



# 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. 771/2016\*, \*\*

<i>Communication submitted by:</i>	J.I. (represented by counsels Bart Stapert, Caroline Buisman and Devika Kamp)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Netherlands
<i>Date of complaint:</i>	11 July 2016
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 7 September 2016 (not issued in document form)
<i>Date of present decision:</i>	16 May 2019
<i>Subject matter:</i>	Extradition from the Netherlands to Rwanda
<i>Procedural issues:</i>	Another procedure of international investigation or settlement; exhaustion of domestic remedies; substantiation of the complaint; admissibility <i>ratione materiae</i>
<i>Substantive issue:</i>	Risk of torture and ill-treatment
<i>Article of the Convention:</i>	3

1.1 The complainant is J.I., a national of Rwanda born on 14 December 1975. He claims that his extradition to Rwanda would constitute a violation by the State party of his rights under article 3 of the Convention. The complainant is represented by counsel.

1.2 On 7 September 2016, the Committee, acting through its Rapporteur on new complaints and interim measures, informed the complainant that it had denied his request for interim measures and would therefore not request the State party to refrain from removing him to Rwanda pending the examination of his complaint. The complainant was extradited to Rwanda on 12 November 2016.

1.3 On 21 March 2017, pursuant to rule 115 (3) of the Committee's rules of procedure, the Committee, acting through its Rapporteur on new communications and interim measures, rejected the State party's request for the admissibility of the communication to be

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

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

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examined separately from the merits. The State party's request for the discontinuance of the complaint was rejected on the same date.

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

2.1 The complainant left Rwanda in April 1994. He initially fled to the Democratic Republic of Congo where he was granted refugee status by the Office of the United Nations High Commissioner for Refugees. In 2003, he and his wife fled to the Netherlands, where they subsequently had three children. He lived in the Netherlands with his family from 2003 to 2016. On 9 July 2013, he was arrested and detained as part of a Netherlands criminal investigation into his possible involvement in genocide in Rwanda. On 23 September 2013, the Rwandan authorities requested his extradition on charges of genocide and his detention was extended based on that request.

2.2 The complainant claims that he is a survivor of a massacre of Hutu refugees in the Democratic Republic of Congo perpetrated by the Rwandese Patriotic Front. He notes that he spoke about the massacre in an interview with a leading Netherlands magazine in May 2015. He claims that the Government of Rwanda denies involvement in the massacre and that those who attest to its occurrence risk being subjected to enforced disappearance or prosecution for "genocide ideology". On 4 April 2014, he filed a complaint with the Prosecutor General in Kigali against the President of Rwanda and other senior officials for their alleged roles in the attacks in the Democratic Republic of Congo. He claims that as a result he risks being subjected to ill-treatment on return to Rwanda. He notes that he has also participated in protests against the Government of Rwanda while in the Netherlands and has also actively supported opposition leaders in Rwanda.

2.3 In addition, the complainant notes that during an interview he gave on the radio station "Itahuka", which is affiliated with a Rwandan opposition group, he identified the Government as complicit in massacres in the Democratic Republic of Congo. He claims that he is also likely to be targeted by the Government because of his family history. His mother was Tutsi and his father Hutu. His family was therefore mistrusted by both communities. Before the genocide his father was an adviser to the largest political party in Rwanda, the Mouvement républicain national pour la démocratie et le développement. When the Rwandese Patriotic Front sought his father's cooperation in the years leading up to the genocide, his father refused and was therefore perceived as a traitor. Subsequently both his father and his brother have been subjected to enforced disappearance after having been arrested by the Rwandese Patriotic Front in 1996 and 1997, respectively.

2.4 On 20 December 2013, The Hague District Court declared the extradition of the complainant permissible under the Convention on the Prevention and Punishment of the Crime of Genocide. It found that he had not sufficiently substantiated his claim that he would suffer a violation of article 6 (right to fair trial) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) if extradited to Rwanda. The decision was upheld by the Supreme Court of the Netherlands on 17 June 2014.

