



# 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. 551/2013<sup>\*,\*\*</sup>

<i>Communication submitted by:</i>	Taoufik Elaïba (represented by TRIAL (Track Impunity Always) and Christian Action for the Abolition of Torture (ACAT-France))
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Tunisia
<i>Date of communication:</i>	11 June 2013 (initial submission)
<i>Date of decision:</i>	6 May 2016
<i>Subject matter:</i>	Torture and ill-treatment by State authorities
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Torture; cruel, inhuman or degrading treatment or punishment; measures to prevent torture; systematic review of arrangements for custody and treatment of detainees; State party's obligation to ensure that its competent authorities proceed to a prompt and impartial investigation; right of complaint; right to redress; prohibition of the use of statements obtained under torture as evidence in proceedings
<i>Articles of the Convention:</i>	1, 2, 11 to 16 and 22

\* Adopted by the Committee at its fifty-seventh session (18 April-13 May 2016).

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

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1. The complainant is Mr. Taoufik Elaïba, a Tunisian/Canadian national born on 11 July 1962 in Tunisia. He claims to be the victim of a violation by Tunisia of articles 1, 2, and 11 to 16 of the Convention. The complainant is represented by counsel. Tunisia made the declaration under article 22 of the Convention on 23 September 1988. The Convention entered into force for Tunisia on 23 October 1988.

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

2.1 The complainant was arrested at his home on 1 September 2009 at around 5 p.m. by about 13 plain-clothes officers of the national guard from El Aouina, a suburb of Tunis.<sup>1</sup> The officers produced no arrest or search warrant. They beat up the complainant inside his house, slapping him, kicking him and hitting him with a truncheon all over his body. When the complainant tried to run away, one of the officers caught his foot and dragged him along the floor over a piece of tin from a fence, opening a 12 cm long cut in his belly. The complainant still bears the scar of this. The officers took papers, money and the children's two computers. At around 6.30 p.m. some of the officers loaded the complainant's car with all the things taken from the house and drove off in it, while others left in the car of the complainant's wife. Neither of the cars has ever been returned. The complainant was driven away in an unmarked car and taken to the national guard post in El Aouina, Tunis.

2.2 The complainant was held for 11 days in El Aouina. When he arrived at the national guard post, he told the officers he needed medication for his heart, but they would not let him have any. To intimidate him, one of the officers told him he was not answerable to the Ministry of the Interior, but directly to Zine El Abidine Ben Ali, then-President of Tunisia. At around 9 p.m. he was taken to the office of the section chief. During questioning, he was slapped very hard on both sides of the jaw by officers. They then brought a chair, completely undressed him and lay him on his back with the calves of his legs resting on the seat of the chair. While he was in this position, they hit him very hard on the soles of his feet with a rubber stick for about five minutes, until the blood had drained from his feet (a form of torture known as *falaqa*). Then the officers put his feet in a bucket of cold water and ordered him to walk. They put a motorcycle helmet on his head and beat him on the head with a baseball bat for about 15 minutes. As a result, the complainant to this day suffers from tinnitus. At around 2.30 a.m. the officers took him home to pick up a few belongings and then took him back to the national guard post in El Aouina.

2.3 For the next five days, the complainant was tortured. On the first day, officers tied him by the wrists and ankles to a large wheel fixed to the wall and spun the wheel very fast in one direction and then the other until he fainted. On the second day, officers sprayed his genitals with a gas and again tortured him by foot-whipping (*falaqa*). On the following days, the complainant was also given electric shocks from a device attached to his body by two electric wires. He was also repeatedly beaten on the fingers with various implements. To this day, one of his fingers is still swollen. One evening, one of the officers ripped out the nail from one of his big toes with a pair of pincers.

2.4 During his 11 days in custody, the complainant wore the same clothes, had only a sandwich a day to eat and was allowed to go to the toilet only once a day. He received no medical treatment, even for the open wound on his belly from the cut inflicted by the piece of tin when he was arrested. Apart from the questioning and torture sessions, he was kept tied to a chair in the corridor, where he spent every night. After the sixth day, he was asked several times to sign the transcripts of his questioning without reading them. When he asked to read them, the officers hit him. As Tunisian law limits the time in custody to three days, renewable once only by decision of the prosecutor, one of the officers forged the

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<sup>1</sup> According to the complainant, the national guard reports, like the police, to the Ministry of the Interior.

arrest report. Whereas he was actually arrested at his home in a town near Tunis on 1 September 2009, the report states that he was arrested in a street in Tunis on 6 September 2009. On 9 September, i.e. three days after the official date of his arrest, the prosecutor authorized the extension of his custody until 11 September, without even having seen him.

