United Nations

Report of the Committee against Torture

Thirty-third session (16-26 November 2004) Thirty-fourth session (2-20 May 2005)

General Assembly
Official Records
Sixtieth session
Supplement No. 44 (A/60/44)

General Assembly
Official Records
Sixtieth session
Supplement No. 44 (A/60/44)

Report of the Committee against Torture

Thirty-third session
(16-26 November 2004)
Thirty-fourth session
(2-20 May 2005)

United Nations • New York, 2005

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

CONTENTS

GE.05-44217 (E) 181005

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 20 May 2005, the closing date of the thirty-fourth session of the Committee against Torture, there were 139 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.

2. Since the last report, Timor-Leste, Liberia, Mauritania and the Syrian Arab Republic have become parties to the Convention. The list of States which have signed, ratified or acceded to the Convention is contained in annex I to the present report. States parties have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention (annex II). The States parties that have made declarations provided for in articles 21 and 22 of the Convention are listed in annex III.

3. The text of the declarations, reservations or objections made by States parties with respect to the Convention may be found in the United Nations website (www.un.org - Site index - treaties).

B. Sessions of the Committee

4. The Committee against Torture has held two sessions since the adoption of its last annual report. The thirty-third session (620th to 638th meetings) was held at the United Nations Office at Geneva from 15 to 26 November 2004, and the thirty-fourth session (639th to 668th meetings) was held from 2 to 20 May 2005. An account of the deliberations of the Committee at these two sessions is contained in the relevant summary records (CAT/C/SR.620-668).

C. Membership and attendance at sessions

5. The membership of the Committee remained the same during the period covered by the present report with the exception of Mr. Yu Mengjia who resigned in November 2004. The Government of China proposed Mr. Xuexian Wang to replace Mr. Yu Mengjia for the remainder of his term (31 December 2005) in accordance with article 17, paragraph 6, of the Convention and article 13 of the Committee's rules of procedure. Mr. Xuexian Wang assumed his duties on the first day of the thirty-fourth session. The list of members, with their terms of office, appears in annex IV to the present report.

D. Solemn declaration by the newly appointed member

6. At the 639th meeting on 2 May 2005, Mr. Xuexian Wang, designated to replace Mr. Yu Mengjia, made the solemn declaration upon assuming his duties, in accordance with rule 14 of the rules of procedure.

E. Election of officers

7. At the thirty-fourth session, on 2 May 2005, the Committee elected Mr. Xuexian Wang as Vice-Chairperson to serve the remainder of Mr. Yu's term until 31 December 2005.

F. Agendas

8. At its 639th meeting, on 15 November 2004, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General (CAT/C/82) as the agenda of its thirty-third session.

9. At its 620th meeting, on 2 May 2005, the Committee adopted the following items listed in the provisional agenda submitted by the Secretary-General (CAT/C/84) as the agenda of its thirty-fourth session.

G. Pre-sessional working group

10. During the period under review, the working group was composed of Mr. El-Masry, Mr. Prado Vallejo, Mr. Yakovlev and Mr. Yu Mengjia, this last only for the November 2004 session. The group met from 6 to 10 November 2004, prior to the thirty-third session, and from 25 to 28 April 2005, prior to the thirty-fourth session. Its agenda was devoted to the consideration of communications under article 22 of the Convention. The group reviewed the information brought to its attention and made recommendations to the Committee.

H. Participation of Committee members in other meetings

11. During the period under consideration Mr. Fernando Mariño Menendez participated in the 16th meeting of Chairpersons of the human rights treaty bodies, held from 23 to 25 June 2004. Mr. Sayed El-Masry, Mr. Fernando Mariño Menendez and Mr. Ole Rasmussen participated in the third inter-committee meeting of the human rights treaty bodies, which took place from 21 to 22 June 2004.

I. General comments

12. At its thirty-third session, the Committee decided to appoint a working group to continue work on the draft general comment on article 2 of the Convention. The working group is composed of Mr. Gubril Camara, Ms. Felice Gaer, Mr. Grossman with Mr. Fernando Mariño Menéndez as rapporteur.

J. Joint statement on the occasion of the United Nations International Day in Support of the Victims of Torture

13. The Committee entrusted one of its members, Ms. Felice Gaer, to prepare the following joint statement to be issued on 26 June 2005, the International Day in Support of the Victims of Torture:

> "Recognizing that the lives of individuals, their well-being and sense of security continue to be scarred by torture on a daily basis, and that torture is reported with growing frequency from all regions of the world, on the occasion of the United Nations International Day in Support of Victims of Torture, we, the United Nations Committee against Torture, the Special Rapporteur of the Commission on Human Rights on the question of torture, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the United Nations High Commissioner for Human Rights:

"Reaffirm concerns highlighted in our previous joint statements and reemphasize the absolute nature of the prohibition of torture, including the principle of non-refoulement where there is a danger of an individual being subjected to torture and stress that no exceptional circumstances may be invoked as a justification for torture.

"Recall the obligations of States to take effective measures to prevent all acts of torture or cruel, inhuman or degrading treatment or punishment. Stress that the importance of prevention cannot be overemphasized, and call for the universal ratification of the Convention against Torture and its Optional Protocol. Urge the creation or strengthening of national preventive mechanisms which are mandated to undertake independent visits to places of deprivation of liberty, as required by the Protocol.

"Remind States parties to the Convention of the desirability of making the declaration under article 22 providing for individual communications.

"Recall the obligation of States to investigate and punish all acts of torture and cruel, inhuman and degrading treatment or punishment and strengthen efforts to fight impunity.

"Recognizing the ordeals of victims and survivors of torture, both those who have spoken out and those who have suffered in silence, urge States to give effect to their obligation under the Convention to ensure that "the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible". Recall that victims of torture have a right to sue for compensation, including civil compensation, which can be based upon universal jurisdiction. Urge the sixtieth session of the United Nations General Assembly to adopt the Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of Human Rights.

"Acknowledge the achievements of the Special Rapporteur on Torture whose mandate was created 20 years ago and stress the importance of his work in preventing torture and protecting its potential victims. Urge all States to issue a standing invitation and extend cooperation to the Special Rapporteur.

"Recall that 10 years ago the Beijing World Conference on Women recognized that sexual violence and gender-based violence constitute torture where the State perpetrates such acts, consents or acquiesces to them. Highlight the need to raise awareness of such forms of violence, including domestic violence, and to strengthen measures to prohibit and prevent as well as investigate, prosecute and punish all such acts. Note that gender-based violence, including domestic violence, plays a particularly insidious role in teaching and perpetuating a culture of violence.

"Recognize the key role of non-governmental organizations in providing assistance to survivors of torture and call upon Governments, private and public entities and individuals to express their solidarity with victims of torture and members of their families by contributing generously to the United Nations Voluntary Fund for Victims of Torture."

II. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

14. During the period covered by the present report 20 reports were submitted to the Secretary-General. Initial reports were submitted by Bosnia and Herzegovina (CAT/C/21/Add.6), Democratic Republic of the Congo (CAT/C/37/Add.6), Togo (CAT/C/5/Add.33) and Qatar (CAT/C/58/Add.1). Second reports were submitted by the Republic of Korea (CAT/C/53/Add.2) and Benin (CAT/C/38/Add.3). Fourth reports were submitted by Australia (CAT/C/67/Add.7), Estonia (CAT/C/80/Add.1), Hungary (CAT/C/55/Add.10), Mexico (CAT/C/55/Add.12), Netherlands (CAT/C/67/Add.4), Russian Federation (CAT/C/55/Add.11), Peru (CAT/C/61/Add.2), Poland (CAT/C/67/Add.5) and Portugal (CAT/C/67/Add.6). Fifth reports were submitted by Canada (CAT/C/81/Add.3), Denmark (CAT/C/81/Add.2), Luxembourg (CAT/C/81/Add.3), Ukraine (CAT/C/81/Add.1) and Norway (CAT/C/81/Add.4).

15. The Committee has to date, 20 May 2005, received 180 reports.

16. As at 20 May 2005, the situation of overdue reports, a total of 190, was as follows:

State party	Date on which the report was due
Initial reports	
Guyana	17 June 1989
Guinea	8 November 1990
Somalia	22 February 1991
Seychelles	3 June 1993
Cape Verde	3 July 1993
Burundi	19 March 1994
Antigua and Barbuda	17 August 1994
Ethiopia	12 April 1995
Chad	7 July 1996
Tajikistan	9 February 1996
Côte d'Ivoire	16 January 1997
Malawi	10 July 1997
Honduras	3 January 1998
Kenya	22 March 1998
Bangladesh	3 November 1999
Niger	3 November 1999
Burkina Faso	2 February 2000
Mali	27 March 2000
Turkmenistan	25 July 2000
Japan	29 July 2000

State party	Date on which the report was due	
Mozambique	14 October 2000	
Ghana	6 October 2001	
Botswana	7 October 2001	
Gabon	7 October 2001	
Lebanon	3 November 2001	
Sierra Leone	24 May 2002	
Nigeria	27 July 2002	
Saint Vincent and the Grenadines	30 August 2002	
Lesotho	11 December 2002	
Mongolia	22 February 2003	
Ireland	10 May 2003	
Holy See	25 July 2003	
Equatorial Guinea	6 November 2003	
Timor-Leste	15 May 2004	
Congo	18 August 2004	
Second periodic reports		
Afghanistan	25 June 1992	
Belize	25 June 1992	
Philippines	25 June 1992	
Uganda	25 June 1992	[25 June 2008]*
Togo	17 December 1992	
Guyana	17 June 1993	
Brazil	27 October 1994	
Guinea	8 November 1994	
Somalia	22 February 1995	
Romania	16 January 1996	
Serbia and Montenegro	9 October 1996	
Yemen	4 December 1996	
Jordan	12 December 1996	
Bosnia and Herzegovina	5 March 1997	
Latvia	13 May 1997	[13 May 2005]*

* The date indicated in brackets next to the due date of reports is the new date for submission of the State party's report, in accordance with the Committee's decision at the time of adoption of the recommendations following the consideration of the State party's previous report.

