



# 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. 858/2018\*, \*\*

<i>Communication submitted by:</i>	B.N. and S.R., represented by TRIAL (Track Impunity Always)
<i>Alleged victims:</i>	B.N. and A.H.
<i>State party:</i>	Burundi
<i>Date of complaint:</i>	22 December 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 12 January 2012 (not issued in document form)
<i>Date of adoption of decision:</i>	19 July 2021
<i>Subject matter:</i>	Torture and enforced disappearance; lack of effective investigation and redress
<i>Procedural issue:</i>	Exhaustion of domestic remedy
<i>Substantive issues:</i>	Torture and cruel, inhuman or degrading treatment or punishment; measures to prevent acts of torture or cruel, inhuman or degrading treatment or punishment; State party's obligation to ensure that the competent authorities proceed to a prompt and impartial investigation; right to complain; right to redress
<i>Articles of the Convention:</i>	2 (1), 11, 12, 13 and 14, read in conjunction with 1 and 16

\* Adopted by the Committee at its seventy-first session (12–30 July 2021).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Erdoğan İşcan, Liu Huawen, Ilvija Pūce, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing.



1.1 The complainant is B.N., a national of Burundi born in 1948 in Gisozi commune, Mwaro Province. He is the father of the victim, A.H., a national of Burundi born in 1980 in the same commune and the victim of an enforced disappearance on 14 December 2015. The complainant claims that Burundi has violated articles 2 (1), 11, 12, 13 and 14, read in conjunction with article 1 and, in the alternative, article 16 of the Convention, in respect of the victim and articles 12, 13 and 14, read in conjunction with article 1 and, in the alternative, article 16 of the Convention, in respect of the complainant. Burundi acceded to the Convention on 18 February 1993 and made the declaration under article 22 (1) of the Convention on 10 June 2003. The complainant is represented by TRIAL (Track Impunity Always).

1.2 On 7 November 2018, the complainant's counsel informed the Committee that, on 17 June 2018, the complainant, B.N., had died of natural causes. Subsequently, one of B.N.'s sons and A.H.'s brother, S.R., agreed that the proceedings should be continued and formally authorized counsel to act on his behalf. S.R. thus requested the Committee to consider him to be the new complainant.

1.3 On 22 December 2017, the complainant had requested the Committee to grant interim measures of protection. On 12 January 2018, pursuant to rule 114 of its rules of procedure, the Committee decided to accede to the request to grant interim measures and requested the State party to immediately adopt all necessary measures to protect the life, safety and personal integrity of the complainant and the victim, and to ensure that no irreparable harm would be caused to them while the complaint was pending.

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

#### *General context*

2.1 In August 2010, President Pierre Nkurunziza, who had first been elected in 2005, was re-elected for a second term. The subsequent crackdown on members of opposition parties was characterized by the frequent use of extrajudicial executions, enforced disappearances and acts of torture and intimidation. From April 2015, Burundi once again saw escalating violence and serious human rights violations, following Pierre Nkurunziza's decision to stand for a third term, which was deemed contrary to the Arusha Peace and Reconciliation Agreement for Burundi by the international community and Burundian civil society.<sup>1</sup> Large demonstrations against a third term subsequently took place and were forcefully suppressed by the authorities, with live ammunition and grenades used against the demonstrators. On 13 May 2015, a coup attempt failed; it was followed by a heavy crackdown against all those with suspected links to the attempt. On 21 July 2015, Pierre Nkurunziza was re-elected in a very tense climate. The number of demonstrations decreased, but a new period of violence began, with targeted killings, extrajudicial executions, arbitrary arrests, acts of torture and other cruel, inhuman or degrading treatment and enforced disappearances, among other abuses. The report on the independent investigation on Burundi carried out pursuant to Human Rights Council resolution S-24/1, submitted to the Council at its thirty-third session in 2016, found that more than 1,000 people were killed during the crisis. Thousands more were reportedly tortured, unknown numbers of women were subjected to various forms of sexual crime, hundreds of people disappeared and thousands were illegally detained.<sup>2</sup> During the night of 10–11 December 2015, unidentified armed persons attacked three military bases

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<sup>1</sup> United Nations, "Conseil de sécurité: examen de la situation au Burundi, marquée par un climat de peur et des restrictions aux libertés en marge des élections du 29 juin et du 15 juillet" ("Security Council: Consideration of the situation in Burundi, characterized by a climate of fear and restrictions on freedoms in the context of the elections of 29 June and 15 July"), Meetings coverage and press releases, 9 July 2015, available at [www.un.org/press/fr/2015/cs11963.doc.htm](http://www.un.org/press/fr/2015/cs11963.doc.htm); and Radio France Internationale, "Présidentielle au Burundi: Ban Ki-moon tente de raisonner Nkurunziza" ("Presidential elections in Burundi: Ban Ki-moon tries to reason with Nkurunziza"), 29 March 2015, available at [www.rfi.fr/afrique/20150329-presidentielle-burundi-ban-ki-moon-tente-raisonner-nkurunziza](http://www.rfi.fr/afrique/20150329-presidentielle-burundi-ban-ki-moon-tente-raisonner-nkurunziza).

