



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. 793/2017*, **

<i>Communication submitted by:</i>	R.M. (represented by counsel, TRIAL International)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Burundi
<i>Date of complaint:</i>	27 December 2016 (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 5 January 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	18 November 2021
<i>Subject matter:</i>	Torture and other cruel, inhuman or degrading treatment or punishment; lack of effective investigation and redress
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<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; systematic monitoring of custody and treatment of prisoners; State party's obligation to ensure that its competent authorities conduct a prompt and impartial investigation; right to file a complaint; right to redress
<i>Articles of the Convention:</i>	2 (1) and 11–14, read in conjunction with articles 1 and 16, and 16

1. The complainant is R.M., a Burundian national born in 1979. He claims that the State party has violated his rights under articles 2 (1) and 11–14, read in conjunction with article 1 or, in the alternative, with article 16 of the Convention, and article 16 of the Convention, read alone. The State party made the declaration provided for in article 22 (1) of the Convention on 10 June 2003. The complainant is represented by counsel from TRIAL International.

* Adopted by the Committee at its seventy-second session (November 8–3 December 2021).

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



Facts as submitted by the complainant

2.1 On 9 March 2014, the complainant was arrested near the headquarters of the Mouvement pour la solidarité et la démocratie (Movement for Solidarity and Democracy) in Bujumbura.¹ The day before, heavily armed police officers had burst into the headquarters to disperse party activists who were meeting inside the building. Two police officers who had managed to slip into the offices without a warrant had been overpowered and disarmed by party activists. The police had surrounded the area before forcibly entering the building using tear gas and live ammunition. During the assault, the complainant was seriously wounded after being shot by police in the right arm. Other party members were also injured in the operation. The police denied access to Burundi Red Cross personnel who wanted to assist the victims.

2.2 During his arrest, the police brutally beat the complainant, despite his visibly critical condition, repeatedly hitting him with rifle butts and batons and kicking him for approximately 15 minutes. The complainant was beaten all over his body, including his legs, head and back. Although unable to stand upright, he was thrown in the back of a police van. The police officers, as well as agents of the National Intelligence Service, hurled insults at him and threatened his life.

2.3 Despite his condition, caused in part by the bullet wound sustained the previous day, the complainant was not immediately taken to hospital. He spent some four hours in the back of the police vehicle before being transported to Prince Louis Rwagasore clinic to receive first aid. Minutes after his arrival at the clinic, intelligence agents burst into the treatment area intent on kidnapping him. On 14 March 2014, the complainant lodged a complaint with the State Prosecutor regarding the violations to which he had been subjected. No action has been taken on that complaint.

2.4 On 27 May 2014, against the advice of doctors that he needed further care, the complainant was forcibly arrested on a warrant issued by the public prosecutor's office of Bujumbura and was taken to Mpimba central prison, where conditions are inhuman and degrading. The next day, on 28 May 2014, thanks to pressure from a number of civil society organizations, the complainant was taken to Prince Régent Charles hospital, where he spent 10 days before being returned to Mpimba central prison. It was not until 7 October 2014 that he was able to be examined again at Prince Régent Charles hospital. Given his worsening condition, in particular the condition of his right arm, which was essentially paralysed due to infection caused by an unchanged dressing, the doctor prescribed three physical therapy sessions per week. However, prison management did not authorize him to undergo that treatment.

2.5 After being imprisoned on 27 May 2014, the complainant was brought before a judge for the first time on 25 June 2014.² At the hearing, the complainant requested, to no avail, that a medical examination be carried out, in keeping with articles 103 and 104 of the Code of Criminal Procedure and reiterated his complaint to the State Prosecutor of 14 March 2014 regarding the acts of torture that he had suffered.

2.6 After the hearing of 25 June 2014, the complainant's detention was not reviewed by a judge until 30 December 2014, in other words more than six months after the first order authorizing his placement in pretrial detention was issued, in violation of article 115 of the Code of Criminal Procedure.