2.5 On 29 April 2015, the Minister of Justice and Security of the Netherlands approved the extradition of the complainant, finding that his extradition would not amount to a violation of article 3 (prohibition of torture) of the European Convention on Human Rights. The Minister noted that the complainant would have the right to amnesty and rehabilitation, if convicted; that there was no risk of torture in the detention facilities; and that the detention facilities complied with international standards. Regarding a potential violation of article 6 of the European Convention on Human Rights, the Minister concluded that the Rwandan authorities had confirmed, in a letter of 18 November 2014, that the complainant had the right to representation by foreign counsel, that the Government of Rwanda would cover the representation costs and that the Embassy of the Netherlands could monitor the complainant's trial and make all reports thereon publicly available. Finally, the Minister noted that there was no link between the complainant's alleged political criticism of the Government of Rwanda and the charges against him. He also noted that the prosecution against the complainant had already been initiated when the complainant had filed his complaint against the President of Rwanda.

2.6 The complainant challenged the decision of the Minister of Justice and Security before The Hague District Court. On 27 November 2015, the District Court found that the assurances from the Rwandan authorities regarding fair trial proceedings would not de facto guarantee that the complainant would receive a fair trial, as defence counsels in Rwanda were inadequate and had insufficient funds to conduct effective investigations. On 5 July 2016, The Hague Court of Appeal reversed the judgment of the District Court. It noted that the complainant's submission regarding the alleged inadequate defence in similar trials under the "Organic law No. 11/2007 of 16 March 2007 concerning transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from other States" (Transfer Law) did not establish a violation so fundamental as to amount to a nullification of his rights under article 6 of the European Convention on Human Rights. It also noted that many of the judicial inadequacies alleged by the complainant had been resolved; that he had not demonstrated that human rights violations in Rwanda and judicial deficiencies in the trials of political opponents were applicable in his case; that he would be tried on genocide charges, not charges related to political offences; and that the extradition would not amount to a violation of his rights under article 3 of the European Convention on Human Rights.

### **The complaint**

3. The complainant claims that he risks being subjected to torture or ill-treatment on return to Rwanda due to his affiliation with opposition groups in Rwanda, his complaint against senior Rwandan officials and his family circumstances. The complainant claims that the safeguards guaranteed by the Transfer Law will not be complied with, and that, as there is no independent judiciary, his sentence of life imprisonment is predetermined. He further argues that any protection he receives under the Transfer Law will end when the trial is over.

### **State party's observations on admissibility**

4.1 On 27 October 2016, the State party submitted its observations on the admissibility of the complaint. It submitted that the complaint should be declared inadmissible as the same matter had already been examined by another procedure of international investigation and also for failure to exhaust all available domestic remedies under article 22 (5) (b) of the Convention, as the complainant had failed to file a cassation appeal before the Supreme Court.

4.2 The State party notes that the complainant submitted an application for interim measures before the European Court of Human Rights on 5 July 2016 concerning the same parties and the same substantive rights as his complaint before the Committee. It also notes that the application for interim measures was denied by the Court on 8 July 2016 and that the application was declared inadmissible under articles 34 and 35 of the European Convention on Human Rights on the same date. The State party argues that, although the Court did not specify the exact grounds on which the application was found to be inadmissible, it could not have been on merely formal grounds, such as the expiration of the six-month time limit for the submission of an application. It argues that the application must have therefore been found inadmissible for one of the following reasons: (a) failure to exhaust domestic remedies; (b) the applicant was not considered to be a victim of a violation of the European Convention on Human Rights; (c) the application was considered to be incompatible with the provisions of the European Convention on Human Rights, manifestly ill-founded or an abuse of process; or (d) the applicant was considered not to have suffered a significant disadvantage. The State party argues that such grounds include a certain examination of the merits of the complaint, thus rendering the complaint before the Committee inadmissible under article 22 (5) (a) of the Convention.

