



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

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## Committee against Torture

### Communication No. 578/2013

#### Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

<i>Submitted by:</i>	E.N., represented by Track Impunity Always (TRIAL)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Burundi
<i>Date of complaint:</i>	10 December 2013 (initial submission)
<i>Date of present decision:</i>	25 November 2015
<i>Subject matter:</i>	Torture committed by police officers
<i>Procedural issue:</i>	None
<i>Substantive issues:</i>	Torture and cruel, inhuman or degrading treatment or punishment; obligation to systematically monitor interrogation techniques and practices; obligation of the State party to ensure that the competent authorities conduct a prompt and impartial investigation; right to lodge a complaint; right to redress
<i>Articles of the Convention:</i>	Articles 2 (1), 11, 12, 13 and 14, 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-sixth session)**

concerning

#### **Communication No. 578/2013\***

*Submitted by:* E.N., represented by Track Impunity Always (TRIAL)

*Alleged victim:* The complainant

*State party:* Burundi

*Date of complaint:* 10 December 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 25 November 2015,

*Having concluded* its consideration of communication No. 578/2013, submitted to the Committee on behalf of E.N. 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 (7) of the Convention**

1.1 The complainant is E.N., born in 1964 in Mwaro Province, Burundi, and residing in the city of Bujumbura. He claims to have been a victim of violations of articles 2 (1), 11, 12, 13 and 14, read in conjunction with article 1 and, alternatively, article 16 of the Convention. The complainant is represented by counsel.

1.2 On 19 December 2013, in accordance with article 114 (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 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 The complainant was working as a bus driver in the city of Bujumbura when the events in question took place. On 15 May 2012 at around 10.40 a.m., he had just reached the centre of Bujumbura and had let off all his passengers. As the passengers were disembarking, the driver found that he was unable to provide the change due to two customers for the purchase of their tickets. He therefore left the vehicle, together with the two customers, to go find change. He drove to the bus depot and, around 15

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

minutes later, parked his vehicle to await new passengers.

2.2 Suddenly, a uniformed police officer, identified as Noël Ndayisaba, accompanied by four other uniformed police officers armed with rifles and holding belts in their hands, approached him and seized him sharply by the neck while he was still at the wheel of his bus. The officers ordered the complainant to get out of his vehicle.

2.3 The police officers then started kicking the complainant and lashing him with the belts while he was still in the parking lot. They indicated that they were punishing him for, according to them, having failed to return 700 Burundi francs (around US\$ 0.45) in change to one of his customers. The complainant was then taken by force to the police station located next to the Bujumbura Market Management Company (SOGEMAC), which is adjacent to the site of the former Bujumbura central market and around 25 metres from the bus parking lot. Co-workers of the complainant who had witnessed the beating attempted to follow the police officers to the station, but they were refused entry. These co-workers then alerted the Radio Publique Africaine (RPA) radio station, which then reported on the incident in its broadcast.

2.4 Upon his arrival at the police station, the complainant was ordered to lie down on the floor and was stripped to the waist. For more than two hours, he was beaten, pulled around the room, kicked by the police officers and lashed with their belts. The beating was so severe that he lost consciousness for an undetermined length of time. He was then left lying on the floor, without assistance. It was not until the superintendent in charge of the police station located next to SOGEMAC came to question his subordinates about what was happening that the abuse stopped. However, the complainant received neither help nor medical attention, even though he was clearly in need of both, given his condition. Because his telephone had been confiscated by the police officers, the complainant was unable to call for assistance himself. In the meantime, witnesses to the attack had managed to contact a friend of the complainant, who had informed the family of what had occurred. The friend in question also managed to gain access to the victim, whom he found sweating and in agony, his naked, swollen body covered in bruises. The friend immediately demanded that the victim be taken to hospital.

