



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

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Committee against Torture

Communication No. 553/2013

Decision adopted by the Committee at its fifty-fifth session (27 July-14 August 2015)

<i>Submitted by:</i>	X represented by Track Impunity Always (TRIAL)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Burundi
<i>Date of complaint:</i>	10 May 2013 (initial submission)
<i>Date of decision:</i>	10 August 2015
<i>Subject matter:</i>	Torture committed by police officers
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Torture and other cruel, inhuman or degrading treatment or punishment; obligation to systematically monitor interrogation practices; obligation of the State party to ensure that its competent authorities conduct a prompt and impartial investigation; right of complaint; right to obtain redress; use of a statement made under torture as evidence in proceedings
<i>Articles of the Convention:</i>	Articles 2 (para. 1), 11, 12, 13, 14 and 15, read in conjunction with articles 1 and 16 of the Convention

[Annex]



Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fifth session)

concerning

Communication No. 553/2013*

Submitted by: X represented by Track Impunity Always (TRIAL)

Alleged victim: The complainant

State party: Burundi

Date of communication: 10 May 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 10 August 2015,

Having concluded its consideration of complaint No. 553/2013 submitted on behalf of X under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1.1 The complainant is X, born in 1974 in Burundi. He claims to be a victim of a violation of articles 2 (para. 1), 11, 12, 13, 14 and 15, read in conjunction with article 1 or, alternatively, with article 16 of the Convention. The complainant is represented by counsel.

1.2 On 17 June 2013, in accordance with rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party to adopt effective measures, throughout the duration of the Committee's consideration of the complaint, to prevent any threats or any acts of violence to which the complainant or his family might be exposed, in particular as a result of having lodged the present complaint.

The facts as submitted by the complainant

2.1 When the facts occurred, X was a senior sergeant major in the national army of Burundi and was working at a military camp in Bujumbura (run by the military police). On 29 January 2010, at about 4.45 p.m., he went to the central market in Bujumbura. When he arrived at the market, he met three of his friends — B.N., E.E. and O.M., all of whom were non-commissioned officers. The three men proposed a foot race to one of the beaches on the shores of Lake Tanganyika, next to the port of

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

Bujumbura. At about 5.45 p.m., when the four friends were on the beach, they suddenly heard shots fired in their direction. They tried to flee but then saw some 30 police officers running towards them, some in plain clothes — who they later found out were agents of the National Intelligence Service (SNR) — and others in military uniforms. The officers ordered all military personnel to remain at the scene. The complainant and the 12 other soldiers who were also there on the beach obeyed the order.

2.2 The complainant and the other soldiers were then rounded up in the middle of the beach before being quickly separated and each placed in the charge of two or three State officials. X was roughly seized by three officials, of whom one was a military officer and the other two SNR agents in plain clothes. Each SNR agent pointed a gun at each of the complainant's temples, while the military officer stood behind him, insulting him and accusing him of being a traitor and planning a coup d'état. The complainant was pushed to the ground and fell to his knees. Once he had been completely overpowered, he was brutally beaten; he received kicks to the chest, ribs and back to the accompaniment of violent insults, and also received blows to the head.

2.3 Two SNR agents ripped off his T-shirt, which they then tore apart so they could use it to tie his hands behind his back. They ripped the laces from his shoes to reinforce the bonds around his wrists. Once his hands were bound behind his back and he was completely at the mercy of the State officials, they started beating him again, kicking him all over his body. They took his mobile phone, a sum of 33,000 Burundi francs (about US\$ 20) and his identity card. When he protested, the officials began hitting him on the head again, sometimes with the butts of their rifles. As a result of this violent attack, the complainant lost consciousness for several minutes. When he came round, he felt sharp pain all over his body and noticed swelling in some places.

2.4 Colonel E.N. then ordered the State officials to separate the detained soldiers once again and to shoot anyone who moved. About 20 minutes later, the State officials bundled the complainant and the other detained soldiers into the back of a van. A few minutes before they were forced into the van, a journalist from Radio Publique Africaine arrived at the scene.¹ She was nearly shot by a police officer. She has been able to testify that she saw people lying in the mud on the lake shore while their assailants stamped on their backs and, speaking in the national language, called them "thugs who want to shed blood yet again when so much blood has already been shed".

2.5 Once they had arrived at the Special Investigation Brigade, the detained soldiers waited in the van for about 10 minutes before it took off again towards the headquarters of the Anti-Aircraft Unit in Kamenge (Bujumbura). Throughout the journey, X, who had no shoes or shirt and still had his hands tied behind his back, was in intense pain all over his body.

2.6 When they arrived at the headquarters of the First Military Region, which oversees all the military camps in Bujumbura, the former Minister of Defence, Lieutenant General G.N., who was at the scene, ordered the 13 detained soldiers to be handcuffed, taken to a meeting room and called out one by one. Despite their critical condition, none of them were examined by a doctor. The complainant's condition was particularly worrisome, as he was covered in bruises and swellings.

2.7 At about 2 a.m., some police officers helped move him to an adjacent office, as he could barely walk. In the office were military personnel, including Colonel D.N., military prosecutor of the court martial. Another of the soldiers who had been arrested on the beach was also in the room. He was handcuffed and sitting on a chair.