2.7 On 30 December 2014, the case was placed on the docket but was later postponed to 15 January, then to 20 February 2015. On 26 February 2015, the court rendered an interlocutory decision, in which it ordered the establishment of a medical committee composed of three government doctors to determine whether the complainant's condition

¹ The Mouvement pour la solidarité et la démocratie is an opposition political party. After the 2010 post-election crisis in Burundi, the political opposition was singled out in the crackdown carried out by Government.

² Under article 111 (3) of the Code of Criminal Procedure, the complainant should have been brought before a judge no later than two weeks following his arrest.

warranted treatment abroad but deferred its decision regarding his request for release pending trial. No action was taken on the interim decision.

2.8 The complainant claims that his case has not been submitted to any other procedure of international investigation.

2.9 The complainant recalls that, under article 22 (5) (b) of the Convention, a person is not required to exhaust domestic remedies that are unlikely to bring effective relief and that, for the purposes of admissibility, the Committee requires that only effective and available remedies be exhausted.³ He claims that, even though he had filed a complaint with the State Prosecutor regarding his ill-treatment, the judicial authorities made no response, whereas, under article 64 of the Code of Criminal Procedure, they should have initiated a criminal investigation on the basis of his statement. Other steps taken with the Ombudsman and the Independent National Human Rights Commission did not yield any results. Letters to the management of Prince Louis Rwagasore clinic dated 30 March 2015, to obtain a certificate attesting to his hospitalization, and 15 December 2015, to seek information from his medical records, have gone unanswered. The acts of intimidation and threats against two of the complainant's lawyers, and their subsequent flight from the country, are telling proof that there is no independent and impartial authority to which the complainant could bring his case and that he stood no chance of gaining satisfaction before the domestic courts.

2.10 Furthermore, the "general climate of impunity" in Burundi, as described by the Committee in view of serious human rights violations, including torture,⁴ implies that it is highly unlikely that the complainant would have won his case before the domestic courts.

2.11 Consequently, the complainant claims that: (a) he gained no satisfaction from the available domestic remedies, as the authorities did not respond to his reports whereas they should have opened a criminal investigation on the basis of his allegations; (b) the remedies have taken an unreasonably long time given that three years and four months after the acts of torture were reported, on 14 March 2014, no investigation had been opened; and (c) it was dangerous for him to take further steps, as the perpetrators of the acts of torture were police officers and persons close to the current Government. The complainant is of the opinion that it is impossible for him to exhaust domestic remedies owing to the fact that they are ineffective and unlikely to bring relief.

Complaint

3.1 The complainant claims that the State party has violated his rights under articles 2 (1) and 11–14, read in conjunction with article 1 or, in the alternative, with article 16, of the Convention, and article 16 of the Convention, read alone.

3.2 According to the complainant, the ill-treatment inflicted on him caused him severe pain and suffering, with a lingering impact on his physical and psychological health. He was seriously wounded after being deliberately shot on 8 March 2014, and public officials prevented Burundi Red Cross personnel from assisting him. Police officers then brutally beat him during his arrest the next day, 9 March 2014, even though he had a gunshot wound and was in visibly critical condition. They hit him with their rifle butts and batons, kicked him, insulted him and threatened his life. The complainant was imprisoned and deprived of the medical care he needed, against the advice of doctors. The prison management did not authorize him to undergo the physical therapy his condition warranted. The complainant claims that the acts of torture inflicted by members of the national police were aimed at intimidating, punishing and putting pressure on him because of his political affiliation. He maintains that the ill-treatment constituted acts of torture within the meaning of article 1 of the Convention.

³ See for example *Sahli v. Algeria* (CAT/C/46/D/341/2008); *Z.T. v. Norway* (CAT/C/35/D/238/2003); *Brada v. France* (CAT/C/34/D/195/2002); *Falcón Ríos v. Canada* (CAT/C/33/D/133/1999); and *Arkauz Arana v. France* (CAT/C/23/D/63/1997).

⁴ CAT/C/BDI/CO/1, para. 21. See also Office of the United Nations High Commissioner for Human Rights, "Burundi and Sri Lanka, two test cases for the prevention of recurring mass violations – UN expert", press release, 15 September 2015; and CAT/C/BDI/CO/2/Add.1.

