



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

Distr.: General
16 June 2017
English
Original: French
English, French and Spanish only

Committee against Torture

Decision adopted by the Committee under article 22 concerning communication No. 579/2013* **

<i>Submitted by:</i>	G.N., represented by Trial (Track Impunity Always) and the Seruka Initiative for rape victims/Centre Seruka
<i>Alleged victim:</i>	C.N., daughter of the complainant.
<i>State party:</i>	Burundi
<i>Date of complaint:</i>	11 December 2013 (initial submission)
<i>Date of present decision:</i>	1 May 2017
<i>Subject matter:</i>	Rape of a child by an officer of the national army and lack of effective investigation and redress
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Torture and other cruel, inhuman or degrading treatment or punishment; measures to prevent acts of torture; State party's obligation to ensure that its competent authorities proceed to a prompt and impartial investigation; right to file a complaint; right to redress
<i>Articles of the Convention:</i>	Articles 2 (1), 12, 13 and 14, read in conjunction with articles 1 and 16 of the Convention.

1.1 The complainant is G.N., a Burundian national born in 1980. She is submitting the communication on behalf of her minor daughter, C.N., born on 17 July 2003. The complainant submits that her daughter, C.N., was the victim of a violation of articles 2 (1), 12, 13 and 14, read in conjunction with article 1 and, alternatively, with article 16 of the Convention against Torture. The complainant is represented by counsel.

1.2 Burundi declared that it recognized the competence of the Committee to receive and consider individual communications under article 22 of the Convention on 10 June 2003.

1.3 On 23 December 2013, in application of rule 114 (1) (formerly rule 108) of its rules of procedure (CAT/C/3/Rev.5), the Committee asked 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 her family might be

* Adopted by the Committee at its sixtieth session (18 April-12 May 2017).

** The following members of the Committee participated in the examination of the present communication: Essadia Belmir, Alessio Bruni, Claude Heller Rouassant, Jens Modvig, Sapana Pradhan-Malla, Ana Racu, Sébastien Touzé and Kening Zhang.



exposed, particularly as a result of having lodged the present complaint, and to keep the Committee informed of the measures taken to that end.

The facts as submitted by the complainant

2.1 The complainant resides in the commune of Gihosha, in Bujumbura Mairie. Her daughter, C.N., is a pupil at Gasenyi II primary school. She was 9 years old at the time of the events.

2.2 On 30 June 2012, Captain D.K.¹ was conducting night patrols in the northern districts of the capital. During his shift, and as he was a friend of the complainant's husband, the captain went to the complainant's home and as usual was received by the family. The child knew the serviceman as well. The complainant's husband was not at home that night. Captain D.K. said that he wished to leave, and he asked the complainant to allow her daughter, C.N., to accompany him. The complainant refused, as it was late and she did not want her daughter to leave the home at such a late hour. She offered to escort the captain home herself, but he refused. The complainant then returned to the kitchen to finish cooking the meal. A few minutes later, she called her daughter to request assistance, but found that her daughter was no longer home.

2.3 When the complainant went out to look for her daughter, she learned from her neighbours that they had seen C.N. leaving with Captain D.K. The complainant then rushed out to the main road, but she did not see anyone there. The serviceman was a friend of the family. She thought her daughter would soon return, so she went home, where she had left her other young children.

2.4 When her husband returned late that night and her daughter had still not returned, the complainant informed her husband of the situation. Her husband reassured her. They decided to wait for their daughter to come home, as they had no telephone and it was already late. The girl eventually returned home the next day.

2.5 Several days later, C.N. explained that when she had left the family home with Captain D.K., they first went to the home of the serviceman's in-laws, where he had drunk a beer. They eventually arrived at the serviceman's house around 11 p.m. Everyone was asleep when they arrived, except the signals officer, who was in a parked vehicle a short distance from the front door. The captain did not use the front door, instead passing through an alleyway leading to the kitchen. He ordered the child to sit down and he went to the toilet. He returned after a short while, naked, and grabbed the child by the arm and stripped off her clothes. He took a seat, forced the victim onto his lap and raped her, penetrating her vagina. When she cried and wailed he showed her his firearm and threatened to kill her unless she immediately stopped. The child, threatened and utterly terrified, went silent. Captain D.K. then sent her to sleep with his own children. The captain's wife saw her and asked her husband why she was there.