¹ Her statement is attached to the complaint.

2.8 X was ordered to sit next to the other soldier. He was interrogated and asked to admit that he had attended a meeting held at the soldier's home to plan a coup d'état under the latter's lead. The complainant denied the accusation. Colonel D.N. then explained to him that if he admitted his involvement he would be released. When the complainant continued to deny the accusation, his interrogators threatened to do things to him that would make him confess. Seeing the bloodied body of the other soldier, who had clearly suffered severe torture, he had no choice but to confess. He therefore signed a statement to the effect that he had been involved in planning the alleged coup d'état.

2.9 The complainant was then taken back to the meeting room, where five of the other soldiers arrested on the beach were still waiting. He spent the night in that room, sitting on the bare floor. The following day, he was transferred to a kind of storage room measuring 7 m by 6 m, without ventilation or windows, where 18 people were being held.

2.10 No visits were allowed, despite repeated requests by a representative of the Association pour la Protection des Droits Humains et des Personnes Détenues (Association for the Protection of Human Rights and Detained Persons, APRODH). On 30 January 2010, X was interrogated once again by the police. He retracted the statements he had made the day before under duress and denied any involvement.

2.11 On 1 and 2 February 2010, representatives of various associations, including APRODH, Human Rights Watch and the Ligue Burundaise des Droits de l'Homme (Iteka), were able to meet with the complainant and the other soldiers who had been arrested under the same circumstances and to note their injuries. The findings of those associations were published in the media.² On the morning of 2 February 2010, three delegates from the International Committee of the Red Cross visited the detained soldiers, including the complainant.

2.12 Over the course of the following days, the complainant continued to undergo interrogations, and the charges against him were changed. He was charged first with mutiny, then with threatening the safety of the military command personnel, and finally with involvement in a military conspiracy.

2.13 On 3 February 2010, X was transferred to the Muha military camp in Bujumbura. He was placed with another detainee in a 2 m² cell without windows and had to sleep on the cold floor. He was given rotten food, which he refused. The guards were ordered not to allow the detainees to leave the cell for any reason.

2.14 On 5 February 2010, X was brought back to the First Military Region headquarters before being transferred to Bubanza prison. That same day, the military prosecutor issued a warrant for his arrest on charges of involvement in a military conspiracy.³ Only then were his handcuffs removed, after he had been kept in that painful position, with his hands behind his back, at all times for seven days, except during interrogation sessions.

2.15 The complainant was subjected to appalling detention conditions in Bubanza prison. He slept on the floor in a 30 m² common area, in which about 80 prisoners were crammed together. His daily food ration was 350 grams of cassava flour and beans.

2.16 On 11 February 2010, the complainant was interrogated in the Bubanza prison legal services office by Lieutenant Colonel J.C.N., together with Lieutenant C.G., who repeatedly called him a murderer throughout the interrogation. At one point during the interrogation, annoyed that the complainant continued to deny any involvement in a

² The complainant has attached a press release published on the Internet.

³ Attached to the complaint.

military conspiracy, Lieutenant Colonel J.C.N. attempted to strike him but was restrained by Lieutenant C.G.

2.17 On 14 February 2010, that is, 16 days after his arrest, he was brought before a judge for the first time. He was not represented by a lawyer. During the hearing, X informed the judge about the torture he had suffered during his arrest and detention. However, despite the seriousness of these claims, they were not reflected in the record or taken into consideration by the judge. No investigation was ordered, even though the signs of the torture were still visible. The complainant also asked to be examined by a doctor and to receive medical treatment, but that request was denied. He was placed in pretrial detention.⁴

2.18 On 1 March 2010, a second hearing before a judge was conducted after the complainant lodged an appeal requesting provisional release. At that hearing, X again complained of the torture he had suffered, but no action was taken. He again asked to see a doctor, but that request was ignored, and he was kept in detention.⁵

2.19 On 12 March 2010, the complainant was transferred to Mpimba Central Prison in Bujumbura. As at that date, he had still not received any assistance from a lawyer or any medical care, despite the critical condition he had been in when placed in detention. In Mpimba prison, X was again held in disturbing conditions, which were exacerbated by overcrowding. The cell in which he was placed with another prisoner measured about 8 m² and had only a small barred window. The food ration was 250 grams of beans and cassava flour per day.

2.20 On 16 March 2010, the complainant was summoned to the first hearing on the merits in the proceedings initiated against him for involvement in a military conspiracy. For the first time, he was assisted by a lawyer. Consideration of the case was, however, postponed to a later date.

2.21 On 17 March 2010, X's health dramatically deteriorated following an attack of malaria. Believing that the problem was low blood pressure, the prison doctor put him on a drip to raise his blood pressure. The complainant was in fact suffering from high blood pressure, which the doctor realized only after completing the drip procedure. He was then prescribed a double dose of quinine-based treatment. A few minutes later, he lost consciousness for about 10 minutes.