4.3 On 23 January 2017, the State party submitted a request that the complaint be either discontinued or, alternatively, declared inadmissible for failure to substantiate the claims for the purposes of admissibility. The State party notes that the complainant was extradited to Rwanda on 12 November 2016 and that his detention has since been monitored by the International Commission of Jurists. The State party also notes that, on 6 December 2016, staff of the Embassy of the Netherlands visited the complainant in detention. During the

visit, the complainant confirmed that the Rwandan authorities had treated him correctly and that they had facilitated visits by family members, as well as access to legal counsel and monitoring by the International Commission of Jurists. Additionally, the complainant confirmed that his initial fear of being tortured or otherwise ill-treated had proved to be ill-founded. For that reason, the State party requested the Committee to discontinue the complaint or, alternatively, to declare it inadmissible for failure to substantiate the claims for purposes of admissibility.

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

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

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

5.3 On 24 February 2017, the complainant submitted his comments on the State party's request for discontinuance and further observations on the admissibility of the complaint. The complainant notes that his concerns about his safety in the Rwandan justice system and the detention centre are far from resolved. He also notes that, while it is true that he has thus far been treated correctly, the situation in Rwanda remains unpredictable. He adds that his concern was never that he would be subjected to inhuman treatment from the moment of his arrival. The Rwandan authorities are aware that the proceedings are monitored by the Netherlands authorities. His concern is what will happen when his detention or imprisonment is no longer monitored. He submits that the risk of being subjected to inhuman treatment at a later stage, after the imposition of a sentence, is still as real as it was prior to his extradition to Rwanda. Referring to a 2016 report by the Netherlands, he claims that there is no guarantee that genocide suspects, tried under the Transfer Law, can escape the ill-treatment for which Rwandan prisons are notorious.<sup>1</sup>

5.4 The complainant submits that his rights are already at risk of being violated. He claims that there is lack of clarity about the monitoring agreement, including what aspects of the proceedings will be monitored and with what frequency, who the monitors are to report to and what potential consequences, if any, could follow from the monitoring reports. He notes that he was offered the assistance of counsel immediately upon his arrival. However, he claims that the counsel tried to force him to plead guilty and that it was very difficult to have the counsel replaced. He also claims that the evidence so far is insufficient to proceed to trial and claims that, accordingly, it is far from clear that the proceedings against him will be conducted fairly.

5.5 The complainant notes that it is correct that he was entitled to receive visitors and make phone calls to family in the Netherlands. However, recently he has been moved from

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<sup>1</sup> The Netherlands, Ministry of Foreign Affairs, "Thematisch ambtsbericht over mensenrechten en justitie in Rwanda", 18 August 2016.

the Kigali Central Prison to Mpanga Prison. Mpanga Prison is in a remote location outside Kigali. Other genocide suspects have been transferred to Mpanga Prison only after they have been convicted. Since his move, his contact with the outside world has been reduced significantly. Telephone calls and visits are much more limited, due to the remoteness of the location. The distance to Kigali also complicates the monitoring process. The complainant therefore submits that, while he has not been exposed to any inhuman or degrading treatment yet, the risk of being exposed to such treatment in the future still exists, in particular in the light of the unpredictability of the conduct of the Rwandan authorities.

#### **State party's additional observations on admissibility and the merits**

6.1 On 21 July 2017, the State party submitted its observations on the merits of the complaint and further observations on admissibility. It notes that, on 9 July 2013, the complainant was arrested and placed in detention in connection with an investigation by the Netherlands authorities of his involvement in the Rwandan genocide. By letter of 25 September 2013, the Ministry of Foreign Affairs of Rwanda requested the complainant's extradition to Rwanda. He was suspected of having committed genocide, complicity in genocide, conspiracy to commit genocide, murder as a crime against humanity and war crimes, in the period from 7 April to 14 July 1994.