2.6 The next day, Captain D.K. gave the child 500 Burundian francs (approximately US\$ 0.30). He warned her never to speak to anyone about what had happened, threatening her and also her mother if she revealed their secret. He sent her home with his two children. The little girl at first told her mother nothing, as she was afraid she would die or that something awful would happen to her family.

2.7 A week later, though, C.N. was unable to stand up. She told her mother she had a stomach ache. The following day, the complainant realized that her daughter had serious problems walking. She persisted in asking what was wrong. The young girl then revealed that she had been raped by the serviceman and begged her mother to keep quiet about it.

2.8 When the victim's father broached the subject with Captain D.K., the captain proposed an out-of-court settlement, whereby he would pay for the victim to remain quiet. The complainant firmly rejected that arrangement. A serious disagreement ensued with her husband, who was in favour of coming to terms. The complainant's husband eventually left the family home. The complainant was thus alone in pursuing the matter before the domestic courts.

¹ Represented by his full name and registration number in the original communication.

2.9 As the complainant found out that her daughter had been raped, the following day, on 11 July 2012, she took her to the Centre Seruka, which provides victims of sexual violence with medical, psychosocial and legal assistance. The victim thus received comprehensive care there.

2.10 On 12 July 2012, the complainant appeared with her daughter before the deputy prosecutor of the military prosecutor's department in Bujumbura to report the rape of her child, C.N. The case was opened and a case number was assigned. Although she was frightened, the young victim described the circumstances of the rape in detail. The complainant too was heard by the deputy, and a record serving as a complaint registration was issued on the basis of the hearings. The investigation continued with an interview of Captain D.K. On 13 July 2012, the witnesses were summoned: the serviceman's wife and the signals officer, present at the scene of the crime. On 13 July 2012 the deputy also ordered an expert opinion from the doctor at the Centre Seruka.

2.11 According to the medical report, the gynaecological examination revealed a "tear in the hymen at the six o'clock position, healing, and bright red discoloration around the urinary meatus and the insides of the labia majora and the labia minora". The report concluded that there were "signs of trauma of the external genitalia".²

2.12 The complainant adds that the child's psychological state is extremely distressing. At the first psychological assistance session, on 13 August 2012, a month and a half after the rape, the complainant pointed out that her daughter had become alienated, had cut herself off from contact with other children and showed signs of anxiety. The psychologists observed that the young victim had "persistent flashbacks reflected in repetitive accounts of the incident, along with avoidance behaviour".³

2.13 The complainant furthermore points out that she is now in extremely dire financial straits and lacks social support. Having been left by her husband because she refused the out-of-court settlement, she is trying to meet her family's needs on her own.

2.14 The complainant later followed up on the case regularly with the investigating magistrate, personally visiting the military prosecutor's department to ask how the investigation was progressing. Specifically, she spoke with him on 24 July and 1 August 2012. On both occasions, he informed her that the investigation was under way. On 7 August 2012, the Centre Seruka's legal assistant went to the military prosecutor's department to enquire about the investigation. She learned at that time that the chief investigating magistrate had been transferred to the courts martial. The new judge who took over the case stated in an interview that despite the spontaneous testimony given by the victim, elements of an offence were missing. The employee of the Centre Seruka then offered the testimony of another child, who had also alleged being raped by Captain D.K., but whose complaint had not been upheld. The father of the other victim was interviewed by the deputy, who also visited the scene of the rape with the victim.

2.15 The complainant and the staff of the Centre Seruka followed up on the case, but to no avail, as it appeared that the investigating magistrate was no longer working on it.

2.16 On 25 February 2013, eight months after the rape, the case was finally dismissed, owing to the absence of elements of an offence.⁴ The complainant points out that the judges nonetheless recognized that the captain had taken the child C.N. to his home late at night and that they mentioned the medical report, which clearly concluded that a sexual assault had taken place. The sole basis cited for dismissing the case was the "relatively long period of 10 days before the victim reported the incident" and the captain's "calm" and "availability" to the investigators.⁵

² The report is in the case file.