2.22 Despite his critical condition, especially after the serious misdiagnosis, the doctor did not provide the complainant with any further medical care. It took another two days before the complainant, who was suffering from intense pain in his lower back, knee and the soles of his feet, was finally transferred to Prince Regent Charles Hospital in Bujumbura on 19 March 2010.⁶ Shortly thereafter, however, he began to suffer from heart palpitations, muscle paralysis, severe headaches, impaired vision and dizziness, which required further cardiac and ophthalmological monitoring.⁷ After two months in the hospital, his condition remained very serious. He was diagnosed with depression caused by post-traumatic stress. He was also diagnosed with post-traumatic neuropsychiatric disorders, which required monitoring.⁸

⁴ The complainant attaches herewith the detention order issued by the Ministry of Defence on 14 February 2010.

⁵ The pretrial detention order issued by the military court on 1 March 2010 is attached to the complaint.

⁶ The complainant attaches herewith copies of the prescriptions written to treat his injuries, mental distress and malaria.

⁷ The relevant medical files are attached to the complaint.

⁸ Idem.

2.23 The complainant was hospitalized for a total of just over three months at the Prince Regent Charles Hospital, from 19 March to 23 June 2010.⁹

2.24 On 23 June 2010 X was ordered back to prison. While still convalescing, he was roughly pulled out of his hospital bed in the middle of the night and taken in a taxi to the prison. After his hospital stay, he remained in poor health. In his weakened state, he could not participate in the activities organized in the prison, particularly sports. He continued to suffer from severe headaches, dizziness, impaired vision, heart palpitations and knee pain and had to make regular visits to the infirmary, where he was given only painkillers and not remedial treatment.

2.25 On 12 August 2010, the court martial sentenced the complainant to 8 years' imprisonment for involvement in a military conspiracy.¹⁰ The complainant lodged an appeal with the military court on 13 August 2010, claiming that, owing to his hospitalization, he had not been able to attend his trial hearings. On 21 September and 26 October 2010, he again submitted complaints about the torture he had suffered during his detention.¹¹ In those complaints, he stated that the court had based its conviction on confessions obtained under torture, and he supported those claims with medical evidence.

2.26 In its closing statement on 27 January 2011, the prosecution argued that the supporting medical evidence provided could not be considered an expert legal opinion and that the complainant should have requested such an expert opinion. However, the judge had never summoned a medical expert, despite the allegations of torture of which he was fully aware, and even though he 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.

2.27 On 3 March 2011, the military court upheld the court martial's decision against X and his sentence of 8 years' imprisonment. It found that the evidence in support of his claim that the confession was obtained under torture did not meet the legal requirements.¹² However, it did not at any point address the fact that the investigating judge should have summoned an expert pursuant to the law, or the fact that, despite the repeated requests he had made during the first days of his detention, the complainant had not been allowed to see a doctor.

2.28 On 7 March 2011, the complainant lodged an appeal against the decision with the Supreme Court.¹³ On 17 March 2011, the complainant, together with the other convicted soldiers, submitted a statement of case in which he pointed out that the military court had ignored the signs of torture on his body and the related medical reports. On 24 December 2012, he was released on parole as part of a general measure to ease overcrowding in the country's prisons.

2.29 Since his release, X's situation has been precarious from the standpoint of both finances and personal safety. He no longer has a permanent job, as he cannot be reinstated in the army. His parents, who are farmers, provide for him as best they can with the limited means at their disposal. He recently found a short-term job as a labourer. In the first weeks following his release, he went into hiding for fear of being subjected to further physical and mental suffering. His health remains a concern, and he continues to suffer from dizziness and pains in various parts of his body. He is also still suffering from post-traumatic symptoms in the form of severe stress, for which he cannot afford treatment.

⁹ Idem.

¹⁰ A copy of the decision is attached to the complaint.

¹¹ Statement of case attached to the complaint.

¹² Decision attached to the complaint.

¹³ The applicant does not mention the outcome of this appeal.

2.30 With regard to the issue of exhaustion of domestic remedies, the complainant claims that on numerous occasions he alerted the Burundian authorities to the treatment he had suffered. In fact, the torture inflicted on him by the members of the army and SNR personnel was reported at the first hearing before a judge, on 14 February 2010, and again at the hearing on 1 March 2010. In his submission dated 21 September 2010, supplemented by the one dated 26 October 2010 in the appeal lodged with the military court, and also in his appeal to the Supreme Court of 17 March 2011, the complainant again stated that he had been the victim of torture and that he had provided medical certificates in support of his claims. He also made it clear that he had confessed to certain allegations under torture. Lastly, on 7 November 2012 he filed a complaint with the Chief Military Prosecutor describing the abuse he had suffered. However, no action was taken in response to his complaints. He has never been called to testify regarding the torture he suffered, and the alleged perpetrators, who would be easily identifiable, have never been summoned to court. The complainant maintains that a period of three years and three months to open an investigation into allegations of torture constitutes an excessive delay that justifies the non-exhaustion of domestic remedies. In addition, he argues that, in view of the threats he has received and the risks he and his family face, he cannot be reasonably expected to initiate additional procedures with the authorities, who have, moreover, demonstrated their lack of interest in the matter.

The complaint

3.1 The complainant alleges that he has been the victim of violations by the State party of articles 2 (para. 1), 11, 12, 13, 14 and 15, read in conjunction with article 1 or, alternatively, article 16 of the Convention.