6.2 On 20 December 2013, the extradition chamber of The Hague District Court held that the requested extradition was permissible in respect of the charges of genocide and attempted genocide. The complainant lodged an appeal in cassation against the District Court's judgment, which the Supreme Court of the Netherlands dismissed on 17 June 2014. By decision of 29 April 2015, the Minister of Justice and Security refused the extradition in part and permitted it in all other respects, in accordance with the judgment of the District Court. The complainant then initiated proceedings against the State before the District Court to obtain an order prohibiting the State party from extraditing him to Rwanda. On 27 November 2015, the District Court prohibited the extradition of the complainant because it considered that there was a well-founded reason for assuming that his extradition to Rwanda would lead to a breach of article 6 of the European Convention on Human Rights. The State lodged an appeal against this judgment before The Hague Court of Appeal. On 5 July 2016, the Court of Appeal quashed the judgment of the District Court on the grounds that the complainant would not be exposed to a real risk of treatment in violation of articles 2, 3, 6 and 8 of the European Convention on Human Rights if extradited to Rwanda.

6.3 The complainant was extradited to Rwanda on 12 November 2016. On 6 December 2016, two members of staff from the Embassy of the Netherlands in Rwanda visited him in Kigali Central Prison. The interview conducted with the complainant during the visit revealed that the Rwandan authorities were treating him properly, that he was allowed to receive family visits and had access to lawyers, and that the proceedings against him were being monitored by the International Commission of Jurists. The complainant stated during the interview with the embassy staff that he had been afraid of being tortured in Rwanda, but that fortunately his current situation was different from what he had feared. On 29 March 2017, the report on the monitoring of the proceedings against the complainant carried out by the International Commission of Jurists in November and December 2016 was sent to parliament and published on the central government website, together with the monitoring agreement. The main conclusion that can be drawn from the initial report is that the Rwandan authorities were complying with the procedural safeguards laid down in the monitoring agreement.<sup>2</sup> On 23 May 2017, the report on the monitoring that the International Commission of Jurists had carried out in January and February 2017 was published on the central government website. The report confirms the conclusion drawn from the initial report.

6.4 The State party reiterates its submission that the complaint should be declared inadmissible for failure to substantiate the claim for purposes of admissibility. It refers to the two International Commission of Jurists reports on the monitoring that took place from November 2016 to February 2017 and the findings by the staff of the Embassy of the

<sup>2</sup> This is the conclusion drawn by the International Commission of Jurists in its letter of 29 March 2017 to the parliament of the Netherlands.

Netherlands and argues that the reports and visits show that the Government of Rwanda is treating the complainant properly and that his initial fear of being tortured or otherwise treated inhumanely has in fact proved to be ill-founded. It was also found that the special prison block where he was being held was clean and well ordered. The complainant himself informed the International Commission of Jurists that “he was okay with the conditions” in the detention facilities and that “all was good” concerning his visitation rights and living conditions at the detention facilities. The State party submits that for that reason alone, the complaint should be declared manifestly unfounded pursuant to rule 113 (b) of the Committee’s rules of procedure.

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

6.6 The State party submits that the country reports on Rwanda show that there has been an overall improvement in the human rights situation over the past five years.<sup>3</sup> In addition, it notes that according to non-governmental organizations the main human rights problems from 2011 to 2016 concerned the harassment, arrest and mistreatment of journalists, political opponents and human rights defenders.<sup>4</sup> Most of the human rights issues concerned civil and political rights; freedom of expression in particular was restricted and there was little scope for criticizing the Government.

6.7 The State party notes that according to country reports those found guilty of genocide are not treated differently from other citizens. There have been cases where those convicted of genocide were afraid to return to their village communities after being released. They were given assistance by government officials. The Government of Rwanda ensures that people do not take revenge, and there have not been many incidents.<sup>5</sup> It also notes that according to country reports there has been an overall improvement of the situation in Rwandan prisons. The prison system was designed for 54,700 detainees. At the end of 2012 the prison population was 55,618, but by 2015 it had fallen to around 54,000.<sup>6</sup> According to the Rwandan Correctional Service, every prison has dormitories, toilets, sports facilities, a clinic, a reception room, a kitchen, water and electricity.<sup>7</sup> A special regime applies to transfer cases such as the complainant’s case. During their trial, “international” defendants accused of genocide stay in a special, comfortable, high-security wing of Kigali Central Prison.<sup>8</sup> In July 2015, five prisoners were housed in this high-security wing. Among other

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<sup>3</sup> The State party refers to the Netherlands, Ministry of Foreign Affairs, “Country Report on Human Rights and Justice in Rwanda”, 18 August 2016.