2.5 Nearly two hours after the incident, the complainant was taken to the emergency room at Prince Regent Charles Hospital in Bujumbura. In response to a request for an expert opinion, a government doctor performed an examination the day after the incident and issued a medical certificate dated 16 May 2012. The certificate details the medical consequences of the beating and of his injuries.<sup>1</sup>

2.6 Although the complainant received the emergency medical care called for by his condition, he continues to suffer acute pain and limited mobility of his right arm. He also suffers from post-traumatic stress and severe anxiety and feels extremely guilty about no longer being able to provide for the needs of his family, particularly those of his four young children. His economic situation is very precarious; because of the physical repercussions of the beating, he is no longer in possession of his former job skills or able to do his job as a bus driver, which is a very physically demanding occupation. While he previously earned a monthly salary of 250,000 Burundi francs (around US\$ 160), he no longer has any source of income and is unable to provide for his family's most basic needs.

2.7 The day after the incident, an investigation was begun into the acts of torture to which the complainant had been subjected. On 16 May 2012, an officer of the criminal investigation police requested an expert opinion, and a medical certificate signed by a

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<sup>1</sup> The consequences noted on the certificate included back pain and pain in his right arm caused by the kicks he had received and the partial loss of the use of his right arm.

government doctor (para. 2.5) was issued accordingly. However, the investigation focused on a single police officer, who claimed not to know the other officers' names.

2.8 Since no follow-up action was taken in respect of the medical report and since the investigation was conducted in a manner that was neither effective nor impartial, on 20 September 2012, the complainant contacted the Prosecutor General of the Bujumbura court of appeal to report the acts of torture to which he had been subjected. He recounted in his letter that only one person had been investigated, even though five police officers were implicated in his accusations of torture.

2.9 The complainant emphasizes that the case was covered extensively by the local media, in particular the RPA radio station, which has a large audience and had reported the incident immediately after it occurred, so neither the administrative nor the governmental authorities could be unaware of the events in question.

2.10 On 13 December 2012, the Office of the Public Prosecutor for the Bujumbura court of appeal concluded its investigation of the case and referred it to the local court (*tribunal de résidence*) of Rohero as Case No. RP 17/2013. The investigating judge noted in the case file that the treatment inflicted upon the complainant had caused "injuries". The complainant maintains that the investigation focused on just one of the police officers involved, namely Noël Ndayisaba. Although, in the complaint submitted on 20 September 2012, he had stated that the investigation should be expanded to include the other officers involved, that request had not been acted upon. Apparently, the names of the other four police officers were not disclosed by their superior officer. Since the fact that this information was withheld prevented the judicial authorities from establishing the facts of the case, they should have taken action to ascertain the identities of the other officers. In addition, a number of different sources indicated that all the police officers then based at the station near the SOGEMAC building had since been transferred to other stations.

2.11 The complainant also notes that the police officer was charged with assault, not torture. Given that the investigation was neither complete nor impartial and resulted in an erroneous classification of the acts in question, the victim visited the investigating judge on numerous occasions in an effort to make the judge aware of the limitations of the investigation and ensure that it was resumed and conducted in a thorough and comprehensive manner. As these efforts proved fruitless, on 3 February 2013 the complainant again petitioned the Prosecutor General of the Bujumbura court of appeal to ensure that a thorough, effective and comprehensive investigation would finally be undertaken that would result in the initiation of proceedings against all the alleged perpetrators of the torture inflicted upon him. However, his petitions were not acted upon. Despite the gravity of what occurred, the alleged perpetrators have still not been prosecuted or punished, and the victim has not received any compensation.

2.12 The complainant refers to the various steps that he has taken. He notes that he has endeavoured to exhaust all domestic remedies but that his efforts have been fruitless. He further states that the application of the remedies that he has pursued has been unreasonably prolonged. In addition, he states that it is particularly dangerous for victims of torture to attempt to bring those responsible to justice. The climate of impunity which prevails in Burundi serves only to heighten the danger that he faces. The complainant therefore asks the Committee to waive the requirement regarding the exhaustion of domestic remedies and find the communication admissible.

### **The complaint**

3.1 The complainant claims to be a victim of violations by the State party of articles 2 (1), 11, 12, 13 and 14, read in conjunction with article 1, and, alternatively, with article 16 of the Convention.