3.3 The complainant, invoking article 2 (1) of the Convention, submits that the State party has not taken effective measures to prevent acts of torture under its jurisdiction. First, he claims that he was not afforded access to judicial remedies and that the Burundian authorities failed in their obligation to investigate the acts of torture to which he was subjected. Secondly, the procedural safeguards that should apply to any deprivation of liberty, chiefly the right of the complainant to challenge the lawfulness of his detention, were not respected. As evidence of this, the complainant points to the authorities' refusal at the hearing of 25 June 2014 to accede to the request for a medical examination and their refusal at the hearing of 20 February 2015 to release him pending trial on grounds of procedural irregularities and the deterioration of his health. Thirdly, the complainant claims that, despite his health and the fact that he had not received medical attention, in particular for the serious bullet wound sustained the previous day, he did not receive first aid until four hours after his arrest. His health has been irreparably damaged by the denial of access to medical care. Moreover, despite the reports and a formal complaint submitted by the complainant, the State party did not meet its obligation to investigate the torture that was inflicted on him and to bring those responsible to justice. Lastly, the complainant points out that under Burundian law, acts of torture committed outside the context of war crimes, crimes against humanity and crimes of genocide are subject to a statute of limitations of 20 or 30 years, depending on the circumstances.⁵

3.4 Invoking article 11 of the Convention and the Committee's practice,⁶ the complainant claims that the State party failed in its obligation to systematically monitor the application of rules, instructions, methods, practices and his treatment during his arrest and detention. This failure is illustrated by the authorities denying him access to appropriate care during his detention, the acts of torture to which he was subjected during his arrest and the obstacles to his enjoyment of judicial safeguards.

3.5 In addition, the complainant submits that, although they were informed of the torture to which he had been subjected through a complaint lodged on 14 March 2014 and his reports of torture at the hearing of 25 June 2014, the Burundian authorities did not conduct a prompt and effective investigation into the allegations of torture, in violation of the obligation imposed by article 12 of the Convention. He also alleges that the State party did not respect his right to bring a complaint so as to have his allegations examined promptly and impartially, in violation of article 13 of the Convention.

3.6 By depriving the complainant of criminal proceedings, the State party has at the same time deprived him of any remedy to obtain compensation for serious crimes such as torture. Furthermore, he received no rehabilitation assistance of any kind to help him to recover as fully as possible, either physically or mentally, or in social and financial terms. In view of the passivity of the judicial authorities, other remedies to obtain redress, such as a civil suit for damages, are entirely unlikely to be successful. The Burundian authorities have taken few measures to compensate victims of torture, a point raised by the Committee in its concluding observations on the initial report of Burundi in 2006.⁷ In 2014, while taking note of the fact that the new Code of Criminal Procedure provided for the compensation of victims of torture, the Committee expressed its concern about the failure to apply this provision, in violation of article 14 of the Convention.⁸ Lastly, in 2016 the Committee reiterated the State party's obligation to ensure access to adequate reparation for victims of torture and cruel, inhuman or degrading treatment.⁹ The Burundian authorities have thus failed to fulfil their obligations under article 14 of the Convention, as the violations perpetrated against the complainant went unpunished owing to the passivity of the State, and the complainant received no compensation and benefited from no rehabilitation measures.

⁵ Burundi, Criminal Code, art. 150.

⁶ The Committee has repeatedly reiterated that States are obliged to comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, including in respect of the right to inform relatives and friends, access to legal counsel, the right to be examined by a doctor, and notification of the prisoner's rights.

⁷ CAT/C/BDI/CO/1, para. 23.

⁸ CAT/C/BDI/CO/2, para. 18.

⁹ CAT/C/BDI/CO/2/Add.1, para. 27 (d).

3.7 The complainant repeats that the violent acts inflicted on him constitute torture, in accordance with the definition in article 1 of the Convention. Should the Committee not agree to qualify it as such, he maintains that the abuse he endured constitutes cruel, inhuman or degrading treatment and that, on this basis, the State party also has an obligation, under article 16 of the Convention, to prevent public officials from committing, instigating or tolerating such acts and to punish them if they do. In addition, he recalls the conditions of detention that he had to endure in the National Intelligence Service cells and at Mpimba central prison. The complainant refers again to the Committee's concluding observations on the initial report of Burundi, in which it noted that conditions of detention in Burundi amounted to inhuman and degrading treatment.¹⁰ Lastly, the complainant recalls that he received no medical treatment while in detention, despite being in critical condition, and therefore concludes that the conditions of detention he experienced constitute a violation of article 16 of the Convention.