State party	Date on which the report was due	
Seychelles	3 June 1997	
Cape Verde	3 July 1997	
Cambodia	13 November 1997	
Burundi	19 March 1998	
Slovakia	27 May 1998	
Antigua and Barbuda	17 August 1998	
Costa Rica	10 December 1998	
Ethiopia	12 April 1999	
Albania	9 June 1999	[9 June 2007]*
The former Yugoslav Republic of Macedonia	11 December 1999	
Namibia	27 December 1999	
Tajikistan	9 February 2000	
Cuba	15 June 2000	
Chad	8 July 2000	
Republic of Moldova	27 December 2000	[27 December 2007]*
Côte d'Ivoire	16 January 2001	
Democratic Republic of the Congo	16 April 2001	
El Salvador	16 July 2001	
Lithuania	1 March 2001	
Kuwait	6 April 2001	
Malawi	10 July 2001	
Slovenia	14 August 2001	
Honduras	3 January 2002	
Kenya	22 March 2002	
Kyrgyzstan	4 September 2002	
Saudi Arabia	21 October 2002	
Bahrain	4 April 2003	[April 2007]*
Kazakhstan	24 September 2003	
Bangladesh	3 November 2003	
Niger	3 November 2003	
Zambia	5 November 2003	
Indonesia	26 November 2003	
South Africa	8 January 2003	
Burkina Faso	2 February 2004	
Mali	27 March 2004	

State party	Date on which the report was due	
Bolivia	11 May 2004	
Turkmenistan	24 July 2004	
Belgium	25 July 2004	
Japan	29 July 2004	
Mozambique	13 October 2004	
Qatar	9 February 2005	

Third periodic reports

Afghanistan	25 June 1996	
Belize	25 June 1996	
Philippines	25 June 1996	
Senegal	25 June 1996	
Uganda	25 June 1996	
Uruguay	25 June 1996	
Togo	17 December 1996	
Guyana	17 June 1997	
Turkey	31 August 1997	[31 August 2005]*
Tunisia	22 October 1997	[30 November 1999]*
Libyan Arab Jamahiriya	14 June 1998	
Algeria	11 October 1998	
Brazil	27 October 1998	
Guinea	8 November 1998	
Somalia	22 February 1999	
Malta	12 October 1999	[30 November 2004]*
Liechtenstein	1 December 1999	
Romania	16 January 2000	
Nepal	12 June 2000	
Serbia and Montenegro	9 October 2000	
Yemen	4 December 2000	
Jordan	12 December 2000	
Malta	31 December 2000	
Bosnia and Herzegovina	5 March 2001	
Benin	10 April 2001	
Latvia	13 May 2001	
Seychelles	3 June 2001	
Cape Verde	3 July 2001	
Cambodia	13 November 2001	
Mauritius	7 January 2002	

State party	Date on which the report was due	
Burundi	19 March 2002	
Slovakia	27 May 2002	
Antigua and Barbuda	17 August 2002	
Armenia	12 October 2002	
Costa Rica	10 December 2002	
Sri Lanka	1 February 2003	
Ethiopia	12 April 2003	
Albania	9 June 2003	
United States of America	19 November 2003	
The former Yugoslav Republic of Macedonia	11 December 2003	
Namibia	27 December 2003	
Republic of Korea	7 February 2004	
Tajikistan	9 February 2004	
Cuba	15 June 2004	
Chad	7 July 2004	
Uzbekistan	27 October 2004	
Republic of Moldova	27 December 2004	
Côte d'Ivoire	16 January 2005	
Lithuania	1 March 2005	

Fourth periodic reports

Afghanistan	25 June 2000	
Belarus	25 June 2000	
Belize	25 June 2000	
Bulgaria	25 June 2000	[25 June 2008]*
Cameroon	25 June 2000	
France	25 June 2000	
Philippines	25 June 2000	
Senegal	25 June 2000	
Uganda	25 June 2000	
Uruguay	25 June 2000	
Austria	27 August 2000	
Panama	22 September 2000	
Togo	17 December 2000	
Colombia	6 January 2001	
Ecuador	28 April 2001	

State party	Date on which the report was due	
Guyana	17 June 2001	
Turkey	31 August 2001	
Tunisia	22 October 2001	
Chile	29 October 2001	[29 October 2005]
China	2 November 2001	
Libyan Arab Jamahiriya	14 June 2002	
Algeria	11 October 2002	
Brazil	27 October 2002	
Guinea	8 November 2002	
Somalia	22 February 2003	
Paraguay	10 April 2003	
Malta	12 October 2003	
Germany	20 October 2003	
Liechtenstein	1 December 2003	
Romania	16 January 2004	
Nepal	12 June 2004	
Cameroon	25 June 2004	
Cyprus	16 August 2004	
Venezuela	20 August 2004	
Serbia and Montenegro	9 October 2004	
Israel	1 November 2004	
Estonia	19 November 2004	
Yemen	4 December 2004	
Jordan	12 December 2004	
Monaco	4 January 2005	[4 January 2009]*
Colombia	6 January 2005	

Fifth periodic reports

Afghanistan	25 June 2004
Belarus	25 June 2004
Belize	25 June 2004
Egypt	25 June 2004
France	25 June 2004
Hungary	25 June 2004
Mexico	25 June 2004
Philippines	25 June 2004
Russian Federation	25 June 2004
Senegal	25 June 2004

State party	Date on which the report was due	
Sweden	25 June 2004	
Switzerland	25 June 2004	[25 June 2008]*
Uganda	25 June 2004	
Uruguay	25 June 2004	
Austria	27 August 2004	
Panama	22 September 2004	
Spain	19 November 2004	
Togo	17 December 2004	
Colombia	6 January 2005	

17. At the request of the Committee, two members, Mr. Mariño and Mr. Rasmussen, continued to maintain contacts with States parties whose initial reports were overdue by five years or more, in order to encourage the submission of such reports.

18. The Committee was not able to consider the initial report of Togo which was scheduled for consideration during the thirty-fourth session due to the absence of a delegation from Togo. The reasons given by the State party for this absence was attributed to the great difficulties facing the country at the scheduled time, which did not allow the Government to appoint a delegation and make available the resources for such a delegation to travel.

19. Bearing in mind these circumstances and also the usefulness of considering the State party reports, in particular the initial ones, in the presence of a delegation from the State party, and in order to have a meaningful and constructive dialogue, the Committee decided to postpone consideration of the initial report of Togo, and to take it up at its thirty-sixth session in May 2006.

20. On the other hand, the Committee expresses its deep concern with respect to the information it has received and which highlight the extensive human rights violations as well as the impunity of those accused of committing these.

21. The Committee wishes to remind the State party of its obligation to respect the absolute prohibition of torture and other cruel, inhuman and degrading treatment, to immediately investigate any allegation of violation, to initiate proceedings against those presumed responsible, to establish efficient mechanisms to provide reparations to the victims for the harm suffered.

22. The Committee expressed its hope that social peace will be fully re-established in Togo and consolidation of the rule of law and full respect to fundamental rights.

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

23. At its thirty-third and thirty-fourth sessions, the Committee considered reports submitted by 19 States parties, under article 19, paragraph 1, of the Convention. The following reports were before the Committee at its thirty-third session:

Argentina: fourth periodic report	CAT/C/55/Add.7
United Kingdom of Great Britain and Northern Ireland: fourth periodic report	CAT/C/67/Add.2
Greece: fourth periodic report	CAT/C/61/Add.1

24. The following reports were before the Committee at its thirty-fourth session:

Canada: fourth and fifth periodic reports	CAT/C/55/Add.8 CAT/C/81/Add.3
Switzerland: fourth periodic report	CAT/C/55/Add.9
Finland: fourth periodic report	CAT/C/67/Add.1
Albania: initial report	CAT/C/28/Add.6
Uganda: initial report	CAT/C/5/Add.32
Bahrain: initial report	CAT/C/47/Add.4

25. In accordance with rule 66 of the rules of procedure of the Committee, representatives of all the reporting States were invited to attend the meetings of the Committee when their reports were examined. All of the States parties whose reports were considered sent representatives to participate in the examination of their respective reports.

26. Country rapporteurs and alternate rapporteurs were designated for each of the reports considered. The list appears in annex V to the present report.

27. In connection with its consideration of reports, the Committee also had before it:

(a) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/4/Rev.2);

(b) General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14/Rev.1).

28. The following sections contain the text of conclusions and recommendations adopted by the Committee with respect to the above-mentioned States parties' reports.

ARGENTINA

29. The Committee considered the fourth periodic report of Argentina (CAT/C/55/Add.7) at its 622nd and 625th meetings, held on 16 and 17 November 2004 (CAT/C/SR.622 and 625 and Add.1), and adopted the following conclusions and recommendations.

A. Introduction

30. The Committee welcomes the fourth periodic report of Argentina, though noting that it was received two years after the due date of June 2000. The Committee appreciates the constructive dialogue established with a high-level representative delegation and thanks it for the frank and direct answers provided to the questions posed by the Committee.

B. Positive aspects

31. The Committee welcomes with satisfaction the efforts made by the State party to combat impunity in respect of crimes against humanity committed under the military dictatorship, and in particular:

(a) The promulgation of Act No. 25.779 in September 2003, declaring the "Due Obedience" and "Clean Slate" Acts absolutely null and void;

(b) The initiation of a significant number of cases in which such violations are being investigated;

(c) The repeal in 2003 of executive decree No. 1581/01, which required the automatic rejection of requests for extradition in cases involving serious and flagrant violations of human rights under the military dictatorship.