3.2 According to the complainant, the abuse inflicted upon him over a period of more than two hours, during which he was lashed with belts and kicked by officers of the Burundian National Police Force, undeniably constitutes acts of torture<sup>2</sup> as defined in article 1 of the Convention. There is no doubt about the fact that these grave acts, which have been verified medically, were perpetrated intentionally by agents of the State party.

3.3 The complainant invokes article 2 (1) of the Convention, pursuant to which the State party should have taken effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. In the present case, no investigation has been carried out despite the existence of an expert medical report. Furthermore, the inquiries that were made focused on only one suspect, were based on an incorrect legal classification of the acts in question and did not ascertain the part played by the other police officers. The complainant adds that his case is not an isolated one and that serious human rights violations committed by police officers in Burundi largely go 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 (1) of the Convention.

3.4 The complainant also invokes article 11 of the Convention and notes that the State party failed to meet its obligations in relation to the custody and treatment of persons subjected to any form of arrest, detention or imprisonment. His detention was unlawful: he was not formally arrested but was simply placed in police custody in the police station next to SOGEMAC and was not informed of the charges against him. Additionally, given the critical condition in which he was left following his interrogation, it is clear that the Burundian authorities failed to properly supervise how he was treated while in police custody. He was not taken to hospital to receive the urgent medical attention he required until two hours after he had been left lying on the floor, and even then only thanks to a friend who had intervened on his behalf and urged the officer in charge of the station to take action. The complainant adds that there is no effective, independent mechanism for monitoring places of detention in Burundi and concludes that the State party failed in its duty to properly supervise the way in which he was treated while being held at the police station.<sup>3</sup>

3.5 The complainant also maintains that the State party has violated article 12 of the Convention in the present case. Under this article, the competent authorities are required to proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.<sup>4</sup> He recalls that it is not necessary, for the purposes of article 12, for a formal complaint to have been lodged. He also recalls that, in the case in question, the Burundian authorities knew that acts of torture had been committed because an expert opinion had been requested by an officer of the criminal investigation police the day after the incident, i.e., on 16 May 2012. However, no effective, thorough and impartial investigation was undertaken. The investigation that was carried out was incomplete and was not of a nature that would have allowed the facts of the case and, consequently, the responsibility of those involved, to be established. The fact that the investigation was

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<sup>2</sup> The complainant refers to communication No. 207/2002, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 24 November 2004, para. 5.3.

<sup>3</sup> The complainant recalls that, in its concluding observations on the State party's initial 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 (CAT/C/BDI/CO/1, para. 19).

<sup>4</sup> The complainant refers to communications No. 341/2008, *Salhi v. Algeria*, decision adopted on 3 June 2011, para. 9.6; No. 187/2001, *Thabti v. Tunisia*, decision adopted on 14 November 2003, para. 10.4; No. 60/1996, *M'Barek v. Tunisia*, decision adopted on 10 November 1999, para. 11.7; and No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.2.

not impartial is also attested to by the authorities' failure to take action against the police officers involved. Indeed, it belies a desire to protect the perpetrators of torture in a case that was quite straightforward, since identifying the persons involved would not have been difficult to do and there were witnesses present at the scene. The decision to classify the acts in question as assault, even though the complainant was severely beaten, lost consciousness and suffered a debilitating fracture of his arm, as well as various other injuries, further confirms the inefficacy and lack of impartiality of the investigation. Consequently, the State party has acted without regard for its obligations under article 12 of the Convention.

3.6 With respect to article 13 of the Convention, the complainant maintains that the State party was under an obligation to ensure that he had the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. However, in spite of the complainant's efforts, and even though an investigation was begun and, on 13 December 2012, the prosecution service asked the Rohero local court to set a date for the hearing, the case has yet to be heard by the Rohero court, and the judicial authorities have taken no action against the only police officer to have been investigated. The complainant therefore concludes that the State party should be found to be in violation of article 13 of the Convention.