<sup>2</sup> A/HRC/33/37, para. 35.

in Bujumbura and another near the city.<sup>3</sup> Following these attacks, the security forces reportedly closed off and combed through several Bujumbura neighbourhoods with ties to the political opposition with the stated aim of tracking down the armed combatants and finding hidden weapons. These operations reportedly caused many civilian casualties.<sup>4</sup> The opposition-linked neighbourhoods of Jabe, Nyakabiga, Musaga, Mutakura, Cibitoke and Ngagara were targeted in these security operations.<sup>5</sup> Indeed, the neighbourhood of Cibitoke, where the victim resided,<sup>6</sup> was known to be one of the neighbourhoods that had challenged President Nkurunziza's third term in office.

2.2 According to a report by the commission of inquiry set up by the Prosecutor General of the Republic to shed light on the insurrectionary movement triggered on 26 April 2015, a criminal file was opened against many members of opposition parties and human rights defenders belonging to the Halte au troisième mandat (Stop the Third Term) movement, who were blamed for the "insurrection".<sup>7</sup>

*The facts as submitted by the complainant*

2.3 A.H. worked as a plumber and, like his two brothers, was a member of a Burundian opposition political party, the Movement for Solidarity and Development, which had been violently suppressed since 2014. In April 2015, A.H. and his two brothers took part in demonstrations against the renewal of President Nkurunziza's term in office.

2.4 On 13 December 2015, while he was with his father, B.N., at his home in the neighbourhood of Cibitoke, Bujumbura Mairie Province, A.H. received a telephone call from a person inviting him to a meeting in Ngagara commune. Without telling his father who had telephoned, A.H. left his home in order to travel to the meeting place. When he arrived, at approximately 2 p.m., A.H. met an acquaintance<sup>8</sup> and saw a police vehicle approach. Police officers from the Unit for the Protection of Institutions got out of the vehicle. All of the men except one were in uniform; the man in civilian clothing has been identified as Brigadier Jonas Ndabirinde, who, according to some media reports, is implicated in numerous cases of abuse.<sup>9</sup> When he saw the officers, A.H. attempted to flee, but was pursued and apprehended by Brigadier Ndabirinde. A.H. was tied up, was violently beaten by the police officers, who struck him across the back with truncheons and punched him in the face, and was interrogated at the scene as to the whereabouts of some of the demonstrators. The officers showed him a document containing the names of some of the protesters they were looking for. Jonas Ndabirinde then turned to the passers-by who had witnessed the scene and asked them whether they knew A.H., to which they replied that they did not. The brigadier then stated that, since they had just said that they did not know him, they should not weep if they were

<sup>3</sup> 2017 detailed final report of the Commission of Inquiry on Burundi (A/HRC/36/CRP.1), para. 258. Available on the Commission's web page:

[www.ohchr.org/FR/HRBodies/HRC/CoIBurundi/Pages/CoIBurundi.aspx](http://www.ohchr.org/FR/HRBodies/HRC/CoIBurundi/Pages/CoIBurundi.aspx).

<sup>4</sup> Ibid.

<sup>5</sup> Amnesty International, "Burundi: suspected mass graves of victims of 11 December violence", 29 January 2016, p. 1, available at [www.amnesty.org/en/documents/afr16/3337/2016/en/](http://www.amnesty.org/en/documents/afr16/3337/2016/en/).

<sup>6</sup> See para. 2.4 below.

<sup>7</sup> Republic of Burundi, Ministry of Justice, *Commission d'enquête chargée de faire la lumière sur le mouvement insurrectionnel déclenché le 26 avril 2015* (Commission of inquiry to shed light on the insurrectionary movement triggered on 26 April 2015) (Bujumbura, August 2015), available at [www.fidh.org/IMG/pdf/20150909\\_justice\\_burundaise\\_rapport-commission-enquete\\_insurrection\\_final.pdf](http://www.fidh.org/IMG/pdf/20150909_justice_burundaise_rapport-commission-enquete_insurrection_final.pdf).

<sup>8</sup> This person witnessed the facts reported.