3.2 With regard to the ill-treatment described above, which was documented by human rights associations and medical certificates, the complainant invokes article 1 of the Convention. He was not examined by a doctor despite his critical condition. Furthermore, he currently suffers from serious physical after-effects of the torture.

3.3 The complainant further states that he was subjected to unbearable conditions of detention, that he was held in a confined space in the First Military Region, without ventilation or a window, with 18 other persons, and that he was prevented from receiving visitors. He was then taken to the Muha military camp and held with another detainee in a windowless cell measuring 2 m². He was forced to sleep on the floor and was served rotten food. He was then transferred to Bubanza prison, where he was subjected to deplorable conditions of detention. The conditions in Mpimba prison were no less disturbing, with overcrowding and insufficient food. In addition, when the complainant's health began to seriously deteriorate, he was hospitalized for about three months. Then, on 23 June 2010 while he was recovering, he was taken back to prison.

3.4 The complainant adds that the severity and nature of the ill-treatment to which he was subjected demonstrated that it was deliberate and that it was clearly intended to punish him for planning to destabilize government institutions.

3.5 There is no doubt that the acts were committed by public officials (national army and SNR personnel). In conclusion, the complainant reiterates that the abuse to which he was subjected amounts to acts of torture, as defined in article 1 of the Convention against Torture.

3.6 The complainant also invokes article 2, paragraph 1, of the Convention: he was not brought before a judge with a view to his pretrial detention until 16 days after his arrest, which was considerably outside the time limit to which the authorities should have adhered under article 60 of the Code of Criminal Procedure, which requires that:

“police custody, as defined in the article [59], may not exceed 7 days counted from hour to hour, except where an extension is deemed essential, as determined by the public prosecutor’s office and up to a maximum of twice that period”. The complainant was not authorized to receive visits during the early days of his detention. Nor did he have access to a lawyer during the weeks following his arrest. Therefore, he did not receive prompt legal assistance.

3.7 Furthermore, while his state of health unquestionably necessitated medical treatment, X received no treatment, despite his repeated requests to see a doctor, until 19 March 2010, almost seven weeks after he had been subjected to torture. On that date he was admitted to the hospital as a matter of urgency following a sudden decline in his health. By their refusal to allow him prompt treatment, the Burundian authorities prevented a medical certificate from being issued and thereby denied him the possibility of seeking justice in an effective manner. A medical certificate was finally issued on 15 July 2010, five and a half months after the events. Although the certificate notes the complainant’s “severe neuropsychiatric disorder, probably post-traumatic in origin”, in view of the time lapse it only partially reflects the gravity of his state of health following the torture. In addition, hospitalization prevented the complainant from attending the court hearings against him which led to his convictions for military conspiracy by the court martial, a circumstance that was a serious obstacle to mounting an effective defence.

3.8 The complainant adds that his case is not an isolated one and that serious human rights violations by police officers in Burundi go largely unpunished. Since it has not taken the legislative and other measures necessary to prevent the practice of torture, the State party has, according to the complainant, failed to fulfil its obligations under article 2, paragraph 1, of the Convention.

3.9 The complainant also invokes article 11 of the Convention, noting that the State party failed to fulfil its obligations concerning the custody and treatment of persons subject to any form of arrest, detention or imprisonment. He was not informed of the charges against him, he did not have access to a lawyer and he was not brought before a judge in connection with his pretrial detention until 16 days after his arrest, even though the Code of Criminal Procedure sets a time limit of 7 days, unless an extension up to a maximum of 14 days is deemed necessary by the public prosecutor’s office. He was not examined by a doctor, despite his critical condition. Nor did he have access to legal counsel. As a result, the complainant concludes that the State party failed in its duty to monitor the treatment he received during his detention.¹⁴

3.10 The complainant further maintains that article 12 of the Convention, which requires the authorities to proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed, has been violated by the State party in his case.¹⁵ He recalls that it is not necessary, for the purpose of article 12, for a formal complaint to have been lodged. In fact, he recalls that in the days that followed the events in question, the authorities were informed of

¹⁴ The complainant recalls that, in its concluding observations on the State party’s initial periodic report, 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). The complainant notes in his initial complaint that the State party had not ratified the Optional Protocol to the Convention, which calls for the establishment of a national mechanism for the prevention of torture. [The State party subsequently became a party to the Optional Protocol on 18 October 2013.]

¹⁵ The complainant refers to communication No. 341/2008, *Sahli v. Algeria*, decision adopted on 3 June 2011, para. 9.6; communication No. 187/2001, *Thabti v. Tunisia*, decision adopted on 14 November 2003, para. 10.4; communication No. 60/1996, *M’Barek v. Tunisia*, decision adopted on 10 November 1999, para. 11.7; and communication No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.2.

the torture to which he had been subjected through the public denunciations and questions raised by human rights organizations, and through his own complaints before the judges. At the first hearings before a judge on 14 February and 1 March 2010, he complained of the torture he had suffered. His body was covered with the visible marks of torture and he still had great difficulty in walking 16 days after the violence to which he had been subjected. The judges would have been able to see for themselves that he had been tortured. Similarly, at the following hearing before a judge on 1 March 2010, the victim again reported that he had been subjected to torture. The authorities did not, however, take the allegations into account, no expert was summoned and no investigation was opened concerning the events reported.

