



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. 575/2013*, **

<i>Communication submitted by:</i>	Saidi Ntahiraja (represented by Philip Grant of TRIAL International)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Burundi
<i>Date of complaint:</i>	10 December 2013 (initial submission)
<i>Date of adoption of decision:</i>	3 August 2015
<i>Subject matter:</i>	Torture in detention for the purpose of obtaining a confession
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture or cruel, inhuman or degrading treatment; obligation to systematically monitor interrogation practices; obligation to conduct a prompt and impartial investigation; right to an effective remedy; right to redress; prohibition against using confessions obtained under torture
<i>Articles of the Convention:</i>	1, 2 (1), 11, 12, 13, 14 and, subsidiarily, 16

1.1 The complainant in the complaint, dated 10 December 2013, is Mr. Saidi Ntahiraja, born in 1975 in Burundi. He claims that Burundi has violated his rights under articles 2 (1), 11, 12, 13 and 14, read in conjunction with article 1, and, subsidiarily, under article 16 of the Convention. The complainant is represented by Philip Grant of the Swiss anti-impunity association, TRIAL International.

1.2 On 17 December 2013, in application of rule 114 (1) of its rules of procedure, the Committee pointed out to the State party that the right to lodge complaints may not be called into question under national law and that the State party must effectively prevent any threat or act of violence to which the complainant or his family might be exposed, especially for having submitted the present complaint. The Committee requested the State party to report on measures taken to achieve that objective.

* Adopted by the Committee at its fifty-fifth session (27 July–14 August 2015).

** The following members of the Committee participated in the examination of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupta Domah, Felice Gaer, Abdoulaye Gaye, Claudio Grossman, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.



The facts as submitted by the complainant

2.1 Up to the time of the events described in the communication, the complainant worked as a serviceman in the Ngagara camp in Bujumbura (military police) and had the rank of captain. He is married and has two children.

2.2 According to the complainant, his arrest is to be seen against the background of human rights violations in Burundi, where no real intention to promote justice and end impunity has been shown. On 29 January 2010, the complainant went to one of the beaches in Bujumbura to meet friends. He and his friends heard gunshots and people screaming all of a sudden. More than 50 armed men suddenly appeared and fired in their direction, yelling at them not to move and to stay down on the ground. The complainant managed to recognize among the men certain officers of the National Intelligence Service and the Chief of Staff of the Burundian national army. A few minutes later, another group of about 60 men dressed in military uniforms, wearing red berets and armed with machine guns, Kalashnikov rifles and rocket launchers approached. They were firing in every direction. The officers told all the soldiers present on the beach to lie on the ground face down. The soldiers were then executed. The complainant was overpowered by the intelligence officers and the Commander of the First Military Region and his seven bodyguards. The complainant was accused of being the instigator of a coup d'état.

2.3 Although he was completely overpowered, on the ground, with his arms tied behind his back, the complainant was beaten by three public officials on the Commander's orders. They kicked him in the head and beat his back and legs with rifle butts. Some thirty minutes had passed since he was restrained before the beatings ceased. He was subsequently carted off on a military truck with other soldiers taken in for questioning. They reached the First Military Region at the border of the camp of the anti-aircraft unit at around 8.45 p.m.

2.4 A few minutes before the soldiers were placed in the truck, a journalist from Radio Publique Africaine arrived at the scene, after having been informed of what was happening on the beach. His account, including the fact that the complainant and other soldiers were beaten and abused before being taken away, confirms the complainant's account.¹

2.5 On arrival at the First Military Region, the Minister of National Defence and Veterans' Affairs, who was present at the scene, ordered the soldiers who had been called in for questioning to be handcuffed and taken to a room where they spent an hour without receiving treatment. The complainant was then taken to a room with three criminal investigation officers who conducted an initial interrogation. The complainant then underwent a further interrogation – this time in the office of the Commander of the First Military Region – in the presence of the Commissioner of the national police. When he denied all the accusations against him, the complainant was severely beaten on the back with a chair by the police Commissioner. He was forcibly stripped of his clothing and had to kneel on beer-bottle caps. He stayed in this painful position during the entire interrogation, which lasted more than three hours, while he continued to be beaten all over his body. In particular, he received a beating to his head and legs with a belt. Throughout this brutal interrogation, he was handcuffed with his arms pinned behind his back. He was also subjected to a mock execution. The Commissioner of the national police in fact pointed his pistol at his face. While loading it, he asked the complainant to answer in the affirmative to all the charges against him and to confess.

2.6 The Commissioner then severely beat him over the head with the butt of his pistol. He was bleeding so much that officers placed his jumper around his head to stop the bleeding. The Commissioner also gashed his left arm with the Kalashnikov bayonet. The scar is clearly visible to this day.² A fellow detainee who was arrested at the same time and under the same circumstances as the complainant was taken to the room where the complainant was at about 2 a.m. He testifies to the fact that the complainant showed visible signs of torture.³ After he witnessed the fate suffered by the complainant, the fellow detainee denounced him as the instigator of a coup d'état in order to avoid the same fate. The complainant then continued to

¹ This account is annexed to the communication.

² The photographs showing the scars are annexed to the initial submission.

³ The testimony of the fellow detainee is annexed to the initial submission.

be tortured, as a result of which he agreed to sign a statement acknowledging his involvement in plotting the coup d'état in question.

2.7 At approximately 4 a.m., the military prosecutor, Colonel N, informed about the acts of violence inflicted on the complainant during the interrogation, asked to see the Commissioner of the national police and demanded that the statement signed by the complainant be torn up.⁴ The military prosecutor has since had to flee the country following threats to his life.

2.8 The following evening (the day after his arrest), the complainant's home was searched, without a warrant being presented to his wife. The search spilled over into acts of violence against his wife and children.