32. The Committee also warmly welcomes the following positive developments:

(a) The ratification of the Optional Protocol to the Convention against Torture in November 2004;

(b) The ratification of the Rome Statute of the International Criminal Court in February 2001;

(c) The promulgation in January 2004 of the new Migration Act, No. 25.871, which lays down, inter alia, that a foreigner may be detained only by a judicial authority;

(d) The work accomplished by the National Commission for the Right to an Identity, which was entrusted with the task of locating children who disappeared under the military dictatorship.

C. Factors and difficulties impeding the application of the Convention

33. The Committee takes note of the difficulties encountered by the State party, especially those of an economic and social nature. However, it points out that there are no exceptional circumstances of any kind which may be invoked to justify torture.

D. Subjects of concern

34. The Committee expresses its concern at the following:

(a) The many allegations of torture and ill-treatment committed in a widespread and habitual manner by the State's security forces and agencies, both in the provinces and in the federal capital;

(b) The lack of proportion between the high number of reports of torture and ill-treatment and the very small number of convictions for such offences, as well as the unjustifiable delays in the investigation of cases of torture, all of which contribute to the prevailing impunity in this area;

(c) The repeated practice of miscategorization of actions by judicial officials, who treat the crime of torture as a minor offence (such as unlawful coercion), which carries a lesser punishment, when in fact such actions should be categorized as torture;

(d) The uneven application of the Convention in the various provinces of the State party, and the lack of machinery for accommodating the requirements of the Convention to the federal structure of the country, despite the fact that the State party's Constitution grants those provisions the same status as the Constitution itself;

(e) The information supplied by the State party on compliance with the obligations imposed by the Convention still fails to reflect the situation in the country as a whole, as the Committee has stated when considering previous reports by the State party. The Committee also notes with concern that the national register of information from domestic courts on cases of torture and ill-treatment in the State party has still not been established;

(f) The reports of arrests and detention of children below the age of criminal responsibility, most of them "street children" and beggars, in police stations, where they are held together with adults, as well as on the alleged torture and ill-treatment suffered by such children, leading to death in some cases;

(g) Allegations of torture and ill-treatment of certain other vulnerable groups, such as members of the indigenous communities, sexual minorities and women;

(h) The overcrowding and poor physical conditions prevailing in the prisons, and particularly the lack of hygiene, adequate food and appropriate medical care, which may be tantamount to inhuman and degrading treatment;

(i) The high number of persons being held in pre-trial detention, which according to the State party is as high as 78 per cent in the Buenos Aires prison system;

(j) The failure to apply the principle of separation between convicted prisoners and remand prisoners in detention centres, and between them and immigrants who have been served with expulsion orders;

(k) Alleged reprisals, intimidation and threats received by persons reporting acts of torture and ill-treatment;

(l) Humiliation and degrading treatment during body searches of persons visiting prisons;

(m) The fact that medical staff in prisons are not independent but are members of the prison service.

E. Recommendations

35. **The Committee recommends that the State party take all necessary steps to prevent acts of torture and ill-treatment in the territory of the State of Argentina, and in particular that it:**

(a) Take vigorous steps to eliminate the impunity of the alleged perpetrators of acts of torture and ill-treatment, carry out prompt, impartial and exhaustive investigations, try and, where appropriate, convict the perpetrators of torture and ill-treatment, impose appropriate sentences on them and properly compensate the victims;

(b) Provide training for judicial officials in order to enhance the efficiency of investigations and bring judicial decisions into line with the relevant international standards;

(c) Improve the quality of the State's security forces and agencies and enhance their training in respect of human rights, and specifically in respect of the requirements stemming from the Convention;

(d) Guarantee that the obligations arising from the Convention will always be fulfilled in all provincial courts, with the aim of ensuring the uniform application of the Convention throughout the State party. The State party is reminded that the State's international responsibility is borne by the State at the national level even when violations have occurred at the provincial level;

(e) Organize a national register of information from domestic courts on cases of torture and ill-treatment in the State party, a measure stated by the State party to be feasible;

(f) Take specific steps to safeguard the physical integrity of the members of all vulnerable groups;

(g) As promised by the delegation of the State party in the case of the province of Buenos Aires, guarantee that the holding of minors in police units will be immediately banned, that minors currently in police units will be transferred to special centres, and that a nationwide ban will be imposed on the detention of minors by police personnel on "welfare grounds";

(h) Take effective steps to improve physical conditions in prisons, reduce the existing overcrowding and properly guarantee the fundamental needs of all persons in custody;

(i) Consider amending its legislation and practice relating to pre-trial detention, so that such detention is imposed only as an exceptional measure, taking into account the recommendations on alternatives to pre-trial detention adopted by the Working Group on Arbitrary Detention in December 2003;

(j) Take the necessary steps to guarantee the principle of separation between convicted prisoners and remand prisoners, and between them and immigrants who have been served with expulsion orders in detention centres;

(k) Take effective steps to ensure that all persons reporting acts of torture or ill-treatment are protected from intimidation and from any unfavourable consequence of their action in making such a report;

(l) Take appropriate steps to guarantee full respect for the dignity and human rights of all persons during body searches, in full compliance with international standards;

(m) Take the necessary steps to guarantee the presence of independent, qualified medical personnel to carry out periodic examinations of persons in detention;

(n) Include in its next periodic report detailed statistical data, especially in terms of types of offence, the age, ethnic group and sex of the victim and the category of the perpetrator, on reports of acts of torture and other cruel, inhuman or degrading punishment or treatment inflicted by State officials, as well as on investigations, proceedings and criminal and disciplinary punishments imposed following such reports and the consequences for the victims in terms of reparation and compensation;

(o) Establish national prevention machinery with authority to make periodic visits to federal and provincial detention centres for the purpose of fully implementing the Optional Protocol to the Convention;

(p) Establish and promote effective machinery within the prison system to receive and investigate reports of sexual violence and provide protection and psychological and medical assistance to victims;

(q) Extensively publicize the reports submitted to the Committee by the State party, as well as the Committee's conclusions and recommendations, through official websites, the media and non-governmental organizations (NGOs);

(r) Inform the Committee within a year of the specific steps taken in pursuance of the recommendations set out in paragraph 35, subparagraphs (e), (f), (l) and (o) above;

(s) Submit its next periodic report, combining the fifth and sixth reports, at the latest by 25 June 2008, the scheduled date for the submission of the sixth report.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, CROWN DEPENDENCIES AND OVERSEAS TERRITORIES

36. The Committee considered the fourth periodic report of the United Kingdom of Great Britain and Northern Ireland, Crown Dependencies and Overseas Territories (CAT/C/67/Add.2) at its 624th and 627th meetings, held on 17 and 18 November 2004 (CAT/C/SR.624 and 627) and has adopted the following conclusions and recommendations.

A. Introduction

37. The fourth periodic report of the United Kingdom of Great Britain and Northern Ireland was due on 6 January 2002 and was received on 6 November 2003. Like the previous report, it conformed to the guidelines of the Committee pertaining to the preparation of such reports, including the point by point replies to the Committee's previous recommendations. The Committee welcomes the comprehensive information provided by the State party, and the inclusive participation in the reporting process of institutions and NGOs concerned with the protection of human rights. The Committee commends the exhaustive written responses provided to the list of issues, as well as the detailed responses provided both in writing and orally to the questions posed by the members during the examination of the report.

B. Positive aspects

38. The Committee notes:

(a) The responsiveness of the State party to some of the previous recommendations of the Committee, in particular the closure of certain prison facilities previously found to be problematic, the confirmation that no baton rounds have been fired by either the police or the army in Northern Ireland since September 2002 and the dissolution of the Royal Ulster Constabulary;

(b) The entry into force in 2000 of the Human Rights Act 1998;

(c) The entry into force of the Female Genital Mutilation Act 2003 covering acts committed by United Kingdom nationals or residents either in the State party or abroad; and the State party's commitment to preventing British companies from manufacturing, selling or procuring equipment designed primarily for torture or other cruel, inhuman or degrading treatment or punishment;

(d) The judgement of 24 March 1999 of the Judicial Committee of the House of Lords in the case of *R. v. Bartle and the Commissioner of Police for the Metropolis, ex parte Pinochet* holding that the State party's courts have jurisdiction over acts of torture committed abroad and that a former Head of State does not have immunity for such crimes;

(e) The establishment of an independent Police Complaints Commission for England and Wales and, in Northern Ireland, the office of Police Ombudsman, and the Northern Ireland Human Rights Commission;

(f) The State party's assurance that the United Kingdom Armed Forces, military advisers, and other public servants deployed on operations abroad are "subject at all times to English criminal law" including the prohibition on torture and ill-treatment;

(g) The State party's affirmation that "evidence obtained as a result of any acts of torture by British officials, or with which British authorities were complicit, would not be admissible in criminal or civil proceedings in the United Kingdom", and that the Home Secretary does not intend to rely upon or present "evidence where there is a knowledge or belief that torture has taken place";

(h) With respect to the British Virgin Islands, the establishment of the Human Rights Reporting Coordinating Committee; with respect to Guernsey, the enactment of the Human Rights (Bailiwick of Guernsey) Law 2000; with respect to Isle of Man, the enactment of the Human Rights Act 2001; and with respect to Bermuda, the complaint mechanism introduced by the Police Complaints Act 1998; and

(i) The State party's reaffirmation of its unreserved condemnation of the use of torture; the early ratification by the State party of the Optional Protocol to the Convention; and its active pursuit through diplomatic activity, practical projects and research funding in support of universal ratification of the Convention and its Optional Protocol.