3.11 In his submissions of 21 September and 26 October 2010 in the appeal to the military court, and subsequently in the appeal to the Supreme Court, X again complained of the torture to which he had been subjected, supporting his allegations with a medical certificate. Faced with the inaction of the judicial authorities, on 7 November 2012 he submitted a complaint to the Chief Military Prosecutor concerning the injuries he had suffered at the hands of public officials. Nevertheless, to this day, over three years after the events,¹⁶ no investigation has been initiated. The complainant has never been called to testify and the perpetrators, who would be easily identifiable, have never been troubled by the law. The complainant concludes that, since it has not carried out a genuine, prompt and effective investigation of the allegations of the torture he had suffered, the State party has acted without regard for its obligations under article 12 of the Convention.

3.12 With respect to article 13 of the Convention, the complainant maintains that the State party was obliged to guarantee his right to bring a complaint before its competent authorities and to ensure that it was promptly and impartially examined. However, in the present case, and despite the formal complaints submitted (as outlined above), no action has been taken in response. The State of Burundi has thus not examined the complainant's allegations of torture promptly and impartially, in violation of article 13 of the Convention.

3.13 The complainant also invokes article 14 of the Convention, since the State party, in preventing him from initiating criminal proceedings has, by the same token, prevented him from obtaining compensation for torture. Furthermore, given the failure of the judicial authorities to take action, other remedies, such as seeking compensation through a civil suit for damages, would have no realistic prospect of success. The Burundian authorities have taken few measures to compensate victims of torture, a point raised by the Committee in its concluding observations of 2006 concerning the State party's initial report (see CAT/C/BDI/CO/1, para. 23). The complainant further states that he has received no assistance that would enable him to achieve as full rehabilitation as possible with respect to his physical, psychological, social and financial well-being. He has not been allowed to return to the army and has encountered significant difficulties in resuming professional and social activity. In addition, the fact that the crimes committed against him remain unpunished, that his torturers have been neither convicted nor prosecuted, and that they have not been the subject of any investigation nor even troubled by the law, demonstrates that there has been a violation of his right to redress under article 14 of the Convention.

3.14 With reference to the Committee's jurisprudence,¹⁷ the complainant also invokes article 15 of the Convention. He maintains that the purpose of the torture to which he was subjected was to intimidate him during the ensuing interrogation in order to obtain a confession of his involvement in the alleged attempted coup d'état. He was also openly threatened with further torture if he did not admit his involvement in the

¹⁶ More than five years at the present time.

¹⁷ Communication No. 193/2001, *P.E. v. France*, decision adopted on 21 November 2002.

plot and was forced to sign a confession concerning his participation in the preparation of the alleged coup d'état. It was on the basis of those confessions that proceedings were brought against him and that he was convicted of military conspiracy. The authorities did not take his allegations of torture into account and did not investigate the methods used to obtain the confessions. Therefore, the complainant maintains that the State party violated article 15 with respect to his case.

3.15 The complainant reiterates that the violence to which he was subjected constituted torture as defined in article 1 of the Convention. Nevertheless, and alternatively, even if the Committee were not to characterize it as such, he maintains that the abuse he suffered constituted cruel, inhuman or degrading treatment and, accordingly, that the State party was obliged, under article 16 of the Convention, to prevent and punish the commission, instigation or tolerance of such acts by public officials. Furthermore, the complainant recalls that he was held at the First Military Region headquarters, at the Muha camp and then in prisons in Bubanza and Bujumbura in deplorable conditions. He also refers to the concluding observations of the Committee, following the State party's initial report, in which the Committee noted that conditions of detention in Burundi amounted to inhuman and degrading treatment (see CAT/C/BDI/CO/1, para. 17). He further recalls that he did not receive medical treatment and that he was reincarcerated while still convalescing. In conclusion, he maintains that, by subjecting him to detention that amounted to inhuman and degrading treatment, the State of Burundi did not fulfil its obligations under article 16.

State party's observations on admissibility and merits

4.1 On 16 August and 14 October 2013, the State party submitted observations on the admissibility and merits of the communication. The State party notes firstly that the communication should be declared inadmissible since the complainant has not exhausted domestic remedies. The various appeals which he has lodged with the political and administrative authorities do not constitute recourse to judicial remedies, since none of the authorities to which the appeals were submitted were competent to give a ruling on the case. The only valid appeal lodged by the complainant was the complaint filed with the Military Prosecutor on 7 November 2012, less than one year ago. Instead of awaiting the outcome of the investigations, the complainant has applied in haste to the Committee. The appeal is still under consideration by the Military Prosecutor, and the State party invites the complainant to cooperate with the justice system in establishing the facts.

4.2 On the merits of the case, the State party maintains that the arguments of the complainant are the result of his imagination or are based on insufficient information.

4.3 On 14 October 2013, the State party submitted additional observations on the merits of the complaint. It notes in the first place that the complainant has brought no proof to substantiate his allegations of torture. He was caught in the act of attempting to destabilize institutions of the State and his responsibility, as well as that of his co-accused, was established by all the jurisdictions. The injuries sustained by some of the alleged putschists were caused by their resisting security officers. "If they had willingly surrendered, they would not have been subjected to the many misadventures which they have improperly termed torture". During their arrest, the "suspected conspirators", who were carrying firearms, resisted the SNR agents, which led to altercations. The measures taken by the SNR agents in order to avoid being killed or injured must be considered as acts of self-defence, and not as torture inflicted on the detainees.