2.9 On 1 and 2 February 2010, after several unsuccessful requests, representatives of a number of associations, including the Association for the Protection of Human Rights and Detained Persons, Human Rights Watch and the Ligue Iteka, finally succeeded in speaking with the complainant. The associations were able to obtain information on the circumstances surrounding the interrogation and on the torture suffered and to observe signs of his injuries. Their findings were publicized in the media.⁵

2.10 Between 30 January and 2 February 2010, the complainant was detained at the Kamenge military camp during the day and on premises of the National Intelligence Service at night. The complainant remained handcuffed throughout the entire period of detention. On 2 February 2010, he received a visit from representatives of the International Committee of the Red Cross.⁶ While in detention at the intelligence service, he underwent three other interrogations, during which intelligence officers placed him under intense pressure with death threats. At night, he had to take off all his clothes and slept on a very cold concrete floor with his arms and knees bound. He was denied visits of any kind.

2.11 On 5 February 2010, the complainant was transferred to Muramvya Prison. Only at that point were his handcuffs removed. He was once again interrogated by the military prosecutor about the events. He did not accept responsibility for preparing the alleged coup d'état and, moreover, signed a statement to that effect.

2.12 He was locked up at Muramvya Prison with 30 other individuals in a cell measuring 25 m², which was filled with smoke because of its proximity to the kitchen. The complainant developed health problems and suffered in particular from chronic swelling of the legs. He received no medical attention. The complainant was detained in the prison for 39 days in these conditions of extreme hardship. He received visits from representatives of the International Committee of the Red Cross twice.

2.13 On 2 March 2010, the complainant came before the first council chamber of judges of the Muramvya Regional Court. He was not assisted by counsel. During the hearing, he denounced the torture that he had suffered and made a request to see a doctor, which was denied. He was never informed of the judge's decision on the confirmation of his detention but was kept in detention.

2.14 On 16 March 2010, he was transferred to Mpimba Central Prison in Bujumbura where he was detained for 2 years and 9 months in equally appalling conditions of detention, with prison overcrowding only making the already poor sanitation conditions even worse. The cell in which he was placed with another prisoner measured about 4 m² and had only a small barred window. The food ration was 250 g of beans and cassava flour per day. He was visited on eight occasions by representatives of the International Committee of the Red Cross.

2.15 The complainant was tried before the military courts. The charges brought against him changed in the course of the proceedings, going from offences against the security of the command authority during the pretrial phase to military conspiracy when the case reached the trial court. Moreover, during the proceedings, several people argued that the soldiers were

⁴ The person in question, whom the complainant calls a military prosecutor, is the military investigating judge.

⁵ The local article on these findings is annexed to the communication.

⁶ All visits to the complainant by the International Committee of the Red Cross have been verified and the attestations are annexed to the communication.

not preparing a coup d'état but had rather begun to put forward claims relating to their conditions of work, in particular their wages. According to this line of thinking, the arrested soldiers were the target of a plot aimed at removing political opponents as the 2010 elections drew near.⁷ The correspondence sent by the Minister of National Defence and Veterans' Affairs to several military officers in late 2009 might reasonably leave the impression that the purpose of the arrests was to silence certain claims. For example, in the correspondence, the Minister mentioned a certain number of directives aimed at "ridding ourselves once and for all of non-commissioned officers and settling their claims for good". Among the directives to be carried out, the military officials were urged in this letter to "eliminate all of the non-commissioned officers who were fuelling this crisis" and "ruthlessly evict family members living in the barracks".⁸

2.16 On 12 August 2010, the War Council sentenced the complainant to 10 years' imprisonment for military conspiracy. In its decision, the War Council said that during the hearings the torture inflicted was reported on several occasions.⁹ On 13 August 2010, the complainant lodged an appeal with the Military Court. In his submission, the complainant mentioned the torture that he suffered against which no action was taken. In his summing-up on 27 January 2011, the public prosecutor went over the complainant's allegation and argued that he had not provided evidence to justify his claims.¹⁰ However, the Public Prosecutor's Office never conducted an investigation, nor did it call in a medical expert, despite the allegations of torture of which it was fully aware, even though it was fully entitled to do so under article 97 of Act No. 1/015 of 20 July 1999 on reform of the Code of Criminal Procedure. Moreover, the complainant's requests for medical attention and treatment were all denied.

2.17 On 28 January 2011, in his response to the summing-up of the prosecutor-general at the Military Court of Bujumbura, the complainant again reported the torture suffered at the hands of public officials and stated that, thus far, those allegations had not been addressed. On 3 March 2011, the Military Court nevertheless confirmed the decision of the War Council. The Court considered that no evidence had been provided to support the allegations of torture. However, it made no reference to the fact that the investigating judge should have launched an investigation into such serious allegations and should moreover, according to the law, have ordered a medical examination. Nor did it disclose the fact that, despite the complainant's numerous requests during the first days of his detention, he was not authorized to see a doctor.

2.18 On 7 March 2011, the complainant lodged an appeal against the decision with the Supreme Court.¹¹

2.19 While he was still awaiting a date for a hearing before the Supreme Court to be fixed and still being detained in Mpimba Prison, the complainant was granted conditional release on 24 December 2012 as part of overall efforts to ease overcrowding in the country's prisons.

2.20 In the first weeks following his release, the complainant went into hiding for fear of being subjected to further physical and mental suffering. He was threatened by intelligence officials, who kept him under regular surveillance.

The complaint

3.1 The complainant claims to be the victim of torture within the meaning of article 1 of the Convention. As regards severe physical and mental pain and suffering, the complainant claims that he was subjected to extremely serious ill-treatment that caused severe suffering and still affects his health today. At the time of his arrest, he was beaten until he bled for

⁷ The complainant attaches a set of news clippings to support this argument.