³ Ibid.

⁴ The decision in the case file.

⁵ The last paragraph of the decision to dismiss the case reads: "(...) despite the evidence submitted by the alleged victim, the testimony gathered from the serviceman guarding the vehicle of the alleged rapist, the relatively long period of 10 days that passed before the victim reported the act, the calm displayed by Captain D.K. and his availability whenever it was solicited during the investigation cast

2.17 Faced with the clear unwillingness of the military prosecutor's department to prosecute, the complainant had only one possible path: to file a direct summons requesting immediate appearance before the court, on the basis of article 350 of the Code of Criminal Procedure.⁶ The procedure in question leaves the victim particularly vulnerable, as it calls for the alleged perpetrator to appear in court without the required investigation being conducted by the public prosecutor's office, thus exposing the victim to a high risk of reprisal and pressure. Furthermore, the complainant ran up against a refusal to register the cover letter for the direct request, as the persons she dealt with in the courts martial claimed that they were unaware of the procedure in question. It was only a few months later that the complainant learned, through counsel, that she must register the request to appear before the Kinindo *tribunal de résidence* (local court). A direct summons calling for Captain D.K. to appear in court was eventually registered with the courts martial on 22 October 2013. However, that direct summons resulted in no action being taken.

2.18 The complainant submits that she has made use of all remedies available to her and that they have proved to be ineffective, as the investigation was incomplete, ineffective, and biased in several respects, and the case was not considered owing to the fact that the prosecution dropped it. Furthermore, the complainant maintains that, in any event, the domestic remedies were not available within any reasonable period of time. Lastly, she notes that, owing to the prevailing lack of security in Burundi coupled with a climate of impunity, it is especially dangerous for victims of torture, including sexual violence, committed by law enforcement agents, to bring perpetrators to justice. This is all the more true when the victim has received a direct death threat from the perpetrator of her rape.

The complaint

3.1 The complainant submits that her daughter, C.N., was the victim of a violation of articles 2 (1), 12, 13 and 14, read in conjunction with article 1 and, alternatively, with article 16 of the Convention against Torture.

3.2 According to the complainant, the abuse inflicted on C.N., a 9-year-old child raped by an on-duty captain of the Burundian army, is of the utmost gravity. Beyond any doubt, the abuse resulted in severe pain and suffering and constitutes torture as defined by article 1 of the Convention. It affects the victim to this day, with serious after-effects impairing her physical and mental health. Furthermore, the child C.N. received serious death threats. She was threatened with a firearm and was told she would be killed if she complained about the rape.

3.3 According to the complainant, rape constitutes torture when it is committed by public officials, at their instigation or with their consent or acquiescence.⁷ Furthermore, rape has been recognized as a form of torture under international criminal law.⁸ The Committee itself has recognized that sexual abuse by the police constitutes torture even when perpetrated outside formal detention facilities.⁹ The complainant adds that, given the young age of the victim, her pain has been all the more intense, and that her suffering has been exacerbated by the fact that she is particularly vulnerable.

3.4 The intention of the torturer to subject her to intense suffering was evident, as it would be impossible to unintentionally subject a child of 9 years to sexual violence of such gravity. Furthermore, the fact that the perpetrator lured the child away from her home using his position as an adult and family friend, and above all as a public official, demonstrates that his actions were completely deliberate and calculated. In addition, the pursued

doubt on the commission of the offence.”

⁶ Article 350 reads as follows: “A direct summons is a procedure initiated by a civil party, whereby a criminal judge may be seized of a criminal case when the prosecution lags in investigating the case.”

⁷ The complainant also refers to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/7/3, paras. 34 ff.).

⁸ International Criminal Tribunal for the former Yugoslavia, case No. IT-96-21-T, *Prosecutor v. Delalić et al.*, judgement of 16 November 1998, and case No. IT-95-17/1-T, *Prosecutor v. Furundžija*, judgement of 10 December 1998.