4.4 The conditions of detention, which are due to a lack of resources and are experienced by all detainees in Burundi, cannot be defined as torture. The complainant

has sought to conflate the inadequacies, requirements and rigours of the prison system with what he considers to be acts of torture. For example, with respect to the alleged refusal to allow access to a doctor, the State party maintains that this was due to an error of judgement. According to prison regulations in Burundi, prisoners are authorized to make regular hospital visits, but the authorization may be refused where a detainee is suspected of feigning illness in order to attempt to escape, especially if he has been accused of a serious offence.

4.5 When it became apparent that X was genuinely ill, he received medical care, first at the prison itself and then in the Prince Regent Charles Hospital for three months from 19 March to 23 June 2010. He attended a number of specialized medical consultations. Contrary to the allegations of the complainant and in the opinion of his doctors, his illnesses were not caused by the treatment he had received following his arrest. His health problems, such as malaria, hypertension and nightmares, are also commonly found in persons who have not been detained. The medical certificates submitted by the complainant cannot be considered as evidence of torture, since they contain diagnoses of illnesses but do not state that they were caused by acts of torture. It is highly likely that X's illnesses preceded his detention and that a relationship between his arrest and his medical conditions cannot be substantiated, even if the latter were identified while he was in prison.

4.6 The State party notes that the complainant benefited from its clemency, it having released him on parole on 24 December 2012. He had therefore only served 2 years of his 8-year sentence. During his trial, he was allowed to exercise his right to a defence and he was represented by a lawyer. He was free to pursue available avenues for appeal. He was not subjected to any act of torture in order to obtain a confession. Burundi has taken all legislative and other measures in order to prevent and punish the practice of torture. The Criminal Code of 2009 devotes a chapter to this subject.

4.7 Concerning the insults which the complainant claims to have suffered, it is quite normal that, under the circumstances and in a context of that kind, exchanges of words should take place, but it would be an exaggeration to claim that they constitute torture. Furthermore, the State party deems it appropriate to point out that threats of torture do not constitute torture unless they have been carried out. If the complainant maintains that he was forced to confess to the events before an investigating judge, he did not do so under threat of torture, but simply because he could not do otherwise since one of his co-detainees had already admitted the facts before he did.

4.8 The State party rejects the allegations of the complainant under article 2, paragraph 1, of the Convention since the records of detainees are regularly updated, both in police cells and in prisons. Furthermore, there is a pool of defence lawyers who are available — free of charge — to anyone in needy circumstances. In addition, the complainant received visits from his family just like other prisoners; he was also given temporary permits to leave the prison, and was even able to lodge judicial and administrative appeals and to send petitions to human rights organizations. He was also provided with medical care, since the Burundian Government allocates a substantial budget to the health of detainees. His argument that his admission to hospital was delayed is debatable, since the infirmary services were looking after him and it was for them to decide when hospitalization was warranted. His return to prison was effected only following the agreement of the attending physician. The decision was not taken by the prison administration, as the complainant maintains.

4.9 With respect to the complainant's argument that his hospitalization prevented him from appearing at his trial, the State party notes that he was able to lodge an appeal concerning the decision and to defend himself.

4.10 With regard to his claims relating to the failure to conduct an investigation, the State party notes that it was the responsibility of X to submit a formal complaint to the competent judicial authority. To date, he has already submitted a complaint to the Military Prosecutor, who will not fail to examine the case. The cooperation of X, which is essential to the proceedings, may well be compromised because he appears to have abandoned his complaint and to have appealed to the Committee instead. The State party notes that an appeal for judicial review by the complainant and his co-defendants is also pending before the Supreme Court.

4.11 The State party also rejects the complainant's allegations pertaining to articles 13, 14 and 16 of the Convention.

4.12 With respect to his safety and the protection measures requested by the Committee, the State party submits that X has no reason to fear for his safety. He has already submitted a complaint to the Military Prosecutor and has never had cause to be concerned about his physical security. Moreover, the Government of Burundi has granted him clemency and has released him on parole. At present, he is free to come and go as he pleases, and no threat has been made against him. Therefore, there is no need to formulate special protection measures for him at this time.

Complainant's comments on admissibility and merits

5.1 On 3 October 2013 and 13 January 2014, the complainant submitted comments on the State party's observations. With regard to the State party's argument that he has not exhausted domestic remedies, he asserts that during the first hearings before a judge on 14 February and 1 March 2010 he complained of the torture inflicted on him. In his appeal to the military court and the appeal for review to the Supreme Court, he again complained of the torture to which he had been subjected. The judicial authorities were therefore informed of these facts.