3.7 The complainant also invokes article 14 of the Convention. He states that, by depriving him of due process, the State party has also deprived him, as a victim of torture, of an enforceable right to compensation. Furthermore, given the inaction of the judicial authorities, other remedies to obtain redress, such as, for example, a civil suit for damages, have no realistic prospect of success. The Burundian authorities have taken very few steps to compensate victims of torture, a point raised by the Committee in its concluding observations concerning the State party's initial report in 2006 (CAT/C/BDI/CO/1, para. 23). The complainant adds that he has not received any type of rehabilitation assistance to help him to recover as fully as possible in physical, mental, social and financial terms. He can no longer work as a bus driver because of the physical consequences of his injuries, and he has found it very difficult to reintegrate himself into his professional and social life. 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 subject to any investigation or to any other sort of action against them demonstrates that there has been a violation of his right to redress under article 14 of the Convention.

3.8 The complainant reiterates that the violence inflicted upon him constitutes torture as defined in article 1 of the Convention. However, in the alternative, even if the Committee were to decide not to characterize it as such, the abuse suffered by the victim in any case constitutes cruel, inhuman or degrading treatment, and the State party is obligated, under article 16 of the Convention, to prevent public officials from committing, instigating or tolerating such acts and for punishing them if they do so.

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

4.1 On 28 April 2014, the State party submitted its observations on the admissibility and merits of the communication. At the outset, the State party notes that the complainant has not exhausted the available domestic remedies, as required under article 22 (5) (b) of the Convention. Less than 24 hours after the investigation into the incident had been opened, the police officer in charge of the case requested an expert opinion, and a medical certificate was drawn up and issued by a government doctor. After gathering the evidence required to establish the truth, the police officer submitted the case file to the prosecutor's office, which in turn opened Case No. RMPG 604/NE, which it forwarded to the presiding judge of the local court of Rohero

on 13 December 2012 so that it could set a date for a hearing. The Burundian authorities have therefore exercised all due diligence in this case.

4.2 According to the State party, proceedings could have taken place fairly swiftly if the victim's lawyer had not entered into interminable debates with the prosecutor's office regarding the prosecution of four other police officers even though, as a result of its investigation, the prosecutor's office had concluded that charges should be brought against one suspect only. Therefore, in attempting to dictate the direction to be taken by the prosecutor's investigation, the complainant's lawyer contributed to the procedural delays. If he believed that there were irregularities in the case because the investigation had not been impartial or had been incomplete, the lawyer could have referred the matter to the State Prosecutor (who is the immediate superior of the Prosecutor General of the Bujumbura court of appeal) or the Minister of Justice, who is empowered by law to instruct the prosecutor's office to investigate a given individual. The complainant's lawyer, who was aware of the available remedies, could also have waited until the public hearing took place to raise the issue of such irregularities.

4.3 The State party also notes that the complainant visited the office of the presiding judge of the Rohero local court in person and informed the judge that he would return with a written notice of his intention to file a criminal indemnity suit to claim redress in the form of compensation. However, the presiding judge has been awaiting his return ever since that date. The case has been left pending the establishment of a date for the public hearing, but it has been assumed that the individual concerned is no longer interested in pursuing the matter. Were it not for these obstructions, it is likely that a court decision would have been handed down in this case by now.

4.4 The State party further points out that, contrary to the complainant's claims, the acts in question cannot be classified as acts of torture pursuant to the definition of torture contained in the Criminal Code of Burundi, which stipulates that such acts must be committed with the aim of obtaining information or a confession. Even though the Burundi prosecutor's office has taken note of the reprehensible acts committed against the complainant by police officers, those officers were not acting on an order from their superiors, and they had no authority to forcibly recover any debts which the bus driver might owe to customers. Consequently, if a customer did happen to have asked a police officer to intervene, and the officer agreed to the request, it had been done on the spur of the moment and out of ignorance of the law. The Committee should not therefore take the view that the police officer was acting on any sort of order from his superiors; the incident was an unfortunate chance occurrence that was unpremeditated and unplanned. Furthermore, the persons accused by the complainant are low-ranking police officers who, contrary to the complainant's allegations, have neither the authority nor the influence to prevent judicial proceedings from being initiated in response to his complaint. Furthermore, it should be noted that the offence of assault can carry a custodial sentence of up to 20 years, depending on its seriousness.