<sup>9</sup> The author cites, inter alia, Radio Publique Africaine, "Campagne Ndondeza: Sur les traces du jeune Albert Kubwimana enlevé par les services de sécurité depuis octobre 2015" ("Ndondeza Campaign: On the trail of the young Albert Kubwimana, abducted by the security services in October 2015"), 11 May 2017, available at [www.rpa.bi/index.php/component/k2/item/1588-minusca-les-policiers-burundais-bases-en-centrafrique-attendent-leurs-indemnite-depuis-16-mois](http://www.rpa.bi/index.php/component/k2/item/1588-minusca-les-policiers-burundais-bases-en-centrafrique-attendent-leurs-indemnite-depuis-16-mois), and the Forum pour la Conscience et le Développement, Declaration No. 010/2017, "Assassinat de Zedi Feruzi: Rapport du FOCODE" ("Murder of Zedi Feruzi: FOCODE report"), 23 May 2017, available at [www.focode.org/assassinat-de-zedi-feruzi-rapport-focode/](http://www.focode.org/assassinat-de-zedi-feruzi-rapport-focode/).

to find his dead body. The officers then forced A.H. into their vehicle, without an arrest warrant, and took him to an unknown location.

2.5 A.H.'s father, B.N., was informed of his son's abduction in the afternoon of 13 December 2015. He went to the *chef de colline*,<sup>10</sup> who refused to help him. In the following days, B.N. conducted a search for A.H. and went to all the police stations in the area of Cibitoke, Ngagara and Bwiza, as well as the detention centre of the National Intelligence Service, but his efforts were unsuccessful. B.N. was then visited at his home by a person in civilian clothing. This person told him that he had been sent by the men who had abducted his son. He threatened B.N., telling him that he was being watched and that, if he continued his search or filed a complaint, he would meet the same fate as A.H. Subsequently, A.H.'s two brothers – including S.R., the complainant – decided to leave Burundi in order to take refuge in a neighbouring country, as they feared that, as fellow members of the Movement for Solidarity and Development, they, too, would be abducted. The complainant emphasizes that these events took place in the aftermath of the attacks of 11 December 2015<sup>11</sup> and were part of the subsequent police crackdown.

2.6 On 14 December 2015, B.N. went to the Independent National Human Rights Commission in order to request assistance in his search. The Commission registered his application, but then told him, during a verbal interview, that it had not found A.H. in the detention facilities visited. In the days that followed, B.N. asked for a copy of his application to register the request, but the Commission refused to provide him with one. The complainant emphasizes that the Commission suffers from a lack of independence and impartiality vis-à-vis the executive branch and that international proceedings have been brought against it.<sup>12</sup>

2.7 On 14 December 2015, a witness recognized A.H. in the Cibitoke neighbourhood. He was in a police vehicle, tied up and covered in blood, with several police officers around him. A.H. has not been found since.

2.8 In the months that followed, B.N. continued to be subjected to intimidation. Police officers came approximately every three months to search his home, claiming that they were checking his household record booklet.<sup>13</sup> During each visit, B.N. was questioned about the whereabouts of his other sons and the police officers threatened that they would “meet the same fate as A.H.” if they were caught. The complainant, S.R., emphasizes that these visits caused B.N. intense suffering and might have been the cause of his hypertension.

#### *Lack of investigation and exhaustion of domestic remedies*

2.9 The complainant maintains that B.N. did not bring a complaint before the national courts for fear of reprisals. He points out that officers from the Unit for the Protection of Institutions have been recognized as being heavily implicated in serious human rights violations.<sup>14</sup>

2.10 The complainant emphasizes that domestic remedies have proved unavailable in view of the human rights situation in Burundi. He refers to the case of *Phillip v. Trinidad and Tobago*,<sup>15</sup> in which the Human Rights Committee held that a complainant did not need to exhaust domestic remedies if he or she would be placed in danger by doing so. In the present case, the perpetrators of the acts of torture and ill-treatment are members of the police, senior officers and/or persons close to the current Government, who have significant powers and means of exerting pressure in order to prevent proceedings from being brought against them before the national courts. The complainant points out that, in 2014, the Committee had expressed concern at the absence of protection for victims and witnesses, who were subject

<sup>10</sup> Local leader.

<sup>11</sup> See para. 2.1 above.

<sup>12</sup> On this subject, see Global Alliance of National Human Rights Institutions, *Report and Recommendations of the Session of the Subcommittee on Accreditation, Geneva, 13–17 November 2017*, pp. 50–53, available at [www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx](http://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Reports.aspx).

<sup>13</sup> A household record booklet is a register of the persons living in a house.

