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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. 768/2016*, **

Communication submitted by:	J.M. (represented by counsel, Bart Stapert, Caroline Buisman and Devika Kamp)
Alleged victim:	The complainant
State party:	The Netherlands
Date of complaint:	11 July 2016 (initial submission)
Document references:	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 26 August 2016 (not issued in document form)
Date of adoption of decision:	16 May 2019
Subject matter:	Extradition from the Netherlands to Rwanda
Procedural issues:	Another procedure of international investigation or settlement; exhaustion of domestic remedies; substantiation of the complaint; admissibility *ratione materiae*
Substantive issue:	Risk of torture and ill-treatment
Article of the Convention:	3

1.1 The complainant is J.M., a national of Rwanda, born on 24 October 1959. At the time of the submission of the communication, he was facing extradition to Rwanda. He claims that his extradition to Rwanda would constitute a violation by the State party of his rights under article 3 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 20 January 1989. The complainant is represented by counsel.

1.2 On 28 August 2016, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to issue a request for interim measures under rule 114 of the Committee's rules of procedure. The complainant was extradited to Rwanda on 12 November 2016.

* Adopted by the Committee at its sixty-sixth session (23 April–17 May 2019).

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

1.3 On 4 May 2017, pursuant to rule 115 (3) of the Committee's rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, rejected the State party's request for the admissibility of the complaint to be examined separately from the merits. The State party's request for the discontinuance of the complaint was rejected on the same date.

The facts as presented by the complainant

2.1 The complainant left Rwanda in April 1994. He initially fled to the Democratic Republic of the Congo with his wife and children. He arrived in the Netherlands in 1999 and lived there with his family until 2016. On 22 November 2012, the Rwandan authorities requested the complainant's extradition on charges of genocide and membership of a criminal organization. He was arrested by State party authorities on 23 January 2014. On 11 July 2014, The Hague District Court declared the extradition permissible on the charges of genocide, but impermissible on the charges of membership of a criminal organization, as it found that there was no treaty basis for extradition on such grounds. It noted that the complainant would be tried under Organic law No. 11/2007 concerning transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from other States (Transfer Law), which established the legitimate expectation that Rwanda would comply with fair trial guarantees. The District Court also noted that the complainant had not sufficiently substantiated his claim that he would suffer a violation of his right to a fair trial under article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) if extradited to Rwanda or that he was a political target and would be prosecuted for political offences. Furthermore, the District Court found that it was the responsibility of the Minister of Justice and Security to assess the complainant's claim that he would be at risk of torture if extradited. The decision was upheld by the Supreme Court of the Netherlands on 16 December 2014.

2.2 On 3 June 2015, the Minister of Justice and Security approved the extradition of the complainant, finding that his extradition would not amount to a violation of article 3 of the European Convention on Human Rights (prohibition of torture). The Minister noted that: life imprisonment was not a disproportionate sentence for a conviction on charges of genocide; the complainant would have the right to amnesty and rehabilitation, if convicted; there was no risk of torture in the detention facilities; and the detention facilities complied with international standards. Regarding a potential violation of article 6 of the European Convention on Human Rights, the Minister concluded that the Rwandan authorities had confirmed, in a letter of 18 November 2014, that the complainant had the right to representation by foreign counsel; that the Government of Rwanda would cover the costs of such representation; and that the Embassy of the Netherlands could monitor the complainant's trial and make all reports thereon publicly available. Finally, the Minister noted that there was no link between the complainant's alleged political criticism of the Government of Rwanda and the charges against him.

2.3 The complainant challenged the decision of the Minister before The Hague District Court. On 27 November 2015, the District Court found that the guarantees from the Rwandan authorities regarding fair trial proceedings would not guarantee that the complainant would receive a fair trial as defence lawyers in Rwanda habitually underperformed and had inadequate funds to conduct effective investigations. On 5 July 2016, The Hague Court of Appeal reversed the judgment of the District Court. It noted that the complainant's submission regarding alleged inadequate defence in similar trials under the Transfer Law did not establish a violation so fundamental as to amount to a nullification of his rights under article 6 of the European Convention on Human Rights. Furthermore, it noted that many of the judicial inadequacies referred to by him had been resolved; he had not demonstrated that human rights violations in Rwanda and judicial deficiencies in the trials of political opponents were applicable in his case; he would be tried on charges of genocide, not on charges related to political offences; and his extradition would not amount to a violation of his rights under article 3 of the European Convention on Human Rights.

