

CANADA

Follow-up - Jurisprudence Action by Treaty Bodies

CAT, A/60/44 (2005)

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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D. Follow-up activities

150. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22.

151. The Rapporteur on follow-up submitted an oral report to the Committee at its thirty-third session. The report contained information received since the thirty-second session from either the complainants or the States parties on the issue of follow-up to a number of decisions in which the Committee had found violations of the Convention. During the consideration of this report, the Committee requested the Special Rapporteur to provide information on follow-up to all decisions in which the Committee had found violations of the Convention, including decisions in which the Committee found violations, prior to the commencement of the Rapporteur's mandate.

152. During the thirty-fourth session, the Special Rapporteur presented a report on follow-up to all the Committee's decisions, including new information received from both the complainants and States parties since the thirty-third session. This report is provided below.

Report on follow-up to individual complaints to the¹ Committee against Torture

Complaints in which the Committee has found violations of the Convention up to thirty-fourth session

Case	Date of adoption	Nationality of complainant and country of removal if applicable	Article of Covenant violated	Interim measures granted and State party's response	Remedy	Follow-up	Further action
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No.15/1994 <i>Tahir Hussain Khan v. Canada</i>	15 Nov. 1994	Pakistani to Pakistan	3	Requested and acceded to by the State party	The State party has an obligation to refrain from forcibly returning Tahir Hussain Khan to Pakistan	No information provided to Rapporteur, however, during the discussion of the State party report to the Committee against Torture in May 2005, the State party stated that the complainant had not been deported.	Request further information on the complainant's status in Canada
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<p>No. 133/1999 <i>Falcon Rio v. Canada</i></p>	<p>30 Nov. 2004</p>	<p>Mexican to Mexico</p>	<p>3</p>	<p>Requested and acceded to by the State party</p>	<p>Relevant measures</p>	<p>On 9 March 2005, the State party provided information on the progress of the case. It stated that the complainant had submitted a request for a new assessment prior to returning to Mexico and that the State party would inform the Committee of the outcome. If the complainant could establish one of the motives for protection under the Immigration and Protection of Refugees Act, the complainant would be able to present a request for permanent residence in Mexico. The Committee's decision would be taken into account by the immigration officer and the complainant would be heard orally if the Minister considered it necessary. The complainant's request for asylum had been considered prior to the entry into force of the Immigration and Protection of Refugees Act. Prior to June 2002, the immigration agent would not be restricted from assessing facts after the date of the initial request but would be required to examine all the facts and circumstances, old and new, as presented by the complainant. In this case, the complainant contested the Committee's decision in paragraph 7.5 of its decision, in which it found that only new information could be considered during such a review. Finally, the State party contested the Committee's view that a humanitarian remedy did not constitute an effective remedy. It referred to previous cases decided by the Committee in which the Committee itself found such remedies to be effective.⁵ It argued that the prohibition of torture could constitute a humanitarian motive and that the court could be requested to have a suspensive effect pending the Committee's decision. According to the State party, at the time of the reporting period, during the consideration of the report by the Committee, the authorities</p>
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						yet completed their reassess the risk of return.
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¹ The present report reflects information up to the end of the thirty-fourth session.

⁵ *S.V. v. Canada*, communication No. 49/1996; *L.O. v. Canada*, communication No. 95/1997;
R. K. v. Canada, communication No. 42/1996.

CAT/C/SR.717 (2006)

COMMITTEE AGAINST TORTURE

Thirty-sixth session

SUMMARY RECORD OF THE 717th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 May 2006, at 10 a.m.

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CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE CONVENTION (agenda item 9) (continued)

50. The CHAIRPERSON invited the Special Rapporteur to introduce the report on follow-up activities (document without a symbol) relating to the Committee's decisions on complaints submitted under article 22 of the Convention.

51. Mr. MARIÑO MENÉNDEZ, Special Rapporteur on Follow-up, summarized the comprehensive report on replies received with regard to all cases in which the Committee had found violations of the Convention and one case in which it had not found a violation but had made a recommendation.

52. It was proposed to send reminders requesting information or updates to the following States parties with regard to the specified communications: Austria (Halimi-Nedibi Quani, 8/1991); Canada (Tahir Hussain Khan, 15/1994; Falcon Ríos, 133/1999); France (Brada, 195/2003); Netherlands (A, 91/1997); Serbia and Montenegro (Ristic, 113/1998; Hajrizi Dzemajl et al., 161/2000; Nikolic, 174/2000; Dimitrijevic, Dragan, 207/2002); Spain (Ecaración Blanco Abad,

59/1996; Urra Guridi, 212/2002); Sweden (Tharina, 226/2003; Agiza, 233/2003); Venezuela (Chipana, 110/1998).

53. In the case of Dadar v. Canada (258/2004), a note verbale had been sent to the State party on 13 March 2006 expressing concern that the complainant was to be deported to Iran despite the Committee's decision concerning Canada's obligations under article 3 of the Convention. Following the complainant's deportation on 26 March 2006, a second note verbale had been sent to the State party on 31 March 2006, expressing concern at the precedent set by Canada in failing to abide by the Committee's decision on the merits of a case submitted and duly considered under article 22 of the Convention, asking to be informed by the State party of any measures taken to ensure the complainant's safety on arrival in the Islamic Republic of Iran, including the establishment of any monitoring mechanism through the State party's consular offices, and requesting information in due course on the complainant's well-being. Was the Committee agreed on the dispatch of a further note verbale to the State party, deploring its failure to comply with the terms of article 3, reminding it of its corresponding obligations, and requesting it to establish a monitoring mechanism whereby Canadian representatives would have direct contact with the complainant?

54. Mr. CAMARA expressed reservations about the dispatch of such a note, which might establish a precedent whereby States parties would consider their obligations under article 3 limited to establishing a monitoring mechanism following the deportation of a complainant. He thought that the Committee should inform the State party that it had violated article 3 and should include that information in its annual report.

55. Ms. GAER said that, at the time of the complainant's deportation, the State party had maintained that the complainant was well and that there was therefore no need for a monitoring mechanism. It had never been suggested that such a mechanism would fulfil the State party's obligations, and it was for the Committee to determine what further follow-up measures should now be taken.

56. The CHAIRPERSON, endorsing the views expressed by Mr. Camara, said that any written communication to the State party should stress the need to comply with the Committee's decision. Other issues could be discussed verbally at a meeting with the representatives of Canada.

57. Mr. MARIÑO MENÉNDEZ agreed that the note to the State party should not refer to possible follow-up measures. Issues such as monitoring, compensation for violation of the Convention and guarantees of future compliance could be discussed at a meeting with the State party's representatives, at which Ms. Gaer might represent the Committee.

58. Ms. GAER said she wished to place on record her concern that, for the first time, a State party had refused to comply with a decision of the Committee on the merits of a complaint. She considered the matter to be particularly serious since Canada had always cooperated very actively in the implementation of the Convention. The Committee would have to determine its substantive response at a subsequent meeting.

59. The CHAIRPERSON suggested, in keeping with the views expressed, that the note verbale to the State party should seek a meeting with its representatives while making no reference to any follow-up measures.

60. It was so decided.

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CAT, CAT/C/SR.749 (2006)

COMMITTEE AGAINST TORTURE

Thirty seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 749th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 22 November 2006, at 3 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Follow up procedures (CAT/C/37/R.2)

1. Mr. MARIÑO MENÉNDEZ, Rapporteur on follow up to communications, reporting on follow up to communications during the thirty sixth and thirty seventh sessions, drew attention to document CAT/C/37/R.2. It explained the status of communications on which the Committee had requested additional information or further action. Five States parties had not responded to the Committee's requests for information. The document contained detailed information on six communications.

2. With regard to the Dadar v. Canada case, it was proposed that the Committee should request the State party to provide, in response to the concern expressed by his counsel, information on the complainant's whereabouts and well being, if necessary with the assistance of the Embassy in Tehran.

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CAT, A/61/44 (2006)

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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D. Follow-up activities

75. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, *inter alia*, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow-up visits to States parties; preparing periodic reports to the Committee on his/her activities.

76. During its thirty-fourth session, the Committee, through its Special Rapporteur on follow-up to decisions, decided that in cases in which it had found violations of the Convention, including Decisions made by the Committee prior to the establishment of the follow-up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's Decisions.

77. In a follow-up report presented to the Committee during the thirty-fifth session, the Special Rapporteur on follow-up to decisions provided information received from four States parties pursuant to this request: France; Serbia and Montenegro (in relation to 113/1998, Ristic); Switzerland; and Sweden. The following countries did not respond to the request: Austria; Canada (with respect to Tahir Hussain Khan, 15/1994); the Netherlands; Spain; and Serbia and Montenegro (in relation to 161/2000, Hajrizi Dzemajl, 171/2000, Dimitrov, and 207/2002, Dragan Dimitrijevic).

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79. During the thirty-sixth session, the Special Rapporteur on follow-up to decisions presented new follow-up information that had been received since the thirty-fifth session with respect to the following cases: *Dadar v. Canada* (258/2004), *Thabti v. Tunisia* (187/2001), *Abdelli v. Tunisia* (188/2001) and *Ltaief v. Tunisia* (189/2001) and *Chipana v. Venezuela* (110/1998). Represented below is a comprehensive report of replies received with regard to all cases in which the Committee has found violations of the Convention to date and in one case in which it did not find a violation but made a recommendation. Where there is no field entitled "Committee's decision" at the end of the provision of information in a particular case, the

follow-up to the case in question is ongoing and further information has or will be requested of the complainant or the State party.

Complaints in which the Committee has found violations of the Convention up to the thirty-fourth session

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State party	CANADA
Case	Tahir Hussain Khan, 15/1994
Nationality and country of removal if applicable	Pakistani to Pakistan
Views adopted on	15 November 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning Tahir Hussain Khan to Pakistan.
Due date for State party response	None
Date of reply	None
State party response	No information provided to Rapporteur, however, during the discussion of the State party report to the Committee against Torture in May 2005, the State party stated that the complainant had not been deported.
Author's response	None
Case	Falcon Rios, 133/1999
Nationality and country of removal if applicable	Mexican to Mexico
Views adopted on	30 November 2004
Issues and violations found	Removal - article 3

Interim measures granted and State party response	Requested and acceded to by the State party
Remedy recommended	Relevant measures
Due date for State party response	None
Date of reply	None
State party response	<p>On 9 March 2005, the State party provided information on follow-up. It stated that the complainant had submitted a request for a risk assessment prior to return to Mexico and that the State party will inform the Committee of the outcome. If the complainant can establish one of the motives for protection under the Immigration and Protection of Refugee's Law, he will be able to present a request for permanent residence in Canada.</p> <p>The Committee's decision will be taken into account by the examining officer and the complainant will be heard orally if the Minister considers it necessary. Since the request for asylum was considered prior to the entry into force of the Immigration and Protection of Refugee's Law, that is prior to June 2002, the immigration agent will not be restricted to assessing facts after the denial of the initial request but will be able to examine all the facts and information old and new presented by the complainant. In this context, it contests the Committee's finding in paragraph 7.5 of its decision which found that only new information could be considered during such a review.</p>
Author's response	None
Case	Dadar, 258/2004
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	3 November 2005
Issues and violations found	Removal - article 3
Interim measures granted and State party	Yes and State party acceded

response

Remedy recommended

The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

Due date for State party response

26 February 2006

Date of reply

22 March 2006, 24 April 2006

State party response

The State party refers to the note verbale from the Secretariat, dated 13 March 2006 (see below).