5.2 As for the State party's claim that an investigation has been launched, the complainant notes that no evidence has been supplied in this regard, even though the State party should be in a position to provide information on the opening and progress of the investigation, along with the corresponding documentation, including the procedure number and copies of the hearing transcripts or investigation reports. Although the State party maintains that the complainant is the only person who can clarify the facts for the judicial authority, the latter has never questioned him. The other persons arrested under the same circumstances have not been heard as witnesses either. It is thus legitimate, not to say reasonable, to question the existence of an investigation. Even assuming that an investigation into the facts has been launched, the delay of almost four years since their occurrence must be considered unreasonable.

5.3 On the merits, the complainant stands by his initial allegations and refers to them, including the allegations about the shortcomings in the Burundian justice system, which he considers to be amply documented.

5.4 The complainant has submitted further comments in which, firstly, he contests the State party's observations implying that he cannot complain of the torture to which he was subjected or seek justice because he was released. He contends that the release was neither a favour nor a measure that deprives him of the right to file a complaint about such serious acts.

5.5 Regarding the protection measures granted by the Committee and deemed to be unwarranted by the State party, the complainant recalls that the persons responsible for the torture are high-ranking army officers and SNR agents, which means that he has good reason to fear reprisals, particularly given the widespread impunity enjoyed by the perpetrators of such crimes in Burundi. The complainant therefore requests the Committee to maintain the interim protection measures that it has granted.

5.6 The complainant rejects the State party's argument that the submission of a complaint to the Committee entails the abandonment of the complaint he filed on 7 November 2012 with the Burundian judicial authorities.

5.7 On the merits, the complainant rejects the assertions of the State party, which merely contests his allegations without providing any material evidence. He reiterates the arguments put forward in his initial communication and maintains that his allegations of torture are based on a wealth of pertinent material evidence, whereas the State party's counterarguments are groundless and unsubstantiated.

5.8 The complainant rejects the State party's argument that the acts inflicted on him were reasonable and inherent consequences of his arrest. He recalls that, when he was subjected to ill-treatment, he was under the full and effective control of agents of the State party, who were present in large numbers and very heavily armed. He had been completely overpowered by them and was lying prone on the ground with his hands tied behind his back, which left him in a vulnerable position in the hands of State officials. In such circumstances, it cannot be argued that the use of violence was part of the arrest or that it served a legitimate purpose such as maintaining law and order. Rather, the acts served an illegitimate purpose, namely, to punish him for a suspected offence. The complainant concludes by reiterating that the acts inflicted on him do constitute torture within the meaning of article 1 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been examined, and is not currently being examined, under another procedure of international investigation or settlement.

6.2 The Committee notes that the State party has contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies, inasmuch as the complainant filed a formal criminal complaint of torture with the Military Prosecutor on 7 November 2012. The Committee notes that the State party has indicated that proceedings are ongoing, but it has provided no further information or evidence that might allow the Committee to see what progress has been made and judge how effective the proceedings might be, bearing in mind that they were instituted almost three years ago in response to acts that occurred more than five years ago. The Committee finds that, in the circumstances, the inaction of the competent authorities has made it unlikely that any remedy that might provide effective relief can be initiated and that, in any event, the domestic proceedings have been unreasonably prolonged. Accordingly, the Committee considers that it is not precluded from considering the complaint under article 22, paragraph 5 (b), of the Convention.

6.3 In the absence of any impediment to admissibility, the Committee proceeds to a consideration on the merits of the claims submitted by the complainant under articles 1, 2 (para. 1), 11, 12, 13, 14, 15 and 16 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, paragraph 4, of the Convention.

7.2 The Committee notes that, according to the complainant, on 29 January 2010 he was arrested by State officials, including an army officer and SNR two agents in plain clothes, who beat him up and kicked him in the chest, ribs, back and head, all the

while pointing a weapon at his head. When he was tied up with his hands behind his back, having been completely overpowered by the State officials, they dealt him further blows to the head, sometimes with the butts of their rifles. The force of the blows caused the complainant to lose consciousness for several minutes. After being taken to First Military Region headquarters, he was interrogated and, fearing further abuse, signed statements attesting to his involvement in planning a coup d'état. The day after his arrest, he was put in a room with no ventilation or window. He was denied contact with the outside world until 1 February 2010.

7.3 The Committee observes that the State party has merely denied and minimized the complainant's allegations of torture, without producing any convincing evidence to refute the acts described. Furthermore, the Committee notes the State party's argument that the injuries sustained by the complainant were caused by his resistance to law enforcement officials. However, corroborated and credible evidence reveals that the injuries occurred while the claimant was under the control of the State party's authorities. The Committee thereby deduces that acts of torture were inflicted on the complainant at the time of his arrest, as well as during subsequent interrogations, and concludes that all of these acts constituted a violation of article 1 of the Convention.

7.4 Regarding article 16, the Committee has taken note of the complainant's claim that the detention conditions he had to endure at First Military Region headquarters, Camp Muha and Bubanza and Bujumbura prisons were deplorable (paras. 2.9, 2.13, 2.15 and 2.19). Moreover, the complainant did not receive the prompt medical care that his condition required. The Committee recalls its concluding observations on the second periodic report of the State party, in which it expressed alarm at the conditions of detention (see CAT/C/BDI/CO/2, para. 15). In the circumstances, the Committee concludes that the detention conditions to which the complainant was exposed from the time of his arrest on 29 January 2010 to his release on 24 December 2012 constituted a separate violation of article 16 of the Convention.