C. Subjects of concern

39. The Committee expresses its concern at:

(a) Remaining inconsistencies between the requirements of the Convention and the provisions of the State party's domestic law which, even after the passage of the Human Rights Act, have left continuing gaps; notably:

(i) Article 15 of the Convention prohibits the use of evidence gained by torture wherever and by whomever obtained; notwithstanding the State party's assurance set out in paragraph 38, subparagraph (g), supra, the State party's law has been interpreted to exclude the use of evidence extracted by torture only where the State party's officials were complicit; and

(ii) Article 2 of the Convention provides that no exceptional circumstances whatsoever may be invoked as a justification for torture; the text of section 134 (4) of the Criminal Justice Act however provides for a defence of "lawful authority, justification or excuse" to a charge of official intentional infliction of severe pain or suffering, a defence which is not restricted by the Human Rights Act for conduct outside the State party, where the Human Rights Act does not apply; moreover, the text of section 134 (5) of the Criminal Justice Act provides for a defence for conduct that is permitted under foreign law, even if unlawful under the State party's law;

(b) The State party's limited acceptance of the applicability of the Convention to the actions of its forces abroad, in particular its explanation that "those parts of the Convention which are applicable only in respect of territory under the jurisdiction of a State party cannot be applicable in relation to actions of the United Kingdom in Afghanistan and Iraq"; the Committee

observes that the Convention protections extend to all territories under the jurisdiction of a State party and considers that this principle includes all areas under the de facto effective control of the State party's authorities;

(c) The incomplete factual and legal grounds advanced to the Committee justifying the derogations from the State party's international human rights obligations and requiring the emergency powers set out in Part IV of the Anti-terrorism, Crime and Security Act 2001; similarly, with respect to Northern Ireland, the absence of precise information on the necessity for the continued emergency provisions for that jurisdiction contained in the Terrorism Act 2000;

(d) The State party's reported use of diplomatic assurances in the "refoulement" context in circumstances where its minimum standards for such assurances, including effective post-return monitoring arrangements and appropriate due process guarantees followed, are not wholly clear and thus cannot be assessed for compatibility with article 3 of the Convention;

(e) The State party's resort to potentially indefinite detention under the Anti-terrorism, Crime and Security Act 2001 of foreign nationals suspected of involvement in international terrorism and the strict regime applied in Belmarsh prison;

(f) The investigations carried out by the State party into a number of deaths by lethal force arising between the entry into force of the Convention in 1988 and the Human Rights Act in 2000 which have failed to fully meet its international obligations;

(g) Reports of unsatisfactory conditions in the State party's detention facilities including substantial numbers of deaths in custody, inter-prisoner violence, overcrowding and continued use of "slopping out" sanitation facilities, as well as reports of unacceptable conditions for female detainees in the Hydebank Wood prison, including a lack of gender-sensitive facilities, policies, guarding and medical aid, with male guards alleged to constitute 80 per cent of guarding staff and incidents of inappropriate threats and incidents affecting female detainees;

(h) Reports of incidents of bullying followed by self-harm and suicide in the armed forces, and the need for full public inquiry into these incidents and adequate preventive measures; and

(i) Allegations and complaints against immigration staff, including complaints of excessive use of force in the removal of denied asylum-seekers.

D. Recommendations

40. **The Committee recommends that:**

(a) The State party take appropriate measures in the light of the Committee's views to ensure, if necessary explicitly, that the defences that might be available to a charge brought under section 134 (1) of the Criminal Justice Act be consistent with the requirements of the Convention;

(b) The State party should review, in the light of its experience since its ratification of the Convention and the Committee's jurisprudence, its statute and common law to ensure full consistency with the obligations imposed by the Convention; for greater clarity and ease of access, the State party should group and publish the relevant legal provisions;

(c) The State party should reassess its extradition mechanism insofar as it provides for the Home Secretary to make determinations on issues such as medical fitness for trial which would more appropriately be dealt with by the courts;

(d) The State party should appropriately reflect in formal fashion, such as legislative incorporation or by undertaking to Parliament, the Government's intention as expressed by the delegation not to rely on or present in any proceeding evidence where there is knowledge or belief that it has been obtained by torture; the State party should also provide for a means whereby an individual can challenge the legality of any evidence in any proceeding plausibly suspected of having been obtained by torture;

(e) The State party should apply articles 2 and/or 3 of the Convention, as appropriate, to transfers of a detainee within a State party's custody to the custody whether de facto or de jure of any other State;

(f) The State party should make public the result of all investigations into alleged conduct by its forces in Iraq and Afghanistan, particularly those that reveal possible actions in breach of the Convention, and provide for independent review of the conclusions where appropriate;

(g) The State party should re-examine its review processes, with a view to strengthening independent periodic assessment of the ongoing justification for emergency provisions of both the Anti-terrorism, Crime and Security Act 2001 and the Terrorism Act 2000, in view of the length of time the relevant emergency provisions have been operating, the factual realities on the ground and the relevant criteria necessary to declare a state of emergency;

(h) The State party should review, as a matter of urgency, the alternatives available to indefinite detention under the Anti-terrorism, Crime and Security Act 2001;

(i) The State party should provide the Committee with details on how many cases of extradition or removal subject to receipt of diplomatic assurances or guarantees have occurred since 11 September 2001, what the State party's minimum contents are for such assurances or guarantees and what measures of subsequent monitoring it has undertaken in such cases;

(j) The State party should ensure that the conduct of its officials, including those attending interrogations at any overseas facility, is strictly in conformity with the requirements of the Convention and that any breaches of the Convention that it becomes aware of should be investigated promptly and impartially, and if necessary the State party should file criminal proceedings in an appropriate jurisdiction;

(k) The State party should take all practicable steps to review investigations of deaths by lethal force in Northern Ireland that have remained unsolved, in a manner, as expressed by representatives of the State party, "commanding the confidence of the wider community";

(l) The State party should develop an urgent action plan, including appropriate resort to criminal sanctions, to address the subjects of concern raised by the Committee in paragraph 40, subparagraph (g) as well as take appropriate gender-sensitive measures;

(m) The State party should consider designating the Northern Ireland Human Rights Commission as one of the monitoring bodies under the Optional Protocol to the Convention;

(n) The State party should consider offering, as routine practice, medical examinations before all forced removals by air and, in the event that they fail, thereafter;

(o) The State party should consider developing a means of central collection of statistical data on issues arising under the Convention in the State party's prisons and other custodial facilities; and

(p) The State party should make the declaration under article 22 of the Convention.

41. **The Committee requests that the State party provide, within one year, information in response to the Committee's recommendations in paragraph 40, subparagraphs (d), (e), (f), (g), (h), (i), (j) and (l) above.**

42. **The Committee requests that the State party submit its next periodic report, due on 6 January 2006, by 2008.**

GREECE

43. The Committee considered the fourth periodic report of Greece (CAT/C/61/Add.1) at its 630th and 633rd meetings, held on 22 and 23 November 2004 (CAT/C/SR.630 and CAT/C/SR.633), and adopted the following conclusions and recommendations.

A. Introduction

44. The Committee welcomes the submission of the fourth periodic report of Greece and the opportunity to continue its dialogue with the State party. However, the Committee notes that the report does not fully conform to the Committee's guidelines for the preparation of periodic reports and lacks information on practical aspects of implementation of the provisions of the Convention.

45. Noting that the report covers the period from November 1999 to December 2001, the Committee appreciates the update provided by the delegation of Greece during the consideration of the report and the replies to most of the questions raised by the Committee. The Committee emphasizes that the next periodic report should contain more specific data and information on implementation.

B. Positive aspects

46. The Committee notes the following positive developments:

(a) The ongoing efforts by the State party to revise its legislation and adopt other necessary measures, so as to strengthen the respect for human rights in Greece and give effect to the Convention. In particular the Committee welcomes the following:

(i) The new Prison Code (Law 2776/99), which contains provisions intended to, inter alia, improve living conditions in prisons and prevent inhuman treatment of prisoners;

(ii) Legislation facilitating the registration of aliens (Law 3274/2004);

(iii) The new Law on Legal Aid (Law 3226/2004), which stipulates that lawyers must be appointed to draw up and submit complaints on behalf of torture victims and victims of trafficking, and that the prison prosecutor has the duty to offer legal counselling to detainees;

(iv) The new Law on Arms Possession and Use of Firearms (3169/2003), which regulates the possession and use of firearms by police personnel;

(v) The Law on Combating Trafficking in Human Beings (Law 3064/2002), criminalizing trafficking and punishing the perpetrators of such crimes with heavy sentences;

(vi) The new Law on Compensation (2001);

(vii) The circulars of the Chief of the Greek Police of July 2003 concerning the detention of undocumented migrants and that of November 2003 regarding the treatment of victims of trafficking;

(b) The establishment of a Department for Children's Rights in the Office of the Ombudsman (Law 3094/2003) with a mandate to, inter alia, undertake investigations and research on specific issues considered particularly important;

(c) The lifting of restrictive quotas (of 15 per cent) for the entry of women into the police force;

(d) The statement made by the delegation that it is prepared to consider modalities for increasing cooperation with NGOs, including visits to detention centres;

(e) The publication of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to Greece and the response of the Government thereto (CPT/Inf(2002)31 and CPT/Inf(2002)32), which would contribute to a general debate among all interested parties;

(f) The contributions, made since 1983, to the United Nations Voluntary Fund for Victims of Torture;

(g) The ratification by the State party, on 15 May 2002, of the Rome Statute of the International Criminal Court.