However, it informed the Committee that it intended to remove the complainant to Iran on 26 March 2006. It submitted that it undertook a review of the file in light of the Committee's determination but reiterated its opinion that it does not share the Committee's view that the complainant has established that he would face a substantial risk of torture if removed to Iran. It submitted that, it is for the national courts of the States parties to the Convention to evaluate the facts and evidence in a particular case.

It submitted that the reference made by the Ministerial Delegate that the risk that the complainant could represent for the Canadian public outweighed the risk that he would face in Iran was meant only as an alternative argument. The Ministerial Delegate's primary conclusion, and the one adopted by the Federal Court, was that the complainant would not face a substantial risk of torture.

The State notes that the Committee does not refer to the complainant's credibility, despite Canada having raised the issue in its submissions, and accepts much of the complainant's evidence without credible and independent supporting documentation. Although the Committee suggested otherwise, the State party submits that it had questioned the allegations made with respect to the complainant's involvement with the Canadian Intelligence and Security Service in its

submissions. In addition, the letter, dated 4 April 2005, which the complainant provided to demonstrate his political involvement was provided after the State party had provided its submissions, and in any event contained no elaboration of his alleged activities. It recalls that the risk of being detained as such is not sufficient to trigger the protection of article 3.

Finally, the State party reminds the Committee that this is the first time that Canada will not follow this Committee's decision on the merits of a case. Nevertheless, its position in this matter should not be interpreted as a sign of any disrespect for the Committee's work in monitoring implementation of the Convention.

On 24 April 2006, the State party responded to the Rapporteur's note verbale of 31 March. It reiterates the Minister's findings and submits that the risk assessment was reaffirmed by the Federal Court on 24 March 2006. Thus, it remains the State party's position that it complied fully with its obligations under article 3.

Since Mr. Dadar's return, the State party informs the Committee that a Canadian representative spoke with the complainant's nephew who said that Mr. Dadar arrived in Tehran without incident, and has been staying with his family. Canada has no direct contact with Mr. Dadar since he was returned to Iran. In light of this information, as well as Canada's determination that Mr. Dadar did not face a substantial risk of torture upon return to Iran, the State party submits that it was not necessary for Canada to consider the issue of monitoring mechanisms in this case. It submits further that Mr. Dadar is now within the jurisdiction of Iran, which is a party to the ICCPR and bound to respect the rights protected under the Covenant, including the prohibition of torture and cruel, inhuman and degrading treatment or punishment. There are also United Nations special procedures, such as the Special Rapporteur on Torture, which would be available to Mr. Dadar if required.

Author's response

The complainant's counsel has contested the State

party's decision to deport the complainant despite the Committee's findings. He has not to date provided information he may have on the author's situation since arriving in Iran.

Action taken

On 13 March 2006, following oral information from the State party on 10 March 2006, that the State party intended to deport the complainant in this case, the Special Rapporteur, sent a note verbale to the State party. The Rapporteur expressed concern that, despite the Committee's decision, the State party intended to deport the complainant back to Iran. On behalf of the Committee, the Rapporteur reminded the State party that it has an obligation under article 3 not to "expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". In view of the Committee's decision (para. 8.9) that, "substantial grounds exist for believing that the complainant may risk being subjected to torture if returned to Iran", the Rapporteur invited the State party to take action in conformity with the Committee's decision.

Following the author's deportation on 26 March 2006, the Rapporteur, on 31 March 2006, sent another note verbale to the State party, on behalf of the Committee, in which the Rapporteur expressed grave concern at the State party's refusal to comply with its decision, and acknowledged, inter alia, that this was the first time, to the Committee's knowledge, that any State party deported a complainant following a conclusion by this Committee that such a deportation would amount to a violation of article 3. The Rapporteur expressed concern not only for the complainant in this case but also deep concern for the global consequences of the State party's action with respect to compliance with the Committee's decisions under article 22. The Rapporteur requested to be informed of any measures taken by the State party to ensure the complainant's safety on arrival in the Islamic Republic of Iran, including the establishment of any monitoring mechanism through the State party's consular offices, or other procedural or substantive

guarantees, and also requested information in due course on the complainant's state of well-being.

Committee's decision

During the consideration of the follow-up at its thirty-sixth session, the Committee deplored the State party's failure to abide by its obligations under article 3, and found that the State party violated its obligations under article 3 not to, "expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".

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CAT, CAT/C/SR.776 (2007)

COMMITTEE AGAINST TORTURE

Thirty-eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC) OF THE 776th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 15 May 2007, at 3 p.m.

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ORGANIZATIONAL AND OTHER MATTERS (agenda item 3)

Follow-up procedures (CAT/C/38/R.1)

1. The CHAIRPERSON invited the Committee to consider the report of on follow-up to individual communications as contained in document CAT/C/38/R.1.

2. Mr. SCHMIDT, Petitions Unit, introducing the report, said that it dealt with follow-up activities since the end of the Committee's previous session, 24 November 2006...

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4. Mr. MARIÑO MENÉNDEZ, Rapporteur on follow up to communications, called the Committee's attention to Falcón Riós v. Canada, in which the Committee had, in 2004, found a violation of Article 3 of the Convention and had requested the State party to take interim measures. Canada had reported on 9 March 2005 that the complainant had lodged a new complaint with the competent authorities seeking an assessment of the risk that he might be tortured if he were returned to Mexico. On 5 February 2007, the complainant had transmitted to the Committee the results of that inquiry, indicating that his request had been rejected and that he had to leave the territory of the State party. Accordingly, the Committee could ask the complainant to provide current information on his situation and request the State party to provide updated information on the case.

5. With regard to the Dadar v. Canada case, which was not mentioned in the document under consideration, the State party had sent the complainant back to his country of origin after concluding, contrary to the Committee's observations of 23 November 2005 that he had not demonstrated that he ran a real risk of being tortured if he were returned. The Committee could therefore request information from the State party regarding the complainant's current situation.

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14. The CHAIRPERSON said that if he heard no objection he would take it that the Committee wished to adopt the proposals of the Rapporteur

15. It was so decided.

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CAT, CAT/C/SR.801/Add.1 (2007)

COMMITTEE AGAINST TORTURE

Thirty-ninth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 801st MEETING

Held at the Palais Wilson, Geneva,

on Monday, 19 November 2007, at 12.35 p.m.

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CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE CONVENTION (continued)

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Follow-up on decisions adopted under article 22 of the Convention (CAT/C/39/R.1)

1. The CHAIRPERSON invited the Special Rapporteur on Follow-up to introduce the report on follow-up activities (CAT/C/39/R.1) relating to the Committee's decisions on individual complaints submitted under article 22 of the Convention.

2. Mr. MARIÑO MENÉNDEZ, Special Rapporteur on Follow-up, summarized the comprehensive report on replies received in cases in which the Committee had found violations of the Convention.

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7. In the case of *Falcón Rios v. Canada* (133/1999) the Committee did not need to take further action since the Canadian Government had said that it did not intend to implement the order to return the complainant to Mexico. However, he suggested that a letter should be sent to the Canadian Government asking it for any new information concerning the case, and reminding it that, in accordance with the Committee's decision, the complainant must not be returned to Mexico as he was still covered by the interim measures granted by the Government.

8. With regard to *Mostafa Dadar v. Canada* (258/2004) he suggested that the Committee should comply with the complainant's request not to remove the case from the follow-up procedure, despite the State party's request to the contrary. Canada had in fact shown a lack of good faith in renegeing on its undertaking to apply interim measures. The Committee should therefore request information from the State party on the complainant's situation.

9. The CHAIRPERSON suggested that the case be kept open until the Committee's fortieth session. In his view, there were insufficient grounds for keeping it open beyond then.

10. Mr. WANG Xuexian sought clarification of the counsel's assertion that his client was persona non grata in Iran. What was meant by that? And was it counsel's view or that of the Iranian Government?

11. Mr. MARIÑO MENÉNDEZ said that the expression had been used in counsel's case file and reproduced. The exact meaning was unclear.

The meeting rose at 1 p.m.

CAT, A/62/44 (2007)

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VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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Complaints in which the Committee has found violations of the Convention up to the thirty-eighth session

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State party	CANADA
Case	Tahir Hussain Khan, 15/1994
Nationality and country of removal if applicable	Pakistani to Pakistan
Views adopted on	15 November 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning Tahir Hussain Khan to Pakistan.
Due date for State party response	None
Date of reply	None
State party response	No information provided to Rapporteur, however during the discussion of the State party report to the Committee against Torture in May 2005, the State party stated that the complainant had not been deported.
Complainant's response	None
Case	Falcon Rios, 133/1999
Nationality and country of removal if applicable	Mexican to Mexico

Views adopted on	30 November 2004
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party
Remedy recommended	Relevant measures
Due date for State party response	None
Date of reply	None
State party response	<p>On 9 March 2005, the State party provided information on follow-up. It stated that the complainant had submitted a request for a risk assessment prior to return to Mexico and that the State party will inform the Committee of the outcome. If the complainant can establish one of the motives for protection under the Immigration and Protection of Refugee's Law, he will be able to present a request for permanent residence in Canada. The Committee's decision will be taken into account by the examining officer and the complainant will be heard orally if the Minister considers it necessary. Since the request for asylum was considered prior to the entry into force of the Immigration and Protection of Refugee's Law, that is prior to June 2002, the immigration agent will not be restricted to assessing facts after the denial of the initial request but will be able to examine all the facts and information old and new presented by the complainant. In this context, it contests the Committee's finding in paragraph 7.5 of its decision which found that only new information could be considered during such a review.</p>
Complainant's response	<p>On 5 February 2007, the complainant forwarded the Committee a copy of the results of his risk assessment, in which his request was denied and he was asked to leave the State party. No further information was provided.</p>
Case	Dadar, 258/2004
Nationality and country of removal if	Iranian to Iran

applicable

Views adopted on

3 November 2005

Issues and violations found

Removal - article 3

Interim measures granted and State party response

Yes and State party acceded

Remedy recommended

The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days of the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

Due date for State party response

26 February 2006

Date of reply

Latest reply 5 April 2007 (Had previously responded on 22 March 2006 and 24 April 2006 - see annual report A/61/44 - and 9 August 2006).

State party response

The Committee will recall that the State party removed the complainant to Iran on 26 March 2006 despite a finding of a violation of the Convention. In its response of 24 April 2006, it stated that since his return a Canadian representative had spoken with the complainant's nephew who said that Mr. Dadar had arrived in Tehran without incident, and was staying with his family. The State party had no direct contact with him since he was returned to Iran. In light of this information, as well as Canada's determination that he did not face a substantial risk of torture upon return to Iran, the State party submits that it was not necessary for it to consider the issue of monitoring mechanisms in this case. (For a full account of the State party's response see annual report A/61/44.)

On 9 August 2006, the State party informed the Committee that on 16 May 2006, the complainant came to the Canadian Embassy in Tehran to pursue certain personal and administrative issues in Canada unrelated to the allegations before the Committee. He did not complain of any ill-treatment in Iran nor make any complaints about

the Iranian authorities. As the complainant's visit confirmed previous information received from his nephew, the Canadian authorities requested that this matter be removed from consideration under the follow-up procedure.