<sup>14</sup> A/HRC/36/CRP.1, para. 204.

<sup>15</sup> *Phillip v. Trinidad and Tobago* (CCPR/C/64/D/594/1992), para. 6.4.

to reprisals.<sup>16</sup> Indeed, until 27 June 2016,<sup>17</sup> Burundi had no adequate legal and institutional framework to ensure the safety of victims and witnesses. The complainant emphasizes that, in view of the continuing violations and impunity in Burundi, it is clear that the adoption of the law in question has had no tangible effect on the situation of victims or on their protection.

2.11 The complainant also refers to the conclusions of the Commission of Inquiry on Burundi and its assessment that the human rights situation in the country was characterized by “widespread impunity, exacerbated by the lack of independence of the judiciary”,<sup>18</sup> which was triggered by the demonstrations of April 2015 and continued into 2016 and 2017, while the relatives of many missing persons “have been subjected to pressure, intimidation or threats by police or National Intelligence Service officers in connection with their disappearances”.<sup>19</sup> Thus, many victims did not lodge complaints “owing to either a fear of reprisals or a lack of confidence in the functioning and independence of the judicial system”<sup>20</sup> and, “even when the authorities announced that investigations had been opened, further action was rarely taken”.<sup>21</sup> The complainant recalls the jurisprudence of the Human Rights Committee, according to which States parties have “a duty to investigate thoroughly alleged violations of human rights ... and to criminally prosecute, try and punish those deemed responsible for such violations”.<sup>22</sup>

2.12 The complainant claims that, despite knowledge of the abuse perpetrated against the victim, the Burundian authorities have not carried out an investigation, which fits into the general context of impunity recognized by the Committee<sup>23</sup> and in the reports of the Commission of Inquiry on Burundi.<sup>24</sup> Indeed, the Commission reiterated that “enforced and other disappearances continued to occur from April 2015 into 2017”<sup>25</sup> and noted that, “throughout 2016 and 2017, dead bodies were regularly discovered in several provinces, often with their arms tied behind their backs, and sometimes decapitated”.<sup>26</sup> Lastly, as is stressed in the report on the independent investigation on Burundi, “the current crisis has further entrenched the existing systemic and institutional dominance of the executive branch over the judiciary”.<sup>27</sup> Indeed, members of the executive branch “have used violent methods against its (perceived) opponents. This new situation has resulted in victims not filing complaints for violations of human rights and not using the justice system to settle differences.”<sup>28</sup>

2.13 The complainant therefore maintains that, in view of the genuine danger that prevented him from taking other steps at the national level, the State party’s reluctance to open an investigation and the seriousness of the human rights situation in Burundi, domestic remedies have proved unavailable to him.

### **The complaint**

3.1 The complainant claims violations under articles 2 (1), 11, 12, 13 and 14, read in conjunction with article 1 and, in the alternative, article 16 of the Convention, in respect of A.H. and violations of articles 12, 13 and 14, read in conjunction with article 1 and, in the alternative, article 16, in respect of the successive complainants.

<sup>16</sup> CAT/C/BDI/CO/2, para. 11.

<sup>17</sup> The author refers to Act No. 1/04 of 27 June 2016 on the protection of victims, witnesses and other persons at risk.

<sup>18</sup> A/HRC/36/CRP.1, para. 195.

<sup>19</sup> *Ibid.*, para. 322.

<sup>20</sup> *Ibid.*, para. 626.

<sup>21</sup> *Ibid.*, para. 624.

<sup>22</sup> *Vicente et al. v. Colombia* (CCPR/C/60/D/612/1995), para. 8.8.

<sup>23</sup> CAT/C/BDI/CO/2, para. 11.

<sup>24</sup> A/HRC/36/CRP.1, para. 635.

<sup>25</sup> *Ibid.*, para. 315.

<sup>26</sup> *Ibid.*, para. 278.

<sup>27</sup> A/HRC/33/37, para. 102.

<sup>28</sup> *Ibid.*, para. 103.

*Alleged violations against A.H.*

3.2 The complainant maintains that the violent truncheon blows to A.H.'s back and face, which caused heavy bleeding, the fact that he was tied up and violently interrogated and his enforced disappearance constitute acts of torture within the meaning of article 1 of the Convention, as they were intentionally inflicted by public officials in order to obtain information from the victim and to punish him for his political activities. Nevertheless, should the Committee decide not to endorse such a characterization, it is maintained, in the alternative, that the abuse suffered by A.H. in any case constitutes cruel, inhuman or degrading treatment contrary to article 16 of the Convention.