2.5 On 11 September 2009, the complainant was taken before an investigating judge, who told him that he could not question him there and then because of the appalling state of the complainant's health. The complainant was accompanied by three lawyers, and his wife was present in the court. They all saw the marks of blows on the complainant's body.<sup>2</sup> The complainant described the torture he had undergone to the investigating judge. The latter told him he should just file a complaint with the prosecutor and ordered him to be placed in detention in Mornaguia prison.

2.6 On 12 September 2009, the complainant was examined by a doctor in Mornaguia prison. During the consultation, the complainant talked about the torture to which he had been subjected. The doctor got him to sign a paper testifying that he had been tortured in the 10 days leading up to his imprisonment.<sup>3</sup> When the complainant next saw the investigating judge, on 18 September 2009, the complainant showed him the marks of the physical abuse he had suffered and again recounted the acts of torture to which he had been subjected. One of his lawyers insisted that the judge mention the traces of torture in the minutes of the questioning, but the judge refused. At each hearing by the investigating judge, the complainant retracted the confession he had signed under torture. But none of the minutes prepared by the investigating judge make any mention of the torture allegations. On 26 September 2009, one of the complainant's lawyers filed a complaint with the Tunis public prosecutor about the torture of his client.<sup>4</sup> No action was ever taken over this complaint, although it was registered.

2.7 On 31 October 2011, over two years after the complainant's arrest, the Tunis court of first instance ruled against the complainant.<sup>5</sup> In front of the judges and in the presence of his three lawyers, the complainant again denounced the torture to which he had been subjected. Despite this, and on the basis of the confession extracted by torture, the court sentenced him to 22 years in prison on a number of counts, including criminal conspiracy. It also sentenced him to 10 years in prison in another case involving trafficking in limousines. On 22 December 2011, one of his lawyers filed a new complaint for torture with the Tunis public prosecutor, pointing out that no action had been taken over the earlier complaint and that his client had been convicted on the basis of a confession extracted by torture. The lawyer asked for an investigation into the acts of torture, for his client to be given a medical examination and for the confession to be struck out by the judge hearing the appeal.

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<sup>2</sup> The complainant provides an undated letter from his lawyer which confirms that, during the hearing, the complainant told the judge that his confession had been extracted by torture and that he had filed a complaint in September 2009 that had never been processed. The complainant also declared that another complaint had been filed concerning his unlawful arrest and his torture during questioning. The complainant asked the judge to exclude the confession obtained by torture, but the judge had taken no account of his statements. Consequently, according to the lawyer, the court had handed down an unjust and unlawful judgment. The complainant also provides an undated letter from another lawyer that points out that the latter had raised the complainant's allegations of torture with the investigating judge and that the complainant had stressed how he had been treated and had even shown the investigating judge the signs of torture on his body.

<sup>3</sup> The document (in Arabic) that the doctor had him sign is included in the file.

<sup>4</sup> The complainant refers to the complaint in Arabic attached to the file.

<sup>5</sup> The complainant refers to excerpts in Arabic from the court's judgment, which are attached to the file. According to the complainant, the judge cited his confession as one of the grounds for his conviction.

2.8 In April 2012, the complainant's wife was received by the principal private secretary of the Minister of Justice, who told her that an investigation into torture had just been opened by the investigating judge of office No. 15 of the Tunis court of first instance. On 10 May 2012, the Tunis court of appeal reduced the complainant's 10-year prison sentence to 1 year.<sup>6</sup> Two days later, the same court of appeal, configured differently, reduced the other sentence from 22 years to 7 years in prison. During both sets of appeal proceedings, the complainant denounced the torture to which he had been subjected, but the judges overlooked this and based their decision on the confession obtained under torture. On 2 January 2013, the complainant's appeal to the court of cassation was dismissed. At that point his conviction became final.