On 5 April 2007, the State party responded to counsel's comments of 24 June 2006. It stated that it had no knowledge of the complainant's state of well-being and that his further questioning by the Iranian authorities would have been due to the discovery of the Committee's decision. The State party regards this decision as an "intervening factor", subsequent to his return that it could not have taken into account at the time of his return. In addition, the complainant's concerns do not disclose any complaint that, were it to be made to the Committee, could give rise to a violation of a right under the Convention. Questioning by the authorities does not amount to torture. In any event, his fear of torture during questioning is speculative and hypothetical. Given Iran's ratification of the International Covenant on Civil and Political Rights and the possibility for the complainant to use United Nations special procedure mechanisms such as the Special Rapporteur on torture, it considers the United Nations better placed to make enquiries about the complainant's well-being.

Complainant's response

The complainant's counsel has contested the State party's decision to deport the complainant despite the Committee's findings. He has not to date provided information he may have on the author's situation since arriving in Iran.

The complainant's counsel states that on 24 June 2006, he heard from the complainant who informed him that the Iranian authorities had delivered a copy of the Committee's decision to his home and had requested his attendance for questioning. He was very worried over the telephone and counsel has not heard from him since. In addition, he states that Mr. Dadar is *persona non grata* in Iran. He cannot work or travel and is unable to obtain the medical treatment he had received in Canada to

treat his condition.

Action taken

See the Committee's annual report (A/61/44) for an account of the contents of notes verbales sent from the Special Rapporteur to the State party.

Committee's decision

During the consideration of the follow-up at its thirty-sixth session, the Committee deplored the State party's failure to abide by its obligations under article 3, and found that the State party violated its obligations under article 3 not to, "expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". The dialogue is ongoing.

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CAT, CAT/C/SR.817 (2008)

COMMITTEE AGAINST TORTURE
Fortieth session

SUMMARY RECORD (PARTIAL)* OF THE 817th MEETING
Held at the Palais Wilson, Geneva,
on Friday, 2 May 2008, at 3 p.m.

Follow-up on decisions adopted under article 22 of the Convention (continued)
(CAT/C/40/R.1)

1. The CHAIRPERSON invited the Committee to resume its consideration of the report on follow-up activities (CAT/C/40/R.1) relating to the Committee's decisions on individual complaints submitted under article 22 of the Convention.
2. Mr. MARIÑO MENÉNDEZ (Special Rapporteur on Follow-up), referring to the case of Falcón Ríos v. Canada (communication No. 133/1999), proposed that a sentence should be added in the last paragraph reflecting the Committee's decision to the effect that the complainant's failure to reply could be interpreted as a wish to discontinue the case.
3. The CHAIRPERSON said he took it that the Committee wished to adopt the proposal by Mr. Mariño Menéndez.
4. It was so decided.
5. Mr. MARIÑO MENÉNDEZ drew attention to an error in the information provided on the Bachan Singh Sogi v. Canada case (communication No. 297/2006): India, the country to which the complainant had been returned, contrary to the Committee's recommendation, had signed but not ratified the Convention.
6. Ms. GAER said that even though India had not ratified the Convention, it should not contravene its provisions. Perhaps that could be reflected somehow in the paragraph on further action taken or required.
7. Mr. GALLEGOS CHIRIBOGA endorsed Ms. Gaer's suggestion. Furthermore, he did not consider it sufficient for the Committee merely to welcome the State party's (Canada's) adoption of the new law. Canada had failed to comply with the Committee's recommended remedy and should be expected to do more by providing reparation in line with the Convention.
8. Mr. MARIÑO MENÉNDEZ said that the adoption of the new law could be considered as a form of reparation: it would prevent any recurrence of the type of problem faced by the complainant.

9. The CHAIRPERSON said that the issue at stake was not whether India had ratified the Convention, but that Canada had failed to comply with the Committee's request for interim measures of protection by returning the complainant to India. The Committee should note that fact with regret in its letter to the State party and recommend the provision of full reparation.

10. Ms. BELMIR agreed that the question of whether India had ratified the Convention was irrelevant. She wondered what the Committee's jurisprudence was in such cases, expressing concern about setting a precedent for similar cases in future.

11. Mr. MARIÑO MENÉNDEZ agreed with Ms. Belmir that what was important was how the Committee dealt with Canada, and that it would complicate matters to enter into the territory of bilateral relations between India and Canada. He proposed that in terms of further action, the Committee should write to the State party noting with regret its interpretation of the interim measures of protection, while recognizing that they were not binding. It should also point out that India was not a party to the Convention. Instead of requesting full reparation or reparation in keeping with the Convention, the Committee should seek assurances that the complainant would not be subjected to torture in India.

12. The CHAIRPERSON said he took it that the Committee agreed to the further action proposed by Mr. Mariño Menéndez; the text of the report would be amended accordingly.

13. It was so decided.

...

The discussion covered in the summary record ended at 4 p.m.

* No summary records was prepared for the rest of the meeting.

CAT, A/63/44 (2008)

...

CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

...

D. Follow up activities

93. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non response, and upon the receipt henceforth of all letters from complainants concerning non implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow up visits to States parties; preparing periodic reports for the Committee on his/her activities.

94. During its thirty fourth session, the Committee, through its Special Rapporteur on follow up to decisions, decided that in cases in which it had found violations of the Convention, including Decisions made by the Committee prior to the establishment of the follow up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the Decisions. To date, the following countries have not yet responded to these requests: Canada (with respect to *Tahir Hussain Khan*, No. 15/1994);...

...

96. ...In one case, the Committee deplored the State party's failure to abide by its obligations under article 3 having deported the complainant, despite the Committee's finding that there were substantial grounds for believing that he would be in danger of being tortured: *Dadar v. Canada* (No. 258/2004).

97. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing: *Falcon Rios v. Canada* (No. 133/1999); *Dadar v. Canada* (No. 258/2004);... *Bachan Singh Sogi v. Canada* (No. 297/2006);...

98. During the thirty ninth and fortieth sessions, the Special Rapporteur on follow up to decisions presented new follow up information that had been received since the last annual

report with respect to the following cases:... *Falcon Rios v. Canada* (No. 133/1999); *Dadar v. Canada* (No. 258/2004));... *Bachan Singh Sogi v. Canada* (No. 297/2006);...

99. Represented below is a comprehensive report of replies received with regard to all 45 cases in which the Committee has found violations of the Convention to date and in one case in which although the Committee did not find a violation of the Convention it did make a recommendation.

**Complaints in which the Committee has found violations of the
Convention up to the fortieth session**

...

State party	CANADA
Case	Tahir Hussain Khan, 15/1994
Nationality and country of removal if applicable	Pakistani to Pakistan
Views adopted on	15 November 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Tahir Hussain Khan to Pakistan.
Due date for State party response	None
Date of reply	None
State party response	No information provided to the Rapporteur, however during the discussion of the State party report to the Committee against Torture in May 2005, the State party stated that the complainant had not been deported.
Complainant's response	None
Case	Falcon Rios, 133/1999

Nationality and country of removal if applicable	Mexican to Mexico
Views adopted on	30 November 2004
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	Relevant measures
Due date for State party response	None
Date of reply	Latest reply on 14 January 2008 (had previously responded on 9 March 2005 and 17 May 2007).
State party response	<p>On 9 March 2005, the State party provided information on follow-up. It stated that the complainant had submitted a request for a risk assessment prior to return to Mexico and that the State party will inform the Committee of the outcome. If the complainant can establish one of the motives for protection under the Immigration and Protection of Refugee's Law, he will be able to present a request for permanent residence in Canada. The Committee's decision will be taken into account by the examining officer and the complainant will be heard orally if the Minister considers it necessary. Since the request for asylum was considered prior to the entry into force of the Immigration and Protection of Refugee's Law, that is prior to June 2002, the immigration agent will not be restricted to assessing facts after the denial of the initial request but will be able to examine all the facts and information old and new presented by the complainant. In this context, it contests the Committee's finding in paragraph 7.5 of its decision which found that only new information could be considered during such a review.</p>

On 17 May 2007, the State party had informed the Committee that, on 28 March 2007, the complainant had filed two appeals before the Federal Court and that at that point, the Government of Canada did not intend to implement the order to return the complainant to Mexico.

On 14 January 2008, the State party informed the Committee that the two appeals were dismissed by the Federal Court in June 2007, and that the immigration agent's decisions are now final. For the moment, however, it did not intend to return the complainant to Mexico. It will inform the Committee of any future developments in this case.

Complainant's response

On 5 February 2007, the complainant forwarded the Committee a copy of the results of his risk assessment, in which his request was denied and he was asked to leave the State party. No further information was provided.

Committee's decision

The Committee considers the dialogue ongoing.

Case

Dadar, 258/2004

Nationality and country of removal
if applicable

Iranian to Iran

Views adopted on

3 November 2005

Issues and violations found

Removal - article 3

Interim measures granted and State party
response

Yes and State party acceded

Remedy recommended

The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days of the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

Due date for State party response

26 February 2006

Date of reply

Latest reply 10 October 2007 (had previously responded on 22 March 2006 and 24 April 2006 - see annual report A/61/44 - and 9 August 2006 and 5 April 2007 - see annual report A/62/44).

State party response

The Committee will recall that the State party removed the complainant to Iran on 26 March 2006 despite a finding of a violation of the Convention. In its response of 24 April 2006, it stated that since his return a Canadian representative had spoken with the complainant's nephew who said that Mr. Dadar had arrived in Tehran without incident, and was staying with his family. The State party had no direct contact with him since he was returned to Iran. In light of this information, as well as Canada's determination that he did not face a substantial risk of torture upon return to Iran, the State party submits that it was not necessary for it to consider the issue of monitoring mechanisms in this case. (For a full account of the State party's response, see A/61/44.)

On 9 August 2006, the State party informed the Committee that on 16 May 2006, the complainant came to the Canadian Embassy in Tehran to pursue certain personal and administrative issues in Canada unrelated to the allegations before the Committee. He did not complain of any ill-treatment in Iran nor make any complaints about the Iranian authorities. As the complainant's visit confirmed previous information received from his nephew, the Canadian authorities requested that this matter be removed from consideration under the follow-up procedure.

On 5 April 2007, the State party responded to counsel's comments of 24 June 2006. It stated that it had no knowledge of the complainant's

state of well-being and that his further questioning by the Iranian authorities would have been due to the discovery of the Committee's decision. The State party regards this decision as an "intervening factor", subsequent to his return that it could not have taken into account at the time of his return. In addition, the complainant's concerns do not disclose any complaint that, were it to be made to the Committee, could give rise to a violation of a right under the Convention. Questioning by the authorities does not amount to torture. In any event, his fear of torture during questioning is speculative and hypothetical. Given Iran's ratification of the International Covenant on Civil and Political Rights and the possibility for the complainant to use United Nations special procedure mechanisms such as the Special Rapporteur on the question of torture, it considers the United Nations better placed to make enquiries about the complainant's well-being.