Lack of cooperation from the State party

4. On 5 January 2017, 4 July 2019 and 28 April 2020, the State party was invited to submit its observations on the admissibility and merits of the communication. The Committee notes that it has received no response and regrets the lack of cooperation from the State party in sharing its observations on the present complaint.¹¹ It 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 measures, if any, that may have been 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 that have been properly substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee 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 In the absence of any obstacle to the admissibility of the communication, the Committee proceeds to its consideration of the merits of the claims submitted by the complainant under articles 1, 2 (1), 11–14 and 16 of the Convention.

Consideration of the merits

6.1 The Committee has considered the complaint 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 The Committee notes the complainant's claim that he suffered a serious gunshot wound to the right arm during the police operation at the headquarters of the Mouvement pour la solidarité et la démocratie and that despite his condition, police officers beat him with rifle butts and batons and kicked him all over his body for 15 minutes. The Committee also notes that: (a) the police officers kept the complainant in the back of their vehicle for over four hours before taking him to hospital; (b) that the police officers did not allow Burundi Red Cross personnel to provide the complainant with medical assistance; (c) that the complainant was insulted and threatened; and (d) that it was only as a result of pressure from a civil society organization that the complainant was taken to hospital. The Committee also

¹⁰ CAT/C/BDI/CO/1, para. 17. See also CAT/C/BDI/CO/2, para. 15, and Office of the United Nations High Commissioner for Human Rights, "The international community should continue to help Burundi to implement its international human rights obligations", press release, 28 May 2010.

¹¹ *O.N. v. Burundi* (CAT/C/71/D/843/2017), para. 4; *Ndagijimana v. Burundi* (CAT/C/62/D/496/2012 and CAT/C/62/D/496/2012/Corr.1), para. 7; *Ndarisigaranye v. Burundi* (CAT/C/62/D/493/2012 and CAT/C/62/D/493/2012/Corr.1), para. 7; and *Ntikarahera v. Burundi* (CAT/C/52/D/503/2012), para. 4.

notes that the hospital did not comply with requests from the complainant's lawyer for his medical records to enable him to present evidence to the authorities of the abuse the complainant had suffered. The Committee likewise takes note of the complainant's allegations that the blows he received caused him extreme pain and suffering, including anguish and psychological suffering, and were reportedly deliberately inflicted by agents of the State with the objective of punishing and intimidating him. At no time have these allegations been contested by the State party. In these circumstances, the Committee concludes that the facts as presented by the complainant constitute torture within the meaning of article 1 of the Convention.¹²

6.3 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 respect, the Committee recalls its conclusions and recommendations in respect of the initial report of Burundi, 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 and to take steps, as a matter of urgency, to bring all places of detention under judicial control and to prevent its officials from making arbitrary arrests and engaging in torture.¹³ In the present case, the Committee takes note of the complainant's claims that he was beaten by the police, then detained while in critical condition without access to appropriate medical care, and that his attempts to challenge the lawfulness of his detention before the authorities were in vain. The Committee also notes that the State party did not take any measures to protect the complainant until non-governmental organizations intervened to support him. Lastly, the State authorities have taken no steps to investigate the acts of torture suffered by the complainant and duly punish those responsible, despite the complaints he repeatedly presented in this regard. In the light of the foregoing, the Committee finds a violation of article 2 (1), read in conjunction with article 1, of the Convention.¹⁴

6.4 The Committee also notes the complainant's argument that article 11 of the Convention was violated because the State party failed to properly oversee the treatment he received while in detention. He argues, in particular, that: (a) despite his critical condition at the time of arrest, he did not receive appropriate care; (b) he was not given access to a lawyer until a month and a half after his arrest and was therefore not assisted during his questioning at the public prosecutor's office on 14 March 2014; (c) he was arrested without being informed of the charges against him; (d) he did not have effective remedies to challenge the acts of torture; and (e) he was detained in "deplorable conditions" at Mpimba prison, despite his critical state of health. The Committee recalls its concluding observations regarding 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 permissible duration of police custody has been exceeded, failures to keep registers on persons in custody or 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.¹⁵ In the present case, the complainant appears to have been deprived of any form of judicial oversight. In the absence of any compelling evidence from the State party that it did supervise the complainant's detention, the Committee finds that the State party has violated article 11 of the Convention.¹⁶