3.3 The complainant further maintains that, contrary to its obligations under article 2 (1) of the Convention, the State party has not adopted all effective legislative, administrative, judicial and other measures to prevent acts of torture within its jurisdiction. Indeed, A.H. has not been reported or acknowledged as missing by the State party's authorities, and no investigation has been opened. In addition, A.H. has had no contact with his family. Furthermore, the day after the events, he was seen in a car, covered in blood, injured, and wearing the same clothes, which indicates that he had not had access to medical care. More than four years after the events, even though there were witnesses at the scene, the State party has not opened an *ex officio* investigation. The facts surrounding A.H.'s enforced disappearance have never been clarified, and the perpetrators remain unpunished.

3.4 The complainant also alleges a violation of article 11 of the Convention in view of the fact that the State party did not respect any procedural guarantees, as A.H. was not informed of the reasons for his arrest, was not able to contact his family, was arrested without a warrant, was not provided with legal assistance and was not able to be examined by a doctor.

3.5 The complainant maintains that the State party has violated article 12 of the Convention, as it did not initiate a prompt, impartial and effective investigation into the allegations that A.H. had been tortured, even though the authorities had reasonable grounds to believe that acts of torture had been committed, as the complainant had referred the matter to the various police centres and to the Independent National Human Rights Commission.

3.6 With regard to article 13 of the Convention, the complainant submits that A.H. was denied the possibility of lodging a complaint by the State party and that no measures were taken to protect him, even though the authorities were aware that he was missing and that his physical and psychological integrity was at risk.

3.7 In violation of article 14, the victim has not obtained any redress or guarantee of non-repetition and has potentially been held in a state of ongoing and recurrent suffering since December 2015. As a victim of enforced disappearance, A.H. is outside the protection of the law. By depriving A.H. of the possibility of bringing legal action under the criminal law, the State party has deprived him of all remedies for obtaining compensation for a serious crime such as torture. Given the inaction of the judicial authorities, other remedies to obtain redress, through a civil suit for damages, for example, have no realistic prospect of success. The Burundian authorities have taken few measures to compensate victims of torture, a point raised by the Committee in its concluding observations following its consideration of the State party's initial report in 2006.<sup>29</sup> In 2014, while taking note of the fact that the new Burundian Code of Criminal Procedure provided for the compensation of victims of torture, the Committee expressed concern at the failure to apply this provision, in violation of article 14 of the Convention.<sup>30</sup> Lastly, in 2016, the Committee reiterated that the State party had an obligation to guarantee adequate compensation for victims of torture and inhuman or degrading treatment.<sup>31</sup> The Burundian authorities have thus not complied with their obligations under article 14 of the Convention, as the violations perpetrated against A.H. remain unpunished, owing to the inaction of the State party, and he has not received any compensation or rehabilitation.

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<sup>29</sup> CAT/C/BDI/CO/1, para. 23.

<sup>30</sup> CAT/C/BDI/CO/2, para. 18.

<sup>31</sup> CAT/C/BDI/CO/2/Add.1, para. 27 (d).

*Alleged violations against B.N.*

3.8 The complainant claims violations of articles 12, 13 and 14, read in conjunction with article 1 and, in the alternative, article 16 of the Convention, in respect of B.N. He maintains that A.H.'s enforced disappearance and the serious threats that were made against B.N. until his death constitute acts of torture within the meaning of article 1 of the Convention. He points out that these acts placed B.N. in a state of constant anguish and distress, which had an impact on his mental integrity. The complainant cites the case of *Hernández Colmenarez and Guerrero Sánchez v. Bolivarian Republic of Venezuela*,<sup>32</sup> in which the Committee described enforced disappearance as a form of torture in relation to both the victim and his or her family. Should the Committee decide not to endorse such a characterization, it is maintained, in the alternative, that the abuse suffered by the complainant in any case constitutes cruel, inhuman or degrading treatment contrary to article 16 of the Convention.

3.9 With regard to article 12 of the Convention, the complainant submits that no prompt and impartial investigation has been opened into A.H.'s disappearance, even though it has been reported to the State party's authorities. As enforced disappearance constitutes an act of torture in relation to the victim and his or her family members, the complainant maintains that the State party's authorities became aware that an act of torture had been committed against B.N. as soon as they became aware of A.H.'s enforced disappearance. From then on, therefore, the State party failed to fulfil its obligation towards the complainant.

3.10 With regard to article 13, the complainant maintains that B.N.'s right to complain to the State party's authorities about acts of torture was not guaranteed, as he was threatened in order to make him halt the search for his son.

3.11 With regard to article 14, the complainant maintains that, by depriving B.N. of criminal proceedings, the State party deprived him of all remedies for obtaining compensation for a serious crime such as torture.

