



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

Distr.: General
5 July 2022
English
Original: French

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 921/2019*, **

<i>Communication submitted by:</i>	M.D. (represented by counsel, TRIAL International)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Burundi
<i>Date of complaint:</i>	13 March 2019 (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 29 March 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	29 April 2022
<i>Subject matter:</i>	Torture or cruel, inhuman or degrading treatment or punishment; lack of effective investigation and redress
<i>Procedural issue:</i>	Lack of cooperation by the State party
<i>Substantive issues:</i>	Torture; cruel, inhuman or degrading treatment or punishment; prevention of torture; prompt and impartial investigation; treatment of prisoners; reparation
<i>Articles of the Convention:</i>	1, 2, 11–14 and 16

1.1 The complainant is M.D., a national of Burundi born in 1970. She claims that the State party has violated her rights under articles 2 (1), 11, 12, 13 and 14 of the Convention, read in conjunction with article 1 or, in the alternative, with article 16 of the Convention, and under article 16 of the Convention, read alone. The State party made the declaration under article 22 (1) of the Convention on 10 June 2003. The complainant is represented by counsel from TRIAL International.

1.2 On 29 March 2019, pursuant to rule 114 (1) of its rules of procedure, the Committee requested the State party to effectively prevent, while the case was under consideration, any threat or act of violence to which the complainant and her family might be exposed, in particular as a result of the submission of the present complaint, and to keep the Committee informed of the measures adopted to that end.

* Adopted by the Committee at its seventy-third session (19 April–13 May 2022).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



Facts as submitted by the complainant

2.1 Since April 2015, Burundi has seen a terrible escalation of violence and a huge number of serious human rights violations, in a context of total impunity. This repression has particularly affected opponents of the Government or persons perceived to be part of the opposition, including members of the opposition party Mouvement pour la solidarité et la démocratie.¹ The attacks of 11 December 2015, sponsored by unidentified armed persons, against four military bases, constituted a genuine turning point in the Burundian crisis. In the aftermath of these attacks, the police launched a crackdown on an unprecedented scale in several neighbourhoods linked to the opposition. According to some estimates, some 160 people were killed in the attacks. Although some of the people who were killed had participated in the attacks or had openly fought against law enforcement in the targeted neighbourhoods, many of them had not. These extrajudicial executions were accompanied by numerous arbitrary arrests, as well as torture and rape.

2.2 The complainant and her husband were both members of the Mouvement pour la solidarité et la démocratie. On the morning of 12 December 2015, the day after the aforementioned attacks, military personnel searched the complainant's home, but did not present any supporting documentation for the search. While she was with the two soldiers whom she had allowed to enter her home,² a third soldier entered, without her knowledge, and claimed to have found a Kalashnikov-type weapon in her bedroom.

2.3 Although the complainant denied knowing where the weapon had come from, she was taken away by the soldiers, who began walking towards the Kukansoko market. All the way to the market, under the eyes of passers-by, the soldiers forced her to carry the very heavy weapon allegedly found in her home, displaying her as a criminal for all to see and taking photographs of her in this humiliating situation. All this time, the soldiers were on the phone with personnel of the National Intelligence Service, who seemed to suggest that the soldiers should execute the complainant. However, the soldiers refused to execute her and instead continued to make their way towards the market, where the complainant was turned over to a group of police officers. During an hour-long interrogation, she was questioned about her political affiliation and accused of participating in the 11 December 2015 attacks, while being beaten by a policewoman with a baton, as other police officers threatened to kill her.

2.4 After the beating, the complainant was held overnight in a cell in Musaga and transferred the next day to the National Intelligence Service, located in Rohero, where she was taken into custody. On 13 December 2015, she was questioned by a criminal investigation police officer. During the questioning, which lasted half an hour, the complainant was not informed of her rights, including her right to remain silent, and was not allowed to consult a lawyer. Although the complainant complained orally of the torture that she had suffered and was experiencing pain in her buttocks and inflammation in her back, the officer noted in the report that she had been presented to him in a normal state of health.

2.5 The complainant was held on the premises of the National Intelligence Service for nine days, in a small cell that she had to share with five other people, without a mattress or blanket. She was not able to speak to a lawyer, contact her relatives or even get the medical attention she needed to treat her injuries.

2.6 On 22 December 2015, the complainant was taken to the Public Prosecutor's Office of Bujumbura, where she was informed of her rights, was able to speak with her relatives and was provided with legal assistance. She complained once again of the torture she had suffered, but her complaints were not noted, and the acts of torture were simply ignored.