C. Subjects of concern

47. The Committee notes that many of the concerns it expressed during the consideration of the third periodic report (A/56/44, para. 87) have not been adequately addressed, and will be reiterated in the present concluding observations. Consequently, the Committee expresses its concern at:

(a) The absence of data with respect to the practical application of the numerous new legislative acts and the seemingly insufficient steps undertaken to reduce the gap between legislation and practice;

(b) Procedures related to the expulsion of foreigners which in some instances may be in breach of the Convention. It is also concerned at the low percentage (0.06 per cent) of persons who were granted refugee status in 2003. The Committee acknowledges that owing to its geographic location Greece has become an important passageway into Europe for many immigrants and asylum-seekers, the number of which has increased significantly in the past decade. The importance of providing an adequate response is therefore all the more pressing;

(c) Training provided to public officials which may be inadequate to provide an appropriate response to the numerous challenges with which they are faced, including undocumented migrants and asylum-seekers and victims of trafficking, many of whom are women and children;

(d) The slow progress in adopting a code of ethics and other measures governing the conduct of police interrogations to supplement the provisions of the Criminal Procedure Code, with a view to preventing cases of torture and ill-treatment, in accordance with article 11 of the Convention;

(e) The lack of an effective independent system to investigate complaints and reports that allegations of torture and ill-treatment are not investigated promptly and impartially;

(f) The alleged reluctance of prosecutors to institute criminal proceedings under article 137A of the Criminal Code. Furthermore, the Committee is concerned at the deficiencies in according protection from ill-treatment or intimidation to victims to which they may be exposed as a consequence of filing a complaint or giving evidence;

(g) The insufficient information available relating to redress and fair and adequate compensation, including rehabilitation available to victims of torture or their dependants, in accordance with article 14 of the Convention;

(h) Continuing allegations of excessive use of force and firearms, including cases of killings and reports of sexual abuse, by the police and, in particular, border guards. Many of the victims are reportedly Albanian citizens or members of other socially disadvantaged groups, and the Committee regrets the fact that disaggregated statistical data in this respect are not available from the State party;

(i) The continued overcrowding and poor conditions prevailing in prisons and other detention facilities, as well as the fact that it is difficult for independent bodies with a mandate to visit places of detention to obtain access;

(j) Ill-treatment of Roma by public officials in situations of forced eviction or relocation. The fact that these may be carried out pursuant to judicial orders cannot serve as a justification for ill-treatment, numerous allegations of which have been reported by national and international bodies alike;

(k) The reported prevalence of violence against women and girls, including domestic violence, and the reluctance on the part of the authorities to, inter alia, adopt legislative measures to counter this phenomenon;

(l) The inadequate measures taken to protect children picked up by the Security Police and taken into State care during the period 1998-2003. In particular, the Committee notes that of the approximately 600 children taken to the Aghia Varvara children's institution, 500 reportedly went missing and that these cases were not promptly investigated by a judicial authority;

(m) The absence of appropriate efforts to prevent and prohibit the production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment, in particular in the light of allegations of the use of electroshocks.

D. Recommendations

48. **The Committee recommends that the State party:**

(a) Strengthen existing efforts to reduce occurrences of ill-treatment, including that which is racially motivated, by police and other public officials. While ensuring protection of individual privacy, the State party should devise modalities for collecting data and monitoring the occurrence of such acts in order to address the issue more effectively. The Committee recommends that the State party continue to take measures to prevent incidents of xenophobic and discriminatory behaviour;

(b) Take all necessary steps to ensure effective implementation in practice of adopted legislation;

(c) Ensure that the competent authorities strictly observe article 3 of the Convention and, in doing so, that they take account of general comment No. 1 (1996) of the Committee, in which the Committee notes that it "is of the view that the phrase 'another State' in article 3 refers to the State to which the individual concerned is being expelled, returned or extradited, as well as to any State to which the complainant may subsequently be expelled, returned or extradited" (para. 2);

(d) Ensure that all personnel involved in the custody, detention, interrogation and treatment of detainees are trained with regard to the prohibition of torture and ill-treatment. Training should include developing skills needed to recognize the sequelae of torture and sensitization with respect to contact with particularly vulnerable persons in situations of risk;

(e) Expedite the process of adopting a code of ethics and continue to consider modalities for amending interrogation rules and procedures, such as introducing audio or videotaping, with a view to preventing torture and ill-treatment;

(f) Take necessary measures to establish an effective, reliable and independent complaints system to undertake prompt and impartial investigations, including immediate forensic medical investigation, into allegations of ill-treatment or torture by police and other public officials, and to punish the offenders. The Committee stresses that while the State party recognizes the independence of the judiciary, it has a responsibility to ensure its effective functioning;

(g) Ensure that all persons reporting acts of torture or ill-treatment are accorded adequate protection, and that the allegations are promptly investigated. Disciplinary measures, including suspension, should not be delayed pending outcome of criminal proceedings;

(h) Inform the Committee about the possibilities of providing redress and compensation to victims of torture and their dependants;

(i) Ensure strict application of the new legislation on the use and possession of firearms, in particular by border guards;

(j) While continuing its long-term efforts to address overcrowding and poor conditions in prisons and other places of detention, including by building new prisons, consider additional alternative means of reducing the prison population as urgent measures to address the situation in places of detention;

(k) Ensure that all actions of public officials, in particular where the actions affect the Roma (such as evictions and relocations) or other marginalized groups, are conducted in a non-discriminatory fashion and that all officials are reminded that racist or discriminatory attitudes will not be permitted or tolerated;

(l) Adopt legislation and other measures to combat violence against women, within the framework of plans to take measures to prevent such violence, including domestic violence, and to investigate all allegations of ill-treatment and abuse;

(m) Review the modalities for protecting street children, in particular to ensure that those measures protect their rights. All decisions affecting children should, to the extent possible, be taken with due consideration for their views and concerns, with a view to finding an optimal, workable solution. The Committee urges the State party to take measures to prevent the recurrence of cases such as the Aghia Varvara children's institution. It should also ensure that a judicial investigation is carried out and provide the Committee with information on the outcome;

(n) Adopt measures aiming at the prevention and prohibition of the production and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment.

49. **The Committee requests that the State party provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal and disciplinary sentences. Information is further requested on any compensation and rehabilitation provided to the victims.**

50. **The Committee encourages the State party to consider ratifying the Optional Protocol to the Convention against Torture.**

51. **The State party is encouraged to disseminate widely the reports submitted by Greece to the Committee and the conclusions and recommendations of the Committee, in appropriate languages, through official websites, the media and NGOs**.

52. **The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraph 48, subparagraphs (e), (h), (i), (j), (k) and (m) above.**

53. **The State party is invited to submit its next periodic report, which will be considered as the combined fifth and sixth report, by 4 November 2009, the due date of the sixth periodic report.**

CANADA

54. The Committee considered the fourth and fifth periodic reports of Canada (CAT/C/55/Add.8 and CAT/C/81/Add.3, respectively) at its 643rd and 646th meetings (CAT/C/SR.643 and 646 and Add.1), held on 4 and 6 May 2005, and adopted, at its 658th meeting (CAT/C/SR.658), the following conclusions and recommendations.

A. Introduction

55. The fourth periodic report of Canada was due on 23 July 2000 and was submitted on 20 August 2002, while the fifth periodic report was due on 23 July 2004 and was submitted on 11 October 2004, each in accordance with the Committee's reporting guidelines. The Committee welcomes the open and inclusive participation in the reporting process of institutions and NGOs concerned with the protection of human rights, as well as the inclusion in the reports of diverging views of civil society.

B. Positive aspects

56. The Committee notes:

(a) The definition of torture in the Canadian Criminal Code that is in accordance with the definition contained in article 1 of the Convention and the exclusion in the Criminal Code of the defences of superior orders or exceptional circumstances, including in armed conflict, as well as the inadmissibility of evidence obtained by torture;

(b) The direct application of the criminal norms cited in subparagraph (a) above to the State party's military personnel wherever they are located, by means of the National Defence Act;

(c) The general inclusion in the Immigration and Refugee Protection Act 2002 of torture within the meaning of article 1 of the Convention as an independent ground qualifying a person as in need of protection (sect. 97, subsect. 1 of the Act) and as a basis for non-refoulement (sect. 115, subsect. 1), where there are substantial grounds for believing that the threat of torture exists;

(d) The careful constitutional scrutiny of the powers conferred by the Anti-Terrorism Act 2001;

(e) The recognition of the Supreme Court of Canada that enhanced procedural guarantees have to be made available, even in national security cases, and the State party's subsequent decision to extend enhanced procedural protections to all cases of persons challenging on grounds of risk of torture, Ministerial expulsion decisions;

(f) The changes to Corrections policy and practice implemented to give effect to the recommendations of the Arbour Report on the treatment of female offenders in the federal prison system;

(g) The requirement that body cavity searches be carried out by medical rather than correctional staff in a non-emergency situation and after written consent and access to legal advice have been provided;

(h) The efforts made by the State party, in response to the issue of overrepresentation of indigenous offenders in the correctional system previously identified by the Committee, to develop innovative and culturally sensitive alternative criminal justice mechanisms, such as the use of healing lodges.