2.9 It appears that the complainant continues to suffer from after-effects that are a direct result of the acts of torture to which he was subjected, including a fracture of the big toe on his left foot, back pain, heel spurs, a fracture of the jaw, tinnitus, a swollen finger on his left hand, and psychological sequelae for which he has not yet received proper treatment.<sup>7</sup>

### **The complaint**

3.1 The complainant claims that the State party violated his rights under articles 1, 2 and 11 of the Convention by not taking all effective measures to prevent his being subjected to torture during questioning.

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<sup>6</sup> The complainant refers to the minutes of his hearings at the Tunis court of first instance (in Arabic), dated 11 May, 15 June and 23 July 2012.

<sup>7</sup> The complainant provides a medical report dated 23 March 2012, written by a Mornaguia prison doctor. The doctor reported that the complainant had been monitored at the prison infirmary since 12 September 2009, and that he had presented with the following medical history: chronic coronary syndrome since 2007, with vasospastic right-dominant coronary circulation with 40-45 per cent calcification of the first diagonal; and high blood pressure and dyslipidemia (high levels of blood fats) for the past three years. According to the doctor, the complainant had stated straight away that he had been the victim of violence during the 10 days leading up to his imprisonment. The medical examination had revealed a painful oedema (swelling of the tissue) in the left big toe and abrasion of the sole of the foot. An X-ray of the left foot had revealed a fracture of the big toe. On 28 January 2010, the complainant had presented with dyspnoea (laboured breathing) and had been referred to a hospital emergency room, where a heart attack had been ruled out. On 16 April 2010, the complainant had had an appointment with a cardiologist, and it had been found that his electrocardiogram results had returned to normal. On 25 June 2010, a thoracic sonogram had been carried out and had produced normal results. On 16 July 2010 and 22 November 2010, the complainant had had appointments at a cardiology department, where stress test results had come back negative. On 16 March 2011, he had received a check-up at a hospital cardiology department. The complainant had seen a doctor several times in prison for foot pain related to inflammation of the plantar fascia, especially on the right, and for mechanical lower-back pain. X-rays of the heel and lumbar spine had been normal. Each time, the complainant had been prescribed painkillers and anti-inflammatory drugs. On 3 May 2011, he had had an outpatient appointment with a rheumatologist, who had found he had a high arch (a defect acquired as he was growing up). On 20 September 2011, the results of a blood test ordered when he was suffering from dysuria (painful urination) had been normal. On 27 February 2012, the complainant had seen a neurosurgical specialist in a hospital after lower-back pains had not been relieved by physiotherapy, painkillers and anti-inflammatory drugs. He had been supplied with an orthopaedic support belt, apparently paid for by the prison's social fund. A follow-up visit to an external cardiologist was planned for April 2012. The doctor concluded that the complainant was "generally in good health".

The complainant has also submitted a medical report dated 27 April 2013, written by a Mornaguia prison doctor, in which the doctor notes that the complainant said he had been on hunger strike since 23 March 2013 and that he still had all his mental, psychological and physical capacities. According to the report, the complainant's health had suffered and he needed to be monitored and treated in hospital.

3.2 The complainant also maintains that the State party violated his rights under article 11 of the Convention by keeping him in custody for an excessive period of 11 days before bringing him before a judicial authority, keeping him incommunicado for the first 6 days of his custody and recording a false date for his arrest.

3.3 According to the complainant, the State party also violated his rights under articles 11 and 16 of the Convention by subjecting him to cruel, inhuman and degrading conditions of detention for 11 days at the national guard post in El Aouina.

3.4 Moreover, the complainant believes the State party violated his rights under articles 12, 13 and 14 of the Convention by not conducting a prompt, independent and diligent investigation following the allegations of torture made in front of the investigating judge, the court of first instance and the appeal court, and the complaints filed by his lawyers and wife.<sup>8</sup>

3.5 The complainant also claims that the State party's refusal to grant him redress and adequate compensation for the acts of torture to which he was subjected constitutes a violation of article 14 of the Convention; and that his conviction on the basis of a confession obtained under torture gave rise to a violation of his rights under article 15 of the Convention.