The complaint

3.1 The complainant argues that he risks being subjected to torture or ill-treatment in Rwanda because of his membership of the Coalition for the Defence of the Republic and his involvement with Rwandan opposition groups in the Netherlands. He notes that in Rwanda he was the Secretary-General of the Coalition's National Committee. He argues that, since the Rwandan authorities initially requested his extradition for membership of a criminal organization, the Coalition's members, like himself, are likely to be categorized as political opponents. He also submits that the Rwandan authorities hold the Coalition responsible for using its militia, the impuzamugambi, to kill Tutsis during the 1994 genocide. He argues that although it has not been established that the National Committee, of which he was the Secretary-General, had any control over or responsibility for the militia members implicated in the genocide, his de jure responsibility in the Coalition makes him particularly vulnerable to violations of his right to a fair trial and to humiliating or degrading treatment. He also notes that he has been accused of being a founder of Radio Télévision Libre des Mille Collines, a radio station that has been found by the International Criminal Tribunal for Rwanda to have been instrumental in the genocide by inciting members of the population to kill Tutsi civilians.[1] He notes that his alleged founding of the radio station has not been established and that, in any event, such a role would not in itself establish any substantial contribution to the genocide.

3.2 The complainant also notes that he was President of the Board of the Federatie van Rwandese Maatschappelijke Organisaties while in the Netherlands and that in this role he supported opposition leaders in Rwanda.

3.3 The complainant claims that his membership of the Coalition and his active involvement in the Rwandan opposition in the Netherlands will make him vulnerable to treatment contrary to article 3 of the Convention if extradited to Rwanda. He claims that the safeguards guaranteed by the Transfer Law will be violated and that, as there is no independent judiciary, his sentence of life imprisonment is predetermined. He also claims that any protection he receives under the Transfer Law will end when the trial is over.

State party's observations on admissibility

4.1 On 26 October 2016, the State party submitted its observations on the admissibility of the complaint. It submits that the complaint should be declared inadmissible as (a) the same matter has already been examined by another procedure of international investigation; and (b) all available domestic remedies have not been exhausted as the complainant has not filed a cassation appeal before the Supreme Court.

4.2 The State party notes that the complainant submitted an application for interim measures before the European Court of Human Rights on 5 July 2016. It argues that the application concerned the same parties and the same substantive rights as his complaint before the Committee. It notes that the application for interim measures was denied by the Court on 8 July 2016 and that the application was declared inadmissible under articles 34 and 35 of the European Convention on Human Rights on the same date. The State party argues that, although the Court did not specify the exact grounds on which the application had been found to be inadmissible, it could not have been on mere formal grounds, such as the expiration of the six months' time limit for the submission of an application. It argues that the application was therefore found inadmissible on one of the following grounds: (a) all domestic remedies had not been exhausted; (b) the applicant was not considered to be a victim of a violation of the European Convention on Human Rights; (c) the application was considered to be incompatible with the provisions of the European Convention on Human Rights, manifestly ill-founded or an abuse of the right of individual application; or (d) the

[1] The complainant refers to 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, *The Prosecutor v. Augustin Ndindiliyimana et al.* (case No. ICTR-00-56-T), judgment of 17 May 2011; and *Ferdinand Nahimana et al. v. the Prosecutor* (case No. ICTR-99-52-A), judgment of 28 November 2007.

applicant was considered not to have suffered a significant disadvantage. The State party argues that these grounds include a certain examination of the merits of the complaint, thus rendering the complaint before the Committee inadmissible under article 22 (5) (a) of the Convention.

4.3 On 23 January 2017, the State party submitted a request for discontinuance of the complaint or, failing that, for it to be declared inadmissible since the complainant had failed to substantiate the claims therein for the purposes of admissibility. The State party notes that the complainant was extradited to Rwanda on 12 November 2016 and that his detention has since been monitored by the International Commission of Jurists. The State party also notes that, on 6 December 2016, staff from the Embassy of the Netherlands visited the complainant in detention. During this visit the complainant confirmed that the Rwandan authorities had treated him in a correct manner and that they had facilitated visits by family members, access to legal counsel and monitoring by the International Commission of Jurists. Additionally, the complainant confirmed that his initial fear of being tortured or otherwise ill-treated had proven ill-founded. For this reason, the State party requested the Committee to discontinue the complaint or, alternatively, declare it inadmissible since the complainant had failed to substantiate the claims therein for the purposes of admissibility.