3.12 The complainant requests the Committee to: (a) order the State party to ensure that independent and impartial bodies carry out a prompt, thorough and effective investigation into the acts of torture inflicted on A.H. and B.N., with a view to criminally prosecuting and punishing the perpetrators; (b) order the State party to provide appropriate redress to the complainant, including compensation for the material and non-material harm caused, restitution, rehabilitation, satisfaction and guarantees of non-repetition; and (c) request the State party to amend its legislation so that no statute of limitations applies to acts of torture, regardless of the context in which they are committed, and so that the authorities comply with their obligation to conduct ex officio independent and impartial investigations as soon as they become aware of acts of torture committed by their officials.

**State party's failure to cooperate**

4. On 12 January 2018, 7 February 2019 and 9 April 2019, the State party was invited to submit its observations on the admissibility and merits of the communication. The Committee notes that it has not received a response and regrets that the State party has not cooperated by sharing its observations on the present complaint.<sup>33</sup> The Committee recalls that the State party is obliged, pursuant to the Convention, to submit to the Committee written explanations or statements clarifying the matter and indicating the steps, if any, that it may have taken to remedy the situation. In the absence of a response from the State party, due weight must be given to the complainant's allegations, which have been properly substantiated.

<sup>32</sup> *Hernández Colmenarez and Guerrero Sánchez v. Bolivarian Republic of Venezuela* (CAT/C/54/D/456/2011), para. 6.4.

<sup>33</sup> See also *Ndagijimana v. Burundi* (CAT/C/62/D/496/2012 and Corr.1), para. 7; *Ndarisigaranye v. Burundi* (CAT/C/62/D/493/2012), para. 7; and *Ntikaraha v. Burundi* (CAT/C/52/D/503/2012), para. 4.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

5.1 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.

5.2 The Committee recalls with concern that, despite the three reminders sent to it, the State party has not provided any observations. The Committee therefore finds that it is not precluded from considering the complaint under article 22 (5) (b) of the Convention.<sup>34</sup>

5.3 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 to 14 and 16 of the Convention.

### *Consideration of the merits*

6.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention. As the State party has not provided any observations on the merits, due weight must be given to the complainant's allegations.

6.2 Before considering the allegations made by the complainant under the articles of the Convention invoked, the Committee must determine whether the acts to which A.H. and B.N. were subjected constitute torture within the meaning of article 1 of the Convention.

6.3 The Committee notes, first of all, the complainant's allegation that A.H. was tied up, violently beaten across his back with truncheons, punched in the face and interrogated by police officers in order to obtain information about the whereabouts of demonstrators. The Committee also notes that A.H. was taken into a vehicle while covered in blood and that he was seen the following day, still tied up and injured, in a police vehicle. The Committee notes that his family and friends have not seen him since 14 December 2015, and that the complainant maintains that A.H. was a victim of enforced disappearance. The Committee also notes that these acts were intentionally inflicted by public officials in order to obtain information from the victim and to punish him for his political activities. The Committee also notes the allegations that B.N. is also a victim of torture within the meaning of article 1 of the Convention, in view of his son's enforced disappearance and the constant threats that followed. The Committee notes that these events allegedly caused emotional and psychological suffering to B.N. and that they were inflicted intentionally by public officials in order to intimidate him. The Committee also notes that, by not submitting a response, the State party has not contested these facts. Lastly, the Committee notes that, should the Committee not endorse the characterization under article 1, the complainant claims, in the alternative, a violation of article 16 of the Convention in respect of A.H. and B.N.

6.4 The Committee recalls that States parties have a special obligation to ensure that the rights enshrined in the Convention are respected for persons deprived of their liberty and to take effective measures to prevent acts of torture.<sup>35</sup> States parties must take the necessary measures to prevent public officials or private individuals from inflicting acts of torture on persons under their control.<sup>36</sup> The Committee further recalls that enforced disappearance entails multiple human rights violations and a failure by the State party concerned to comply with the obligations contained in the Convention, and constitutes in itself, in relation to the disappeared person, or may constitute, in relation to the person's relatives, a form of torture or inhuman treatment contrary to the Convention.<sup>37</sup> In these circumstances, the Committee

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<sup>34</sup> *Hernández Colmenarez and Guerrero Sánchez v. Bolivarian Republic of Venezuela*, para. 5.3.

<sup>35</sup> See the Committee's general comment No. 2 (2007), para. 13.

<sup>36</sup> *Ibid.*, para. 17.