2.7 Following her appearance at the Public Prosecutor's Office, the complainant was remanded in custody at Mpimba Central Prison, where she again reported to the prison authorities the torture that she had suffered. Although she was able to get some medical care, it consisted only of pills to soothe the inflammation in her back and the pain that she continued to suffer in the buttocks area.

¹ After the 2010 post-election crisis in Burundi, the political opposition was singled out in the government crackdown.

² Some fifteen soldiers had shown up at her door.

2.8 The complainant's pretrial detention was extended on 6 January 2016 by the Tribunal de Grande Instance (court of major jurisdiction) of Mairie de Bujumbura, and on 9 June 2016 by the Bujumbura Court of Appeal. She once again reported the acts of torture before the judges of the Tribunal de Grande Instance, but her statement was not included in the judgment. Following her appearance before the Tribunal de Grande Instance of Muha on 20 February 2017, she was convicted of the offence of illegal possession of firearms and sentenced to 3 years and 6 months of imprisonment. She did not appeal the judgment and was detained in Mpimba Prison in deplorable conditions³ until her release on 16 March 2018.

2.9 Although the complainant has reported the torture she suffered on many occasions and to various entities, her complaints have been ignored by the authorities. She was in fact deeply affected by the abuse she suffered. Although the physical pain subsided after a few months, the painful psychological after-effects have remained: she suffers from severe sleep disorders and is regularly plagued by violent nightmares. The acts of torture were not recognized by the authorities, and so although three years have passed since their perpetration, no investigation or proceedings in relation to these acts have been initiated.

2.10 The Burundian authorities were repeatedly informed of the torture suffered by the complainant and therefore could not have been unaware of it. However, on the date of submission of the present complaint to the Committee, more than three years had passed since the events' occurrence, and no investigative action had been taken. Besides the authorities' clear refusal to determine those responsible in this case, the complainant also draws attention to the general climate of impunity in Burundi, particularly with regard to acts of torture, which has been the subject of numerous reports by United Nations bodies. In its concluding observations on the second periodic report of Burundi, the Committee expressed concern about the slow pace and limited scope of the investigations and judicial proceedings that have been opened in this connection, which would appear to corroborate claims that the perpetrators of acts of torture and extrajudicial killings, including members of the Burundian National Police and the National Intelligence Service, enjoy impunity.⁴

2.11 Consequently, the complainant claims that (a) she gained no satisfaction from the available domestic remedies, as the authorities did not respond to her complaints whereas they should have opened a criminal investigation on the basis of her allegations; (b) the application of these remedies has been unreasonably long, given that, more than three years after the acts of torture were reported, no investigation had been opened; and (c) it was dangerous for her to initiate further proceedings, as she risked reprisals because of her detention in Mpimba Prison and her husband's detention in the same prison.⁵

The complaint

3.1 The complainant claims that the State party has violated her rights under articles 2 (1), 11, 12, 13 and 14 of the Convention, read in conjunction with article 1 or, in the alternative, with article 16 of the Convention, and under article 16 of the Convention, read alone.

3.2 According to the complainant, the ill-treatment inflicted on her caused her severe suffering, both physically and psychologically. The psychological sequelae of the torture to which she was subjected on 12 December 2015 include severe sleep disorders and violent nightmares. The police officers who brutally beat her aimed to cause her suffering and great long-term psychological distress. In addition, she was denied access to care. These acts of torture, deliberately inflicted by police officers, were aimed at intimidating, punishing and putting pressure on her because of her political affiliation. The complainant maintains that the ill-treatment constituted acts of torture within the meaning of article 1 of the Convention.

³ The complainant indicates that she was held in a windowless cell, where she shared a bed – without a mattress and measuring less than one metre – with another person. The cell was infested with rodents and the complainant had access to very little food.

⁴ CAT/C/BDI/CO/2, para. 11. See also the 2017 conference room paper of the Commission of Inquiry on Burundi, para. 635, available on the Commission's web page (<https://www.ohchr.org/en/hr-bodies/hrc/co-i-burundi/co-i-burundi>).

⁵ The complainant's husband was also a victim of torture because of his political affiliation, and a communication was also registered by the Committee in his name.