⁹ See communication No. 262/2005, *V. L. v. Switzerland*, decision adopted 20 November 2006, para. 8.10.

objective — an element of the crime of torture — in this case was discrimination based on sex or gender. The complainant also points out that Captain D.K. was acting in the framework of his duties, carrying out night patrols. He was thus acting as a public official.

3.5 The complainant adds that the State party has not taken the necessary measures, legislative or otherwise, to prevent the practice of torture in Burundi, contrary to its obligations under article 2 (1) of the Convention. On the basis of the complaint filed by the complainant and the victim, the military prosecutor initiated an investigation on 12 July 2012. The parties were heard and a court-ordered medical expert examination concluded that the victim had suffered a sexual assault. The judge also visited the site of the rape with the victim and heard the victim's testimony there, thereafter concluding that her account was coherent. Yet after several months of inaction, on 25 February 2013 the military prosecutor dropped the case for lack of elements of an offence, despite solid evidence of guilt. The military investigation did not meet the requirement for a prompt, diligent and impartial investigation. The complainant's attempt to revive the proceedings by issuing the direct summons to appear produced no result. The presumed perpetrator has thus faced no prosecution, while the victim has been left with no means to defend her rights. Consequently, the State party has failed to comply with article 2 (1) of the Convention.

3.6 The complainant further submits that the investigation did not meet the requirements of article 12 of the Convention, as it was clearly ineffective and biased. The grounds for dropping the case were unfounded, as the military prosecutor's department did not take into account the impact on a 9-year-old child of death threats coming from a serviceman with immense power over her, while it gave disproportionate importance to the captain's "calm". Furthermore, the public prosecution service did not show due diligence, as during the investigation it failed to proceed with an effective and impartial search for additional evidence, despite the gravity of the offence and the young age of the victim. According to the complainant, the authorities' failure to take action against the serviceman, who to this day has not been troubled by the justice system, reflects a will to protect him to the detriment of an effective investigation. Consequently, the State party has failed to meet its obligations under article 12 of the Convention.

3.7 For the same reasons, the complainant also invokes article 13 of the Convention, arguing that no investigation has been initiated and that the presumed perpetrator has not been troubled by the justice system and has remained in service, as a result of which the victim's right to submit a complaint, guaranteed under that article, has been violated as well.

3.8 According to the complainant, by depriving the victim of a criminal trial, the State also deprived her of the legal means to obtain compensation for the material and moral harm caused by a crime as serious as rape. In addition, the only rehabilitation services received by the victim have been provided to her by the Centre Seruka, a private association. The State authorities provided no rehabilitation services at all. The young girl is facing enormous difficulties fitting in at school and in socializing with other children. She no longer plays. It is as if she has been plunged into a permanent state of shock and dejection. The State party has thus also committed a violation of article 14 of the Convention, as the young victim's legal representatives have received no compensation and the victim has not benefited from any rehabilitation or recovery services.

3.9 The complainant maintains that the rape of the child C.N. was an act of torture as qualified by article 1 of the Convention. However, and as an alternative argument, even if the Committee does not agree to qualify it as torture, the abuse endured by the victim in any case constitutes cruel, inhuman or degrading treatment, and on that basis, the State party had the obligation, under article 16 of the Convention, to prevent and repress the commission, instigation or tolerance of such acts by State officials.

State party's observations on admissibility and merits

4.1 On 28 May 2014, the State party submitted its observations on the admissibility and merits of the communication. It emphasized that rape is mentioned in Act No. 1/05 of 22 April 2009 revising the Burundian Criminal Code (art. 557 (2) and (5)). The State party also gave another account of the facts of the case, emphasizing that upon their arrival at the

house, the child went directly into the bedroom of Captain D.K.'s children and that C.N. was familiar with the family, as she had previously visited them on three occasions.

4.2 Referring to the medical report and the injuries described in it, the State party observes that the expert's conclusions are not based on any samples. It adds that the complainant has stopped bringing her daughter for regular psychological follow-up care.