4.5 With regard to the complainant's claims for compensation, the State party maintains that it is up to the Burundian court that tries the case to determine what damages are due if it finds that the offence of assault was indeed committed. The Burundian courts regularly hand down decisions in which they award compensation to victims.

4.6 As for the protection measures that have been requested, the State party notes that the complainant, who is currently living in Burundi, has not received any threats and has never had any cause to be concerned for his safety. The interim measures requested by the Committee are therefore inappropriate and unnecessary.

4.7 For all the above reasons, the State party invites the Committee to conclude that the communication is inadmissible by reason of the failure to exhaust domestic remedies and that appropriate and effective measures were adopted without delay by the authorities of Burundi in response to the incident. It also invites the Committee to reject the complainant's claim for redress, including compensation, and to refer him to the domestic court assigned to the case, which will consider his claim for damages and pass judgement on the matter.

#### **Complainant's observations on admissibility and merits**

5.1 On 1 September 2014, the complainant submitted his comments on the State party's observations. He recalls that he continues to suffer the consequences of the torture to which he was subjected and has not been provided with any rehabilitation measures, while the perpetrators of the offences committed against him go unpunished.

5.2 The fact that the complainant has submitted a complaint to the Committee does not mean that he has withdrawn the complaint lodged with the Burundian judicial authorities. The complainant rejects the State party's argument that he failed to pursue the matter with the national authorities.

5.3 Although the State party believes that protection measures are unnecessary and inappropriate, it has not provided any evidence to reassure the complainant as to his safety. Furthermore, the situation in the country has grown considerably worse, with those in power adopting a harsher attitude towards persons who voice opinions that are contrary to those of the current regime. Accordingly, the complainant's fears are entirely justified, especially since Burundi has yet to adopt legislation on victim and witness protection and therefore lacks a structural legislative framework for addressing such matters.

5.4 As to the argument that the complainant should have availed himself of domestic remedies and that those remedies have been shown to be reliable, given the diligence with which the authorities responded to the incident, the complainant recalls that, although an investigation was initiated the day after the event in question, it was not conducted in a diligent or impartial manner and was impeded in various ways. The remedies should be considered unsatisfactory owing to the irregularities in the investigation and the unreasonable delays in pursuing the case. With reference to the Committee's jurisprudence,<sup>5</sup> the complainant recalls that, whenever there is reasonable ground to believe that acts of torture have been committed, the State must automatically initiate an investigation, regardless of the grounds for the suspicion. The complainant cannot be held responsible for delaying the proceedings, since the decision to conclude the discussions lay with the judicial authorities and, specifically, the prosecutor. This observation also holds true for action to follow up on the case; the State bears primary responsibility for conducting a thorough examination of the complainant's case once the incident has been reported. Moreover, in view of the unreasonable delays in the proceedings, the complainant must not be expected to wait until the public hearing — a date for which has still not been set — to report the irregularities that occurred in the investigation. That would be tantamount to penalizing the complainant for the authorities' lack of diligence in examining the case.

5.5 In addition, and referring again to the Committee's jurisprudence,<sup>6</sup> the complainant maintains that the application of domestic remedies has proved to be

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<sup>5</sup> See, inter alia, Committee against Torture, *Hanafi v. Algeria*, para 9.6; *Thabti v. Tunisia*, para. 10.4; *M'Barek v. Tunisia*, para. 11.7; and *Blanco Abad v. Spain*, para. 8.2.