6.5 In respect of articles 12 and 13 of the Convention, the Committee notes the complainant's allegations that, on 8 March 2014, he was shot and beaten by police officers during a police operation at the headquarters of the Mouvement pour la solidarité et la démocratie. Although he filed a complaint on 14 March 2014 with the Bujumbura State

¹² *Ndagijimana v. Burundi*, para. 8.2; *Ndarisigaranye v. Burundi*, para. 8.2; *Kabura v. Burundi* (CAT/C/59/D/549/2013), para. 7.2; and *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 8.2.

¹³ CAT/C/BDI/CO/1, para. 10.

¹⁴ *Ndagijimana v. Burundi*, para. 8.4; *Ndarisigaranye v. Burundi*, para. 8.3; *Niyonzima v. Burundi*, para. 8.4; and *E.N. v. Burundi* (CAT/C/56/D/578/2013), para. 7.5.

¹⁵ CAT/C/BDI/CO/2, para. 10.

¹⁶ *E.N. v. Burundi*, para. 7.6.

Prosecutor and reported the torture he had suffered before the judge at hearings on 25 June 2014 and 20 February 2015, no investigation has been conducted almost six years after the events. The Committee considers that so long a delay in initiating an investigation into allegations of torture is patently unjustified. In this regard, it draws attention to the State party's obligation under article 12 of the Convention to ensure that its competent authorities proceed automatically to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.¹⁷ The Committee therefore finds a violation of article 12 of the Convention.

6.6 By failing to meet its obligation to investigate, the State party has also failed to fulfil its responsibility under article 13 of the Convention to guarantee the right of the complainant to lodge a complaint, which presupposes that the authorities provide a satisfactory response by launching a prompt and impartial investigation.¹⁸ The Committee therefore also finds a violation of article 13 of the Convention.

6.7 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.¹⁹ In the present case, given the absence of a prompt and impartial investigation despite clear material evidence that the complainant was the victim of acts of torture, which have gone unpunished, the Committee concludes that the State party has also failed to fulfil its obligations under article 14 of the Convention.²⁰

6.8 As for the grievance under article 16 of the Convention, the Committee notes the complainant's claim that he was detained at Mpimba central prison, where conditions of detention are particularly degrading and inhuman, without access to appropriate medical care. In the absence of any relevant information from the State party in this regard, the Committee concludes that the facts in the present case disclose a violation by the State party of its obligations under article 16 of the Convention.²¹

7. The Committee, acting under article 22 (7) of the Convention, concludes that the facts before it disclose violations of articles 2 (1) and 11–14, read in conjunction with article 1, and of article 16 of the Convention. The Committee notes the lack of cooperation by the State party, which amounts to a violation of article 22 of the Convention.

8. The Committee urges the State party to launch an impartial investigation into the events in question, with a view to bringing those allegedly responsible for the complainant's treatment to justice.

9. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days of the date of transmittal of this decision, of the steps it has taken to respond to the above observations, including adequate and fair compensation encompassing the means for as full a rehabilitation as possible of the victim.

¹⁷ *Ndagijimana v. Burundi*, para. 8.5; *Ndarisigaranye v. Burundi*, para. 8.5; *Kabura v. Burundi*, para. 7.4; and *Niyonzima v. Burundi*, para. 8.4.

¹⁸ *Niyonzima v. Burundi*, para. 8.5.

¹⁹ *Ibid.*, para. 8.6. See also *Ntikarahera v. Burundi*, para. 6.5.

²⁰ *Ndarisigaranye v. Burundi*, para. 8.7.

²¹ *Ibid.*, para. 8.8; *Niyonzima v. Burundi*, para. 8.8; and *Ntikarahera v. Burundi*, para. 6.6.