4.3 As for the procedure, the State party contends that, contrary to the complainant's assertion that impunity is prevalent, criminal investigations are initiated in such cases. The problem of violence against women and sexual abuse has drawn the attention of Burundian lawmakers, and addressing the issue is one of the Government's priorities: the 2014 Budget Act allocates funding for operating costs to combat violence against women and for the operation of the national children's judicial protection unit. In addition, the State party refers to Act No. 1/05 revising the Criminal Code (arts. 538 to 563) and Act No. 1/10 of 3 April 2013 establishing the Code of Criminal Procedure.

4.4 With regard to its obligations under article 2 (1), the State party emphasizes that there are several State bodies responsible for combating sexual and gender-based violence both in the prosecution services and the courts, and also under the Ministries of Justice and Human Rights. Such bodies are supported by the Independent National Human Rights Commission, the Office of the Ombudsman and private associations.

4.5 With respect to article 12, according to the State party, Burundian criminal procedure is precisely in line with the aim of the provision: When a crime is committed, article 10 (2) of the Code of Criminal Procedure of 2013 requires the judicial police official to take the case *ex officio* and to immediately inform the prosecutor. For cases involving sexual violence, specialized chambers have just been established and judges and deputies have been appointed to deal exclusively with the issue. The investigation is conducted by hearing the cases made by the prosecution and the defence, with strict respect for the rights of the defence.

4.6 As for article 13, as the prosecution services and the courts have specialized chambers dealing with sexual violence, its provisions are respected. A judicial investigation is opened as soon as the authorities are informed of a case.

4.7 In respect of article 14, the State party maintains that it has established a court system that amply meets the provision's requirements. The trial court always decides the applicable penalty and the amount of compensation for a possible victim.

4.8 The State party adds that the definition of torture adopted by the Burundian legislature is in line with the one in article 1 of the Convention (Act No. 1/05 revising the Burundian Criminal Code, art. 204). The Act also has provisions for suppressing acts of torture. Article 16 of the Convention has been implemented as well, as the suppression of all acts of torture and acts akin to torture is covered by the Burundian Criminal Code of 2009.

4.9 With regard to the specific allegations made by the complainant, firstly, the State party provides an account that differs from that of the complainant. On 30 June 2012, around 8.30 p.m., Captain D.K. reportedly visited the complainant. After some discussion, he asked the child C.N. to accompany him home. The child left the family home with the serviceman. Once they arrived at Captain D.K.'s home, around 11 p.m., the girl went directly to his children's room, where she reportedly spent the night. C.N. knew the family well; she had apparently already visited them three times.

4.10 The State party adds that as soon as the sexual assault was reported to the competent authorities, on 13 July 2012, a judicial investigation was initiated, but that the investigation did not result in charges being brought against the suspect. The parties were heard on the day the complaint was filed, and the expert's conclusions were presented on 16 July 2012. The following day, the sole eyewitness present at the scene was interviewed for his version of the events, and his testimony exculpated the suspect.

4.11 In just four days, the military prosecutor completed his investigation. The case was closed shortly thereafter. The investigation was conducted promptly, in conformity with the law, and there was no negligence. The prosecutor was unable to find a link between Captain

D.K. and the sexual assault perpetrated against the child. The State party notes that the medical expert did not take samples — notwithstanding the fact that they were essential — from the serviceman suspected of carrying out the assault, nor were any biological samples taken from the child in order to perform a comparative analysis of the genetic profiles. The investigator from the military prosecutor's department was therefore unable to prove that the child's injuries sustained during the sexual assault were attributable to Captain D.K. Because of the failure to identify the actual perpetrator of the sexual assault, the investigator proposed that the case should be dropped, and it was, in application of article 41 (1) of Act No. 1/15, of 20 July 1999, on reform of the Code of Criminal Procedure; the serviceman benefited from the existence of doubt.

4.12 The State party adds that, according to Burundian criminal procedure, children and the principle of the best interest of the child are afforded privileged protection.¹⁰ However, other basic principles are involved in criminal proceedings. Namely, the investigator must respect the presumption of innocence. It cannot be totally excluded that the perpetrator of the sexual assault against the child was a person other than Captain D.K. The fact that the investigation was discontinued does not mean the judicial authorities can be accused of being remiss. There is currently no genetic identification (DNA testing) in Burundi; it is not used to deal with criminal cases.