Complainant's comments on the State party's observations on admissibility

5.1 On 12 January 2017, the complainant provided his comments on the State party's observations on the admissibility of the complaint. He argues that his application to the European Court of Human Rights was limited to requesting interim measures and did not include a request to determine the complaint on the merits. He notes that, on 8 July 2016, the Court dismissed the request for interim measures in two sentences, stating that "the Court (the duty judge) decided not to indicate to the Government of the Netherlands, under Rule 39 of the Rules of the Court, the interim measure you are seeking. Therefore, the Court will not prevent the applicant's removal". In the three subsequent paragraphs, the Court declared the application inadmissible. The Court's decision fails to specify the grounds on which the dismissal was based. It only states "that the conditions of admissibility provided for in Articles 34 and 35 of the Convention were not fulfilled". The complainant argues that, without any proper explanation from the Court, the application's dismissal could have been based on procedural grounds.

5.2 As regards the State party's submission that the complaint should be declared inadmissible since not all domestic remedies had been exhausted, the complainant argues that he was not required to lodge an appeal in cassation before the Supreme Court in order to exhaust all available domestic remedies, as a cassation appeal does not have suspensive effect. At the time he submitted his complaint before the Committee, his extradition was imminent, so even if an appeal had been made, he would have been extradited by the time the Supreme Court had rendered its decision.

5.3 On 24 February 2017, the complainant submitted his comments on the State party's request for discontinuance and further observations on the admissibility of the complaint. The complainant notes that his concerns about his safety in the Rwandan justice system are far from resolved. He notes that, while it is true that he has thus far been treated correctly, the situation in Rwanda remains unpredictable. He adds that his concern was never that he would be subjected to inhuman treatment from the moment of his arrival. The Rwandan authorities are aware that the proceedings are monitored by the authorities of the Netherlands. His concern is what will happen when his detention or imprisonment is no longer monitored. He submits that the risk of being subjected to inhuman treatment at a later stage, after the imposition of a sentence, is still as real as it was prior to his extradition to Rwanda. He claims that there is no guarantee that those suspected of having committed genocide who are tried under the Transfer Law can escape the ill-treatment that Rwandan prisons are notorious for.[2]

[2] The Netherlands, Ministry of Foreign Affairs, *Thematisch Ambtsbericht over Mensenrechten en Justitie in Rwanda* (The Hague, 18 August 2016).

5.4 The complainant submits that his rights are already at risk of being violated. He claims that there is lack of clarity about the monitoring agreement as it is still unknown which aspects of the proceedings will be monitored, the frequency of such monitoring, to whom the monitors report and the potential consequences, if any, that could follow from the monitoring reports. The complainant also claims that there is a risk that he will be charged with membership of the Coalition for the Defence of the Republic. He states that this became apparent during the first hearing on 6 December 2016, when the allegations against him were read out. One of the allegations referred to his membership of the Coalition for the Defence of the Republic, despite the fact that his extradition had been authorized only for his alleged individual and direct participation in the genocide. The complainant alleges that the evidence presented so far is not sufficient to proceed to trial. He adds that his counsel has received information according to which attempts are being made to pressure prisoners to provide incriminating statements against him. He therefore claims that there are doubts as to whether the proceedings against him will be conducted fairly.

5.5 The complainant notes that it is correct that he was entitled to receive visitors and make telephone calls to his family in the Netherlands while in detention. However, recently, he was moved from Kigali Central Prison to Mpanga Prison, which is in a remote location outside Kigali. Others accused of genocide were only transferred to Mpanga Prison after the end of their trials. Since his move, his contact with the outside world has been reduced significantly. Telephone contact and visits have been much more strictly controlled due to the logistical difficulties in reaching the location. The distance to Kigali also complicates the monitoring process. The complainant therefore submits that, while he has not yet been exposed to any inhuman or degrading treatment, the risk of being exposed to such treatment in the future still exists, in particular in light of the unpredictability of the conduct of the Rwandan authorities.

State party's observations on the merits and further observations on the admissibility of the complaint

6.1 On 27 July 2017, the State party submitted its observations on the merits of the complaint and further observations on its admissibility. It notes that, on 22 November 2012, the Ministry of Foreign Affairs of Rwanda requested the authorities of the Netherlands to extradite the complainant so that he could be prosecuted under criminal law. The complainant was suspected of having committed the following offences in the period from 7 April to 14 July 1994: genocide; complicity in genocide; conspiracy to commit genocide; murder as a crime against humanity; extermination as a crime against humanity; violation of common article 3 of the Geneva Conventions; and formation, membership and leadership of and participation in an association of a criminal gang whose purpose and existence is to do harm to people or their property.