On 10 October 2007, the State party reiterates that the complainant has not been tortured since his return to Iran. Therefore, Canada has fully complied with its obligations under article 3 of the Convention and is under no obligation to monitor the complainant's condition. The absence of evidence of torture upon return supports Canada's position that it should not be held responsible for a purported violation of article 3 when subsequent events confirm its assessment that the complainant was not at substantial risk of torture. In the circumstances, the State party reiterates its request that the case be removed from the agenda of the follow-up procedure.

Complainant's response

The complainant's counsel has contested the State party's decision to deport the complainant despite the Committee's findings. He has not to date provided information he may have on the author's situation since arriving in Iran.

The complainant's counsel states that on 24 June 2006, he heard from the complainant who informed him that the Iranian authorities had delivered a copy of the Committee's decision to his home and had requested his attendance for questioning. He was very worried over the telephone and counsel has not heard from him since. In addition, he states that Mr. Dadar is persona non grata in Iran. He cannot work or travel and is unable to obtain the medical treatment he had received in Canada to treat his condition.

On 29 June 2006, counsel informed the Committee that subsequent to his initial detention, the complainant resided under house arrest living with his aged mother. On several occasions the Iranian authorities asked him to re-attend for further questioning. The questioning pertained, inter alia, to the complainant's political activities while in Canada. The complainant had expressed dissatisfaction with his apparent status in Iran as a persona non grata and said that he lacked status to obtain employment or travel. He was also unable to obtain the medication he received in Canada to treat his medical condition. Moreover, the Iranian authorities had delivered a copy of the Committee's decision to his home and requested his attendance for questioning.

On 1 June 2007, counsel informed the Committee that but for the intervention of the complainant's brother prior to his arrival in Tehran and during the period of his detention immediately following his arrival, with a high ranking member of the Iranian Intelligence Service, the complainant would have been tortured and possibly executed. He requests that the case not be removed from the Committee's follow-up procedure.

Action taken

See the Committee's annual report (A/61/44) for an account of the contents of notes verbales sent from the Special Rapporteur to

the State party.

Committee's decision

During the consideration of the follow-up at its thirty-sixth session, the Committee deplored the State party's failure to abide by its obligations under article 3, and found that the State party violated its obligations under article 3 not to, "expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". The dialogue is ongoing.

Case

Bachan Singh Sogi, 297/2006

Nationality and country of removal if applicable

Indian to India

Views adopted on Issues and violations found

16 November 2007
Removal - article 3

Interim measures granted and State party response

Requested but rejected by the State party.⁷

Remedy recommended

To make reparation for the breach of article 3 of the Convention, and to determine, in consultation with the country to which he was deported, the complainant's current whereabouts and the state of his well-being.

Due date for State party response

28 February 2008

Date of reply

29 February 2008

State party response

The State party regrets that it is not in a position to implement the Committee's Views. It does not consider either a request for interim measures of protection or the Committee's Views themselves to be legally binding and is of the view that it has fulfilled all of its international obligations. Its failure to comply with the Committee's Views should not be interpreted as disrespect for the Committee's work. It submits that the

Government of India is better placed to advise the Committee on the complainant's whereabouts and well-being and reminds the Committee that India is a party to the Convention as well as the Covenant on Civil and Political Rights. However, it has written to the Ministry of Foreign Affairs of India informing it of the Committee's Views, in particular, its request for up-dated information on the complainant.

The State party submits that the decision to return the complainant was not a matter of "exceptional circumstances", as suggested by the Committee (para. 10.2). It reminds the Committee that the decision of 2 December 2003 was cancelled by the Court of Federal Appeal of 6 July 2005 and that the complainant's deportation was based on the decision of 11 May 2006. In this latter decision, the Minister's delegate had concluded that there was no risk of torture to the complainant and thus it was not necessary to balance the aspect of risk with that of danger to society to determine whether the complainant's situation gave way to "exceptional circumstances" justifying his return despite the risk of torture.

The State party contests the conclusion that the Minister's delegate denied the existence of a risk and that the decision was not motivated. The existence of a new law in India was not the only basis upon which the delegate made his decision. He took into account the general human rights situation in India as well as the particular circumstances of the complainant's case. The soundness of this decision was confirmed by the Court of Federal Appeal on 23 June 2006.

The State party contests the Committee's View that its determination that the complainant would not risk torture was based on information which had not been divulged to the complainant. The State party reiterates

that the evaluation of risk was undertaken independently to the question of the threat the complainant posed to society, and the proof in question related only to the issue of danger posed. In addition, the law itself which allows for the consideration of information to which a complainant has not been made privy was considered by the Court of Federal Appeal in the complainant's case to be constitutional and the Human Rights Committee did not consider a similar procedure contrary to the Covenant on Civil and Political Rights.

However, the State party informs the Committee that the law has been amended and that since 22 February 2008, to the extent that the nomination of a "special lawyer" is authorized to defend the individual in his absence and in the absence of his own lawyer, when such information is considered in camera.

As to the Committee's point that it is entitled to freely assess the facts of each case (para. 10.3), the State party refers to jurisprudence in which the Committee found that it would not question the conclusion of national authorities unless there was a manifest error, abuse of process, or grave irregularity etc. (see cases 282/2005 and 193/2001). In this context, it submits that the delegate's decision was reviewed in detail by the Court of Federal Appeal, which itself reviewed all the original documentation submitted to support his claims as well as new documents and found that it could not conclude that the delegate's conclusions were unreasonable.

Complainant's response

None

Committee's decision

The Committee considers the follow-up dialogue ongoing.

...

...

7/ “As regards non-compliance with the Committee’s requests of 14 and 30 June 2006 to suspend removal, the Committee recalls that the State party, by ratifying the Convention and voluntarily accepting the Committee’s competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the procedure of individual complaints established thereunder. The Committee also notes that the State party’s obligations include observance of the rules adopted by the Committee, which are inseparable from the Convention, including rule 108 of the rules of procedure, which is specifically intended to give meaning and scope to articles 3 and 22 of the Convention. (See *Dar v. Norway*, communication No. 249/2004, Views of 11 May 2007, para. 16.3; and *Tebourski v. France*, communication No. 300/2006, Views of 1 May 2007, para. 8.6) Consequently the Committee considers that, by sending the complainant back to India despite the Committee’s repeated requests for interim measures, the State party has committed a breach of its obligations under articles 3 and 22 of the Convention.”

...

CAT, CAT/C/SR.855 (2008)

COMMITTEE AGAINST TORTURE

Forty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 855th MEETING

Held at the Palais Wilson, Geneva,

on Friday, 14 November 2008, at 3 p.m.

...

CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE CONVENTION (continued)

Follow-up progress report of the Committee against Torture on individual communications (CAT/C/41/R.1)

1. The CHAIRPERSON invited the Special Rapporteur to introduce the follow-up progress report (CAT/C/41/R.1) relating to the Committee's decisions on complaints submitted under article 22 of the Convention.

2. Mr. MARIÑO MENÉNDEZ (Special Rapporteur on Follow-up), introducing the report, said that it contained follow-up information submitted since the Committee's fortieth session. No information had been received from: Canada concerning communication No. 15/1994; Spain concerning communications No. 59/1996 and No. 212/2002; Serbia and Montenegro concerning communications Nos. 171/2000, 172/2000 and 207/2002; or Tunisia concerning communication No. 269/2005. Both Serbia and Montenegro had rejected responsibility for the above-mentioned cases, as well as for the case of Milan Ristic (communication No. 113/1998), which had not been referred to in the report. He proposed that reminders requesting follow-up information should be sent to all those States parties. In the absence of a response from Serbia and Montenegro, a meeting should be convened between State party representatives and himself to clarify legal responsibility for the cases.

3. The CHAIRPERSON said that, if there was no objection, he would take it that the Committee agreed to the course of action proposed by the Special Rapporteur.

4. It was so decided.

Communication No. 297/2006: Bachan Singh Sogi v. Canada

5. Mr. MARIÑO MENÉNDEZ, summarizing the replies received from Canada, drew attention to the follow-up action proposed in the report.

6. Following a brief exchange of views, the CHAIRPERSON said he took it that the Committee agreed to the course of action proposed by the Special Rapporteur.

7. It was so decided.

...

The public part of the meeting rose at 4.35 p.m.

*/ The summary record of the second part (closed) of the meeting appears as document CAT/C/SR. 855/Add.1.

VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

...

D. Follow-up activities

89. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non response, and upon the receipt henceforth of all letters from complainants concerning non implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow up visits to States parties; preparing periodic reports for the Committee on his/her activities.

90. During its thirty fourth session, the Committee, through its Special Rapporteur on follow up to decisions, decided that in cases in which it had found violations of the Convention, including decisions made by the Committee prior to the establishment of the follow up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the decisions. To date, the following countries have not yet responded to these requests: Canada (with respect to *Tahir Hussain Khan*, No. 15/1994); ...

...

92. ... In one case, the Committee deplored the State party's failure to abide by its obligations under article 3 having deported the complainant, despite the Committee's finding that there were substantial grounds for believing that he would be in danger of being tortured: *Dadar v. Canada* (No. 258/2004).

93. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing: *Falcon Rios v. Canada* (No. 133/1999); *Dadar v. Canada* (No. 258/2004); ... *Bachan Singh Sogi v. Canada* (No. 297/2006); ...

94. During the forty-first and forty-second sessions, the Special Rapporteur on follow up to decisions presented new follow up information that had been received since the last annual report with respect to the following cases: ... *Bachan Singh Sogi v. Canada* (No. 297/2006); ...

95. Represented below is a comprehensive report of replies received with regard to all 48 cases in which the Committee has found violations of the Convention to date and in 1 case in which although the Committee did not find a violation of the Convention it did make a recommendation.

Complaints in which the Committee has found violations of the Convention up to the forty-second session

...

State party	CANADA
Case	Tahir Hussain Khan, 15/1994
Nationality and country of removal if applicable	Pakistani to Pakistan
Views adopted on	15 November 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Tahir Hussain Khan to Pakistan.
Due date for State party response	None
Date of reply	None
State party response	No information provided to the Rapporteur, however during the discussion of the State party report to the Committee against Torture in May 2005, the State party stated that the complainant had not been deported.
Complainant's response	None
Committee's decision	Follow-up dialogue ongoing
Case	Falcon Rios, 133/1999
Nationality and country of removal if applicable	Mexican to Mexico

Views adopted on	30 November 2004
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	Relevant measures
Due date for State party response	None
Date of reply	Latest reply on 14 January 2008 (had previously responded on 9 March 2005 and 17 May 2007).
State party response	<p>On 9 March 2005, the State party provided information on follow-up. It stated that the complainant had submitted a request for a risk assessment prior to return to Mexico and that the State party will inform the Committee of the outcome. If the complainant can establish one of the motives for protection under the Immigration and Protection of Refugee's Law, he will be able to present a request for permanent residence in Canada. The Committee's decision will be taken into account by the examining officer and the complainant will be heard orally if the Minister considers it necessary. Since the request for asylum was considered prior to the entry into force of the Immigration and Protection of Refugee's Law, that is prior to June 2002, the immigration agent will not be restricted to assessing facts after the denial of the initial request but will be able to examine all the facts and information old and new presented by the complainant. In this context, it contests the Committee's finding in paragraph 7.5 of its decision which found that only new information could be considered during such a review.</p> <p>On 17 May 2007, the State party had informed the Committee that, on 28 March 2007, the complainant had filed two appeals before the Federal Court and that at that point, the Government of Canada did not intend to implement the order to return the complainant to</p>

Mexico. On 14 January 2008, the State party informed the Committee that the two appeals were dismissed by the Federal Court in June 2007, and that the immigration agent's decisions are now final. For the moment, however, it did not intend to return the complainant to Mexico. It will inform the Committee of any future developments in this case.