4.13 The State party adds that the complainant filed the application with the Committee before the exhaustion of domestic remedies in Burundi. She could have reported the inadequacy of dropping the case to the next level in the hierarchy (the State Prosecutor) and requested that the case be reopened, providing new evidence. Under article 41 (a) of the 1999 Act, discontinuation of a case is an administrative measure which does not bar resumption of the investigation or prosecution of the same case. It is a temporary measure, not a definitive one.

4.14 At this stage, the child cannot obtain a judicial remedy, for the simple reason that the judge is no longer seized of the case. Until the case is reopened, the child must still receive the psychosocial assistance and medical care required because of her trauma. The State party adds that it makes use of the means at its disposal to strengthen social institutions, encouraging activities by private associations that provide care for victims. In the present case, the psychosocial unit of the Centre Seruka reported that the complainant did not return to the Centre and that she did not continue to make use of the psychological services provided to her daughter, which were nonetheless essential for her.

Complainant's comments on the State party's observations on admissibility and on the merits

5.1 On 16 December 2014, the complainant submitted her comments on the State party's observations. She noted first of all that while Burundi had indeed adopted a new Criminal Code in 2009 establishing that torture was a criminal offence and a new Code of Criminal Procedure in 2013, there were still several legal obstacles to the effective prevention of the practice of torture. Moreover, the adoption of legislation provided no guarantee of satisfactory implementation and was insufficient to prevent the commission of acts of torture. Article 558 of the Criminal Code *inter alia* provides that "rape shall be punishable by life imprisonment when it is committed against a child under the age of 12". Notwithstanding the existence of a suitable legal framework, the State party's actual response to the problem of sexual violence is thus still inadequate.

5.2 The complainant refers to her initial argument and repeats that the domestic remedies have proven to be of no avail and ineffective, unreasonably prolonged, and dangerous for her child and herself. She adds that with the assistance of the Centre Seruka, she tried to reinstate the proceedings in the domestic courts after the case had been dropped by the military prosecutor's department, by issuing a direct summons, filed with the courts martial on 22 October 2013. On 26 June 2014, though, the courts martial stated that the complaint did not fall within their competence, basing the decision on article 65 of Act No. 1/21 of 31 December 2010 amending Act No. 1/15 of 29 April 2006, establishing the

¹⁰ The State party refers to articles 554 ff. of the Criminal Code of 2009.

conditions of service for officers of the National Defence Forces of Burundi.¹¹ The complainant adds that that body had, however, been found to be competent by the investigating magistrate in a similar case involving the rape of a minor, initiated against the same alleged perpetrator.¹² Clearly, then, there is an inconsistency in the treatment of the two cases. Furthermore, in the light of the case's other previously cited irregularities, the complainant concludes that the decision of the courts martial that they were not competent to hear the complaint was a delaying tactic intended to protect the presumed perpetrator from criminal prosecution.

5.3 On the merits of the case, the complainant points out that the State party has not contested the facts. It has not denied that a sexual assault took place, merely contending that no link could be established with the presumed perpetrator, while implicitly admitting that the captain could be the one who carried out the sexual assault.

5.4 The complainant argues that the State party cannot blame the lack of DNA tests on her and seek to exonerate itself by placing the burden for the lack of means and investigation techniques on the victim, expecting the victim to provide further evidence using a method that the State itself has failed to make available. Furthermore, with regard to the State party's argument that the complainant failed to exhaust domestic remedies by not reporting to the next level in the hierarchy that the dismissal of the case was inappropriate, the complainant notes that it is unreasonable to require the presentation of further incriminating evidence that the State itself is unable to provide, for lack of available DNA testing. In addition, this position ignores the fact that the victim and her family, rendered destitute as a result of the rape, have been left vulnerable before a senior officer, who, for his part, has been given protection.