<sup>37</sup> *Hernández Colmenarez and Guerrero Sánchez v. Bolivarian Republic of Venezuela*, para. 6.4. The Committee has also addressed the issue of enforced disappearance in its concluding observations on several occasions. See, for example, CAT/C/BDI/CO/2/Add.1, para. 10; CAT/C/MEX/CO/7, para. 28; CAT/C/RWA/CO/2, para. 38; CAT/C/LKA/CO/5, para. 15; CAT/C/TKM/CO/2, para. 9; and CAT/C/COL/CO/5, para. 10.



finds that the facts concerning A.H., as presented by the complainant, constitute torture within the meaning of article 1 of the Convention.<sup>38</sup>

6.5 The Committee notes that A.H.'s enforced disappearance was a source of anguish and suffering for B.N. and that the authorities were indifferent to his efforts to shed light on what had happened to his son and his son's whereabouts. The successive complainants have never received a satisfactory explanation of the circumstances of his disappearance. In the absence of satisfactory explanations from the State party, the Committee considers that the facts before it disclose a violation of article 16 of the Convention in respect of B.N.<sup>39</sup>

6.6 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. In this regard, the Committee recalls its conclusions and recommendations, in which it urged the State party to take effective legislative, administrative and judicial measures to prevent all acts of torture and all ill-treatment,<sup>40</sup> and to take all possible action to locate persons reported as missing, in particular those who go missing after being questioned by the security forces.<sup>41</sup> In the present case, the Committee takes note of the complainant's allegations that A.H. was beaten and forcibly taken away by members of the security forces. The Committee also notes that A.H. has not been reported or acknowledged as missing by the authorities of the State party and that no measures have been taken to protect him. The State authorities have not taken any steps to investigate the acts of torture to which A.H. was subjected or his enforced disappearance, or to punish the perpetrators of these acts, even though B.N. reported these facts to the various police stations and detention centres, the National Intelligence Service and the Independent National Human Rights Commission. In the light of the foregoing, and in the absence of compelling evidence from the State party, the Committee finds a violation of article 2 (1), read in conjunction with article 1 of the Convention.<sup>42</sup>

6.7 The Committee also notes the complainant's argument that article 11 was violated, as the State party failed to respect any procedural safeguards in respect of A.H., since he was not informed of the reasons for his arrest and was arrested without a warrant. He was not able to contact his family, did not receive legal assistance, and was not able to be examined by a doctor. The Committee recalls its concluding observations on the second periodic report of Burundi, in which it expressed concern at: the excessive length of time during which people can be held in police custody; numerous instances in which the allowable duration of police custody has been exceeded; failures to keep registers on persons in custody or failures to ensure that such records are complete; failures to comply with fundamental legal safeguards for persons deprived of their liberty; the absence of provisions that guarantee access to a doctor and access to legal assistance for persons of limited means; and the excessive use of pretrial detention in the absence of regular reviews of its legality and of any limit on its total duration.<sup>43</sup> In the present case, A.H.'s arrest and detention appear to have been carried out without any judicial oversight. In the absence of compelling evidence from the State party that the complainant's arrest and detention were in fact subject to its oversight, the Committee finds a violation of article 11 of the Convention.<sup>44</sup>

6.8 With regard to articles 12 and 13 of the Convention, the Committee notes the complainant's allegations that, more than four years after the events, no prompt, impartial and effective investigation has been opened into the allegations that A.H. was subjected to torture, even though the authorities had reasonable grounds to believe that such acts had been committed, as the complainant had referred the matter to the various police centres and to the Independent National Human Rights Commission. The Committee also notes that the State

<sup>38</sup> *Hernández Colmenarez and Guerrero Sánchez v. Bolivarian Republic of Venezuela*, paras. 6.4 and 6.10; *Yrusta and Del Valle Yrusta v. Argentina* (CAT/C/65/D/778/2016), paras. 7.3 and 7.10.

<sup>39</sup> *Hernández Colmenarez and Guerrero Sánchez v. Bolivarian Republic of Venezuela*, para. 6.10.

<sup>40</sup> CAT/C/BDI/CO/1, para. 10.

<sup>41</sup> CAT/C/BDI/CO/2/Add.1, para. 11 (b).

<sup>42</sup> *Ndagijimana v. Burundi*, para. 8.4; *Ndarisigaranye v. Burundi*, para. 8.3; *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 8.3; and *E.N. v. Burundi* (CAT/C/56/D/578/2013), para. 7.5.

<sup>43</sup> CAT/C/BDI/CO/2, para. 10.