Complainant's response

On 5 February 2007, the complainant forwarded the Committee a copy of the results of his risk assessment, in which his request was denied and he was asked to leave the State party. No further information was provided.

Committee's decision

The Committee considers the dialogue ongoing.

Case

Dadar, 258/2004

Nationality and country of removal if applicable

Iranian to Iran

Views adopted on

3 November 2005

Issues and violations found

Removal - article 3

Interim measures granted and State party response

Yes and State party acceded.

Remedy recommended

The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days of the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

Due date for State party response

26 February 2006

Date of reply

Latest reply 10 October 2007 (had previously responded on 22 March 2006 and 24 April 2006 - see annual report A/61/44 - and 9 August 2006 and 5 April 2007 - see annual report A/62/44).

State party response

The Committee will recall that the State party removed the complainant to Iran on 26 March 2006 despite a finding of a violation of the

Convention. In its response of 24 April 2006, it stated that since his return a Canadian representative had spoken with the complainant's nephew who said that Mr. Dadar had arrived in Tehran without incident, and was staying with his family. The State party had no direct contact with him since he was returned to Iran. In light of this information, as well as Canada's determination that he did not face a substantial risk of torture upon return to Iran, the State party submits that it was not necessary for it to consider the issue of monitoring mechanisms in this case. (For a full account of the State party's response, see A/61/44.)

On 9 August 2006, the State party informed the Committee that on 16 May 2006, the complainant came to the Canadian Embassy in Tehran to pursue certain personal and administrative issues in Canada unrelated to the allegations before the Committee. He did not complain of any ill-treatment in Iran nor make any complaints about the Iranian authorities. As the complainant's visit confirmed previous information received from his nephew, the Canadian authorities requested that this matter be removed from consideration under the follow-up procedure.

On 5 April 2007, the State party responded to counsel's comments of 24 June 2006. It stated that it had no knowledge of the complainant's state of well-being and that his further questioning by the Iranian authorities would have been due to the discovery of the Committee's decision. The State party regards this decision as an "intervening factor", subsequent to his return that it could not have taken into account at the time of his return. In addition, the complainant's concerns do not disclose any complaint that, were it to be made to the Committee, could give rise to a violation of a right under the Convention. Questioning by the authorities does not amount to torture. In any event, his fear of torture during questioning is speculative and hypothetical. Given Iran's ratification of the International Covenant on Civil and Political Rights and the possibility for the complainant to use United Nations special

procedure mechanisms such as the Special Rapporteur on the question of torture, it considers the United Nations better placed to make enquiries about the complainant's well-being.

On 10 October 2007, the State party reiterates that the complainant has not been tortured since his return to Iran. Therefore, Canada has fully complied with its obligations under article 3 of the Convention and is under no obligation to monitor the complainant's condition. The absence of evidence of torture upon return supports Canada's position that it should not be held responsible for a purported violation of article 3 when subsequent events confirm its assessment that the complainant was not at substantial risk of torture. In the circumstances, the State party reiterates its request that the case be removed from the agenda of the follow-up procedure.

Complainant's response

The complainant's counsel has contested the State party's decision to deport the complainant despite the Committee's findings. He has not to date provided information he may have on the author's situation since arriving in Iran.

The complainant's counsel states that on 24 June 2006, he heard from the complainant who informed him that the Iranian authorities had delivered a copy of the Committee's decision to his home and had requested his attendance for questioning. He was very worried over the telephone and counsel has not heard from him since. In addition, he states that Mr. Dadar is persona non grata in Iran. He cannot work or travel and is unable to obtain the medical treatment he had received in Canada to treat his condition.

On 29 June 2006, counsel informed the Committee that subsequent to his initial detention, the complainant resided under house arrest living with his aged mother. On several occasions the Iranian authorities asked him to re-attend for further questioning. The questioning pertained, inter alia, to the complainant's political activities while in Canada. The complainant had expressed

dissatisfaction with his apparent status in Iran as a persona non grata and said that he lacked status to obtain employment or travel. He was also unable to obtain the medication he received in Canada to treat his medical condition. Moreover, the Iranian authorities had delivered a copy of the Committee's decision to his home and requested his attendance for questioning.

On 1 June 2007, counsel informed the Committee that but for the intervention of the complainant's brother prior to his arrival in Tehran and during the period of his detention immediately following his arrival, with a high ranking member of the Iranian Intelligence Service, the complainant would have been tortured and possibly executed. He requests that the case not be removed from the Committee's follow-up procedure.

Action taken

See the Committee's annual report (A/61/44) for an account of the contents of notes verbales sent from the Special Rapporteur to the State party.

Committee's decision

During the consideration of the follow-up at its thirty-sixth session, the Committee deplored the State party's failure to abide by its obligations under article 3, and found that the State party violated its obligations under article 3 not to, "expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". The dialogue is ongoing.

Case

Bachan Singh Sogi, 297/2006

Nationality and country of removal if applicable

Indian to India

Views adopted on

16 November 2007

Issues and violations found

Removal, article 3

Interim measures granted and State party response

Requested but rejected by the State party.⁶

To make reparation for the breach of article 3 of

Remedy recommended the Convention, and to determine, in consultation with the country to which he was deported, the complainant's current whereabouts and the state of his well-being.

Due date for State party response 28 February 2008

Date of reply 7 April 2009 (the State party had previously responded on 29 February 2008 and 21 October 2008).

State party response On 29 February 2008, the State party regretted that it was not in a position to implement the Committee's Views. It did not consider either a request for interim measures of protection or the Committee's Views themselves to be legally binding and is of the view that it has fulfilled all of its international obligations. Its failure to comply with the Committee's Views should not be interpreted as disrespect for the Committee's work. It submitted that the Government of India is better placed to advise the Committee on the complainant's whereabouts and well-being and reminds the Committee that India is a party to the Convention as well as the Covenant on Civil and Political Rights. However, it has written to the Ministry of Foreign Affairs of India informing it of the Committee's Views, in particular, its request for updated information on the complainant.

The State party submitted that the decision to return the complainant was not a matter of "exceptional circumstances", as suggested by the Committee (para. 10.2). It reminded the Committee that the decision of 2 December 2003 was cancelled by the Court of Federal Appeal of 6 July 2005 and that the complainant's deportation was based on the decision of 11 May 2006. In this latter decision, the Minister's delegate had concluded that there was no risk of torture to the complainant and thus it was not necessary to balance the aspect of risk with that of danger to society to determine whether the complainant's situation gave way to "exceptional circumstances"

justifying his return despite the risk of torture.

The State party contested the conclusion that the Minister's delegate denied the existence of a risk and that the decision was not motivated. The existence of a new law in India was not the only basis upon which the delegate made his decision. He took into account the general human rights situation in India as well as the particular circumstances of the complainant's case. The soundness of this decision was confirmed by the Court of Federal Appeal on 23 June 2006.

The State party contested the Committee's View that its determination that the complainant would not risk torture was based on information which had not been divulged to the complainant. The State party reiterated that the evaluation of risk was undertaken independently to the question of the threat the complainant posed to society, and the proof in question related only to the issue of danger posed. In addition, the law itself which allows for the consideration of information to which a complainant has not been made privy was considered by the Court of Federal Appeal in the complainant's case to be constitutional and the Human Rights Committee did not consider a similar procedure contrary to the Covenant on Civil and Political Rights.

However, the State party informed the Committee that the law had been amended and that since 22 February 2008, to the extent that the nomination of a "special lawyer" is authorized to defend the individual in his absence and in the absence of his own lawyer, when such information is considered in camera.

As to the Committee's point that it is entitled to freely assess the facts of each case (para. 10.3), the State party referred to jurisprudence in which the Committee found that it would not question the conclusion of national authorities unless there was a manifest error, abuse of process, or grave irregularity, etc. (see cases 282/2005 and 193/2001). In this context, it submits that the

delegate's decision was reviewed in detail by the Court of Federal Appeal, which itself reviewed all the original documentation submitted to support his claims as well as new documents and found that it could not conclude that the delegate's conclusions were unreasonable.

On 21 October 2008, the State party provided a supplementary reply. It denied the author's allegations that his rights were violated by the Canadian authorities during his removal from Canada. It explained that in such circumstances where an individual being returned poses a great threat to security he/she is returned by a chartered rather than commercial airline. The complainant's hands and feet were handcuffed, the handcuffs on his hands were connected to a belt attached to his seatbelt and those on his feet were attached to a security strap. He was held in his chair by a belt around his body. These measures are always taken in cases where there is a very high security risk on a chartered flight. These measures did not prevent him from moving his hands and feet to some extent or from eating or drinking. The authorities offered to change the position of his seat on several occasions but he refused. As to food, the complainant was offered special vegetarian meals but other than apple juice he refused to accept anything. The chemical toilet on the plane had not been assembled and could not be used so "*un dispositif sanitaire*" was made available to the complainant. At the time of depart there were no female guards aboard the plane. Unfortunately, the complainant could not use the "*dispositif sanitaire*" successfully.

The State party notes that it is strange that the complainant did not raise these allegations earlier in the procedure despite the fact that he made two submissions to the Committee prior to his departure and prior to the Committee making its decision. The Committee has already made its decision and in any event the communication was only brought under article 3 of the Convention.

As to the allegation that the complainant was

tortured in India upon his return, the State party submitted that such allegations are very worrying but noted that these allegations were not made prior to the Committee's decision in either of the complainant's submissions of 5 April 2007 or 24 September 2007. It also noted that certain Indian newspapers reported that the complainant was brought before a judge on 5 September 2006 six days after his arrival in India. In any event, the complainant is no longer within Canada's jurisdiction and although India may not have ratified the Convention, it has ratified the Covenant on Civil and Political Rights and other mechanisms, United Nations and otherwise, which may be used in allegations of torture. As to whether the State party has received a response from India to its initial letter, the State party explains that it did receive such a letter but that no information was provided on the place of residence or the state of well-being of the complainant. In addition, it states that given the claim by counsel that the State party's last note to India may have created additional risks for the complainant, the State party is not disposed to communicate again with the Indian authorities.

On 7 April 2009, the State party responded to the complainant's submission of 2 February 2009 as well as the Committee's concerns with respect to the way in which the complainant was treated during his deportation to India. It submits that he was treated with the utmost respect and dignity possible while at the same time assuring the security of all those involved. It notes the Committee's comment that it was not in a position under the follow-up procedure to examine new claims against Canada. Thus, the State party is of the view that this case is closed and should no longer be considered under the follow-up procedure.

Complainant's response

On 12 May 2008, the complainant's representative commented on the State party's response. She

reiterates arguments previously made and argued that subsequent changes in legislation do not justify the violation of the complainant's rights, nor the authorities' refusal to grant him compensation. The State party is violating its obligations under international law by failing to recognize and implement the Views as well as its failure to respect the Committee's request for interim measures of protection. The efforts made by the State party to find out the current situation of the complainant are inadequate, and it has neglected to inform both the complainant's representative and the Committee of the outcome of its request to the Indian Ministry of Foreign Affairs. Indeed, in the view of the complainant's representative, such a contact may have created additional risks for the author. Also, despite the State party's view to the contrary there is a lot of documentary proof that the Indian authorities continue to practice torture.