5.5 The complainant adds that in this case, the medical expert opinion did indeed conclude that a sexual assault had taken place, a fact that the State party has not denied. In addition, the psychosocial services confirmed that the child's description of the incident corresponded with her psychological state, as assessed by professionals. Furthermore, convictions for rape (albeit not when they are committed by high-level State officials) have already been handed down on the basis of medical experts' forensic reports, without resorting to DNA testing. The absence of DNA testing in this case is thus not an insurmountable obstacle, and the State party provides no satisfactory explanation for its failure to take action in response to a medical report of particular gravity about a minor, who should benefit from special protection. The State authorities had the responsibility to launch an effective, prompt and impartial investigation, ordering a thorough expert's report and questioning witnesses to ascertain who was responsible.

5.6 The complainant also notes that in practice there has been a lack of convictions of perpetrators of violence against women and of sexual assault when they are State officials. No prosecutions are initiated when senior officers are involved. Furthermore, the State party presents the work done by civil society associations as one of its own achievements, but such associations specifically address the shortcomings of the State in responding to such violations. The same applies to the obligation of the State party to provide the necessary measures for compensation and rehabilitation of the victim, which has so far been ensured by a private association.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee notes the allegation of the complainant, according to which the State party has not taken the necessary measures, legislative or otherwise, to prevent the practice of torture, contrary to its obligations under article 2 (1) of the Convention. The Committee

¹¹ Article 65 (2) provides that "ordinary offences committed by officers shall be tried in ordinary courts".

¹² Case RMP 144770.

takes note of the legislative measures undertaken by the State party, particularly the adoption of Act No. 1/05 revising the Burundian Criminal Code; article 10 (2) of the Code of Criminal Procedure of 2013, which instructs the judicial police *ex officio* to take up cases and to immediately inform the prosecutor; and article 558 of the Criminal Code, which provides for a penalty of life imprisonment when a rape is committed against a child under the age of 12. The Committee concludes that the complainant has failed to substantiate, for purposes of admissibility, the claim presented under article 2 (1) of the Convention, and therefore finds it inadmissible.

6.3 Secondly, the Committee observes that the State party has contested the admissibility of the communication on the grounds that the complainant has not exhausted domestic remedies, since the complainant, by producing further evidence, could have reported the decision of the military prosecutor's department of 25 February 2013 to the State Prosecutor. The Committee notes that, according to the admission of the State party itself, investigation techniques employing DNA testing are not used in criminal cases in Burundi. Yet the State party has maintained that such techniques were supposedly required in order to identify the perpetrator and the victim for the purposes of the investigation. It thus cannot be held against the complainant that she did not avail herself of a remedy that could only have been available with the presentation of new evidence. The Committee notes that, in any case, it was incumbent on the State party to continue to seek the truth and to ensure that an effective investigation would identify and punish the person responsible for the crime. The Committee concludes that in such circumstances, domestic remedies have been exhausted and that the complaint is admissible under article 22 (5) (b) of the Convention.

6.4 In the absence of any additional obstacle to the admissibility of the communication, the Committee proceeds to its consideration of the merits of the claims submitted by the complainant under articles 1, 12, 13, 14 and 16 of the Convention.

Consideration of the merits

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

7.2 The Committee notes the complainant's allegation that on 30 June 2012, during a patrol, Captain D.K., a member of the Armed Forces of Burundi, went to her home and that he reportedly took her daughter, C.N., who was 9 years old at the time, to his home, and that he allegedly sexually assaulted her. The Committee notes that the State party has provided a different version of the events. According to it, Captain D.K. proposed that the child C.N. accompany him home, and she accepted. Once they arrived at the serviceman's home, the child went directly to the children's room, where she spent the night.

7.3 The Committee emphasizes that, despite this discrepancy between the factual accounts, there is no dispute as to whether the child C.N. spent the night at Captain D.K.'s home and that she was subjected to sexual assault, a fact that was formally certified by a medical examination following the request for an expert opinion formulated by the authorities of the State party as part of the judicial investigation opened in this case. The Committee further notes that the State party has not commented on the applicant's allegation that Captain D.K. reportedly first threatened to kill the child with his firearm if she did not stop crying and wailing and subsequently gave the child money to ensure her silence, and that he later proposed an out-of-court settlement to the family of the victim, which, in the Committee's view, should be considered as a confession. Accordingly, the Committee gives due weight to the complainant's allegations, insofar as they have been sufficiently substantiated and the State party has not provided satisfactory answers to them.