<sup>4</sup> United States of America, Department of State, “Country Reports on Human Rights Practices for 2015: Rwanda”.

<sup>5</sup> The State party refers to the Netherlands, Ministry of Foreign Affairs, “Country Report on Rwanda”, 28 November 2011.

<sup>6</sup> United States, “Country Reports on Human Rights Practices for 2015: Rwanda”.

<sup>7</sup> United States, Department of State, “Country Reports on Human Rights Practices for 2014: Rwanda”.

<sup>8</sup> Ibid.

things, they can watch television and use a computer. They also have their own kitchen.<sup>9</sup> If they are convicted, they are transferred to Mpanga Prison where conditions meet international standards, partly because of the Transfer Law. Eight prisoners of the Special Court for Sierra Leone have been held in a specially built wing of Mpanga Prison.<sup>10</sup> The special wing of Mpanga Prison also holds a prisoner extradited by Norway to Rwanda who has been sentenced to 30 years' imprisonment at first instance. He has a spacious, comfortable cell with his own washroom.<sup>11</sup>

6.8 The State party refers to the case of *Ahorugeze v. Sweden*,<sup>12</sup> in which the European Court of Human Rights found that the extradition of a genocide suspect to Rwanda would not amount to a violation of article 3 of the European Convention on Human Rights. It noted that the authorities had offered assurances to the effect that the applicant would be detained and serve a possible prison sentence in Mpanga Prison and temporarily during his trial would be detained at the Kigali Central Prison. The Court found the two facilities met international standards and noted that there was no evidence in the case to indicate that the applicant would face a risk of torture or ill-treatment at Mpanga Prison or Kigali Central Prison.

6.9 The State party submits that, although the human rights situation in Rwanda may give some cause for concern, there is no reason to conclude that extradition to Rwanda would in itself involve a risk of contravening article 3 of the Convention or that every genocide suspect extradited to Rwanda would be exposed to a real, personal and foreseeable risk of treatment contrary to article 3 of the Convention.

6.10 The State party argues that the complainant's claims regarding the alleged risk he would face upon extradition have been superseded by subsequent events, a situation that alone warrants the conclusion that he does not face a risk of treatment contrary to article 3 of the Convention. Furthermore, it submits that the complainant's claims relating to the fairness of his trial, such as there being no independent judiciary or presumption of innocence, do not fall within the scope of article 3 of the Convention, and that the rest of the complainant's claims are not plausible given the individual circumstances of his case. The State party argues that it is not clear why the complainant's background would mark him as a political opponent in the eyes of the Rwandan authorities. It also argues that the fact that the complainant's father was branded a traitor is no reason to assume that the Rwandan authorities will view the complainant as a political opponent; the claim is merely speculative. It further argues that the prosecution and trial of genocide suspects is very important for Rwanda and that for this reason compliance with agreed guarantees is in the State's own interests. This is illustrated by the Rwandan authorities' willingness to give extensive guarantees and allow far-reaching monitoring and the fact that the authorities have adhered to all the agreements made since the complainant's extradition. Even if the Government were to attach such importance to the complainant's political beliefs that it regarded him as a political opponent, it is highly unlikely that that would result in torture or inhuman treatment given the importance the Government attaches to prosecuting and trying offenders and the ensuing need to treat them properly. In addition, the State party argues that there are not enough concrete indications to support such a contention.