The following information was provided to the complainant's counsel from India over the telephone on 27 February 2008. As to his removal from Canada counsel states that the complainant was tied up for the whole 20 hours of his return to India, and that despite repeated requests the Canadian guards refused to loosen the ties around him which were causing pain. In addition, he was refused permission to use the toilet and had to relieve himself in a bottle in front of female guards, which he found humiliating. He was also denied food and water for the entire journey. In the representative's view, this treatment by the Canadian authorities amounted to a violation of his fundamental rights.

The complainant also described his treatment upon arrival in India. Upon return to India, he was handed over to the Indian authorities and was interrogated at the airport for about five hours during which he was accused, inter alia, of being a terrorist. He was threatened with death if he did not answer the questions posed. He was then driven to a police station in Guraspur, which took five hours and during which he was brutally

beaten, with fists and feet and sat upon after being made to lay on the floor of the vehicle. In addition, his hair and beard were pulled which is against his religion. Upon arrival at the police station, he was interrogated and tortured in what he believes to have been an unused toilet. He was given electric shocks on his fingers, temples, and penis, a heavy machine was rolled over him, causing him severe pain and he was beaten with sticks and fists. He was poorly fed during these six days in detention and neither his family nor lawyer knew of his whereabouts. In or around the sixth day, the complainant was transferred to another police station where he suffered similar treatment and remained for three further days. On the ninth day he was brought before a judge for the first time and saw his family. After being accused of having supplied explosives to persons accused of terrorism and plotting to murder leaders of the country, he was transferred to another detention centre in Nabha where he was detained for a further seven months without seeing any member of his family or his lawyer. On 29 January 2007, he appealed the decision which had ordered his preliminary detention and on 3 February 2007, was released subject to certain conditions.

Since his release, both the complainant and members of his family have been watched and are interrogated every two or four days. The complainant has been interrogated in the police station about six times during which he was psychologically harassed and threatened. All those involved with the author, including his family, his brother (who also claims to have been tortured), and the doctor who examined the complainant after his release are too afraid to provide any information relating to the abuse they and the complainant have all been subjected to. The complainant fears reprisals from India if the torture and ill-treatment to which he has been subjected are disclosed.

In terms of remedy, counsel requests an investigation by the Canadian authorities into the complainant's allegations of torture and

ill-treatment since his arrival in India (as in the *Agiza v. Sweden*, case 233/2003). Counsel also requests Canada to take all necessary measures to return the complainant to Canada and to allow him to stay on a permanent basis (as was done in

Dar v. Norway, 249/2004). In the alternative, counsel suggests that the State party arrange for a third country to accept the complainant on a permanent basis. Finally, she requested a figure of 368,250.00 Canadian dollars by way of compensation for the damages suffered.

On 2 February 2009, the complainant's counsel responded to the State party's submission of 21 October 2008. She reiterates arguments previously made and states that the reason the complainant did not complain of his treatment by the Canadian authorities during his return to India or indeed of his treatment upon arrival in India was due to the judicial proceedings instituted against him in India and an inability to communicate with his representative. In addition, the complainant's representative states that he claims to have been threatened by the Indian authorities not to divulge the ill-treatment to which he was subjected and for this reason remains reticent to provide many details. According to the representative, the complainant was in the custody of the police until 13 July 2006, which was his first court appearance. Given the threats made against him, the complainant fears that any complaints to the Indian authorities themselves will result in further ill-treatment. The representative argues that the efforts made by the Canadian authorities to determine where the complainant is as well as his state of well-being have been insufficient. She clarifies that the *exchange* of information between the Canadian and Indian authorities may put the complainant at risk but that this would not be the case if the State party were to make a *request* for information to the Indian authorities upon the condition that it did not mention the allegations of torture by the Indian authorities against the complainant.

Committee's decision

During the fortieth session, the Committee decided to write to the State party informing it of its obligations under articles 3 and 22 of the Convention and requesting the State party *inter alia* to determine, in consultation with the Indian authorities, the current situation, whereabouts and well-being of the complainant in India.

As to the new allegations made by the complainant in counsel's submission of 12 May 2008, with respect to the complainant's treatment by the Canadian authorities during his return to India, the Committee noted that it had already considered this communication, upon which it adopted its Views, and that it was now currently being considered under the follow-up procedure. It regretted that these allegations had not been made prior to its consideration. However, in its response of 21 October 2008, the State party had confirmed certain aspects of the complainant's claims, in particular, relating to the manner in which he was tied up for the entire journey, as well as the failure to provide him with adequate sanitary facilities during this long-haul flight.

Although the Committee considered that it could not examine whether the State party violated the Convention with respect to these new allegations, under this procedure and outside the context of a new communication, it expressed its concern at the way in which the complainant was treated by the State party during his removal, as confirmed by the State party itself. The Committee considered that the measures employed, in particular, the fact that the complainant was rendered totally immobile for the entire trip with only a limited ability to move his hands and feet, as well as the provision of a mere "*dispositif sanitaire*", described by the complainant as a bottle, in which to relieve himself, were totally unsatisfactory and inadequate at the very least.

As to whether the State party should make further attempts to request information on the complainant's location and state of well-being, the Committee noted that the complainant's

representative initially indicated that such efforts may create additional risks for the complainant, but in her submission of 2 February 2009, she clarified that a request for information only with no mention of allegations of torture against the Indian authorities would go some way to remedying the violation suffered.

During the forty-second session, and despite the State party's request not to consider this matter any further under follow-up, the Committee decided to request the State party to contact the Indian authorities to find out the complainant's location and state of well-being. It is reminded of its obligation to make reparation for the violation of article 3. Serious consideration should be made of any future request by the complainant to return to the State party.

The Committee considers the follow-up dialogue ongoing.

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6/ "As regards non-compliance with the Committee's requests of 14 and 30 June 2006 to suspend removal, the Committee recalls that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the procedure of individual complaints established thereunder. The Committee also notes that the State party's obligations include observance of the rules adopted by the Committee, which are inseparable from the Convention, including rule 108 of the rules of procedure, which is specifically intended to give meaning and scope to articles 3 and 22 of the Convention. (See *Dar v. Norway*, communication No. 249/2004, Views of 11 May 2007, para. 16.3; and *Tebourski v. France*, communication No. 300/2006, Views of 1 May 2007, para. 8.6). Consequently the Committee considers that, by sending the complainant back to India despite the Committee's repeated requests for interim measures, the State party has committed a breach of its obligations under articles 3 and 22 of the Convention."

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CAT, A/65/44 (2010)

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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D. Follow-up activities

108. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow-up visits to States parties; preparing periodic reports for the Committee on his/her activities.

109. During its thirty-fourth session, the Committee, through its Rapporteur for follow-up of decisions on complaints, decided that in cases in which it had found violations of the Convention, including decisions made by the Committee prior to the establishment of the follow-up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the decisions. To date, the following countries have not yet responded to these requests: Canada (with respect to *Tahir Hussain Khan*, No. 15/1994); Serbia¹ and Montenegro (with respect to *Dimitrov*, No. 171/2000,² *Danil Dimitrijevic*, No. 172/2000, *Nikolić, Slobodan and Ljiljana*, No. 174/2000, *Dragan Dimitrijevic*, No. 207/2002 and *Besim Osmani v. Republic of Serbia*, No. 261/2005); and Tunisia (with respect to *Ali Ben Salem*, No. 269/2005).

110. Action taken by the States parties in the following cases complied fully with the Committee's decisions and no further action will be taken under the follow-up procedure: *Halimi-Nedibi Quani v. Austria* (No. 8/1991); *M.A.K. v. Germany* (No. 214/2002);³ *Hajrizi Dzemajl et al. v. Serbia and Montenegro* (No. 161/2000), *the Netherlands* (with respect to A.J., No. 91/1997); *Mutombo v. Switzerland* (No. 13/1993); *Alan v. Switzerland* (No. 21/1995); *Aemei v. Switzerland* (No. 34/1995); *V.L. v. Switzerland* (No. 262/2005); *El Rgeig v. Switzerland* (No. 280/2005); *Tapia Paez v. Sweden* (No. 39/1996); *Kisoki v. Sweden* (No. 41/1996); *Tala v. Sweden* (No. 43/1996); *Avedes Hamayak Korban v. Sweden* (No. 88/1997); *Ali Falakflaki v.*

Sweden (No. 89/1997); *Orhan Ayas v. Sweden* (No. 97/1997); *Halil Haydin v. Sweden* (No. 101/1997); *A.S. v. Sweden* (No. 149/1999); *Chedli Ben Ahmed Karoui v. Sweden* (No. 185/2001); *Dar v. Norway*⁴ (No. 249/2004); *Tharina v. Sweden* (No. 266/2003); *C.T. and K.M. v. Sweden* (No. 279/2005); and *Jean-Patrick Iya v. Switzerland* (No. 299/2006).

111. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure: *Elmi v. Australia* (No. 120/1998); *Arana v. France* (No. 63/1997); and *Ltaief v. Tunisia* (No. 189/2001). In one case, the Committee deplored the State party's failure to abide by its obligations under article 3 having deported the complainant, despite the Committee's finding that there were substantial grounds for believing that he would be in danger of being tortured: *Dadar v. Canada* (No. 258/2004). In one case, given the author's voluntary return to his country of origin, the Committee decided not to consider the case any further under the follow-up procedure: *Falcon Rios v. Canada* (No. 133/1999).

112. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing: *Dadar v. Canada* (No. 258/2004); *Brada v. France* (No. 195/2003); *Guengueng et al. v. Senegal* (No. 181/2001); *Ristic v. Serbia and Montenegro* (No. 113/1998); *Blanco Abad v. Spain* (No. 59/1996); *Urta Guridi v. Spain* (No. 212/2002); *Agiza v. Sweden* (No. 233/2003); *Thabti v. Tunisia* (No. 187/2001); *Abdelli v. Tunisia* (No. 188/2001); *M'Barek v. Tunisia* (No. 60/1996); *Saadia Ali v. Tunisia* (No. 291/2006); *Chipana v. Venezuela* (No. 110/1998); *Pelit v. Azerbaijan* (No. 281/2005); *Bachan Singh Sogi v. Canada* (No. 297/2006); *Tebourski v. France* (No. 300/2006); and *Besim Osmani v. Republic of Serbia* (No. 261/2005).

113. During the forty-third and forty-fourth sessions, the Rapporteur for follow-up of decisions on complaints presented new follow-up information that had been received since the last annual report with respect to the following cases: *Guengueng et al. v. Senegal* (No. 181/2001); *Agiza v. Sweden* (No. 233/2003); *Bachan Singh Sogi v. Canada* (No. 297/2006); *Falcon Rios v. Canada* (No. 133/1999); *Blanco Abad v. Spain* (No. 59/1996); *Urta Guridi v. Spain* (No. 212/2002); *M'Barek v. Tunisia* (No. 60/1996); *Saadia Ali v. Tunisia* (No. 291/2006).

114. Represented below is a comprehensive report of replies received with regard to all 49 cases in which the Committee has found violations of the Convention to date and in 1 case in which although the Committee did not find a violation of the Convention it did make a recommendation.