⁸ The letter is annexed to the communication.

⁹ The War Council judgment of 12 August 2010 attests to the fact that the complainant reported the torture suffered.

¹⁰ The summing-up of the Public Prosecutor's Office mentions the allegations of torture made by the complainant but does not respond to them.

¹¹ On 4 May 2015, the complainant's counsel informed the Committee of the fact that the Supreme Court dismissed the complainant's appeal in September 2014 (see para. 5.20).

30 minutes, even though he had already been restrained; during his interrogation on the first night, he was brutally beaten with various objects all over his body and on the head. During the interrogation, he was handcuffed with his arms behind his back, was forcibly stripped and had to kneel on beer-bottle caps and remain in this painful position for more than three hours while he was struck with a belt all over his body; and his left arm was gashed with a Kalashnikov bayonet. The complainant was also humiliated and insulted, kept in inhuman conditions and threatened with death a number of times. As mentioned, the facts were noted by several persons (see in particular paras. 2.4, 2.6, 2.9, 2.10 and 2.12). The complainant still bears marks of torture on his arms and knees. He also has a scar on his head that is still visible, more than four years after the events, which was the result of beatings with a pistol. Photographs in support of his complaint are before the Committee. Psychologically, he is still suffering from post-traumatic stress disorder.

3.2 The complainant was held for almost three years in deplorable conditions of detention, in turn at the anti-aircraft site, in detention cells of the National Intelligence Service, at the central prison in Muramvya and at the central prison in Bujumbura. He notes that the Committee has already considered that this type of treatment in detention, whether it involves the lack of medical attention and hygiene or prison overcrowding, is tantamount to torture.¹²

3.3 The complainant adds that he was subjected to torture for the express purpose of extracting a confession and punishing him. At the time of his arrest, he was under the full control of State officials, who were present in large numbers and very heavily armed. He had been completely overpowered by them and was lying face down on the ground with his arms tied behind his back. The acts committed against him had an unlawful objective, which was to punish him for a suspected offence. During questioning at the anti-aircraft base, he was tortured for refusing to admit to his involvement in mounting the alleged coup d'état and, in particular, to his participation in planning meetings. The abuse did not end until he agreed to sign the statement acknowledging his guilt. His suffering was inflicted by State officials, namely members of the national army and the National Intelligence Service, and continued at Muramvya Prison and, finally, at Bujumbura Prison. All the elements of torture are there, meaning that the State party violated his rights under article 1 of the Convention.

3.4 Subsidiarily, the complainant alleges that the acts committed are at the very least in breach of article 16 of the Convention.

3.5 The claimant also alleges a violation of article 2 (1), read in conjunction with article 1. In fact, the applicant was brought before a judge to be remanded in custody 32 days after his arrest, well beyond the 7 days provided for by law. He was not allowed to have any visitors during the first few days of his detention. He did not have access to a lawyer during the first few weeks following his arrest. In addition, although he indisputably required medical attention because of the torture inflicted on him, he was not examined by a doctor or given any treatment for the duration of his detention. By denying the complainant access to health care, the State party prevented the issuance of a medical certificate that would have made it possible to record the torture he had suffered and thereby failed to ensure the complainant's right to seek justice effectively.

3.6 The State party has not met its obligation to investigate the acts of torture and to bring the perpetrators to justice (see para. 2.13 et seq.). To this day, despite the numerous attempts to report the torture, no investigation has been launched to shed light on the facts and identify those responsible. Notwithstanding the complainant's allegations, the investigating judge and the judges handling the case have never requested an expert opinion. The complainant has never been granted a hearing and the perpetrators have never been investigated by the law, despite being easily identifiable. Moreover, the administrative and State authorities were alerted by the complainant and by other institutions acting on his behalf. Thus, the Burundian authorities were informed of the torture inflicted on the complainant fully and through a variety of channels, and could therefore not have been unaware of it. Members of the National Intelligence Service are among those responsible for the acts of torture; this makes it all the

¹² The complainant refers to communications No. 353/2008, *Slyusar v. Ukraine*, decision adopted on 14 November 2011; and No. 172/2000, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 16 November 2005.

more dangerous for the complainant to pursue domestic remedies, especially given the significant pressure that they can exert.

3.7 The complainant alleges that the State party also violated article 11 because it did not properly supervise his treatment while in detention. Since he was being detained on the orders of high-ranking army and police officers, it could not have been expected that they would prevent the acts committed by their subordinates. Moreover, there were several procedural irregularities, particularly in the complainant's arrest, the search of his home and his detention. The complainant was not shown any warrants; his house was searched without a warrant, late at night in conditions that his family found traumatic; the complainant was not allowed visitors during the first days of his detention; he did not have access to counsel during the first weeks after his arrest; lastly, he was not brought before a judge to be placed in pretrial detention until 32 days after his arrest. The complainant recalls that there is no effective independent mechanism to monitor places of detention in Burundi. In 2006, the Committee expressed concern at the lack of systematic and effective monitoring of all places of detention, notably through regular unannounced visits by national inspectors and a mechanism for legislative and judicial monitoring (see [CAT/C/BDI/CO/1](#), para. 19).

3.8 The complainant argues that the State party violated articles 12 and 13 of the Convention. It breached its obligation to carry out a prompt and impartial investigation, even though the authorities were clearly informed of the acts of torture through the public denunciations and direct appeals of human rights organizations, which were widely reported in the media, and through the numerous complaints lodged by the complainant himself with the various judicial authorities, all of which were competent to open inquiries into the serious allegations. In addition, the State party did nothing to protect the complainant from intimidation arising out of the legal action that he had initiated before the judicial authorities.