6.11 The State party submits that the complainant's statement that he would risk being subjected to torture or ill-treatment after the finalization of the trial and monitoring must also be considered as no more than speculative. It notes that monitoring takes place at several levels. Formal monitoring is carried out by the International Commission of Jurists. In addition, under the Transfer Law the International Committee of the Red Cross or an observer appointed by the International Residual Mechanism for Criminal Tribunals may monitor the complainant's situation. It is therefore highly unlikely that the international community will not continue monitoring the complainant's situation. Furthermore, the State party argues that the complainant's situation is not comparable to that of other prisoners.

<sup>9</sup> The State party refers to the Netherlands, "Country Report on Human Rights and Justice in Rwanda", 18 August 2016.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Application No. 37075/09, judgment of 27 October 2011.

The Transfer Law is applicable during the complainant's trial and substantial guarantees have been agreed with the Government of Rwanda. Under article 23 of the Transfer Law, any person transferred to Rwanda for trial is detained in accordance with the minimum standards of detention stipulated in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. For individuals subject to the Transfer Law, detention is therefore not comparable to detention for other suspects. In the case of *Jean Uwinkindi v. the Prosecutor*,<sup>13</sup> the International Criminal Tribunal for Rwanda noted a guarantee under the Transfer Law was that any person transferred would be detained in accordance with the minimum standards of detention adopted by the United Nations General Assembly.<sup>14</sup> The Rwandan authorities have stated that Mpanga Prison has been designated as the primary location and that the complainant will be held temporarily in Kigali Central Prison. If it is necessary to transfer him to another prison, it will be to a facility that also meets the relevant standards. The monitoring that has taken place so far shows that the Rwandan authorities are adhering to those agreements.

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

7.1 On 9 July 2018, the complainant provided his comments on the State party's observations. He maintains that the communication is admissible. He notes the State party's submission that the complaint should be declared inadmissible for failure to substantiate the claim for purposes of admissibility, as the Rwandan authorities have treated him in accordance with the agreements made with the Netherlands authorities. The complainant disagrees with this assessment. He notes that he was supposed to benefit from a legal aid system that would include an investigation budget; however, no investigation budget has been made available to him yet. He has also not been allowed to contact his international counsel. The complainant concedes that he has not, as of yet, been subjected to physical torture or inhumane treatment. However, he claims that he has a legitimate fear of such treatment as a perceived political opponent and due to the widespread use of torture in Rwanda.

7.2 The complainant notes the State party's argument that the human rights situation in Rwanda has improved over the past few years. However, he argues that recent human rights reports show a different picture, and that the Rwandan military has routinely unlawfully detained and tortured detainees, submitting them to beatings, asphyxiations, mock executions and electric shocks.<sup>15</sup> Complaints about torture under such circumstances have not been investigated and evidence obtained under torture has not been excluded at trial.<sup>16</sup> Furthermore, the complainant notes that the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment postponed its monitoring mission to Rwanda on 20 October 2017 because the Government refused to cooperate and severely limited the Committee's access to prisoners. He argues that country reports thus demonstrate that the persecution of perceived political opponents of the Government is a continuing reality and that there is real and imminent risk that he will be exposed to torture or other inhumane or degrading treatment. He also argues that, while there is some level of scrutiny and monitoring of his situation, his situation will change when the monitoring stops.

7.3 The complainant notes that the monitoring reports issued by the International Commission of Jurists are general and do not provide any analysis, conclusions or recommendations about his case. In addition, they are published irregularly, sometimes with gaps of six months. The reports include very few details on his treatment, the visitors he is allowed to receive and the possibility to send and receive mail. In addition, there appears to be no transparency in the manner in which the monitoring system is functioning. There is no concrete workplan or schedule in the agreement between the Ministry of Foreign Affairs of the Netherlands and the International Commission of Jurists. Moreover,

<sup>13</sup> The State party refers to the extradition request from Rwanda to the Netherlands authorities.

<sup>14</sup> Case No. ICTR-01-75-AR11bis, decision of 16 December 2011, para. 37.

<sup>15</sup> The complainant refers to Human Rights Watch, "'We will force you to confess': torture and unlawful military detention in Rwanda", 10 October 2017.