<sup>44</sup> *E.N. v. Burundi*, para. 7.6.

party did not allow A.H. to file a complaint. The Committee considers that so long a delay in initiating an investigation into allegations of torture is patently unjustified. In this regard, the Committee recalls the State party's obligation under article 12 of the Convention to ensure that a prompt and impartial ex officio investigation is carried out, wherever there is reasonable ground to believe that an act of torture has been committed.<sup>45</sup> In the present case, the Committee therefore finds a violation of article 12 of the Convention in respect of A.H.

6.9 By failing to meet this obligation, the State party has also failed to fulfil its responsibility under article 13 of the Convention to guarantee A.H.'s right to lodge a complaint, which presupposes that the authorities provide a satisfactory response by launching a prompt and impartial investigation.<sup>46</sup> The Committee therefore finds that a violation of article 13 of the Convention has also been committed in respect of A.H.

6.10 Regarding 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>47</sup> In the present case, in the absence of a prompt and impartial investigation, despite compelling testimony that A.H. was a victim of acts of torture, which have gone unpunished, the Committee finds that the State party has also failed to fulfil its obligations under article 14 of the Convention.<sup>48</sup>

6.11 With regard to the violations of articles 12, 13 and 14 of the Convention in respect of B.N., the Committee notes that the enforced disappearance of A.H. and the repeated threats and intimidation to which B.N. was subjected were a source of intense and ongoing suffering for him and that the authorities never acted on his complaints. The Committee notes that, as the events were never acknowledged by the State party, no remedy was available to B.N. Consequently, the State party did not conduct a prompt, impartial and effective investigation, B.N. was not able to file a complaint, and he was therefore deprived of any means of obtaining compensation. The Committee also notes the complainant's claim that the involvement of persons close to the Government in A.H.'s enforced disappearance would have made the State party more reluctant to open an investigation and heightened B.N.'s fear of taking other steps at the national level. The Committee recalls that, according to article 14, the term "victims" is understood to mean persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention.<sup>49</sup> This concept of a victim also includes close family, such as A.H.'s father. The Committee notes that the State party has not put forward any argument that would lead to the conclusion that B.N. does not fall into this category. Moreover, the Committee considers that the anguish and suffering experienced by B.N. owing to the lack of information that would have allowed clarification of what had happened to his son were exacerbated by the failure to acknowledge B.N.'s status as a victim, which thus became a cause of revictimization that is incompatible with the principles enshrined in the Convention.<sup>50</sup> The Committee considers that, in the present case, the very fact that the complainant has at no time been able to take part as plaintiff in investigative proceedings, more than four years after the events in question, in itself entails a violation of articles 12, 13 and 14 of the Convention. After such a long period has passed, the possibility of playing an active and effective part in proceedings is lessened to such an extent that the impairment of

<sup>45</sup> *Ndagijimana v. Burundi*, para. 8.5; *Ndarisigaranye v. Burundi*, para. 8.5; *Kabura v. Burundi* (CAT/C/59/D/549/2013), para. 7.4; and *Niyonzima v. Burundi*, para. 8.4.

<sup>46</sup> *Niyonzima v. Burundi*, para. 8.5.

<sup>47</sup> *Ibid.*, para. 8.6, and *Ntikarahera v. Burundi*, para. 6.5.

<sup>48</sup> *Ndarisigaranye v. Burundi*, para. 8.7.

<sup>49</sup> *Yrusta and Del Valle Yrusta v. Argentina*, para. 7.10, and general comment No. 3 (2012), para. 3.

<sup>50</sup> *Yrusta and Del Valle Yrusta v. Argentina*, para. 7.10.

the right in question becomes irreversible, in violation of the victims' right to know the truth and to obtain redress.<sup>51</sup>

7. The Committee, acting under article 22 (7) of the Convention, concludes that the facts before it disclose violations of articles 2 (1), 11, 12, 13 and 14, read in conjunction with article 1, in respect of A.H. and of articles 12, 13 and 14, read in conjunction with article 16, in respect of B.N.

8. As the State party has not responded to the Committee's requests to submit its observations on the present complaint, thereby refusing to cooperate with the Committee and preventing it from considering the complaint effectively, the Committee, acting under article 22 (7) of the Convention, decides that the facts before it constitute a violation by the State party of article 22 of the Convention.

9. In accordance with rule 118 (5) of its rules of procedure, the Committee urges the State party to: (a) open an impartial and exhaustive investigation into the circumstances of A.H.'s disappearance; (b) prosecute, try and punish the perpetrators of the violations committed; (c) provide compensation and rehabilitation to A.H., if he is still alive, and to the complainant, as B.N. is deceased; and (d) inform the complainant, within 90 days of the date of transmittal of the present decision, of the steps taken in conformity with the above Views.

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<sup>51</sup> Ibid.