C. Subjects of concern

57. The Committee expresses its concern at:

(a) The failure of the Supreme Court of Canada, in *Suresh v. Minister of Citizenship and Immigration*, to recognize at the level of domestic law the absolute nature of the protection of article 3 of the Convention, which is not subject to any exception whatsoever;

(b) The alleged roles of the State party's authorities in the expulsion of Canadian national Mr. Maher Arar, expelled from the United States of America to the Syrian Arab Republic where torture was reported to be practised;

(c) The blanket exclusion by the Immigration and Refugee Protection Act 2002 (sect. 97) of the status of refugee or person in need of protection for persons falling within the security exceptions set out in the Convention relating to the Status of Refugees and its Protocol; as a result, such persons' substantive claims are not considered by the Refugee Protection Division or reviewed by the Refugee Appeal Division;

(d) The explicit exclusion of certain categories of persons posing security or criminal risks from the protection against refoulement provided by the Immigration and Refugee Protection Act 2002 (sect. 115, subsect. 2);

(e) The State party's apparent willingness, in the light of the low number of prosecutions for terrorism and torture offences, to resort in the first instance to immigration processes to remove or expel individuals from its territory, thus implicating issues of article 3 of the Convention more readily, rather than subject him or her to the criminal process;

(f) The State party's reluctance to comply with all requests for interim measures of protection, in the context of individual complaints presented under article 22 of the Convention;

(g) The absence of effective measures to provide civil compensation to victims of torture in all cases;

(h) The still substantial number of "major violent incidents", defined by the State party as involving serious bodily harm and/or hostage-taking, in the State party's federal corrections facilities; and

(i) Continued allegations of inappropriate use of chemical, irritant, incapacitating and mechanical weapons by law enforcement authorities in the context of crowd control.

D. Recommendations

58. **The Committee recommends that:**

(a) The State party unconditionally undertake to respect the absolute nature of article 3 in all circumstances and fully to incorporate the provision of article 3 into the State party's domestic law;

(b) The State party remove the exclusions in the Immigration and Refugee Protection Act 2002 described in paragraph 57, subparagraphs (c) and (d) above, thereby extending to currently excluded persons entitlement to the status of protected person, and protection against refoulement on account of a risk of torture;

(c) The State party should provide for judicial review of the merits, rather than merely of the reasonableness, of decisions to expel an individual where there are substantial grounds for believing that the person faces a risk of torture;

(d) The State party should insist on unrestricted consular access to its nationals who are in detention abroad, with facility for unmonitored meetings and, if required, of appropriate medical expertise;

(e) Given the absolute nature of the prohibition against refoulement contained in article 3 of the Convention, the State party should provide the Committee with details on how many cases of extradition or removal subject to receipt of "diplomatic assurances" or guarantees have occurred since 11 September 2001, what the State party's minimum requirements are for such assurances or guarantees, what measures of subsequent monitoring it has undertaken in such cases and the legal enforceability of the assurances or guarantees given;

(f) The State party should review its position under article 14 of the Convention to ensure the provision of compensation through its civil jurisdiction to all victims of torture;

(g) The State party should take steps to ensure that the frequency of "major violent incidents" in its federal corrective facilities decreases progressively;

(h) The State party should conduct a public and independent study and a policy review of the crowd control methods, at federal and provincial levels, described in paragraph 57, subparagraph (i) above;

(i) The State party should fully clarify, if necessary through the adoption of legislation, the competence of the Commission for Public Complaints Against the RCMP (Royal Canadian Mounted Police) to investigate and report on all activities of the Royal Canadian Mounted Police falling within its complaint mandate; and

(j) The State party should consider becoming party to the Optional Protocol to the Convention.

59. **The Committee requests that the State party provide, within one year, information in response to the Committee's recommendations in paragraph 58 subparagraphs (d), (e) and (g).**

60. **The Committee requests the State party to submit its sixth periodic report by the due date of 23 July 2008.**

SWITZERLAND

61. The Committee considered the fourth periodic report of Switzerland (CAT/C/55/Add.9) at its 645th and 648th meetings, held on 6 and 9 May 2005 (CAT/C/SR.645 and 648), and adopted, at its 661st meeting (CAT/C/SR.661), the following conclusions and recommendations.

A. Introduction

62. The Committee welcomes the fourth periodic report of Switzerland, which was prepared in accordance with the Committee's guidelines. It notes, however, that the report was submitted with a two-year delay. The Committee appreciates the constructive dialogue with the delegation and commends the comprehensive written responses provided to the list of issues, as well as the meticulous responses provided to all oral questions posed.

B. Positive aspects

63. The Committee notes the following positive aspects:

(a) The ban, proposed by the draft federal law regulating the use of force by police during deportations and during the transport of detainees ordered by a federal authority, on all restraint methods which restrict breathing as well as on the use of irritant or incapacitating sprays;

(b) The elaboration of "guidelines relating to forcible deportations by air" (*directives relatives aux rapatriements sous constrainte par voie aérienne*), which include a provision that medication can be forcibly administered exclusively for medical reasons. It also notes that the Swiss Academy for Medical Sciences (Académie suisse pour les sciences médicales) was consulted in the process of their elaboration;

(c) The new draft federal code of criminal procedure on the rights of persons detained in police custody that prohibits incommunicado detention (*mise au secret*);

(d) The measures contained in the revised law on asylum as well as those taken by the Federal Office for Migration to address cases of gender-based persecution;

(e) The publication of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its third and fourth visits to Switzerland and the response of the Government thereto, as well as the work being carried out by the State party's authorities to implement recommendations contained therein, such as those concerning removals by air of foreign nationals and integration into the general police training programme of information concerning the risk of positional asphyxia during these deportations;

(f) The signature of the Optional Protocol to the Convention in June 2004 and the measures being undertaken to seek its ratification;

(g) The ratification of the Rome Statute of the International Criminal Court on 12 October 2001.

C. Subjects of concern

64. The Committee expresses concern regarding the following:

(a) Although torture is prohibited by the Federal Constitution, no specific definition of torture exists in criminal law covering all the constituent elements of article 1 of the Convention;

(b) The draft federal law regulating the use of force by police during deportations and during the transport of detainees ordered by a federal authority:

(i) Authorizes the use of electro-shock instruments, including taser devices, which can sometimes be used as instruments of torture;

(ii) Does not make any provision for independent monitors to be present during the deportation;

(c) The Federal Act on Administrative Procedure does not explicitly include the findings of the Committee in respect of an individual complaint concerning a violation of article 3 of the Convention as constituting, in itself, grounds for a review of a case. The Committee notes, however, that the finding will provide the basis for reappraisal when new facts or evidence are adduced during the proceedings;

(d) In order for a person to invoke article 3 of the Convention, the Committee notes that the standards of proof required by the State party exceed the standards required by the Convention. The Committee wishes to draw the attention of the State party to its general comment No. 1 (1996) stating that the risk of torture "must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable (para. 6)";

(e) No complete or disaggregated statistical information exists encompassing all Swiss cantons as to the number of:

(i) Complaints received of cases of torture and other cruel, inhuman or degrading treatment or punishment and ill-treatment;

(ii) Persons granted asylum on the basis of having been victims of, or in danger of being subjected to, torture;

(iii) Persons (victims or their families) having received compensation for cases of torture or cruel, inhuman or degrading treatment;

(f) In spite of the increase in number of complaints filed against the police, often by persons of foreign origin, for ill-treatment, only a minority of these complaints result in prosecutions or indictments, and even fewer cases result in compensation for the victims or their families;

(g) All but one canton have failed to establish machinery to receive complaints against members of the police regarding allegations of torture or ill-treatment during arrest, questioning and police custody, in spite of a previous recommendation of the Committee in this regard;

(h) Changes have been introduced by the revised law on asylum which restrict or aggravate asylum-seekers' access to legal counsel and the length and conditions of detention in "preparatory" or pre-deportation detention. The Committee is also concerned that in cases of non-entry decisions (*décision de non-entrée en matière*) the social benefits of asylum-seekers are being curtailed significantly;

(i) Asylum-seekers retained at airports are not consistently being informed of their right to walk and exercise regularly in the fresh air as well as to request medical assistance;

(j) The "guidelines relating to forcible deportations by air" do not contain an explicit ban on the wearing of masks or hoods by officers involved in the deportations.

D. Recommendations

65. **The Committee recommends that the State party:**

(a) Include an explicit definition of torture in the Criminal Code, incorporating all elements contained in article 1 of the Convention;

(b) Undertake efforts to encourage the successful outcome of the ongoing consultations on the draft federal law regulating the use of force by police during deportations and during the transport of detainees ordered by a federal authority regarding the ban on the use of electro-shock instruments. The State party should also ensure that independent human rights observers and/or doctors are present during all forced removals by air. It should also offer, as a routine practice, medical examinations both before forced removals by air and, in the case of abortive attempts, thereafter;

(c) Take measures to ensure that a finding of this Committee of a violation of article 3 be considered as sufficient grounds to review a case;

(d) Ensure compliance with the requirements of article 3, including the proper test of proof, or the risk of torture, when determining whether to expel, return or extradite a person to another State;

(e) Take measures to compile, at national level, disaggregated data relating to the cases of alleged torture or ill-treatment, in particular in the context of the application of the law on asylum and the law on foreigners, as well as to the outcomes of any investigations and prosecutions that might be pursued;

(f) Ensure that all complaints for acts of ill-treatment are properly and effectively investigated and that the alleged perpetrators are prosecuted and if found guilty sanctioned accordingly. Victims and their families should be informed of their right to pursue compensation and procedures should be made more transparent. In this regard, the State party should provide written information to the Committee on the steps taken to compensate the families of the two victims of the two recent cases of death caused during forcible deportation;

(g) Encourage all cantons to establish independent mechanisms entrusted to receive complaints against members of the police regarding cases of torture or ill-treatment;

(h) Ensure that asylum-seekers are granted full respect of their right to a fair hearing, to an effective remedy and to social and economic rights during all procedures established by the revised law on asylum;

(i) Take measures to effectively inform all asylum-seekers retained at airports of all their rights, and in particular the right to regularly access fresh air and access to a doctor;

(j) Inform the Committee whether there have been complaints in the State party against the use of "diplomatic assurances" as a way to circumvent the absolute prohibition of non-refoulement established in article 3 of the Convention;

(k) Continue to contribute to the United Nations Voluntary Fund for Victims of Torture, as the State party has done since 1984.