3.6 Lastly, the complainant accuses the State party of violations of articles 15 and 16 of the Convention, in that he was convicted on the basis of a confession obtained under torture and kept in detention following an unfair trial. These actions prolonged the effects of torture and caused the complainant mental suffering that constitutes cruel, inhuman and degrading treatment, adding to the physical suffering inherent in imprisonment and the fact that the complainant cannot receive appropriate care for the after-effects of the torture.

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

4.1 In its observations dated 10 December 2013, the State party does not challenge the admissibility of the communication. As for the merits, the State party points out that an investigation has been opened into the communication by the investigating judge at office No. 15 of the Tunis court of first instance under articles 104 and 106 of the Tunisian Code of Criminal Procedure. These articles are concerned with investigations into acts of torture committed by public servants in the exercise of their duties. The case was registered following the complaint filed on behalf of the complainant with the prosecutor at the Tunis court of first instance.

4.2 The complainant was heard by an investigating judge of that court. In his statements he confirmed the substance of the complaint, claiming to have been violently assaulted and ill-treated on 10 September 2011 by security officers. Three witnesses, including the complainant's wife, were heard. According to the State party, the investigations into this are still under way, with the aim of establishing the truth.

4.3 Respectful of the provisions of the Convention and its Optional Protocol, as well as the International Covenant on Civil and Political Rights, the State party is working within the framework of its international commitments to respect international human rights standards and values. The State party is prepared to respond to all allegations of human

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<sup>8</sup> The complainant attaches a letter in Arabic from the State prosecutor to the Mornaguia prison director, dated 16 September 2011. According to the complainant, the prosecutor responds in this letter to the complainant's own letter to him, dated 4 July 2011, drawing attention to the complaint of torture filed by his lawyer on 26 September 2009. The prosecutor informs the complainant, via the prison director, that his complaint has been forwarded to the investigating judge responsible for investigating the charges against the prisoner. The complaint was reportedly placed on file with the investigating judge on 12 June 2009, i.e. before the complainant had been arrested.

rights violations before any national or international judicial body, including those of the United Nations.

4.4 The complainant was granted a special pardon on 7 August 2013, on the occasion of a religious feast day, which shortened by 15 months the prison sentence he had received from the Tunis court of appeal for his part in arrangements to injure or damage people and property, giving false evidence, corruption and currency crimes, treason, and making forgeries on the basis of genuine documents. The complainant began to serve his sentence on 6 September 2009.

4.5 As regards the state of the complainant's health, he has been held in Mornaguia prison. Since 2007, he has been suffering from an arterial embolism and high blood pressure. He has also said he suffers from respiratory insufficiency, and was able to consult a cardiac specialist at the Charles Nicolle hospital in Tunis on 16 April 2014. He underwent specialized tests that showed there was no coronary thrombosis. The results of the tests were normal. Since 12 September 2009, he has had regular medical and health check-ups and has been taking the medication prescribed for him. During his initial medical examination in prison he said he had been subjected to acts of violence for 10 days before being incarcerated. The complainant enjoys the rights set forth in the law governing prisons, in accordance with international human rights standards.

4.6 The Tunisian authorities do not deny the existence of complaints about acts of torture and assault, but ensure that judicial investigations are opened into them and the outcomes are monitored. The Tunisian authorities are working together with the World Organisation against Torture, the Association for the Prevention of Torture and representatives of civil society to put a stop to all acts of torture and cruel, inhuman and degrading treatment. The authorities have entered into discussions with international and non-governmental organizations, government ministries and human rights organizations with a view to establishing a national mechanism to prevent torture and improve preventive measures in this respect.

#### **Complainant's comments on the State party's observations**

5.1 In a letter dated 8 September 2014, the complainant states that the State party has produced no evidence that the preliminary inquiries being conducted into torture can be classed as a diligent, independent, impartial and prompt investigation. At the time of writing, over two-and-a-half years after the complainant's lawyer filed the second complaint for torture on 22 December 2011, the officers accused by him had still not been heard by a judge. Moreover, these preliminary inquiries had not led to any investigative action since July 2012, over two years earlier. These facts alone demonstrate a violation of articles 12, 13 and 14 of the Convention.