6.2 The complainant was arrested on 23 January 2014. On 11 July 2014, the extradition chamber of The Hague District Court held that the requested extradition was permissible in respect of the charges of genocide and attempted genocide, but not in respect of the other charges because the Convention on the Prevention and Punishment of the Crime of Genocide did not provide a valid basis for extradition on these charges. The complainant lodged an appeal in cassation against the District Court's judgment, which the Supreme Court dismissed on 16 December 2014. In a decision of 3 June 2015, the Minister of Justice and Security allowed the extradition in accordance with the judgment of the District Court. The complainant then initiated proceedings against the State before the District Court, with the aim of obtaining an order prohibiting the State party from extraditing him to Rwanda. On 27 November 2015, the District Court prohibited the extradition of the complainant because it considered that there was a well-founded reason for assuming that his extradition to Rwanda would lead to a breach of article 6 of the European Convention on Human Rights. The State lodged an appeal against this judgment before The Hague Court of Appeal. On 5 July 2016, the Court of Appeal quashed the judgment of the District Court. It found that the complainant, if extradited, would not be exposed to a real risk of treatment in violation of articles 2, 3, 6 or 8 of the European Convention on Human Rights.

6.3 The complainant was extradited to Rwanda on 12 November 2016. Two members of staff from the Embassy of the Netherlands in Rwanda visited the complainant in Kigali Central Prison on 6 December 2016. During an interview conducted with the complainant during this visit, it was revealed that the Rwandan authorities were treating him properly, he was allowed to receive family visits, he had access to counsel and the proceedings against him were being monitored by the International Commission of Jurists. The complainant stated during the interview that he had been afraid of being tortured in Rwanda, but that fortunately this had not happened. On 29 March 2017, the report on the monitoring of the proceedings against the complainant that the International Commission of Jurists had carried out in November and December 2016 was sent to the Parliament of the Netherlands and published on the Government's website, together with the monitoring agreement. The main conclusion to be drawn from this initial report was that the Rwandan authorities were complying with the procedural safeguards laid down in the monitoring agreement. On 23 May 2017, the report on the monitoring that the International Commission of Jurists had carried out in January and February 2017 was published on the same website. This report confirms the conclusion drawn from the initial report.

6.4 As concerns the admissibility of the complaint, the State party reiterates its submission that the complaint should be declared inadmissible since the complainant has failed to substantiate the claims therein for the purposes of admissibility. It refers to the two reports of the International Commission of Jurists on the monitoring that took place from November 2016 to February 2017 and the findings by the embassy's staff, and it argues that these reports and visits show that the Rwandan authorities are treating the complainant properly and that his initial fear of being tortured or otherwise subjected to ill-treatment has proven ill-founded. The State party notes that the complainant himself informed the International Commission of Jurists that "he did not experience any aggression from the Rwandan authorities upon arrival" and that the conditions of detention "were good and the prison authorities were well prepared to receive him when he arrived".[3] The State party notes that other visits to the complainant by the International Commission of Jurists show that his conditions of detention are in accordance with the guarantees that had been agreed.[4] It submits that, for this reason alone, the complaint should be declared manifestly unfounded pursuant to rule 113 (b) of the Committee's rules of procedure.

6.5 As concerns the merits of the complaint, the State party argues that those suspected of serious crimes should, as far as possible, be prosecuted and tried in the country in which the crimes were committed. That is where the impact on the legal order is greatest and the evidence is to be found. Victims, surviving relatives, witnesses and fellow nationals must be able to see with their own eyes that justice is done and how it is done. Articles VI and VII of the Convention on the Prevention and Punishment of the Crime of Genocide clearly express the importance of cases being tried in the country in which the offences were committed and of extradition being granted for that purpose. The State party argues that, given the need to thoroughly assess an extradition request and the importance of due care in granting extradition, various safeguards have been built into the domestic extradition procedure. The decision by the Minister of Justice to grant extradition is subjected to an objective review by the extradition chamber of The Hague District Court. This double review of an extradition request is an important safeguard in the extradition procedure, which ensures that such requests are thoroughly and objectively assessed. This is reinforced by the right to lodge an appeal in cassation against the judgment of the extradition chamber. Furthermore, civil proceedings may be instituted against the Minister's decision to grant extradition, to assess whether the decision was reasonable.

6.6 The State party argues that the country reports on Rwanda show that there has been an overall improvement in the human rights situation over the past five years.[5] Furthermore,

[3] Kenyan Section of the International Commission of Jurists, "Monitoring report for the case of … monitoring period: November–December 2016", paras. 32–33. Available at www.tweedekamer.nl/kamerstukken/detail?id=2017D08623&did=2017D08623.

[4] Kenyan Section of the International Commission of Jurists, "Monitoring report for the case of … monitoring period: January–February 2017", para. 49.