66. **The Committee recommends that the State party disseminate widely the Committee's conclusions and recommendations, in appropriate languages, through official websites, the media and NGOs.**

67. **The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 65, subparagraphs (b), (f), (g) and (i) above.**

68. **The State party is invited to submit its next periodic report, which will be considered as the combined fifth and sixth report, by 25 June 2008, the due date of the sixth periodic report.**

FINLAND

69. The Committee considered the fourth periodic report of Finland (CAT/C/67/Add.1) at its 647th and 650th meetings (CAT/C/SR.647 and 650), held on 9 and 10 May 2005, and adopted, at its 661st meeting (CAT/C/SR.661), the following conclusions and recommendations.

A. Introduction

70. The Committee welcomes the fourth periodic report of Finland, which was prepared in accordance with the Committee's guidelines and submitted on time. The Committee appreciates the constructive dialogue with the delegation and commends the comprehensive written responses provided to the list of issues, as well as the detailed responses provided to the members' oral questions.

B. Positive aspects

71. Amongst the many positive developments, the Committee notes in particular:

(a) The inclusion of a prohibition of torture and other treatment violating human dignity in section 7 of the new Constitution of Finland;

(b) Oral assurances by the representatives of the State party that the Government would consider the issue of the inclusion of a definition of torture in accordance with article 1 of the Convention in the Penal Code bearing in mind the concerns of the Committee;

(c) The measures taken by the State party to implement the Committee's previous recommendations concerning:

(i) Judicial supervision of the use of isolation in pre-trial detention;

(ii) The prohibition of organizations that promote and incite racial discrimination; and

(iii) The prohibition of the dissemination of ideas based on racial superiority or hatred;

(d) The Act on the Integration of Immigrants and Reception of Asylum-Seekers 2001, which seeks to enhance the integration, equality and freedom of choice of immigrants, and the amendment of the Act in 2002 to accommodate the needs of vulnerable people, including minors and victims of torture, rape, or other physical or sexual violence;

(e) The overall reform of the system for enforcement of sentences and detention, including changes to the system of parole;

(f) The amendment of the Mental Health Act, taking into account human rights conventions binding on Finland, in order to strengthen the rights of the patient and staff;

(g) The reassurance that strict provisions of law are in place to govern the use of force, including the use of sedatives and other medication, in the execution of deportation orders;

(h) The creation of a new Office of Minority Ombudsman in 2001 to replace the Ombudsman for Aliens, with wider powers under the Minority Ombudsman Act and Aliens Act, including the ability to act for asylum-seekers and deportees;

(i) The fact that there has been no reported case of torture in Finland during the reporting period;

(j) The publication of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to Finland (CPT/Inf (2003) 38 and CPT/Inf (2004) 20), and the Government replies thereto, as well as the work being carried out by the State party to implement the recommendations made by the European Committee;

(k) The signature of the Optional Protocol to the Convention in September 2003 and the measures being undertaken to seek its ratification;

(l) The ratification of the Rome Statute of the International Criminal Court on 29 December 2000.

C. Subjects of concern

72. The Committee expresses concern that:

(a) The Committee's previous recommendations notwithstanding no specific definition of torture exists in criminal law covering all the constituent elements of article 1 of the Convention, although torture is prohibited by the new Constitution.

(b) The "accelerated procedure" under the Aliens Act allows an extremely limited time for applicants for asylum to have their cases considered thoroughly and to exhaust all lines of appeal if their application is rejected;

(c) Despite the safeguards in place, the Parliamentary Ombudsman reported on one recent case of an asylum-seeker whose application had been rejected and who was subsequently allegedly subjected to torture in his country of origin;

(d) Despite the programme of prison renovation currently under way, the practice of "slopping out", which continues in some prisons, will not be definitively halted until 2010.

D. Recommendations

73. **The Committee recommends that the State party:**

(a) Enact specific legislation criminalizing torture in all its forms, as defined in article 1 of the Convention;

(b) Review the application of the "accelerated procedure" for consideration of asylum requests to ensure that applicants have sufficient time to use all available appeal procedures before irreversible action is taken by the authorities;

(c) Strengthen the legal safeguards for asylum-seekers to ensure that all asylum procedures conform to article 3 of the Convention and other international obligations in this field;

(d) Complete the process of implementing the suggestions made by the working group established to look at the situation of Roma in Finnish prisons and all other necessary measures to improve the situation and welfare of Roma prisoners;

(e) Consider means of accelerating the prison renovation programme and, in the interests of improved hygienic conditions, explore additional alternative interim solutions to the practice of "slopping out";

(f) Continue to contribute to the United Nations Voluntary Fund for Victims of Torture, as it has done regularly since 1984.

74. **The Committee recommends that the State party disseminate widely the Committee's conclusions and recommendations, in all appropriate languages, through official websites, the media and NGOs.**

75. **The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 73, subparagraphs (c), (d) and (e) above.**

76. **The State party is invited to submit its next periodic report, which will be considered as the combined fifth and sixth reports, by 28 September 2010, the due date of the sixth periodic report.**

ALBANIA

77. The Committee considered the initial report of Albania (CAT/C/28/Add.6) at its 649th and 652nd meetings (CAT/C/SR.649 and 652), held on 10 and 11 May 2005, and adopted, at its 660th meeting (CAT/C/SR.660), the following conclusions and recommendations.

A. Introduction

78. The Committee welcomes the initial report of Albania and the opportunity to establish a dialogue with the State party, but it regrets that the report, due in June 1995, was submitted with an eight-year delay.

79. The Committee notes that the report does not fully conform to the Committee's guidelines for the preparation of initial reports and lacks information on practical aspects of the implementation of the Convention's provisions. The Committee acknowledges in this regard the difficulties encountered by the State party during its political and economic transition and the efforts made in this respect, and hopes that in the future it will comply fully with its obligations under article 19 of the Convention.

80. The Committee also welcomes the additional information provided in writing by the State party and by the delegation in the introductory remarks and in the answers to the questions raised, which demonstrates the State party's willingness to establish an open and fruitful dialogue with the Committee.

B. Positive aspects

81. The Committee notes with appreciation the ongoing efforts by the State party aimed at strengthening human rights in Albania. In particular, the Committee welcomes the following:

(a) The adoption of a democratic Constitution in 1998 that enhances protection of human rights, including the prohibition of torture, establishes a maximum 48-hour limit on detention before which a person must be brought before a judge, and the direct applicability of ratified international treaties and their superiority over domestic laws;

(b) The adoption of:

(i) The Law "On Innocence, Amnesty and Rehabilitation of Ex-political Convicted and Persecuted Persons" in 1991, amended in 1993;

(ii) The Law "On Migration" in 1995;

(iii) The Criminal Military Code in 1995;

(iv) The Law "On the Rights and Treatment of Prisoners" in 1998;

(v) The Law "For the Ombudsman" in 1999;

(vi) The Criminal Code in 1995, amended in 1996, 1997 and 2001;

(vii) The Law "On the Organization and Functioning of the High Justice Council" in 2002;

(c) The ratification of:

(i) The European Convention on Extradition and its Additional Protocol in 1998 and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Protocol No. 1 and Protocol No. 2 in 1996;

(ii) The Rome Statute of the International Criminal Court in 2002 as well as of most of the United Nations conventions and protocols for the protection of human rights;

(iii) The Optional Protocol to the Convention against Torture in 2003;

(d) Specific measures for law enforcement personnel:

(i) The adoption of the "Code of Police Ethics" in 1998;

(ii) The organization of training for the police through a project of education in the field of prevention of torture by the Ministry of Public Order in cooperation with NGOs.

82. Furthermore, the Committee would like to commend:

(a) The suspension since 1992 of the death penalty;

(b) The separation of juveniles from adults in all detention facilities;

(c) The publication of the reports of the four first visits of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to Albania (CPT/Inf (2003)11) and of the response of the Government thereto (CPT/Inf (2003)12) as well as the assurance of the Government that it will soon authorize the publication of the report of the 2003 visit;

(d) The involvement of national NGOs in the preparation of the initial report of Albania.

C. Subjects of concern

83. The Committee expresses concern:

(a) That the definition of torture in the Criminal Code does not cover all the elements contained in article 1 of the Convention, especially regarding persons acting in an official capacity;

(b) That the qualification of acts of torture by law enforcement personnel merely as "arbitrary acts" results in those acts being treated as less serious criminal offences;

(c) That a climate of de facto impunity prevails for law enforcement personnel who commit acts of torture or ill-treatment, in view of:

(i) The numerous allegations of torture and ill-treatment by law enforcement personnel, especially at the moment of arrest and during interrogation;

(ii) The limited number of complaints regarding torture and ill-treatment, in particular to the Peoples' Advocate;

(iii) The lack of prompt and impartial investigation of allegations of torture and ill-treatment committed by law enforcement personnel; and

(iv) The absence of convictions in cases of torture under article 86 of the Criminal Code, and the limited number of convictions of torture with serious consequences under article 87 of the Criminal Code, all of which may indicate that there is a lack of awareness on the part of victims of their rights and that there is a lack of confidence in the police and judicial authorities;

(d) About the difficulties encountered by victims of torture and ill-treatment in filing a formal complaint with public authorities, obtaining medical evidence in support of their allegations and presenting that evidence;

(e) About allegations of lack of independence of the judiciary;

(f) That there is no universal jurisdiction of the Albanian courts in cases involving torture;

(g) That there is no clear legal provision prohibiting the use as evidence of any statement obtained under torture as well as no clear legal provision stating that an order from a superior may not be invoked as justification of torture;

(h) At the failure to ensure fair and adequate compensation, including rehabilitation, for all victims of torture, including ex-political convicted and persecuted persons;

(i) At the lack of implementation of the fundamental legal safeguards for persons detained by the police, including guaranteeing the right to inform a relative, access to a lawyer and a doctor of their own choice, the provision of information about their rights and, for juveniles, the presence of their legal guardians during interrogation;

(j) At the poor conditions of detention and long pre-trial detention periods of up to three years;

(k) At the existence of an additional 10-hour administrative detention period for interrogation before the maximum 48-hour period within which a detainee must be brought before a judge begins;

(l) About the lack of regular and unannounced visits to police stations by the Office of the Ombudsman;

(m) About the lack of systematic medical examination of detainees within 24 hours of their admission to prison, the poor medical care in detention facilities, and the lack of training for medical personnel and prison medical personnel, not under the authority of the Ministry of Public Health;

(n) About the legal possibility of refoulement of persons without any legal procedures in cases affecting public order or national security;

(o) At the reported prevalence of violence against women and girls, including sexual and domestic violence, and the reluctance on the part of the authorities to, inter alia, adopt legislative and other measures to counter this phenomenon.