7.5 The complainant also invokes article 2, paragraph 1, of the Convention, under which the State party is required to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. The Committee observes in this respect that the complainant was severely beaten and then detained without being allowed to contact his family immediately or have access to legal or medical assistance. It was not until 14 February 2010 that he was brought before a judge, to whom he complained of the torture he had suffered. Even though the authorities have been fully informed of the acts perpetrated against X, the torture inflicted on him remains unpunished and, more than five years after the acts were committed, there is no indication that an independent and effective investigation has been launched. In this respect, the Committee recalls its jurisprudence to the effect that the State party has an obligation to carry out a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.¹⁸ The Committee consequently finds a violation of article 2, paragraph 1, read in conjunction with article 1 of the Convention.¹⁹

7.6 The Committee also notes the complainant's argument that article 11 was violated because the State party failed to conduct proper monitoring of the treatment he received while in detention. The Committee again recalls its latest concluding observations on Burundi, in which it expressed concern at: the excessive length of time during which people can be held in police custody; numerous instances in which

¹⁸ See communications No. 269/2005, *Ali Ben Salem v. Tunisia*, decision adopted on 7 November 2007, para. 16.7; and No. 402/2009, *Abdelmalek v. Algeria*, decision adopted on 23 May 2014, para. 11.7.

¹⁹ See communication No. 514/2012, *Niyonzima v. Burundi*, decision adopted on 21 November 2014, para. 8.3.

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 access to legal assistance for persons of limited means; and the excessive use of pretrial detention in the absence of regular reviews of its legality and of any limit on its total duration (see CAT/C/BDI/CO/2, para. 10). In the present case, the complainant appears to have remained outside judicial oversight until he was brought before a judge on 14 February 2010, 16 days after his arrest. In the absence of conclusive evidence from the State party that the complainant's detention was, in fact, placed under its supervision, the Committee finds that the State party has violated article 11 of the Convention.

7.7 With respect to articles 12 and 13 of the Convention, the Committee has taken note of the complainant's claim that, despite his numerous attempts to report the torture inflicted on him, there has been no investigation to shed light on the facts and determine responsibility. On 14 February and 1 March 2010, during the hearings before a judge, he formally complained about the torture he had suffered at the time of his arrest. He repeated his complaints on 21 September and 26 October 2010 during the appeal proceedings he had initiated before the military court, and again on 17 March 2011 before the Supreme Court. He also filed a formal complaint with the Military Prosecutor on 7 November 2012; the outcome is still unknown. The State party has contested and trivialized the complainant's serious allegations, claiming that the reported acts stemmed from the fact that he resisted arrest, and has simply mentioned the procedure pending since 7 November 2012. It did not, however, provide any information that might allow the Committee to ascertain how far the proceeding has progressed, judge how effective it might potentially be or understand why it is taking so long. 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 is reasonable ground 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 an adequate response to such a complaint by launching a prompt and impartial investigation.²⁰

7.8 With regard to article 14 of the Convention, the Committee has taken note of the complainant's claim that he has not been the subject of any form of rehabilitation designed to ensure that he recovers as fully as possible in physical, psychological, social and financial terms. The Committee recalls that article 14 not only recognizes the right to fair and adequate compensation but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee refers to its general comment No. 3 (2012), in which it establishes that States parties should ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible. In view of the lack of a prompt and impartial investigation despite the complainant's numerous claims that he was tortured, which were corroborated by a range of evidence that the State party has not convincingly refuted, the Committee concludes that the State party breached its obligations under article 14 of the Convention.

7.9 With regard to the alleged violation of article 15 of the Convention, the Committee has noted the complainant's arguments that he was compelled to sign a statement attesting to his involvement in planning an alleged coup d'état, that he was

²⁰ See communications No. 376/2009, *Bendib v. Algeria*, decision adopted on 8 November 2013, para. 6.6; and No. 503/2012, *Ntikarahera v. Burundi*, decision adopted on 12 May 2014, para. 6.4.

convicted of military conspiracy on the basis of those confessions and that the State party has not carried out any investigations, despite his numerous complaints of torture. The Committee recalls that the broad scope of the prohibition in article 15 against invoking any statement that is established to have been made as a result of torture as evidence in any proceedings is a function of the absolute nature of the prohibition of torture and implies, consequently, an obligation for each State party to ascertain whether or not statements admitted as evidence in any proceedings for which it has jurisdiction have been made as a result of torture. In the present case, the State party has failed to conduct any such verification, and the Committee accordingly finds that it has violated the right of X under article 15 of the Convention.

8. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of article 1, article 2 (para. 1) read in conjunction with article 11, and articles 12, 13, 14, 15 and 16 of the Convention.

9. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to: (a) conduct an impartial investigation into the incidents in question, with a view to bringing to justice those responsible for the complainant's treatment; (b) grant the complainant appropriate redress, including compensation for the material and psychological injury caused, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition; (c) take all necessary measures to prevent any threats or any act of violence to which the complainant or his family might be exposed, in particular as a result of having lodged the present complaint; and (d) inform the Committee, within 90 days from the date of transmittal of this decision, of the steps it has taken in response to the views expressed above, including compensation for the complainant.