<sup>16</sup> Ibid. and United States, Department of State, 2017 Country Reports on Human Rights Practices: Rwanda.



while the monitoring reports are supposed to act as a safeguard against potential violations, the general nature of the reports, combined with the fact that the publication of the reports is irregular and frequently late, decreases the reliability of the reports as a protective measure. Furthermore, the complainant claims that the intimidation and threats of the Rwandan authorities have a serious effect on his morale. He also claims that the evidence presented against him by the prosecution is based on hearsay and that it has been impossible to find defence witnesses willing to testify for him, as they fear that they will be intimidated and persecuted if they come forward. Defence lawyers and investigators are also under pressure from the authorities, and therefore are very cautious in choosing their line of defence.

### **State party's further observations**

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

8.2 Regarding its submission that the claim should be declared inadmissible for failure to substantiate the claims for purposes of admissibility, the State party refers to its submission of 27 July 2017. Furthermore, it notes that the present situation, one year on, shows that the Rwandan authorities are still acting in accordance with the guarantees they have given, and that prison conditions are good. The State party argues that, given the fact that the Rwandan authorities have continued to treat the complainant well since his arrival in November 2016, there is no reason to expect that the treatment of the complainant will change in the future. That assertion is supported by the fact that in proceedings against other genocide suspects being tried under the Transfer Law, such as Jean Uwinkindi, no treatment contrary to article 3 of the Convention has occurred. The State party submits that there is no reason to assume that the complainant is at risk of treatment contrary to article 3 of the Convention with regard to the remainder of the trial and any possible prison sentence.

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

#### *Consideration of admissibility*

9.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee recalls that, under article 22 (5) (a) of the Convention, it shall not consider any communications from an individual unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. The Committee recalls its jurisprudence that a communication has been or is being examined by another procedure of international investigation or settlement if the examination by the procedure relates or related to the same matter within the meaning of article 22 (5) (a), which must be understood as relating to the same parties, the same facts and the same substantive rights.<sup>17</sup> The Committee observes that on 8 July 2016, the European Court of Human Rights, sitting in a single-judge formation, declared the complainant's application inadmissible, as the admissibility criteria set out in articles 34 and 35 of the European Convention on Human Rights had not been met, without providing any explanation as to the specific reasons that had led it to such a finding. The Committee notes that the complainant's application before the court appears to refer to the same facts as those raised in the present communication. The Committee also notes, however, that the Court's decision does not set forth a reasoning for the inadmissibility finding and that it does not allow the Committee to verify the extent to which the Court examined the complainant's application, including whether it conducted a thorough analysis of the

<sup>17</sup> *N.B. v. Russian Federation* (CAT/C/56/D/577/2013), para. 8.2.

elements related to the merits of the case.<sup>18</sup> The Committee therefore considers that it is not precluded by article 22 (5) (a) of the Convention from examining the communication.

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

9.3 The Committee notes the complainant's claim that he will not be afforded a fair trial in Rwanda. It also notes that the fact that a complainant may face trial in a judicial system that does not guarantee the right to a fair trial may constitute an indication of a risk of torture to which State party authorities should give consideration in their decisions on removal of a person from their territory.<sup>19</sup> In the present case, the Committee notes that the State party authorities examined the complainant's claims in this regard and found that he was not at risk of not being afforded the right to a fair trial in Rwanda. The Committee also notes that the complainant has not provided any additional specific information that would indicate that he would be exposed to treatment contrary to article 3 of the Convention if removed to Rwanda. It therefore finds that the complainant's claim in this part of the complaint is not sufficiently substantiated for the purposes of admissibility.