¹ On 11 June 2008, following requests by the Committee to Serbia and Montenegro to confirm which State would be following up on Decisions adopted by the Committee and registered against the State party "Serbia and Montenegro", the Secretariat received a response from Montenegro only which stated that all the cases were within the remit of the Republic of Serbia.

² In December 2009, the Secretariat learned verbally from the State party that this case had been subsequently reopened but nothing has been received in writing to this effect.

³ Although no violation was found in this case, the Committee welcomed the State party's readiness to monitor the complainant's situation and subsequently provided satisfactory information in this regard (see chart below).

⁴ The State had already remedied the breach prior to consideration of the case.

Complaints in which the Committee has found violations of the Convention up to the forty-fourth session

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State party	Canada
Case	<i>Tahir Hussain Khan, 15/1994</i>
Nationality and country of removal if applicable	Pakistani to Pakistan
Views adopted on	15 November 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Tahir Hussain Khan to Pakistan.
Due date for State party response	None
Date of reply	None
State party response	No information provided to the Rapporteur for follow-up of decisions on complaints, however during the discussion of the State party report to the Committee against Torture in May 2005, the State party stated that the complainant had not been deported.
Complainant's	None

response

Committee's decision Follow-up dialogue ongoing

Case *Falcon Rios, 133/1999*

Nationality and country of removal if applicable Mexican to Mexico

Views adopted on 30 November 2004

Issues and violations found Removal - Article 3

Interim measures granted and State party response Requested and acceded to by the State party.

Remedy recommended Relevant measures

Due date for State party response none

Date of reply Latest reply on 9 July 2009 (had previously responded on 9 March 2005, 17 May 2007 and 14 January 2008).

State party response On 9 March 2005, the State party provided information on follow-up. It stated that the complainant had submitted a request for a risk assessment prior to return to Mexico and that the State party will inform the Committee of the outcome. If the complainant can establish one of the motives for protection under the Immigration and Protection of Refugee's Law, he will be able to present a request for permanent residence in Canada. The Committee's decision will be taken into account by the examining officer and the complainant will be heard orally if the Minister considers it necessary. Since the request for asylum was considered prior to the entry into force of the Immigration and Protection of Refugee's Law, that is prior to June 2002, the immigration agent will not be restricted to assessing facts after the denial of the initial request but will be able to examine all the facts and information old and new presented by the complainant. In

this context, it contests the Committee's finding in paragraph 7.5 of its decision which found that only new information could be considered during such a review.

**Complainant's
comments**

On 5 February 2007, the complainant forwarded the Committee a copy of the results of his risk assessment, in which his request was denied and he was asked to leave the State party. No further information was provided.

**State party
response**

On 17 May 2007, the State party had informed the Committee that, on 28 March 2007, the complainant had filed two appeals before the Federal Court and that at that point, the Government of Canada did not intend to implement the order to return the complainant to Mexico.

On 14 January 2008, the State party informed the Committee that the two appeals were dismissed by the Federal Court in June 2007, and that the immigration agent's decisions are now final. For the moment, however, it did not intend to return the complainant to Mexico. It will inform the Committee of any future developments in this case.

On 9 July 2009, the State party informed the Committee that the complainant voluntarily returned to Mexico on 1 June 2009. It stated that on 21 May 2009, the author was intercepted by the Canadian immigration authorities as he was attempting to leave for Mexico. He was in possession of a Mexican passport, which had been delivered on 12 January 2005. The State party highlights the fact that despite the author's alleged fears of torture upon return to Mexico he requested a passport as early as 2005. In addition, it states that there is more than one entry into Mexico marked on his passport since the Committee's Decision. He was also in possession of two forged documents, a Canadian identity card and insurance card, which had his picture but another individual's name. He also had a certificate indicating that he intended to establish his residence in Mexico. The complainant was detained by the authorities as it was probable that he would flee. On 25 May 2009, he was brought before the same authorities to review the reason for his detention. His detention was continued for a further seven days, as it was considered likely that he would flee. He was represented throughout by a lawyer and had interpretation. On 1 June 2009, the complainant voluntarily left Canada having spoken to his lawyer and having signed a declaration of voluntary departure. In the light of the above, the State party requests that the consideration of this case be discontinued under the follow-up procedure.

Committee's decision	Given the complainant's voluntary return to Mexico, the Committee decides to discontinue consideration of this case under the follow-up procedure.
Case	<i>Dadar, 258/2004</i>
Nationality and country of removal if applicable	Iranian to the Islamic Republic of Iran
Views adopted on	3 November 2005
Issues and violations found	Removal - Article 3
Interim measures granted and State party response	Yes and State party acceded.
Remedy recommended	The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days of the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.
Due date for State party response	26 February 2006
Date of reply	Latest reply 10 October 2007 (had previously responded on 22 March 2006 and 24 April 2006 (see annual report A/61/44) and 9 August 2006 and 5 April 2007 (see annual report A/62/44)).
State party response	The Committee will recall that the State party removed the complainant to Iran on 26 March 2006 despite a finding of a violation of the Convention. In its response of 24 April 2006, it stated that since his return a Canadian representative had spoken with the complainant's nephew who said that Mr. Dadar had arrived in Tehran without incident, and was staying with his family. The State party had no direct contact with him since he was returned to Iran. In light of this information, as well as Canada's determination that he did not face a substantial risk of torture upon return to Iran, the State party submits that it was not necessary for it to consider the issue of monitoring

mechanisms in this case. (For a full account of the State party's response, see A/61/44.)

Complainant's response

On 29 June 2006, counsel informed the Committee that subsequent to his initial detention, the complainant resided under house arrest living with his aged mother. On several occasions the Iranian authorities asked him to re-attend for further questioning. The questioning pertained, inter alia, to the complainant's political activities while in Canada. The complainant had expressed dissatisfaction with his apparent status in Iran as a persona non grata and said that he lacked status to obtain employment or travel. He was also unable to obtain the medication he received in Canada to treat his medical condition. Moreover, the Iranian authorities had delivered a copy of the Committee's decision to his home and requested his attendance for questioning.

State party response

On 9 August 2006, the State party informed the Committee that on 16 May 2006, the complainant came to the Canadian Embassy in Tehran to pursue certain personal and administrative issues in Canada unrelated to the allegations before the Committee. He did not complain of any ill-treatment in Iran nor make any complaints about the Iranian authorities. As the complainant's visit confirmed previous information received from his nephew, the Canadian authorities requested that this matter be removed from consideration under the follow-up procedure.

On 5 April 2007, the State party responded to counsel's comments of 24 June 2006. It stated that it had no knowledge of the complainant's state of well-being and that his further questioning by the Iranian authorities would have been due to the discovery of the Committee's decision. The State party regards this decision as an "intervening factor", subsequent to his return that it could not have taken into account at the time of his return. In addition, the complainant's concerns do not disclose any complaint that, were it to be made to the Committee, could give rise to a violation of a right under the Convention. Questioning by the authorities does not amount to torture. In any event, his fear of torture during questioning is speculative and hypothetical. Given Iran's ratification of the International Covenant on Civil and Political Rights and the possibility for the complainant to use United Nations special procedure mechanisms such as the Special Rapporteur on the question of torture, it considers the United Nations better placed to make enquiries about the complainant's well-being.

Complainant's comments

On 1 June 2007, counsel informed the Committee that but for the intervention of the complainant's brother prior to his arrival in Tehran and during the period of his detention immediately following his arrival, with a high ranking member of the Iranian Intelligence Service, the complainant would have been tortured and possibly executed. He requests that the case not be removed from the Committee's follow-up procedure.

State party response

On 10 October 2007, the State party reiterates that the complainant has not been tortured since his return to Iran. Therefore, Canada has fully complied with its obligations under article 3 of the Convention and is under no obligation to monitor the complainant's condition. The absence of evidence of torture upon return supports Canada's position that it should not be held responsible for a purported violation of article 3 when subsequent events confirm its assessment that the complainant was not at substantial risk of torture. In the circumstances, the State party reiterates its request that the case be removed from the agenda of the follow-up procedure.

Complainant's comments

The complainant's counsel has contested the State party's decision to deport the complainant despite the Committee's findings. He has not to date provided information he may have on the author's situation since arriving in Iran. The complainant's counsel states that on 24 June 2006, he heard from the complainant who informed him that the Iranian authorities had delivered a copy of the Committee's decision to his home and had requested his attendance for questioning. He was very worried over the telephone and counsel has not heard from him since. In addition, he states that Mr. Dadar is persona non grata in Iran. He cannot work or travel and is unable to obtain the medical treatment he had received in Canada to treat his condition.

Action taken

See the Committee's annual report(A/61/44) for an account of the contents of notes verbales sent from the Rapporteur for follow-up of decisions on complaints to the State party.

Committee's decision

During the consideration of the follow-up at its thirty-sixth session, the Committee deplored the State party's failure to abide by its obligations under article 3, and found that the State party violated its obligations under article 3 not to, "expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".

The dialogue is ongoing.

Case	<i>Bachan Singh Sogi, 297/2006</i>
Nationality and country of removal if applicable	Indian to India
Views adopted on	17 November 2007
Issues and violations found	Removal - Article 3
Interim measures granted and State party response	Requested but rejected by the State party ⁷
Remedy recommended	To make reparation for the breach of article 3 of the Convention, and to determine, in consultation with the country to which he was deported, the complainant's current whereabouts and the state of his well-being.
Due date for State party response	28 February 2008
Date of reply	Latest reply on 31 August 2009 (the State party had previously responded on 29 February 2008, 21 October 2008 and 7 April 2009).
State party response	On 29 February 2008, the State party regretted that it was not in a position to implement the Committee's Views. It did not consider either a request for interim measures of protection or the Committee's Views themselves to be legally binding and is of the view that it has fulfilled all of its international obligations. Its failure to comply with the Committee's Views should not be interpreted as disrespect for the Committee's work. It submitted that the Government of India is better placed to advise the Committee on the complainant's whereabouts and well-being and reminds the Committee that India is a party to the Convention as well as the International Covenant on Civil and Political Rights. However, it has written to the Ministry of Foreign Affairs of India informing it of the Committee's Views, in particular, its request for updated information on the complainant.

The State party submitted that the decision to return the complainant was not a matter of “exceptional circumstances”, as suggested by the Committee in its Decision (para. 10.2). It reminded the Committee that the decision of 2 December 2003 was cancelled by the Court of Federal Appeal of 6 July 2005 and that the complainant’s deportation was based on the decision of 11 May 2006. In this latter decision, the Minister’s delegate had concluded that there was no risk of torture to the complainant and thus it was not necessary to balance the aspect of risk with that of danger to society to determine whether the complainant’s situation gave way to “exceptional circumstances” justifying his return despite the risk of torture.

The State party contested the conclusion that the Minister’s delegate denied the existence of a risk and that the decision was not motivated. The existence of a new law in India was not the only basis upon which the delegate made his decision. He took into account the general human rights situation in India as well as the particular circumstances of the complainant’s case. The soundness of this decision was confirmed by the Court of Federal Appeal on 23 June 2006.