3.9 Lastly, the complainant alleges that the State party violated article 14 of the Convention because, five years later, it has still not honoured its obligation to ensure his right to reparation. Since being tortured, the complainant has not benefited from measures to ensure the fullest possible physical, psychological, social and financial rehabilitation. He remains in a highly vulnerable situation. He has not benefited from reintegration measures, either. He has not been reinstated in the army and is finding it very difficult to reintegrate professionally and socially. None of the perpetrators of the torture have been prosecuted, still less punished. Their actions have enjoyed impunity, and the State party has not adopted any measures to guarantee the non-repetition of the violations.

State party's observations on admissibility and the merits

4.1 On 28 April 2014, the State party submitted its observations on the admissibility and merits of the communication.

4.2 The State party contests admissibility on the grounds that domestic remedies have not been exhausted, inasmuch as the complaint submitted by the complainant to the Attorney General of the Republic is under consideration and the case is thus not closed. Moreover, the complainant has lodged an appeal in cassation with the Supreme Court of Burundi against the judgment of the Military Court. As at the date of submission of the observations, the appeal was still pending.¹³

4.3 As regards the merits, the State party denies all the complainant's allegations, including the allegations of torture, which were not corroborated by any evidence. Moreover, contrary to what he claims, the complainant was recognized as being the ringleader and caught in flagrante delicto committing the acts with which he was charged.

4.4 The State party notes that the complainant seeks to describe a prevailing environment in which impunity has been a constant in Burundi for many years up to the present day, in order to depict himself as a victim of impunity for that reason.

4.5 As for the allegations of torture and the evidence to which the complainant refers, the State party's response is that the statement by his fellow prisoner (see para. 2.6) could not be considered evidence, in view of the fact that the co-defendant had no choice but to support

¹³ The Supreme Court subsequently delivered its judgment (see para. 5.20).

his accomplice, even if mistakenly, simply through a feeling of solidarity. Moreover, the criminal investigation officers who interviewed and interrogated him had no need to torture the complainant, since another co-defendant had just disclosed what had occurred.

4.6 With regard to the complainant's transfer between various places of detention, this is a perfectly normal procedure to achieve greater efficiency in the investigation. It is not intended to create bad prison conditions for suspects or inflict any kind of torture on them thereby.

4.7 The accounts given by journalists and human rights organizations, and the tangible proof that they provided, refer only to the operations conducted by the military at the time of the complainant's arrest, which led to injuries simply because the soldiers involved in the coup, of whom the complainant was one, put up resistance. The journalist who reported the facts that are alleged to have occurred during the arrest arrived only at the end of the operation, just before the complainant and the other suspects were taken away.

4.8 The bad detention conditions experienced by the complainant were no different from those experienced by other detainees in Burundi, which are due simply to the lack of resources and, sometimes, prison overcrowding. The bad detention conditions, which the State party untiringly seeks to address, do not constitute an act of torture specially reserved for the complainant. Moreover, the complainant does not give any example of torture that he suffered in these prisons.

4.9 The complainant's allegations lack substance, as shown by the various decisions handed down by the courts, which convicted the suspects, including the complainant, and sentenced them to long terms of imprisonment. The complainant nonetheless applied to the Attorney General, who is required to consider that complaint, even though it relates to relatively old facts and is clearly complex. Despite this ongoing procedure, the complainant immediately brought the case before the Committee, ignoring his obligation to exhaust domestic remedies.

4.10 With regard to the alleged torture, the State party reiterates its view that human rights organizations have simply endorsed the complainant's statement, without providing solid evidence; that the hardship described by the complainant was simply the consequence of the treatment he underwent at the time of his arrest; and that, during his arrest, the military authorities who faced resistance from the arrested persons, including the complainant, cannot be accused of any deliberate acts. The State party considers that the insults directed at the complainant and the other suspects must be taken in context and do not constitute acts of torture. The complainant himself admits that, following his arrest, he was "overpowered", which confirms that there had been fighting at the place of arrest and that injuries suffered during such confrontations cannot be described as torture.

4.11 The complainant should be grateful for having benefited from the clemency of the State party, which granted him conditional release on 24 December 2012.

4.12 The mock execution during questioning, mentioned by the complainant, cannot be described as an act of torture but should be seen rather as a form of "dissuasion". The State party also denies the complainant's allegation that he did not receive any medical care after his arrest, even though, in the State party's view, it is internationally recognized that a detainee has the right to health care. Moreover, the complainant received the necessary care when his state of health gave cause for concern.¹⁴

4.13 With regard to the letter sent by the Minister of Defence to a number of senior military officers at the end of 2009 (see para. 2.15), the State party notes that, contrary to the concerns expressed by the complainant, the Minister's letter was not intended to target a particular individual but was aimed at a group of which the complainant was the leader. The State party adds that the trial of the complainant and his co-defendants was conducted in accordance with domestic law and that the defendants had the services of a lawyer and enjoyed their right

¹⁴ The State party does not provide any evidence that the complainant received the mentioned medical care.

to a defence. Despite the gravity of the acts in question, the State party showed clemency in granting the complainant and his co-defendants conditional release.

4.14 With regard to article 11, the State party notes that all detainees are entered in a register, whether in police stations or prisons, that they have the right to legal aid, including free legal aid, and that the complainant was not denied that right. Contrary to his allegations, the complainant received visits from his family, like all other prisoners. He even received permission to go out. Moreover, he sought a judicial remedy by appealing his sentence and had the opportunity to write to the administrative authorities and the heads of various human rights organizations.

4.15 As regards the public right of action, the State party notes that it could not require the investigating judge accused of torture to open an investigation into himself, that it was for the complainant to lodge a complaint and that the complainant had indeed lodged a complaint with the Attorney General, who would not fail to carry out an investigation and to conclude it with a fair decision, after a scrupulous consideration of the facts. The cooperation of the complainant with such an investigation would seem to be unlikely, given that he considered domestic remedies to be of no use, having brought the case to the Committee and thus effectively abandoning his complaint to the Attorney General.

