party to launch an impartial investigation into the incidents in question, with a view to bringing those responsible for the victim's treatment to justice, and to inform it, within 90 days of the date of transmittal of this decision, of the measures it has taken in response to the above views, including adequate and fair compensation that provides the means necessary for his fullest possible rehabilitation.

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<sup>13</sup> See *Ntikarahera v. Burundi*, para. 6.6.