7.4 The Committee notes that on 30 June 2012, the daughter of the complainant, a minor, was under the physical control of an officer of the Burundian national army. It is not disputed that the acts in question, deliberately inflicted and consisting of vaginal penetration of a 9-year-old child, surely constitute infliction of severe pain and suffering, perpetrated for impermissible purposes. The pain and suffering were compounded by intimidation of the victim, who was threatened with a firearm. Furthermore, the family was subjected to pressure to keep the victim quiet about the rape. Accordingly, the Committee

considers that the sexual abuse to which the child C.N. was subjected by an official of the State acting in his official capacity and the associated acts of intimidation fall within the scope of article 1 of the Convention.

7.5 Having reached this conclusion, the Committee does not consider it necessary to examine the same claims from the perspective of article 16 of the Convention, invoked by the complainant on an alternative basis.

7.6 Regarding articles 12 and 13 of the Convention, the Committee has taken note of the complainant's allegations that the investigation launched in this case did not meet the requirements for an impartial, effective and prompt inquiry. The Committee observes, first, that an investigation was initiated promptly, as the day after the formal complaint was lodged by the complainant, on 13 July 2012, an investigation was launched; the following day, witnesses were interviewed. The Committee recalls, however, that under the obligation contained in article 12 of the Convention, States parties must carry out a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.

7.7 In the present case, given the speed with which the investigation was closed, the Committee considers that there are substantial grounds for believing that the measures taken were not impartial, as they did not seek out additional evidence making prosecution possible. The Committee thus cannot conclude that such measures were effective. The State party's argument, which criticized the medical expert for not taking genetic samples (in a medical examination that the State itself had ordered) while at the same time stating that such techniques do not exist in Burundi, is unacceptable.

7.8 In any event, the Committee notes that, after the premature termination of the investigation, no other suspect was arrested and brought before the courts of the State party, meaning that the perpetrator of the rape of the child C.N. has gone unpunished, despite the fact that the Burundian Criminal Code (art. 558) provides that rape is punishable by life imprisonment when committed against a child under 12 years of age. The Committee finds that a violation of article 12 of the Convention has occurred.

7.9 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 an adequate response to such a complaint by launching a prompt and impartial investigation.¹³

7.10 As for the complainant's claims under article 14 of the Convention, the Committee recalls that this article 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 that redress should cover all the harm suffered by the victim and encompasses, among other measures, restitution, compensation and guarantees of non-repetition of the violations, taking into account the circumstances of each case.¹⁴ In the present case, the Committee has noted the complainant's allegation that the only rehabilitation follow-up services received by the victim were provided by a private association. The Committee further notes that the State party presumed to invoke the work of that association, over which it holds no prerogatives or authority, without identifying the measures it intends to take to meet its obligation to provide rehabilitation and redress for a crime as serious as the rape of a child by a military officer. In these circumstances, the Committee can only conclude that, in the absence of an effective and impartial investigation, the State party has violated 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 violations of articles 12, 13 and 14, read alone or in conjunction with article 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. In accordance with rule 118 (5) of its rules of procedure, the Committee urges the State party to: (a) promptly reopen an investigation into the incidents in question with a

¹³ See communication No. 578/2013, *E.N. v. Burundi*, decision adopted on 25 November 2015, para. 7.7.

¹⁴ *Ibid.*, para. 7.8.

view to bringing to justice all those responsible for the treatment inflicted on the complainant's daughter; (b) provide the complainant with appropriate reparation, including measures of compensation for the material and moral harm caused, restitution, rehabilitation, measures of satisfaction and a guarantee of non-repetition; (c) take all necessary measures to prevent any threats or acts of violence to which the complainant or her daughter might be exposed, in particular as a result of having lodged the present complaint; and (d) inform the Committee, within 90 days of the date of transmittal of this decision, of the steps it has taken in response to the views expressed above, including for compensation of the complainant.