4.16 Contrary to the complainant's allegations, the State party has adopted every possible legislative or other measure to prevent the practice of torture. The Criminal Code adopted in 2009 devotes a chapter to the definition and punishment of the practice of torture and other cruel, inhuman or degrading treatment (Criminal Code, arts. 204–209), which represents one of the most significant innovations introduced to the Code.

4.17 As regards article 12, the State party reiterates its view that, in the absence of evidence of the alleged torture during questioning, the judicial authorities could not order an investigation without being provided with basic information, particularly since the complainant's allegations were only made in order to alert public opinion and avoid the proceedings instituted against him.

4.18 In view of the fact that torture has not been proved in the case of the complainant, the State party has not committed any violation of article 13. The allegation should therefore be rejected, subject to the result of the investigations being carried out by the Attorney General, if the complainant succeeds in providing any evidence for his accusations.

4.19 In relation to article 16, the complainant's allegations are restricted to claims about the overcrowding in the prisons where he was held. This overlooks the fact that he was not alone in these places and that he thus shared his difficulties with large numbers of other prisoners.

4.20 As for the protection measures requested by the complainant on the grounds of possible reprisals against him, the State party notes that the complainant was able to take his complaint to the Attorney General without being concerned for his physical safety, that the State party showed clemency by granting him conditional release and that he remains at liberty to come and go. The State party emphasizes its obligation to protect persons living in its territory and notes that no one who has submitted a complaint to the Committee has suffered any harassment. The adoption of special measures would be inappropriate.

Complainant's comments on the admissibility and merits of the complaint

5.1 On 17 August 2014, the complainant noted that the State party had not fulfilled its procedural obligation to inform the Committee of the exact status of the domestic proceedings concerning him.

5.2 The State party implies that the complainant cannot bring a complaint for torture or attempt to obtain justice because he has been released and that he has therefore defied the authorities by referring the matter to the Committee. However, according to the complainant, such a view is unacceptable, given the seriousness of the acts in question. Article 2 (2) of the Convention states unequivocally that no exceptional circumstances whatsoever may be invoked as a justification of torture and refers specifically, by way of example, to situations of internal political instability. By suggesting that the complainant's release – which, in any event, met established criteria that should be applied objectively and impartially – should

have precluded the matter from being referred to the Committee, the State party encourages continued impunity for those responsible for acts of torture and seeks to discourage victims from initiating proceedings to obtain justice. The complainant has only exercised a right recognized by the State party itself under article 22 of the Convention.

5.3 Regarding the State party's argument in paragraph 4.15, the submission of the complaint to the Committee does not in any way entail a discontinuation of the complaint lodged with the judicial authorities of Burundi; it is a response to the passivity of the judicial authorities in the face of the many unsuccessful steps taken by the complainant.

5.4 With respect to the appropriateness of protection measures, those responsible for the acts of torture are senior officers of the National Army and the National Intelligence Service, who wield considerable power and influence. The complainant therefore has good reason to fear reprisals, especially in view of the widespread impunity enjoyed by the perpetrators of such crimes, as described at length in the initial submission. The current situation, which has deteriorated considerably, has been criticized by many human rights organizations and the United Nations itself.¹⁵

5.5 The complainant acknowledges that Burundi has complied fully with the interim measures adopted in all the relevant proceedings before the Committee. This is further proof of the appropriateness and value of such measures; the State party is therefore invited to continue to fulfil its obligations in that regard.

5.6 With regard to the exhaustion of domestic remedies, article 22 provides that complainants must be released from this requirement when their application has been unreasonably prolonged. The Committee has considered that a delay of 15 months before initiating an investigation into allegations of torture, which then failed to yield a result in two years, is an unreasonably long delay that justifies the complainant's failure to exhaust domestic remedies.¹⁶ The Committee has considered that even shorter delays are also unreasonable. It has thus concluded that a delay of 19 days is excessive with regard to the requirement to conduct prompt investigations.¹⁷ Accordingly, it is inadmissible to argue that allegations made on 2 March 2010 – that is, more than five years ago – are still being investigated. This undoubtedly constitutes an excessive delay that should lead the Committee to act in accordance with its jurisprudence and release the complainant from the obligation to exhaust domestic remedies.

5.7 Furthermore, it should be noted that the State party has failed to provide any evidence whatsoever that the investigation is ongoing, even though it alone is able to produce such material as investigation documents, records and minutes of meetings. It is therefore legitimate to call into question the very existence of any such investigation. It is not necessary, for the purposes of article 12 of the Convention, for a formal complaint to have been lodged or even an express statement of intent to institute and sustain a criminal action to have been made.¹⁸

5.8 Lastly, in its observations the State party appears undecided as to its intention to fully investigate this case. On the one hand, it calls on the Committee to refer the complainant's case back to the judicial authorities of Burundi; on the other hand, inasmuch as it considers that the complainant has discontinued the proceedings by submitting his case to the Committee, it states that it is inappropriate to ask Burundi to open an investigation. This lack of clarity further reinforces the view that domestic remedies offer the complainant no prospect of success and that they are therefore ineffective.

¹⁵ The complainant refers to, for example: "Burundi: Pillay denounces increasing restrictions on political and civil rights ahead of 2015 elections", 7 March 2014.

¹⁶ Communication No. 8/1991, *Halimi-Nedzibi v. Austria*, decision adopted on 18 November 1993, para. 6.2.

¹⁷ Communication No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.2.

¹⁸ The complainant refers among other things to communication No. 6/1990, *Parot v. Spain*, decision adopted on 2 May 1995; and to *Blanco Abad v. Spain*.