The State party contested the Committee’s View that its determination that the complainant would not risk torture was based on information which had not been divulged to the complainant. The State party reiterated that the evaluation of risk was undertaken independently to the question of the threat the complainant posed to society, and the proof in question related only to the issue of danger posed. In addition, the law itself which allows for the consideration of information to which a complainant has not been made privy was considered by the Court of Federal Appeal in the complainant’s case to be constitutional and the Human Rights Committee did not consider a similar procedure contrary to the International Covenant on Civil and Political Rights.

However, the State party informed the Committee that the law had been amended and that since 22 February 2008, to the extent that the nomination of a “special lawyer” is authorized to defend the individual in his absence and in the absence of his own lawyer, when such information is considered in camera.

As to the Committee’s point that it is entitled to freely assess the facts of each case (para. 10.3), the State party referred to jurisprudence in which the Committee found that it would not question the conclusion of national authorities unless there was a manifest error, abuse of process, or grave irregularity, etc. (see cases No. 282/2005 and No. 193/2001). In this context, it submits that the delegate’s decision was reviewed in detail by the Court of Federal Appeal, which itself

reviewed all the original documentation submitted to support his claims as well as new documents and found that it could not conclude that the delegate's conclusions were unreasonable.

**Complainant's
comments**

On 12 May 2008, the complainant's representative commented on the State party's response. She reiterates arguments previously made and argued that subsequent changes in legislation do not justify the violation of the complainant's rights, nor the authorities' refusal to grant him compensation. The State party is violating its obligations under international law by failing to recognize and implement the Views as well as its failure to respect the Committee's request for interim measures of protection. The efforts made by the State party to find out the current situation of the complainant are inadequate, and it has neglected to inform both the complainant's representative and the Committee of the outcome of its request to the Indian Ministry of Foreign Affairs. Indeed, in the view of the complainant's representative, such a contact may have created additional risks for the author. Also, despite the State party's view to the contrary there is a lot of documentary proof that the Indian authorities continue to practice torture.

The following information was provided to the complainant's counsel from India over the telephone on 27 February 2008. As to his removal from Canada counsel states that the complainant was tied up for the whole 20 hours of his return to India, and that despite repeated requests the Canadian guards refused to loosen the ties around him which were causing pain. In addition, he was refused permission to use the toilet and had to relieve himself in a bottle in front of female guards, which he found humiliating. He was also denied food and water for the entire journey. In the representative's view, this treatment by the Canadian authorities amounted to a violation of his fundamental rights.

The complainant also described his treatment upon arrival in India. Upon return to India, he was handed over to the Indian authorities and was interrogated at the airport for about five hours during which he was accused, inter alia, of being a terrorist. He was threatened with death if he did not answer the questions posed. He was then driven to a police station in Guraspur, which took five hours and during which he was brutally beaten, with fists and feet and sat upon after being made to lay on the floor of the vehicle. In addition, his hair and beard were pulled which is against his religion. Upon arrival at the police station, he was interrogated and tortured in what he believes to have been an unused toilet. He was given electric shocks on his fingers,

temples, and penis, a heavy machine was rolled over him, causing him severe pain and he was beaten with sticks and fists. He was poorly fed during these six days in detention and neither his family nor lawyer knew of his whereabouts. In or around the sixth day, the complainant was transferred to another police station where he suffered similar treatment and remained for three further days. On the ninth day he was brought before a judge for the first time and saw his family. After being accused of having supplied explosives to persons accused of terrorism and plotting to murder leaders of the country, he was transferred to another detention centre in Nabha where he was detained for a further seven months without seeing any member of his family or his lawyer. On 29 January 2007, he appealed the decision which had ordered his preliminary detention and on 3 February 2007, was released subject to certain conditions.

Since his release, both the complainant and members of his family have been watched and are interrogated every two or four days. The complainant has been interrogated in the police station about six times during which he was psychologically harassed and threatened. All those involved with the author, including his family, his brother (who also claims to have been tortured), and the doctor who examined the complainant after his release are too afraid to provide any information relating to the abuse they and the complainant have all been subjected to. The complainant fears reprisals from India if the torture and ill-treatment to which he has been subjected are disclosed.

In terms of remedy, counsel requests an investigation by the Canadian authorities into the complainant's allegations of torture and ill-treatment since his arrival in India (as in the *Agiza v. Sweden*, case 233/2003). Counsel also requests Canada to take all necessary measures to return the complainant to Canada and to allow him to stay on a permanent basis (as was done in *Dar v. Norway*, 249/2004). In the alternative, counsel suggests that the State party arrange for a third country to accept the complainant on a permanent basis. Finally, she requested a figure of 368,250 Canadian dollars by way of compensation for the damages suffered.

**State party
response**

On 21 October 2008, the State party provided a supplementary reply. It denied the author's allegations that his rights were violated by the Canadian authorities during his removal from Canada. It explained that in such circumstances where an individual being returned poses a great threat to security he/she is returned by a chartered rather than commercial airline. The complainant's hands and feet were handcuffed, the handcuffs on his hands were connected to a belt attached to his seatbelt and those on his feet were attached to a

security strap. He was held in his chair by a belt around his body. These measures are always taken in cases where there is a very high security risk on a chartered flight. These measures did not prevent him from moving his hands and feet to some extent or from eating or drinking. The authorities offered to change the position of his seat on several occasions but he refused. As to food, the complainant was offered special vegetarian meals but other than apple juice he refused to accept anything. The chemical toilet on the plane had not been assembled and could not be used so "*un dispositif sanitaire*" was made available to the complainant. At the time of depart there were no female guards aboard the plane. Unfortunately, the complainant could not use the "*dispositif sanitaire*" successfully.

The State party notes that it is strange that the complainant did not raise these allegations earlier in the procedure despite the fact that he made two submissions to the Committee prior to his departure and prior to the Committee making its decision. The Committee has already made its decision and in any event the communication was only brought under article 3 of the Convention.

As to the allegation that the complainant was tortured in India upon his return, the State party submitted that such allegations are very worrying but noted that these allegations were not made prior to the Committee's decision in either of the complainant's submissions of 5 April 2007 or 24 September 2007. It also noted that certain Indian newspapers reported that the complainant was brought before a judge on 5 September 2006 six days after his arrival in India. In any event, the complainant is no longer within Canada's jurisdiction and although India may not have ratified the Convention, it has ratified the International Covenant on Civil and Political Rights and other mechanisms, United Nations and otherwise, which may be used in allegations of torture. As to whether the State party has received a response from India to its initial letter, the State party explains that it did receive such a letter but that no information was provided on the place of residence or the state of well-being of the complainant. In addition, it states that given the claim by counsel that the State party's last note to India may have created additional risks for the complainant, the State party is not disposed to communicate again with the Indian authorities.

**Complainant's
comments**

On 2 February 2009, the complainant's counsel responded to the State party's submission of 21 October 2008. She reiterates arguments previously made and states that the reason the complainant did not complain of his treatment by the Canadian authorities during his return to India or indeed of his treatment upon arrival in India was due to the

judicial proceedings instituted against him in India and an inability to communicate with his representative. In addition, the complainant's representative states that he claims to have been threatened by the Indian authorities not to divulge the ill-treatment to which he was subjected and for this reason remains reticent to provide many details. According to the representative, the complainant was in the custody of the police until 13 July 2006, which was his first court appearance. Given the threats made against him, the complainant fears that any complaints to the Indian authorities themselves will result in further ill-treatment. The representative argues that the efforts made by the Canadian authorities to determine where the complainant is as well as his state of well-being have been insufficient. She clarifies that the exchange of information between the Canadian and Indian authorities may put the complainant at risk but that this would not be the case if the State party were to make a request for information to the Indian authorities upon the condition that it did not mention the allegations of torture by the Indian authorities against the complainant.

**State party
response**

On 7 April 2009, the State party responded to the complainant's submission of 2 February 2009 as well as the Committee's concerns with respect to the way in which the complainant was treated during his deportation to India. It submits that he was treated with the utmost respect and dignity possible while at the same time assuring the security of all those involved. It notes the Committee's comment that it was not in a position under the follow-up procedure to examine new claims against Canada. Thus, the State party is of the view that this case is closed and should no longer be considered under the follow-up procedure.

On 31 August 2009, the State party responded to the Committee's request made following the forty-second session to make further efforts to contact the Indian authorities. The State party maintains that its position on this case remains unchanged, that it is satisfied that it has met all its obligations under the Convention and that it has no intention of attempting to communicate further with the Indian authorities. It reiterates its request to discontinue consideration of this case under the follow-up procedure. Being unable to agree with the Committee's Decision, the State party considers the case closed.

**Committee's
decision**

During the fortieth session, the Committee decided to write to the State party informing it of its obligations under articles 3 and 22 of the Convention and requesting the State party inter alia to determine, in consultation with the Indian authorities, the current situation, whereabouts and well-being of the complainant in India.

As to the new allegations made by the complainant in counsel's submission of 12 May 2008, with respect to the complainant's treatment by the Canadian authorities during his return to India, the Committee noted that it had already considered this communication, upon which it adopted its Views, and that it was now currently being considered under the follow-up procedure. It regretted that these allegations had not been made prior to its consideration. However, in its response of 21 October 2008, the State party had confirmed certain aspects of the complainant's claims, in particular, relating to the manner in which he was tied up for the entire journey, as well as the failure to provide him with adequate sanitary facilities during this long-haul flight.

Although the Committee considered that it could not examine whether the State party violated the Convention with respect to these new allegations, under this procedure and outside the context of a new communication, it expressed its concern at the way in which the complainant was treated by the State party during his removal, as confirmed by the State party itself. The Committee considered that the measures employed, in particular, the fact that the complainant was rendered totally immobile for the entire trip with only a limited ability to move his hands and feet, as well as the provision of a mere "dispositif sanitaire", described by the complainant as a bottle, in which to relieve himself, were totally unsatisfactory and inadequate at the very least. As to whether the State party should make further attempts to request information on the complainant's location and state of well-being, the Committee noted that the complainant's representative initially indicated that such efforts may create additional risks for the complainant, but in her submission of 2 February 2009, she clarified that a request for information only with no mention of allegations of torture against the Indian authorities would go some way to remedying the violation suffered.

During the forty-second session, and despite the State party's request not to consider this matter any further under follow-up, the Committee decided to request the State party to contact the Indian authorities to find out the complainant's location and state of well-being. It is reminded of its obligation to make reparation for the violation of article 3. Serious consideration should be made of any future request by the complainant to return to the State party.

During the 43rd session, the Committee decided that it should again remind the State party of its earlier requests under the follow-up procedure in the context of fulfilling its obligations under article 3 of the Convention. It regretted the State party's refusal to adopt the

Committee's recommendations in this regard. It decided to inform other United Nations mechanisms, dealing with issues of torture, of the State party's response.

The Committee considers the follow-up dialogue ongoing.

⁷ “As regards non-compliance with the Committee's requests of 14 and 30 June 2006 to suspend removal, the Committee recalls that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the procedure of individual complaints established thereunder. The Committee also notes that the State party's obligations include observance of the rules adopted by the Committee, which are inseparable from the Convention, including rule 108 of the rules of procedure, which is specifically intended to give meaning and scope to articles 3 and 22 of the Convention. (See *Dar v. Norway*, communication No. 249/2004, Views of 11 May 2007, para. 16.3; and *Tebourski v. France*, communication No. 300/2006, Views of 1 May 2007, para. 8.6).