5.2 The complainant feels, moreover, that the State party has not replied to his detailed account of the physical abuse he suffered and has not denied that such abuse took place. It can be presumed that force was used to obtain a confession, since he was held incommunicado for his first six days in custody. The complainant has provided the Committee with the evidence in his possession to justify his allegations, bearing in mind that he is in detention and has not been able to get an expert medical opinion. He asserts that establishing the truth is not the sole objective of the investigation into torture, as claimed by the State party. The pretrial investigation should lead to the identification of those responsible for the physical abuse so that they can be tried and sentenced, and also to redress for the victim.

5.3 As for the partial pardon granted on the occasion of a religious feast day, the complainant claims that this measure was not taken in response to his allegations of torture. Many other criminals also benefit from this pardon every year; it therefore contributes

nothing whatsoever to compensation for the violation of article 15 from which he has suffered.

5.4 As for restitution, the complainant asks to be released, given that he is being detained arbitrarily, pursuant to unfair procedures based on a confession obtained under torture, and requests a review of the charges against him that excludes his confession, which should be declared null and void.

5.5 The complainant also requests that the State party pay him compensation, which should be expeditious, fair and appropriate. The complainant requests, in particular, compensation for physical, psychological and mental harm. The physical suffering and psychological trauma resulting from torture should be evaluated in a medical report drawn up in line with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). His wife and children should also be compensated for the mental harm they have suffered as a result of the violations suffered by the complainant. The complainant also requests the reimbursement by the State party of the lawyers' fees incurred in: the criminal proceedings related to the allegations of torture; the proceedings in which the complainant was charged on the basis of a confession obtained under torture; and the proceedings before the Committee; as well as the reimbursement of any medical bills that might be incurred for his physical and psychological rehabilitation. In addition, the complainant asserts his right to receive appropriate rehabilitation care free of charge and without delay (without waiting for the conclusion of the criminal proceedings to be conducted by the Tunisian courts in order to punish the torturers).

5.6 In a further letter dated 17 February 2015, the complainant informed the Committee that his wife has filed another application for his conditional release. Like earlier applications, this one has met with no reply. The same is true of the numerous requests for pardon submitted by the complainant on the occasion of national public holidays. Hundreds of prisoners have benefited from a presidential pardon on such occasions, but the complainant's requests have been repeatedly ignored.

5.7 Given that he was arrested on 1 September 2009 and imprisoned on 11 September 2009, the complainant has already served well over half of his sentence and would normally be entitled to parole. However, far from being released, he continues to be persecuted by the justice system. He was sentenced in May 2012 to a further 8 months' imprisonment on the same charges of trafficking in cars for which he had already been sentenced to 7 years' imprisonment, on the basis of a confession signed under torture. Although he has been in detention for over 5 years, the Tunis court sentenced him in absentia. He is also being prosecuted in four other cases of trafficking in cars. He believes that these four cases relate to the same acts for which he was sentenced at his first trial.

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

### *Consideration of admissibility*

6.1 Before considering any claims contained in a complaint, the Committee must decide whether or not 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.

6.2 The Committee notes that the State party does not contest admissibility. As the Committee finds no other obstacles to admissibility, it declares the communication admissible.

*Consideration of the merits*

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

7.2 The Committee notes that the complainant accuses the State party of violations of articles 1, 2 and 11 to 16 of the Convention. The Committee also notes that, according to the State party, an investigation into the complainant's allegations of torture is under way.

7.3 With regard to the complaints relating to articles 1, 2, 11 and 16, the Committee takes note of the complainant's allegations that the State party did not take all effective measures to prevent his being subjected to torture and cruel, inhuman and degrading treatment during his questioning at the national guard post in El Aouina in September 2009. In this regard, the Committee takes note of the complainant's claim that, for six days, officers of the national guard hit him very hard on the face; beat him on the soles of his feet with a rubber stick for about five minutes; placed a motorcycle helmet on his head and beat him on the head with a baseball bat for about 15 minutes, damaging his hearing; tied him by the wrists and ankles to a large wheel fixed to the wall and spun the wheel very fast in one direction and then the other until he fainted; sprayed his genitals with a gas; gave him electric shocks; repeatedly beat him on the fingers with various implements; and ripped out the nail from one of his big toes. After that, the Committee notes that, according to the complainant, he was held incommunicado for 6 days; was able to eat only a sandwich a day and was allowed to go to the toilet only once a day; received no medical treatment for the entire duration of his custody, while he had an open wound on his belly as a result of the use of force during his arrest; was kept tied to a chair when not being questioned or tortured; and was slapped when he asked to read the transcripts of his questioning, including the transcript in which one of the officers forged the date of his arrest, before signing them.