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 in the territory under its jurisdiction. In particular, throughout her detention, the complainant did not receive appropriate care, with the exception of pills to alleviate some of the pain she was experiencing. The complainant did not have access to a lawyer until the hearing that took place at the Public Prosecutor's Office on 22 December 2015 – 10 days after her arrest – and no lawyer was present during the questioning that took place on the premises of the National Intelligence Service on 13 December 2015. She was able to make contact with her relatives only on 22 December 2015. Moreover, despite the complainant's reports of torture, the State party did not fulfil its obligation to investigate the torture that she claimed to have suffered and to bring the persons responsible for those acts to justice. Accordingly, the complainant submits that the State party failed to take the measures, including the legislative measures, required under article 2 (1) of the Convention.

3.4 Invoking article 11 of the Convention and the Committee's practice,⁶ the complainant submits that, despite her critical state of health at the time of arrest, she did not receive appropriate medical care. She was arrested without being informed of the charges against her; she did not have effective remedies to take action against the acts of torture; and she was detained in deplorable conditions at Mpimba Prison, despite her critical state of health.

3.5 Furthermore, the complainant submits that, even though the Burundian authorities were informed of the torture to which she had been subjected, as a result of her numerous oral reports, they 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. She also claims that the State party did not respect her right to bring a complaint so as to have her 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 her of any remedy to obtain compensation for such serious crimes as torture. Furthermore, she received no rehabilitation assistance of any kind to help her to recover as fully as possible physically or mentally, or in social and financial terms, from the torture she had suffered. In view of 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 done little 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 that the State party had an obligation to guarantee adequate compensation 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 remain unpunished, owing to the inaction of the State, and the complainant has not received any compensation or rehabilitation assistance.

3.7 The complainant reiterates that the violent acts inflicted on her constitute torture, as defined in article 1 of the Convention. Even if the Committee were not to characterize them as such, she maintains that the abuse endured by her constitutes cruel, inhuman or degrading treatment and that, on that basis, the State party also has an obligation, under article 16 of the Convention, to prevent agents of the State from committing, instigating or tolerating such acts and to punish them if they do. In addition, she recalls the conditions of detention that she had to endure in the National Intelligence Service cells and at Mpimba Central Prison. The

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, the right to an attorney, the right to be examined by a doctor and the right to be notified of prisoners' 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).

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 she received no medical treatment while in detention, despite her critical state of health, and she therefore concludes that the conditions of detention that she experienced constitute a violation of article 16 of the Convention.

Issues and proceedings before the Committee

Lack of cooperation by the State party

4. On 29 March 2019, 9 September 2020, 11 November 2020 and 18 January 2022, the State party was requested to submit its observations on the admissibility and merits of the complaint. The Committee notes that it has received no response and regrets the unwillingness of the State party to cooperate by 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.

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 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 2 (1), 11, 12, 13, 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, which have been properly substantiated.

6.2 The Committee notes the complainant's allegation that she was beaten for an hour by a policewoman, who delivered violent blows to the complainant's back and buttocks with a baton. The Committee also notes that (a) the complainant was made to continue suffering, through lack of appropriate care, unsanitary conditions of detention and lack of food; (b) the soldiers and police officers made degrading remarks about her, threatened her, forced her to carry a heavy weapon, displaying her as a criminal, and photographed her in that humiliating situation; and (c) she was detained in "deplorable conditions" on the premises of the National Intelligence Service and in Mpimba Central Prison. The Committee further notes that the complainant did not have access to health care, a lawyer or her family for 10 days. The Committee recalls its jurisprudence according to which any person deprived of liberty must be given access to prompt and independent legal and medical assistance and must be able to contact his or her family in order to prevent torture.¹² The Committee likewise takes note of the complainant's allegations that the blows she received caused her extreme suffering, including moral and psychological anguish, and that they were deliberately inflicted by agents of the State with the objective of punishing and intimidating her. The Committee also notes that these allegations have not been contested by the State party. In these circumstances,

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 *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.

¹² See Committee against Torture, general comment No. 2 (2007).

the Committee concludes that the facts as presented by the complainant constitute torture within the meaning of article 1 of the Convention.¹³

6.3 The Committee notes the complainant's claim that, if they are not found to be acts of torture, the acts and treatment to which she was subjected should be considered to constitute cruel, inhuman or degrading treatment or punishment in accordance with article 16 of the Convention. However, the Committee considers that these allegations relate to acts that constitute torture within the meaning of article 1 of the Convention. It does not, therefore, deem it necessary to consider separately the claims of a violation of article 16 of the Convention.¹⁴