[5] The State party refers to the above-mentioned report on Rwanda by the Ministry of Foreign Affairs of the Netherlands dated 18 August 2016.

it notes that, according to non-governmental organizations, the main human rights problems between 2011 and 2016 were the harassment, arrest and mistreatment of journalists, political opponents and human rights defenders.[6] Most problems seem to concern civil and political rights; the freedom of expression in particular is restricted and there is little scope for criticizing the Government.

6.7 The State party notes that, according to country reports, those found guilty of genocide are not treated differently from other citizens. There have been cases in which those convicted of genocide were afraid to return to their village communities after being released. They were given assistance by government officials. The Government of Rwanda ensures that people do not take revenge, and there have not been many incidents.[7] It notes that, according to country reports, there has been an overall improvement in the situation of Rwandan prisons. The prison system was designed for 54,700 detainees. At the end of 2012, the prison population was 55,618, but by 2015 it had fallen to around 54,000.[8] According to the Rwandan Correctional Service, every prison has dormitories, toilets, sports facilities, a clinic, a reception room, a kitchen, water and electricity.[9] A special regime applies to transfer cases such as the complainant's case. During their trial, "international" defendants accused of genocide stay in a special, comfortable, high-security wing of Kigali Central Prison.[10] In July 2015, five prisoners were housed in this high-security wing. Among other things, they can watch television and use a computer. They also have their own kitchen.[11] If they are convicted, they are transferred to Mpanga Prison, in which conditions meet international standards, partly because of the Transfer Law. Eight prisoners of the Residual Special Court for Sierra Leone were held in a specially built wing of Mpanga Prison.[12] The special wing of Mpanga Prison also holds a prisoner extradited by Norway to Rwanda who has been sentenced to 30 years' imprisonment at first instance. He has a spacious, comfortable cell with his own washroom.[13]

6.8 The State party refers to jurisprudence of the European Court of Human Rights in the case of *Ahorugeze v. Sweden*, in which the Court found that the extradition of a genocide suspect to Rwanda would not amount to a violation of article 3 of the European Convention on Human Rights.[14] It noted that the authorities had offered assurances to the effect that the applicant would be detained and serve a possible prison sentence in Mpanga Prison and, temporarily during his trial, be detained at Kigali Central Prison. The Court found that those two facilities met international standards and noted that there was no evidence in the case to indicate that the applicant would face a risk of torture or ill-treatment at Mpanga Prison or Kigali Central Prison.

6.9 The State party submits that, although the human rights situation in Rwanda may give some cause for concern, there is no reason to conclude that extradition to Rwanda would in itself involve a risk of violating article 3 of the Convention, or that everyone suspected of genocide who is extradited to Rwanda will be exposed to a real, personal and foreseeable risk of treatment contrary to article 3 of the Convention, especially since a special regime exists for transfer cases like that of the complainant.

6.10 The State party notes the complainant's claim that his involvement in various organizations that oppose the Government of Rwanda makes him particularly vulnerable to a violation of his rights under article 3 of the Convention. The State party argues that the

[6] United States of America, Department of State, "Country reports on human rights practices for 2015 – Rwanda".

[7] The State party refers to the report on Rwanda by the Ministry of Foreign Affairs of the Netherlands dated 28 November 2011.

[8] United States, Department of State, "Country reports on human rights practices for 2015 – Rwanda".

[9] United States, Department of State, "Country reports on human rights practices for 2014 – Rwanda".

[10] Ibid.

[11] The State party refers to the report on Rwanda by the Ministry of Foreign Affairs of the Netherlands dated 18 August 2016.

[12] Ibid.

[13] The State party refers to the report on Rwanda by the Ministry of Foreign Affairs of the Netherlands dated 18 August 2016.

[14] European Court of Human Rights, *Ahorugeze v. Sweden* (application No. 37075/09), judgment of 27 October 2011.

complainant's claims regarding this alleged risk have been superseded by subsequent events and that this alone warrants the conclusion that he does not face a risk of being subjected to treatment contrary to article 3 of the Convention. It also argues that he has not substantiated or explained why his involvement in the Coalition for the Defence of the Republic, Radio Télévision Libre des Mille Collines or Federatie van Rwandese Maatschappelijke Organisaties would cause the Rwandan authorities to regard him as a political opponent. It argues that the prosecution and trial of those suspected of genocide is very important for Rwanda. Compliance with the agreed guarantees, which is necessary if the complainant is to be prosecuted and tried effectively, is therefore in the country's own interests. This is illustrated by the Rwandan authorities' willingness to give extensive guarantees and allow far-reaching monitoring, and the fact that, since the complainant's extradition, they have adhered to all the agreements made. Even if the Government of Rwanda were to attach so much importance to the complainant's political beliefs that it regarded him as a political opponent, it is highly unlikely that this would result in torture or inhuman treatment given the importance of prosecuting and trying offenders and the ensuing need to treat them properly. The State party argues that there are not enough concrete indications to support such a contention. Furthermore, it submits that the complainant's claims relating to the right to a fair trial, such as there being no independent judiciary or presumption of innocence, do not fall within the scope of article 3 of the Convention.