5.9 With regard to the merits, contrary to what is stated by the State party, the complainant has produced evidence in support of his claims, as was amply demonstrated in the initial complaint. First, the testimony of the journalist, who does not claim to have been present throughout the operation but who did witness at first hand part of the events, sheds some light on the worrying condition of the soldiers who were arrested. The journalist also states that when the soldiers had been forced to the ground and overpowered, they continued to be trampled underfoot.

5.10 Furthermore, the other detainee mentioned by the complainant has himself submitted a complaint to the Committee (communication No. 553/2013). In addition, the representatives of the human rights organizations who are referred to did not base their assertions on what the complainant said but on what they found when they visited the anti-aircraft camp and met the detainees, including the complainant. Following their interview with the latter, the non-governmental organizations (NGOs) stated that signs of torture were visible on his body.

5.11 The State party makes no reference to the other evidence produced, including the photographs showing the physical traces still present several years after the events and which correspond to the description of the acts of torture given by the complainant, in particular the fact that he was forced to kneel on beer-bottle caps and that he was beaten about the head and other parts of the body. Accordingly, it must be concluded that in the absence of observations from the State party, the validity of this evidence cannot be called into question.

5.12 With regard to the mock execution, the Committee against Torture has previously noted that pointing a firearm at a person's head is a method of torture (see [CAT/C/75](#), para. 143). In addition, both the Committee against Torture and the Human Rights Committee have on several occasions held that threats, in particular against a person's life, in combination with other acts, amount to torture (see [A/52/44](#), para. 257).¹⁹ Furthermore, the use of insults against a person who is under the control of public officials increases the degree of suffering and the degrading nature of the treatment and is thus a contributing factor to the ill-treatment being classified as torture.

5.13 Regarding the conditions of detention, the Committee has already held that poor conditions of detention, in particular a lack of care – and, by extension, the inadequacy of such care – a lack of hygiene and prison overcrowding, should be taken into account when determining whether a detainee has been subjected to torture.²⁰ However, international recognition of the right of detainees to receive care is unfortunately no guarantee that this principle is respected in practice. The complainant maintains that he did not receive the care that his condition required. Likewise, the argument that all detainees are exposed to the same conditions of detention, which are due to a lack of resources, does not justify the complainant's situation and in no way exempts the State party from its responsibilities in that regard.

5.14 The complainant maintains that the acts of torture he suffered at the time of his arrest – what the State regrettably refers to as a mishap in order to downplay the seriousness of those acts – were inflicted in order to punish him. In a recent decision against Burundi, the Committee found that the beating of a man by a large group of police officers, who then proceeded to arrest him, outside the context of either an interrogation or detention, was carried out with the objective of punishing and intimidating him and constituted acts of torture within the meaning of article 1 of the Convention.²¹ Furthermore, the complainant was unarmed, a fact that has not been contradicted or even mentioned by the State party.

5.15 As for the correspondence sent by the Minister of Defence, the fact that it referred to the whole group of which the complainant was a member in no way diminishes its aggressive nature. The correspondence still demonstrates that the acts were intentional and planned.

¹⁹ The complainant refers, among others, to communications No. 258/2004, *Mostafa Dadar v. Canada*, decision adopted on 23 November 2005; and No. 279/2005, *C.T. and K.M. v. Sweden*, decision adopted on 17 November 2006. Human Rights Committee, communication No.1353/2005, *Njaru v. Cameroon*, Views of 19 March 2007, paras. 3.1 and 6.1.

²⁰ The complainant refers to, inter alia, *Slyusar v. Ukraine* and *Dimitrijevic v. Serbia and Montenegro*.

²¹ Communication No. 503/2012, *Ntikarahera v. Burundi*, decision adopted on 12 May 2014, para. 6.2.

5.16 Contrary to the State party's assertions, the complainant maintains that he was not brought before the judge within the legal time limit for a hearing to confirm his detention; that he was not allowed to receive visits during his first few days in detention and that, in addition, an NGO was initially denied access to the soldiers; that he had no access to a lawyer during his first few weeks in detention and that his appeals related to the proceedings against him, not to his complaint of torture; that he did not receive proper medical care; and, lastly, that his complaint was not considered immediately with a view to opening an investigation and that he has received no reparation.

5.17 With respect to articles 12 and 13, the authorities should have opened an investigation of their own motion on the basis of the allegations made repeatedly by the complainant; under those articles, the authorities should have proceeded to a prompt and impartial investigation. For the reasons already given above, article 14 was also violated.

5.18 Lastly, with regard to article 16, as mentioned earlier, the argument that all detainees are exposed to the same conditions of detention does not justify the complainant's situation and in no way exempts the State party from its responsibilities in that regard. The complainant also refers to the Committee's recent jurisprudence concerning Burundi, in which it concluded that the poor conditions of detention to which the complainant was exposed by the Burundian authorities constituted a violation of article 16 of the Convention and therefore amounted to inhuman and degrading treatment.²²

5.19 In the light of the foregoing, the complainant asks the Committee to find a violation of the above-mentioned articles; to request the State party to conduct a prompt, thorough and effective investigation into the torture he suffered; to request the State party to provide him with an effective remedy, including measures of compensation for the material and moral harm caused, restitution, rehabilitation, satisfaction and guarantees of non-repetition; and to request the State party to amend its legislation so as to ensure that acts of torture are not subject to a statute of limitations, irrespective of the context in which they are committed, and that the amended legislation makes express provision for the obligation of the authorities to conduct, of their own motion and immediately, independent and impartial investigations into reports of torture committed by their officials.