6.4 The Committee takes note of the complainant's claim based on 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 concerning 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 in order to prevent its officials from making arbitrary arrests and engaging in torture.¹⁵ In the present case, the Committee takes note of the complainant's allegations that she was beaten by police officers and then detained without an arrest warrant and denied the possibility of contacting a lawyer for 10 days, which left her outside the protection of the law. The Committee also notes that the State party has not taken any measures to protect the complainant. Lastly, the State authorities have taken no steps to investigate the acts of torture suffered by the complainant and to adopt the appropriate punitive measures, despite the complaints that she had 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.¹⁶

6.5 The Committee also notes the complainant's argument that article 11 of the Convention – which calls on States parties to keep under systematic review arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture – was violated. The complainant argues, in particular, that (a) despite her critical condition at the time of arrest, she did not receive appropriate medical care; (b) she was not given access to a lawyer until 10 days after her arrest and no lawyer was present during the questioning that took place on the premises of the National Intelligence Service on 13 December 2015; (c) she was arrested without being informed of the charges against her; (d) she did not have effective remedies to take action against the acts of torture; and (e) she was detained in “deplorable conditions” on the premises of the National Intelligence Service and in Mpimba Prison, despite her 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 could be held in police custody, numerous instances in which the allowable duration of police custody was exceeded, failures to keep registers with information on persons in custody or failures to ensure that such records were complete, failures to comply with fundamental legal safeguards for persons deprived of their liberty, the absence of provisions that guaranteed 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.¹⁷ In the present case, the complainant appears to have been deprived of any form of judicial oversight. In the absence of any relevant information to the contrary from the State party, the existence of such deplorable conditions and treatment is sufficient to establish that the State party failed to fulfil its obligation to keep under systematic review arrangements for the custody and

¹³ *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.

¹⁴ *Ramírez Martínez et al. v. Mexico* (CAT/C/55/D/500/2012), para. 17.4.

¹⁵ CAT/C/BDI/CO/1, para. 10.

¹⁶ *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.

¹⁷ CAT/C/BDI/CO/2, para. 10.

treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture, and that this violation resulted in harm to the complainant. The Committee therefore finds that the State party has violated article 11 of the Convention.¹⁸

6.6 In respect of articles 12 and 13 of the Convention, the Committee has taken note of the complainant's allegations that, on 12 December 2015, she was beaten for an hour by a policewoman and received death threats. Although she reported the torture to the official from the National Intelligence Service, to the prosecutor and to the judges, an investigation had yet to be carried out, more than six years after the events reported. The Committee is of the view 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.¹⁹ The Committee therefore finds a violation of article 12 of the Convention.

6.7 In view of the above findings, 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.²⁰ The Committee notes that article 13 does not require the formal lodging of a complaint of torture under the procedure laid down in national law, nor does it require an express statement of intention to bring a criminal case. It is enough for the victim simply to bring the facts to the attention of an authority of the State for the State to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as required by this provision of the Convention.²¹ The Committee therefore also finds a violation of article 13 of the Convention.

6.8 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.²² 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 that have gone unpunished, the Committee concludes that the State party has also failed to fulfil its obligations under article 14 of the Convention.²³

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

8. As the State party has failed to respond to the Committee's requests to submit observations on the present complaint, thereby refusing to cooperate with the Committee and preventing it from effectively considering the elements of the complaint, the Committee, acting under article 22 (7) of the Convention, is of the view that the facts before it constitute a violation by the State party of article 22 of the Convention.

9. The Committee urges the State party to (a) initiate a thorough and impartial investigation into the incidents in question, in full conformity with the guidelines of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel,

¹⁸ *E.N. v. Burundi*, para. 7.6.

¹⁹ *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.

²⁰ *Niyonzima v. Burundi*, para. 8.5.

²¹ *Parot v. Spain* (CAT/C/14/D/6/1990), para. 10.4; *Blanco Abad v. Spain* (CAT/C/20/D/59/1996), para. 8.6; and *Ltaief v. Tunisia* (CAT/C/31/D/189/2001), para. 10.6.

²² *Niyonzima v. Burundi*, para. 8.6. See also *Ntikarahera v. Burundi*, para. 6.5.

²³ *Ndarisigaranye v. Burundi*, para. 8.7.

Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), with a view to bringing those responsible for the complainant's treatment to justice; (b) provide the complainant with fair and adequate compensation, including the means for the fullest rehabilitation possible; and (c) take all necessary measures to prevent any threats or acts of violence to which the complainant and her family might be exposed, in particular as a result of having lodged the present complaint.

10. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken to respond to the above observations.