6.11 As concerns the complainant's contention that being held in prison would make him vulnerable because many prisoners are subjected to torture, the State party submits that, whatever the merits of this contention, the complainant's situation is not comparable to that of other prisoners. The Transfer Law is applicable during the complainant's trial and substantial guarantees have been agreed with the Government of Rwanda. Under article 23 of the Transfer Law, any person transferred to Rwanda for trial is "detained in accordance with the minimum standards of detention stipulated in the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment". In addition, the International Committee of the Red Cross or an observer appointed by the International Residual Mechanism for Criminal Tribunals has the right to inspect the conditions of detention. For individuals subject to the Transfer Law, the conditions of detention are therefore not comparable to those of other suspects. In the case of *Jean Uwinkindi*, the International Criminal Tribunal for Rwanda noted that one of the guarantees under the Transfer Law was that any person transferred, as in the case of the complainant, would be detained in accordance with the minimum standards of detention adopted by the General Assembly.[15] The Rwandan authorities have stated that Mpanga Prison has been designated as the primary location of detention and that the complainant will be held temporarily in Kigali Central Prison. If it is necessary to transfer him to another prison, it will be to a facility that also meets the relevant international standards.[16] The monitoring that has taken place so far shows that the Rwandan authorities are adhering to these agreements.

6.12 The State party notes the complainant's claim that he is at risk of being subjected to treatment contrary to article 3 of the Convention after the trial has concluded. It argues that this claim is purely speculative. It reiterates that the complainant's situation is monitored at several levels and that it is highly unlikely that the international community would cease to monitor the complainant's situation after the trial has concluded.

Complainant's comments on the State party's observations

7.1 On 9 July 2018, the complainant submitted his comments on the State party's observations. He maintains that his complaint is admissible. He notes the State party's submission that the complaint should be declared inadmissible since the complainant has failed to substantiate the claims therein for the purposes of admissibility, that is to say that the Rwandan authorities have treated him in in accordance with the agreements made

[15] *Jean Uwinkindi v. the Prosecutor* (case No. ICTR-01-75-AR11bis), judgment of 16 December 2011, para. 37.

[16] The State party refers to the extradition request from Rwanda to the authorities of the Netherlands.

between the authorities of the Netherlands and Rwanda. The complainant disagrees with this assessment. He notes that he was supposed to be eligible for legal aid, which would have included funds for an investigation, however, no such funds have been made available to him yet. He also notes that he has not been allowed to be in contact with his international counsel. The complainant concedes that he has not, as of yet, been subjected to physical torture or inhuman treatment. However, he claims that he has a legitimate fear of such treatment since he is perceived as a political opponent of the Government of Rwanda and the use of torture is widespread in the country.

7.2 The complainant notes the State party's argument that the human rights situation in Rwanda has improved over the past years. He argues that recent human rights reports, however, show a different picture and that the Rwandan military has routinely unlawfully detained and tortured detainees through beatings, asphyxiations, mock executions and electric shocks.[17] Complaints about torture in such circumstances have not been investigated and the evidence obtained through torture has not been excluded at trial.[18] The complainant further notes that the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment postponed its monitoring visit to Rwanda on 20 October 2017 because the Government refused to cooperate and severely limited its access to prisoners. The complainant argues that country reports demonstrate that the persecution of perceived political opponents of the Government is a continuing reality and that there is a real and imminent risk that he will be exposed to torture or other inhuman or degrading treatment. He also argues that, while there is some level of scrutiny and monitoring of his situation, his situation will change when the monitoring stops.