5.20 On 4 May 2015, the complainant's counsel informed the Committee that on 30 July 2014 a hearing had finally been held before the Supreme Court in the context of the appeal in cassation, but the parties concerned, including the complainant, were not summoned to the hearing. He adds that the Supreme Court dismissed the appeal in a judgment delivered in September 2014. The decision was never formally notified to the complainant, who learned of it through another convicted defendant who did attend the hearing.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, 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 contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies, as an appeal for judicial review of the complainant's conviction was pending and the investigation of the Attorney General of the Republic into the complainant's allegations of torture was still under way. With regard to the first objection to admissibility, the Committee notes that, since the submission of observations by the State party, the Supreme Court has delivered its judgment dismissing the appeal of the complainant and his co-accused.²³ The Committee notes that the State party has

²² *Ntikarahera v. Burundi*, para. 6.6.

²³ On 4 May 2015, the complainant's counsel informed the Committee that a hearing had in fact been held before the Supreme Court on 30 July. The complainant and other individuals concerned were not summoned, however, apart from one of the co-accused, who shared the information. The Supreme Court dismissed the appeal in a judgment delivered in September 2014. However, the persons

not refuted this. In these circumstances, the Committee has no need to determine the usefulness of such an appeal with regard to the complainant's allegations of torture. It therefore considers that this objection to admissibility is no longer relevant.

6.3 As for the second objection to admissibility, the Committee notes that the complainant's allegations of ill-treatment have been brought to the attention of the competent national authorities on a number of occasions. Furthermore, the State party did not dispute that at his trial, which began in March 2010, the complainant reported having been tortured in the course of his arrest and during his interrogations. The Committee therefore finds that the competent authorities have been notified of the complainant's allegations of torture. It recalls that the rule concerning the exhaustion of all domestic remedies does not apply if the application of these remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief.²⁴ The Committee considers that the complainant has made reasonable efforts to exhaust domestic remedies, but without success. According to the minutes and records of the hearing, copies of which were submitted to the Committee, the Public Prosecutor's Office was notified of the allegations made by the complainant in March 2010. However, to date, it appears not to have conducted any investigation or taken any other measures in this regard. The Committee therefore considers that the application of the remedies has been unreasonably prolonged and that it is not precluded by the requirements of article 22 (5) (b) of the Convention from considering the communication on the merits.

6.4 The Committee thus concludes that the communication is admissible under article 22 (5) (b) of the Convention.

Consideration of the merits

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

7.2 The Committee notes the complainant's allegation that, during his arrest by agents of the National Intelligence Service and the Commander of the First Military Region and his seven bodyguards on 29 January 2010, he was beaten, for 30 minutes until he bled, even though he had already been overpowered; that during his interrogation on the first night, he was brutally beaten with various objects all over his body and about the head; that, throughout the interrogation, he was handcuffed with his arms behind his back, forcibly stripped and forced to kneel on beer-bottle caps and remain in this position for more than three hours, while being struck with a belt all over his body; and that his left arm was gashed with a Kalashnikov bayonet. The Committee notes the complainant's allegation that he was also humiliated and insulted, kept in inhuman conditions and threatened with death a number of times. The Committee notes that, according to the complainant, this treatment during his arrest and interrogations was intended to punish him and to extract a confession from him.

7.3 The Committee notes the State party's reply that this treatment of the complainant during his arrest, which left marks on his body, was due to the resistance that he put up, leading to his forcible restraint. It notes the State party's reply that the complainant failed to provide evidence of any torture during his interrogation. The Committee also notes the State party's reply that the complainant's mock execution was not tantamount to torture, but rather a form of "dissuasion".

7.4 The Committee notes the various pieces of evidence submitted by the complainant in support of his communication to the Committee, which include testimony from a journalist who was present at the time of his arrest and from a fellow prisoner, reports from human rights organizations that had access to the complainant while he was in detention and photographs of the marks on the complainant's body that corroborate his allegations. The Committee notes, with regard to the treatment of the complainant during his arrest and the

concerned were not notified of the decision. The counsel could therefore not provide a copy of the decision.

²⁴ Communication No. 441/2010, *Evloev v. Kazakhstan*, decision adopted on 5 November 2013, para. 8.6.

death threats he received during his interrogation, that the State party merely denied that such treatment might constitute torture, without denying that such treatment had been inflicted.

7.5 On the basis of information before it, the Committee concludes that all the criteria for torture have been met and that the treatment inflicted on the complainant during his arrest and interrogations constitutes a violation of article 1 of the Convention.

7.6 The Committee also notes that the complainant was not only abused but also humiliated and punished, as he was forced, during one of the interrogations, to remove all of his clothing and to sleep with his arms and knees bound on a very cold cement floor; and that the State party has not refuted these allegations. The Committee also notes the allegation that the treatment was inflicted in the context of the complainant's not having access to a judge for 32 days or to visitors, the presence of a lawyer or medical care; and that, apart from denying these serious allegations, the State party has not provided evidence to disprove them. The Committee concludes that the humiliation and extreme conditions of detention, as well as the abuse inflicted and the apparent lack of medical care provided following the abuse, also constitute a violation of article 1 of the Convention.

7.7 As for article 16 of the Convention, the Committee notes that, following the interrogations that were conducted in worrying conditions of detention, the complainant was held for 39 days at Muramvya Prison, which was overcrowded and provided neither proper medical care nor a review of his pretrial detention by a judge; that he was then transferred to Mpimba Central Prison in Bujumbura, where he was held with another person for 2 years and 9 months in a cell measuring approximately 4 m², with only a small barred window; and that the food ration was, according to the complainant, minimal. The Committee notes that the State party recognizes the worrying conditions of detention in which the complainant was held. The Committee also recalls the alarm expressed in its latest concluding observations on Burundi with regard to prison overcrowding in the country (see [CAT/C/BDI/CO/2](#), para. 15). In the circumstances of the case, the Committee considers that all the conditions of detention to which the complainant was subjected between his arrest on 29 January 2010 and his conditional release constitute a separate violation of article 16 of the Convention.