<sup>6</sup> The complainant recalls that, in the case of *Sonko v. Spain* (communication No. 368/2008, decision adopted on 25 November 2011), the Committee was of the view that an enquiry that had been under way for a little more than 19 months, without a prompt and impartial investigation having been



unreasonably prolonged, given that an effective investigation into the incident that occurred in May 2012 has still not been carried out. As for the assertion that the complainant is responsible for the delays because of his lawyer's discussions with the judge, the complainant contends that his lawyer's actions fell within the normal exercise of the prerogatives of an attorney who is seeking to ensure the proper administration of justice in the face of the shortcomings found to exist in the investigation and proceedings. The State party's assertion is also contradictory in that while, on the one hand, it criticizes the complainant for failing to have recourse to domestic remedies, it also, on the other hand, criticizes him for having delayed the proceedings precisely by attempting to make use of those remedies.

5.6 With regard to the State party's additional argument that the complainant was intending to sue for damages through a criminal indemnity action in the Rohero court but ultimately desisted, the complainant maintains that the initiation of proceedings is not dependent on whether or not the victim decides to sue for damages and that, for offences as serious as those involved in the present case, a criminal indemnity action could not in any way compensate for the failure to prosecute the case, which should have been done on an ex officio basis.

5.7 As regards the classification of the offence, the complainant notes that the State party has acknowledged that the acts in question have caused him acute pain and suffering. Furthermore, it has not denied that agents of the State party were involved. The complainant rejects the State party's argument that the acts were not committed pursuant to instructions or with intention or premeditation. The end pursued, as the State party has acknowledged, was to punish a person thought to have stolen money from a bus passenger. Punishment is one of the unlawful grounds expressly specified in the definition of torture, and such punishment does not have to have been inflicted for purposes of obtaining information. There is no doubt that the complainant was under the physical control of agents of the State party; he was totally overpowered by the police officers and mounted no resistance. It cannot therefore be argued that the violence inflicted upon the victim was necessary for his arrest or had any legitimate purpose. Furthermore, whether or not the police officers had received an order from their superiors is irrelevant. Article 2 (2) of the Convention does not admit any exceptional circumstance that might be invoked as a justification for torture.

5.8 As to the substance of the complaint and the alleged violations of articles 1, 2, 11, 12, 13, 14 and 16, the complainant reiterates all the arguments set forth in the initial submission.

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

#### *Consideration of admissibility*

6.1 As required under article 22 (5) (a) of the Convention, the Committee has ascertained 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 has contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies, inasmuch as a formal criminal charge of assault was filed and registered with the Rohero local court as Case No. RMPG 604/NE on 13 December 2012. The Committee notes that the State party has indicated that proceedings are ongoing, but it has provided no further

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undertaken, was not in keeping with the State party's obligations in the matter, particularly those set forth in article 12 of the Convention. He also recalls that, in the case of *Blanco Abad v. Spain*, the Committee concluded that taking 10 months to carry out investigative procedures "shows the investigative measures not to have satisfied the requirement for promptness in examining complaints".

information or evidence that might allow the Committee to ascertain what progress has been made or to judge how effective the proceedings might be, bearing in mind that the case has remained on the court's docket for nearly three years. The Committee finds that, under 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 (5) (b) of the Convention.

6.3 In the absence of any impediment to admissibility, the Committee proceeds to its consideration of the merits of the claims submitted by the complainant under articles 1, 2 (1), 11, 12, 13, 14 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 (4) of the Convention.

7.2 The Committee notes that, according to the complainant, on 15 May 2012 he was violently assaulted by uniformed police officers armed with rifles and was then arrested and taken to the police station located next to the SOGEMAC building without being informed of the reasons for his arrest. Upon his arrival at the police station, he was kicked and beaten with belts so violently for more than two hours that he lost consciousness. The complainant was left lying on the floor without assistance, despite his serious injuries, and was only taken to hospital, two hours after the incident, thanks to the intervention of a friend. The Committee observes that the treatment inflicted on the complainant was intentional, since it occurred while he was in the hands of agents of the State party, and was of such a severity that the victim lost consciousness and that his injuries have had lasting consequences which affect him to this day. Furthermore, the abuse to which he was subjected was in all likelihood intended to punish him for an act that he was thought to have committed.