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

#### *Consideration of the merits*

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

10.2 In accordance with article 3 of the Convention, the Committee must determine whether or not there are substantial grounds for believing that the complainant was in danger of being subjected to torture upon his return to Rwanda. The Committee observes, at the outset, that in cases where a person has been expelled prior to the consideration of the complaint, the Committee assesses what the State party knew or should have known at the time of expulsion. Information obtained after the person's removal is relevant only to the assessment of what the State party actually knew, or could have deduced, about the risk of torture at the time the complainant was expelled.<sup>20</sup>

10.3 In order to determine whether or not there were substantial grounds for believing that the complainant would be in danger of being subjected to torture upon his return to Rwanda, the Committee must take into account all relevant considerations, pursuant to

<sup>18</sup> See *S. v. Sweden* (CAT/C/59/D/691/2015), para. 7.5; and *Mozer v. Switzerland* (CAT/C/57/D/584/2014), paras. 9.4–9.5.

<sup>19</sup> Committee against Torture, general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 29 (d).

<sup>20</sup> *Sogi v. Canada* (CAT/C/39/D/297/2006), para. 10.8; *Tebourski v. France* (CAT/C/38/D/300/2006), para. 8.1; *Agiza v. Sweden* (CAT/C/34/D/233/2003), para. 13.2; *Kalinichenko v. Morocco* (CAT/C/47/D/428/2010), para. 15.2; and *L.M. v. Canada* (CAT/C/63/D/488/2012), para. 11.2.

article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of return. The Committee recalls that the aim of the evaluation is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. The existence of a pattern of gross, flagrant or mass violations of human rights in a country therefore does not as such constitute a sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country, and additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.<sup>21</sup>

10.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22 (para. 11), according to which the non-refoulement obligation exists whenever there are “substantial grounds” for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing removal, either as an individual or a member of a group which may be at risk of being tortured in the State of destination. The Committee also recalls that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real”.

10.5 The Committee recalls that the burden of proof is on the complainant, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real (*ibid.*, para. 38). The Committee gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings. The Committee will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case (*ibid.*, para. 50).

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

10.7 The Committee notes that the complainant’s claims of being at risk of torture or ill-treatment if extradited were examined by the State party authorities prior to his extradition. It also notes that the complainant was extradited under the Transfer Law, which prescribes that any person transferred to Rwanda for trial under the law will be detained in accordance with international minimum standards of detention.<sup>22</sup> It further notes that the complainant has been detained in Mpanga Prison and Kigali Central Prison, both of which have been found to meet international minimum standards of detention.<sup>23</sup> The Committee notes that the complainant was extradited under a monitoring agreement and that regular monitoring

<sup>21</sup> See, *inter alia*, *S.K. and others v. Sweden* (CAT/C/54/D/550/2013), para. 7.3.

<sup>22</sup> Article 23 of the Transfer Law stipulates that: “Any person who is transferred to Rwanda by the [International Criminal Tribunal for Rwanda] for trial shall be detained in accordance with the minimum standards of detention stipulated in the United Nations Body of Principles for the Protection of all persons under any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December, 1998.” In accordance with article 24 of the Transfer Law it applies “*mutatis mutandis* in other matters where there is transfer of cases to the Republic of Rwanda from other States or where transfer of cases or extradition of suspects is sought by the Republic of Rwanda from other States”.

<sup>23</sup> European Court of Human Rights, *Ahorugeze v. Sweden* (application no. 37075/09), 27 October 2011, para. 92.

of his detention has been carried out by the International Commission of Jurists. It also notes that the claims made by the complainant are primarily based on the presumption that, as a person extradited on genocide charges, he would automatically be at risk of torture on return to Rwanda. It further notes, however, that the information presented by the complainant does not contain any specific reference to allegations of torture of Rwandan returnees under the Transfer Law to be tried for acts of genocide.<sup>24</sup> The Committee notes that the complainant has not provided any concrete information or evidence that would indicate that he would face a real, personal and foreseeable risk of torture if extradited to Rwanda, in violation of article 3 of the Convention. The Committee therefore concludes that the complainant's extradition to Rwanda would not expose him to treatment contrary to article 3 of the Convention.

11. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Rwanda by the State party does not constitute a violation of article 3 of the Convention.

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<sup>24</sup> See also, *L.M. v. Canada* (CAT/C/63/D/488/2012), para. 11.5.