7.3 The complainant argues that the monitoring reports issued by the International Commission of Jurists are general and do not provide any analysis, conclusions or recommendations about his case. In addition, the reports are published irregularly, sometimes with gaps of six months. The reports include very few details of his treatment, the visitors he is allowed to receive and the possibilities to send and receive post. He argues that there appears to be no transparency in the manner in which the monitoring system functions. There is no concrete workplan or schedule in the agreement between the Ministry of Foreign Affairs of the Netherlands and the International Commission of Jurists. He notes that the monitoring reports are supposed to act as a safeguard against potential violations of his rights and argues that the general nature of such reports, combined with the fact that their publication is irregular and frequently late, decreases their reliability as a protective measure. He also argues that the intimidation and threats of the Rwandan authorities also have a serious effect on his morale. He claims that the evidence presented against him by the prosecution is based on hearsay and that it has been impossible to find defence witnesses willing to testify for him, as they fear intimidation and persecution if they come forward. Defence lawyers and investigators are also under pressure from the authorities resulting in their having to be very careful in choosing their line of defence.

State party's further submission

8.1 On 10 October 2018, the State party submitted further observations on the admissibility and merits of the complaint. It reiterates its position that the complaint should be declared inadmissible on the grounds that the European Court of Human Rights has already ruled on the same matter, that the complainant has failed to exhaust all available domestic remedies and that he has failed to substantiate the claims for the purposes of admissibility. It also reiterates its submission that, should the Committee find the communication to be admissible, the complaint is without merit.

8.2 As concerns its submission that the complaint should be declared inadmissible since the complainant has failed to substantiate the claims therein for the purposes of admissibility, the State party refers to its submission of 27 July 2017. It notes that the present situation, one year on, shows that the Rwandan authorities are still acting in

[17] Human Rights Watch, *"We Will Force You to Confess": Torture and Unlawful Military Detention in Rwanda* (New York, 10 October 2017).

[18] Ibid. and the United States, Department of State, "Country reports on human rights practices for 2017 – Rwanda".

accordance with the guarantees they have given and that prison conditions are good. The State party argues that, given the fact that the Rwandan authorities have continued to treat the complainant well since his arrival in November 2016, there is no reason to expect that such treatment will change in the future. This assertion is supported by the fact that, in the cases of others being tried for genocide under the Transfer Law, such as Jean Uwinkindi, no treatment contrary to article 3 of the Convention has occurred. The State party also argues that, with regard to the remainder of the trial and any possible prison sentence, there is no reason to assume that the complainant is at risk of treatment contrary to article 3 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee recalls that, under article 22 (5) (a) of the Convention, it shall not consider any communications from an individual unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. The Committee recalls its jurisprudence that a communication has been or is being examined by another procedure of international investigation or settlement if the examination by the procedure relates or related to the same matter within the meaning of article 22 (5) (a), which must be understood as relating to the same parties, the same facts and the same substantive rights.[19] The Committee observes that, on 8 July 2016, the European Court of Human Rights, sitting in a single-judge formation, declared the author's application inadmissible as the admissibility criteria set out in articles 34 and 35 of the European Convention on Human Rights had not been met, without providing any explanation as to the specific reasons that had led it to reach such a finding. The Committee notes that the complainant's application before the Court appears to refer to the same facts as those raised in the present communication. The Committee notes, however, that the Court's decision does not set forth a reasoning for the inadmissibility finding and that it does not allow the Committee to verify the extent to which the Court examined the complainant's application, including whether it conducted a thorough analysis of the elements related to the merits of the case.[20] The Committee therefore considers that it is not precluded by article 22 (5) (a) of the Convention from examining the communication.

9.2 The Committee notes the State party's submission that the complaint should be declared inadmissible since the complainant failed to exhaust domestic remedies by not filing a cassation appeal before the Supreme Court against the decision of The Hague Court of Appeal of 5 July 2016. It notes, however, the complainant's submission that a cassation appeal would not have been an effective remedy in his case as it would not have had suspensive effect and would not have prevented his extradition. The Committee notes that the State party has neither refuted the complainant's claim in this regard nor provided any information that would suggest that a cassation appeal before the Supreme Court would have had suspensive effect in the complainant's case or that he could have applied for a provisional measure to prevent his extradition pending appeal. The Committee therefore concludes that it is not precluded by article 22 (5) (b) from examining the communication.

9.3 The Committee notes the complainant's claim that he will not be afforded a fair trial in Rwanda. It notes that the fact that a complainant may face trial in a judicial system that does not guarantee the right to a fair trial may constitute an indication of a risk of torture to which State party authorities should give consideration in their decisions on removal of a person from their territory.[21] In the present case, the Committee notes that the State party authorities examined the author's claims in this regard and found that he was not at risk of not being afforded the right to a fair trial in Rwanda. The Committee notes that the

[19] *N.B. v. Russian Federation* (CAT/C/56/D/577/2013), para. 8.2.