7.4 The Committee notes that the State party does not refute any of these allegations and confirms that the complainant stated during his first questioning in prison that he had been subjected to acts of violence for 10 days before being imprisoned. The Committee also notes that the complainant provided a report dated 23 March 2012, written by a Mornaguia prison doctor, who wrote that the complainant had claimed during his first consultation to be the victim of a violent attack in the 10 days preceding his incarceration; that the medical examination revealed a painful swelling of the left big toe and abrasion of the sole of the foot; and that an X-ray had revealed a fracture of the left big toe. The Committee also takes note of the complainant's allegations that he suffers from numerous physical and psychological after-effects of being tortured and notes that he has provided medical reports in this regard.<sup>9</sup> The Committee observes, moreover, that although the State party takes note of the complainant's medical history, it has not provided the report from his initial medical examination in Mornaguia prison on 12 September 2009; nor has it commented on the complainant's claim that he informed the doctor on the same day about the physical abuse to which he had just been subjected. In these circumstances, the Committee concludes that the facts as presented constitute torture and cruel, inhuman and degrading treatment, and that the State party violated its obligations under articles 1, 2 (1) and 16 of the Convention.<sup>10</sup> As far as article 11 is concerned, the Committee considers that the information provided by the State party on its efforts to prevent and combat torture is of a general nature and does not demonstrate that it has taken specific measures to prevent police officers from committing acts of violence and to prevent the torture by or with the acquiescence of the authorities of individuals who have been arrested, detained or

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<sup>9</sup> See paragraph 2.9 above.

<sup>10</sup> In view of its position on article 1 of the Convention, the Committee does not find it necessary to consider the complainant's allegations under article 16.



imprisoned.<sup>11</sup> Consequently, the Committee finds that the State party is responsible for a violation of article 11 of the Convention.

7.5 As for the alleged violations of articles 12 and 13 of the Convention regarding the State party's failure to conduct a prompt, independent and diligent investigation into the allegations of torture, the Committee takes note of the complainant's claims that, during his appearances before the judges, he said he had been tortured, but the judges took no action over this. The Committee notes that one of his lawyers informed the investigating judge in September 2009 about the physical abuse suffered by his client during questioning and that the investigating judge ignored his statements, despite the visible marks of torture on the complainant's body. The Committee also takes note of the testimony of another lawyer, who asserts that he himself drew the investigating judge's attention to the ill-treatment of his client, as well as of the complaint of torture filed on behalf of the complainant on 26 September 2009. The Committee observes, moreover, that, according to the complainant, the State prosecutor informed him in 2011 that the complaint of torture filed by his lawyer on 26 September 2009 had been entrusted to the investigating judge on 12 June 2009, which was before the complainant had been arrested.<sup>12</sup> The Committee notes that the State party, in its observations, states that an investigation into torture has been opened but gives no date for the opening of the investigation and no details on the progress of the proceedings or the prosecution of the alleged perpetrators of the acts of torture and ill-treatment, over six years after the events in question. The Committee also notes that, according to the decision of the Tunis court of first instance, the complainant admitted that he had committed the acts of which he was accused.

7.6 The Committee draws attention to the State party's obligation under article 12 of the Convention to ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.<sup>13</sup> Such an investigation should be prompt, impartial and effective, promptness being essential both to ensure that the victim cannot continue to be subjected to such acts and because, in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear.<sup>14</sup> Moreover, a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved in them.<sup>15</sup> Given the length of time that has elapsed since the complainant attempted to initiate proceedings at the domestic level, and given the lack of information from the State party concerning the follow-up to the complaint lodged by the complainant, the Committee is of the view that the State party has failed to fulfil its obligation under article 12 of the Convention. The Committee is also of the view that the State party has failed to fulfil its responsibility under article 13 of the Convention to guarantee the complainant's right to lodge a complaint with the competent authorities, which must provide a proper response to such a complaint by launching a prompt and impartial investigation.<sup>16</sup>

<sup>11</sup> See communication No. 456/2011, *Hernández Colmenarez and Guerrero Sánchez v. the Bolivarian Republic of Venezuela*, decision adopted on 15 May 2015, para. 6.7.