7.3 The Committee has noted the State party's argument that the actions of the police officers were unplanned, that the officers were not acting on orders and that therefore the acts in question cannot be classified as torture. In this regard, the Committee observes that, according to information provided by the complainant that has not been contested by the State party, the individuals who beat and interrogated him were uniformed police officers armed with rifles and belts. Furthermore, the complainant was severely beaten for two hours by police officers within the police station itself. Based on the information provided to it, the Committee concludes that the abuse inflicted upon the complainant was committed by agents of the State party acting in an official capacity and that the acts constitute acts of torture within the meaning of article 1 of the Convention.

7.4 Having found a violation of article 1 of the Convention, the Committee will not consider the grievances raised by the complainant, on a subsidiary basis, under article 16 of the Convention.

7.5 The complainant also invokes article 2 (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 that the complainant in this case was severely beaten and then detained without being allowed immediate contact with his family or access to legal or medical assistance. Even though the authorities have been provided with ample information about the acts committed against the victim, an investigation was promptly launched the day after the events, that is, on 16 May 2012, and the case file was submitted to the Rohero local court on 13 December 2012, the acts in question

remain unpunished. Accordingly, the Committee finds a violation of article 2 (1), read in conjunction with article 1 of the Convention.<sup>7</sup>

7.6 The Committee also notes the complainant's argument that article 11 was violated because the State party failed to properly oversee the treatment he received while in detention. In particular, he claims that he was not formally arrested but rather placed in police custody; that he was not informed of the charges against him; that his detention was unlawful; and that he was not examined promptly by a doctor, despite his critical condition. The Committee recalls its concluding observations regarding the second periodic report of Burundi, in which it expressed concern at: the excessive length of time during which people 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 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). The Committee observes that the complainant appears to have been deprived of any form of judicial oversight. In the absence of any evidence from the State party that it did supervise the complainant's detention, the Committee finds that the State party has violated article 11 of the Convention.

7.7 With regard to articles 12 and 13 of the Convention, the Committee has noted that an investigation into the facts of the case was initiated promptly the day after the events in question. The Committee also notes the complainant's allegations that the investigation was vitiated by a number of shortcomings, including the legal classification of the acts concerned; the fact that only one of the five police officers under suspicion was investigated; the fact that, even though the case was referred to the Rohero local court on 13 December 2012, the case has not yet been heard; and the fact that, almost three years after the proceedings were initiated, the judicial authorities have taken no action against the only police officer to have been investigated. The State party contests the referral of the case to the Committee by the complainant on the grounds that the latter has filed a complaint with the domestic authorities, but it has provided no evidence which might help the Committee to ascertain what progress has been made, to judge how effective the procedure might be or to explain the reasons for such a delay. The Committee considers that such a long delay is clearly in breach of 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 complainant's right to lodge a complaint, which presupposes that the authorities provide a proper response to such a complaint by launching a prompt and impartial investigation.<sup>8</sup>

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 provided with any type of rehabilitation measure 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 recalls its general comment No. 3 (2012) on the implementation of article 14 by States parties, in which it establishes that States parties shall ensure that victims of torture or

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<sup>7</sup> See, inter alia, communication No. 522/2012, *Gahungu v. Burundi*, decision adopted on 10 August 2015, para. 7.6.

<sup>8</sup> See *Gahungu v. Burundi*, para. 7.8.

ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible.<sup>9</sup> Such redress 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.<sup>10</sup> In view of the failure to conduct an effective and impartial investigation in this case, the Committee concludes that the State party has failed to fulfil its obligations under article 14 of the Convention.

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

9. Pursuant to rule 118 (5) of its rules of procedure, the Committee urges the State party to: (a) complete its investigation into the events in question with a view to bringing all those responsible for the complainant's treatment to justice; (b) grant the complainant appropriate redress, including compensation for the material and psychological harm suffered, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition; (c) take all necessary measures to prevent any threats or acts 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 the transmittal of this decision, of the steps it has taken, including the provision of compensation to the complainant, in response to the views expressed above.

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<sup>9</sup> *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 44 (A/68/44)*, annex X, para. 5.

<sup>10</sup> See *Bendib v. Algeria*, para. 6.7.