[20] *S v. Sweden* (CAT/C/59/D/691/2015), para. 7.5; and *Mozer v. Switzerland* (CAT/C/57/D/584/2014), paras. 9.4–9.5.

[21] Committee against Torture, general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 29 (d).

complainant has not provided any additional specific information in this regard that would indicate that he would be exposed to treatment contrary to article 3 of the Convention if removed to Rwanda. It therefore finds his claim in this part inadmissible as insufficiently substantiated for the purposes of admissibility.

9.4 The Committee notes the complainant's claim that extradition to Rwanda would expose him to treatment contrary to article 3 of the Convention. The Committee considers that the complainant has sufficiently substantiated his claim for the purposes of admissibility. As the Committee finds no further obstacles to admissibility, it declares this part of the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

10.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all the information made available to it by the parties.

10.2 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 in which 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.[22]

10.3 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 into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of return. The Committee recalls that the aim of the evaluation is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. The existence of a pattern of gross, flagrant or mass violations of human rights in a country therefore does not as such constitute a sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country, and additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.[23]

10.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing removal, either as an individual or a member of a group that may be at risk of being tortured in the State of destination. The Committee also recalls that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".[24]

10.5 The Committee recalls that the burden of proof is on the complainant, who must present an arguable case – that is, must submit arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned, however, it is not bound by such findings and will make a free assessment of the

[22] *Sogi v. Canada* (CAT/C/39/D/297/2006), 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; *Kalinichenko v. Morocco* (CAT/C/47/D/428/2010), para. 15.2; and *L.M. v. Canada* (CAT/C/63/D/488/2012), para. 11.2.

[23] See, inter alia, *S.K. and others v. Sweden* (CAT/C/54/D/550/2013), para. 7.3.

[24] General comment No. 4, para. 11.

information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.[25]

10.6 The Committee notes the complainant's claims that he risks being subjected to torture or ill-treatment in Rwanda as he will be perceived as a political opponent by the Rwandan authorities because of his membership of the Coalition for the Defence of the Republic and his involvement in the Rwandan opposition in the Netherlands. The Committee also notes his claims that the safeguards guaranteed by the Transfer Law are insufficient as a protective measure. The Committee further notes the State party's argument that the complainant has been extradited to Rwanda under the Transfer Law and will therefore be detained in conditions that meet international standards and that, if convicted, he will serve his sentence in a prison meeting international standards. The Committee notes the State party's argument that the complainant has not substantiated his claim that the Rwandan authorities would regard him as a political opponent. The Committee also notes the State party's argument that the complainant's claim that he is at risk of being subjected to treatment contrary to article 3 of the Convention after the trial has concluded is purely speculative.

10.7 The Committee notes that the complainant's claims of being at risk of torture or ill-treatment if extradited were examined by the State party authorities prior to his extradition. The Committee also notes that the complainant has not provided any specific information or evidence indicating that he would face a real, personal and foreseeable risk of torture if extradited to Rwanda. The Committee further notes that the complainant was extradited under the Transfer Law, which prescribes that any person transferred to Rwanda for trial under the law will be detained in accordance with international minimum standards of detention.[26] The Committee notes that the complainant has been detained in Mpanga Prison and Kigali Central Prison, which have been found to meet international minimum standards of detention.[27] The Committee also notes that the complainant was extradited under a monitoring agreement and that regular monitoring of his detention has been carried out by the International Commission of Jurists. The Committee further notes that the claims made by the complainant are primarily based on the presumption that, as a person extradited on genocide charges, he would automatically be at risk of torture on return to Rwanda. The Committee notes, however, that the information presented by the complainant does not contain any specific reference to allegations of torture of Rwandans returned, under the Transfer Law, to be tried for acts of genocide.[28] The Committee also notes that the complainant has not presented any concrete information that would substantiate his claim of being at risk of treatment contrary to article 3 of the Convention. The Committee is therefore of the opinion that the complainant has failed to substantiate his claims that his extradition to Rwanda would expose him to treatment contrary to article 3 of the Convention.

11. 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.

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[25] Ibid., para. 50.

[26] Article 23 of the Transfer Law stipulates that: "Any person who is transferred to Rwanda by the [International Criminal Tribunal for Rwanda] for trial shall be detained in accordance with the minimum standards of detention stipulated in the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December, 1998. In accordance with article 24 of the Transfer Law, it applies "mutatis mutandis in other matters where there is transfer of cases to the Republic of Rwanda from other States or where transfer of cases or extradition of suspects is sought by the Republic of Rwanda from other States".

[27] *Ahorugeze v. Sweden*, para. 92.

[28] See also *L.M. v. Canada*, para. 11.5.