<sup>12</sup> See footnote 8 above.

<sup>13</sup> See communications No. 514/2012, *Niyonzima v. Burundi*, decision adopted on 21 November 2014, para. 8.4; and No. 500/2012, *Ramírez Martínez et al. v. Mexico*, decision adopted on 4 August 2015, para. 17.7.

<sup>14</sup> See communication No. 495/2012, *E.Z. v. Kazakhstan*, decision adopted on 28 November 2014, para. 13.2.

<sup>15</sup> See communications No. 580/2014, *F.K. v. Denmark*, decision adopted on 23 November 2015, para. 7.7; and No. 161/2000, *Dzemajl et al. v. Yugoslavia*, decision adopted on 21 November 2002, para. 9.4.

<sup>16</sup> See *Niyonzima v. Burundi*, para. 8.5.

7.7 With regard to the complainant's claims relating to article 14, the Committee recalls that article 14 of the Convention 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.<sup>17</sup> The Committee considers that redress should cover all the harm suffered by the victim, including restitution, compensation, rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations, while always bearing in mind the circumstances of each case.<sup>18</sup> The Committee notes that no investigation has been conducted into the acts of torture and that no provision has been made for rehabilitation measures in respect of the after-effects reported by the complainant, including a fracture of the left big toe, back pain, a fracture of the jaw, hearing difficulties and psychological sequelae. The Committee therefore considers that the complainant was deprived of his rights under article 14 of the Convention to redress and compensation.

7.8 In addition, the Committee points out that, according to the complainant, the State party violated its obligations under article 15 of the Convention, insofar as the claimant was convicted on the basis of a confession obtained under torture. In this connection, the Committee observes that, according to the complainant, the confession he signed under torture was used to justify keeping him in detention for over 6 years. The Committee notes that the State party neither refuted these allegations nor included any specific information on this question in its observations to the Committee. The Committee recalls that the general nature of the provisions of article 15 of the Convention derives from the absolute nature of the prohibition of torture and therefore implies an obligation for any State party to verify that statements included in proceedings under its jurisdiction have not been made under torture.<sup>19</sup> The Committee considers that the State party was under an obligation to review the complainant's claims that his confession had been obtained under torture, and that by not carrying out such a review and by using his confession in the judicial proceedings against the complainant, the State party violated its obligations under article 15 of the Convention.<sup>20</sup>

7.9 The Committee, acting under article 22 (7) of the Convention, is of the view that the facts before it disclose a violation of articles 1, 2 (1) and 11 to 16 of the Convention.

7.10 In accordance with rule 118 (5) of its rules of procedure, the Committee urges the State party to: (a) conduct an impartial investigation into the events in question with a view to the prosecution, trial and punishment of anyone found to be responsible for acts of torture. This investigation should include medical examinations of the complainant, in accordance with the Istanbul Protocol; (b) provide the complainant with redress and the means of rehabilitation for the acts of torture committed; and (c) take steps to ensure that, in the case in question, it fulfils its obligations under article 15 of the Convention. The State party is, moreover, under an obligation to prevent the recurrence of any such violations in the future. The Committee urges the State party to inform it, within 90 days of the date of transmittal of this decision, of the measures it has taken in response to the views expressed above, notably the provision of adequate and fair compensation, including the means for as full rehabilitation as possible.

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<sup>17</sup> See communication No. 291/2006, *Saadia Ali v. Tunisia*, decision adopted on 21 November 2008, para. 15.8.

<sup>18</sup> See *Saadia Ali v. Tunisia*, para. 15.8; and *Niyonzima v. Burundi*, para. 8.6.

<sup>19</sup> See *Niyonzima v. Burundi*, para. 8.7; and communication No. 419/2010, *Ktiti v. Morocco*, decision adopted 26 May 2011, para. 8.8.

<sup>20</sup> See *Niyonzima v. Burundi*, para. 8.7.