7.8 The Committee notes the complainant's allegation that the State party failed in its obligations under article 2 (1), read in conjunction with article 1 of the Convention, to prevent and punish the acts of torture inflicted on the victim. The Committee notes in this regard that, according to the complainant, he was not brought before a judge for placement in pretrial detention until 32 days after his arrest, he was not allowed to have any visitors during the first few days of his detention and he did not have access to a lawyer during the first few weeks following his arrest or to medical treatment, even though he needed it.²⁵ The Committee notes that the State party merely dismissed the complainant's allegations as unsubstantiated, without ever providing evidence or documents showing that the complainant had been brought before a judge within the time limit prescribed by law, or documents or registers showing that the complainant was visited by lawyers or doctors. In the light of the information before it, the Committee finds that the complainant was and continues to be the victim of a violation of article 2 (1), read in conjunction with article 1 of the Convention.

7.9 The Committee notes the complainant's argument that article 11 was violated, in that the State party did not keep under review his treatment during detention, as required, and that several procedural irregularities took place during his arrest and detention, without either of these issues being addressed by the judicial authorities. The Committee recalls its latest concluding observations on Burundi, in which it expressed concern about the excessive length of time during which people can be held in police custody; numerous instances in which the allowable duration of police custody has been exceeded; failures to keep registers on persons in custody or failures to ensure that such records are complete; failures to comply with fundamental legal safeguards for persons deprived of their liberty; the absence of provisions that guarantee access to a doctor and, for persons of limited means, access to legal assistance; and the excessive use of pretrial detention in the absence of regular reviews of its legality and of any limit on its total duration (see [CAT/C/BDI/CO/2](#), para. 10). In the present

²⁵ Communications No. 269/2005, *Ali Ben Salem v. Tunisia*, decision adopted on 7 November 2007, para. 16.4; and No. 402/2009, *Abdelmalek v. Algeria*, decision adopted on 23 May 2014, para. 11.5.

case, the complainant appears to have been held without any judicial oversight before being brought before a judge 32 days after his arrest; during the first days of his detention, he had no access to a lawyer or to his family; and during the same period he was allegedly tortured. None of these allegations has been rebutted by the State party through a document establishing that the detention of the complainant was placed under review. In the absence of evidence refuting the complainant's allegation, the Committee finds a violation of article 11 of the Convention by the State party.

7.10 As to articles 12 and 13 of the Convention, the Committee has taken note of the complainant's allegations that, despite numerous efforts to report the acts of torture, no investigation has ever been launched to shed light on what happened or identify the perpetrators in this case; that the investigating judge and the judges handling the case never requested an expert opinion, despite the complainant's allegations; that the Attorney General of the Republic has not, to date, conducted any investigation, even though acts of torture were reported at the first hearings of the complainant's trial in March 2010. The Committee notes the State party's argument that it is a complex case and that the Public Prosecutor's Office should be allowed to conduct the investigation into these events. The Committee recalls its long-standing jurisprudence according to which the State party has the obligation to proceed to a prompt and impartial investigation wherever there are reasonable grounds to believe that an act of torture has been committed.²⁶ In this regard, the Committee notes, however, that five years after the event, there appears to have been no follow-up to the complaint lodged by the complainant and that, moreover, the State party has not provided evidence of any investigation into this matter. The Committee considers that so long a delay in initiating an investigation into allegations of torture is patently unjustified and clearly breaches the State party's obligations under article 12 of the Convention, which requires it to proceed to a prompt and impartial investigation wherever there are reasonable grounds to believe that an act of torture has been committed. By failing to meet this obligation, 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 to such a complaint by launching a prompt and impartial investigation.²⁷

7.11 Regarding the alleged violation of article 14 of the Convention, the Committee notes the complainant's claim that the State party has deprived him of any possibility of redress by failing to act on his complaint and by not proceeding to a prompt investigation. The Committee notes that the State party merely stated that, in the absence of a substantiated act of torture, no right to redress could be claimed. The Committee recalls its general comment No. 3 (2012) on the implementation of article 14 by States parties,²⁸ specifically the fact that redress for acts of torture should cover all the harm suffered by the victim and encompass, among other measures, restitution, compensation and guarantees of non-repetition of the violations, taking into account the circumstances of the individual case.²⁹ Given the lack of a prompt and impartial investigation despite the complainant's numerous claims that he was tortured, which were corroborated by various pieces of evidence none of which was refuted by the State party, the Committee finds that the State party is also in breach of its obligations under article 14 of the Convention.

8. The Committee, acting under article 22 (7) of the Convention, concludes that the information before it reveals a violation by the State party of articles 1 and 2 (1), read in conjunction with articles 1, 11, 12, 13, 14 and 16 of the Convention.

9. In accordance with rule 118 (5) of its rules of procedure, the Committee urges the State party to: (a) open an impartial investigation into the incidents in question, with a view to bringing to justice those responsible for the treatment inflicted on the complainant; (b) provide the complainant with appropriate reparation, including measures of compensation for the material and moral harm caused, restitution, rehabilitation, satisfaction and guarantees of non-repetition; (c) take all necessary measures to prevent any threats or acts of violence to

²⁶ *Ali Ben Salem v. Tunisia*, para. 16.7; and *Abdelmalek v. Algeria*, para. 11.7.

²⁷ Communication No. 376/2009, *Bendib v. Algeria*, decision adopted on 8 November 2013, para. 6.6; and *Ntikarahera v. Burundi*, para. 6.4.

²⁸ See general comment No. 3 (2012), para. 2.

²⁹ *Ali Ben Salem v. Tunisia*, para. 16.8.

which the complainant or his family might be exposed, in particular as a result of having lodged the present complaint; (d) inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above, including compensation for the complainant and the measures to prevent any reprisals being taken against him or his family.