D. Recommendations

84. **The Committee recommends that the State party:**

(a) Amend the Criminal Code in order to adopt a definition of torture that covers all the elements contained in article 1 of the Convention;

(b) Ensure strict application of the provisions against torture and ill-treatment, criminalizing acts of torture and prosecuting and punishing perpetrators in a manner proportionate to the seriousness of the crimes committed;

(c) Investigate all allegations of ill-treatment and torture by law enforcement personnel, carrying out prompt and impartial investigations to bring the perpetrators to justice in order to eliminate the de facto impunity for law enforcement personnel who commit acts of torture and ill-treatment;

(d) Improve mechanisms to facilitate the submission of complaints by victims of ill-treatment and torture to public authorities, including obtaining medical evidence in support of their allegations;

(e) Take all appropriate measures to strengthen the independence of the judiciary and to provide adequate training on the prohibition of torture to judges and prosecutors;

(f) Amend domestic legislation to ensure that acts of torture are considered universal crimes;

(g) Adopt clear legal provisions prohibiting the use as evidence of any statement obtained under torture and establishing that orders from a superior may not be invoked as a justification of torture;

(h) Implement the established legal mechanisms enabling victims of torture to obtain redress and fair and adequate compensation;

(i) Implement the fundamental legal safeguards for persons detained by the police, guaranteeing their rights to inform a relative, to have access to a lawyer and a doctor of their own choice and to be provided with information about their rights and, for juveniles, to have their legal guardians present during interrogation;

(j) Improve conditions in places of detention, ensuring that they conform to international minimum standards, adopt necessary measures to reduce the pre-trial detention period and continue to address overcrowding in places of detention;

(k) Take the necessary measures to abolish the 10-hour administrative detention period for interrogation prior to the 48-hour period within which a suspect must be brought before a judge;

(l) Allow regular and unannounced visits to police stations by the Office of the Ombudsman, as well as by other independent bodies;

(m) Provide systematic medical examination of detainees within 24 hours of their admission to prison, improve medical care in detention facilities, establish training for medical personnel and transfer all prison medical personnel to the authority of the Ministry of Public Health;

(n) Amend its legislation in order to prohibit the refoulement of persons without a legal procedure and to provide all required guarantees;

(o) Adopt measures to combat sexual violence and violence against women, including domestic violence, and promptly and impartially investigate all allegations of torture or ill-treatment with a view to prosecuting those responsible;

(p) Transfer the responsibility for all pre-trial detainees to the authority of the Ministry of Justice;

(q) Take all necessary measures to ensure the effective implementation of the provisions of the Convention and of the adopted legislation, disseminate the relevant legislation to detainees and law enforcement personnel and provide adequate training to the latter;

(r) Provide in the next periodic report detailed statistical data, disaggregated by age, gender and origin, on complaints related to torture and other ill-treatment allegedly committed by law enforcement personnel, as well as on related investigations, prosecutions, and penal and disciplinary sentences;

(s) Consider making the declarations under articles 21 and 22 of the Convention.

85. **The Committee also recommends that the State party disseminate widely the Committee's conclusions and recommendations, in all appropriate languages, through official websites, the media and NGOs.**

86. **The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraph 84, subparagraphs (c), (d), (i) and (l) above.**

87. **The State party is invited to submit its next periodic report, which will be considered as the second, by 9 June 2007.**

UGANDA

88. The Committee considered the initial report of Uganda (CAT/C/5/Add.32) at its 651st and 654th meetings, held on 11 and 12 May 2005 (CAT/C/SR.651 and 654 and Add.1), and adopted, at its 661st meeting (CAT/C/SR.661), the following conclusions and recommendations.

A. Introduction

89. The Committee welcomes the submission of the initial report of Uganda, which is in accordance with the Committee's guidelines, but regrets the delay of 16 years in the submission of the report. It commends the frankness of the report, which admits shortcomings in the implementation of the Convention in the State party. The Committee appreciates the constructive dialogue established with a high-level representative delegation and welcomes the candid and comprehensive responses to the questions raised during the dialogue.

B. Positive aspects

90. The Committee notes with satisfaction the following positive developments:

(a) The establishment in 1996 of the Uganda Human Rights Commission under articles 51 to 59 of the Constitution and in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), which is endowed with powers to address human rights violations, and the human rights desks in the army, police stations and prisons;

(b) The abolition of corporal punishment following Criminal Appeal No. 16 of 1999 (Supreme Court) *Kyamanywa v. Uganda*;

(c) The permission granted to many NGOs to operate freely in the country;

(d) The generous approach taken by the Government of Uganda in hosting more than 200,000 refugees and in fully respecting the principle of non-refoulement;

(e) The ratification by the State party of most major international human rights conventions;

(f) The ratification by the State party, on 14 June 2002, of the Rome Statute of the International Criminal Court;

(g) The current discussions in the State party with regard to the ratification of the Optional Protocol to the Convention.

C. Factors and difficulties impeding the implementation of the Convention

91. The Committee acknowledges the difficult situation of internal armed conflict in northern Uganda. However, it points out that no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Subjects of concern

92. The Committee notes with concern that the State party has neither incorporated the Convention into its legislation nor introduced corresponding provisions to implement several articles, in particular:

(a) The lack of a comprehensive definition of torture in the domestic law as set out in article 1 of the Convention;

(b) The lack of an absolute prohibition of torture in accordance with article 2 of the Convention;

(c) The absence of universal jurisdiction for acts of torture in Ugandan law;

(d) The lack of compliance with other articles in the Convention, including articles 6 to 9.

93. The Committee is further concerned about:

(a) The length of pre-trial detention, including detention beyond 48 hours as stipulated by article 23, clause 4, of the Constitution and the possibility of detaining treason and terrorism suspects for 360 days without bail;

(b) The reported limited accessibility and effectiveness of habeas corpus;

(c) The continued allegations of widespread torture and ill-treatment by the State's security forces and agencies, together with the apparent impunity enjoyed by its perpetrators;

(d) The wide array of security forces and agencies in Uganda with the power to arrest, detain and investigate;

(e) The disproportion between the high number of reports of torture and ill-treatment and the very small number of convictions for such offences, as well as the unjustifiable delays in the investigation of cases of torture, both of which contribute to the impunity prevailing in this area;

(f) The pervasive problem of sexual violence, including in places of detention and in camps for internally displaced persons;

(g) Alleged reprisals, intimidation and threats against persons reporting acts of torture and ill-treatment;

(h) The magnitude of the problem of abduction of children by the Lord's Resistance Army, in particular in northern Uganda;

(i) Reports of customary torture in the area of Karamuja.

94. The Committee takes note of the explanation provided by the delegation about the outlawing of "ungazetted" or unauthorized places of detention or "safe houses" where persons have been subjected to torture by military personnel. Nevertheless, it remains concerned about the widespread practice of torture and ill-treatment of persons detained by the military as well as by other law enforcement officials.

95. While acknowledging the important role of the Uganda Human Rights Commission in the promotion and protection of human rights in Uganda, the Committee is concerned about the frequent lack of implementation by the State party of the Commission's decisions concerning both awards of compensation to victims of torture and the prosecution of human rights offenders in the limited cases in which the Commission had recommended such prosecution.

96. Furthermore, the Committee regrets that the State party has not taken sufficient steps to ensure the protection of persons affected by the armed conflict in northern Uganda, in particular internally displaced persons currently confined in camps.

E. Recommendations

97. **The Committee recommends that the State party take all necessary legislative, administrative and judicial measures to prevent acts of torture and ill-treatment in its territory, and in particular that it:**

(a) Adopt a definition of torture that covers all the elements contained in article 1 of the Convention, and amend domestic penal law accordingly;

(b) Adopt domestic legislation to implement the principle of non-refoulement in article 3 of the Convention;

(c) Ensure that acts of torture become subject to universal jurisdiction in Ugandan law in accordance with article 5 of the Convention;

(d) Ensure compliance with several articles of the Convention, including articles 6 to 9, for example by setting up a Law Commission;

(e) Reduce the length of pre-trial detention;

(f) Enhance the accessibility and effectiveness of habeas corpus;

(g) Take vigorous steps to eliminate impunity for alleged perpetrators of acts of torture and ill-treatment, carry out prompt, impartial and exhaustive investigations, try and, where appropriate, convict the perpetrators of torture and ill-treatment, impose appropriate sentences on them and properly compensate the victims;

(h) Minimize the number of security forces and agencies with the power to arrest, detain and investigate and ensure that the police remain the primary law enforcement agency;

(i) Abolish the use of "ungazetted" or unauthorized places of detention or "safe houses", and immediately provide information about all places of detention;

(j) Allow independent human rights monitors, including the Uganda Human Rights Commission, full access to all official and non-official places of detention, without notice;

(k) Strengthen the Uganda Human Rights Commission and ensure that its decisions are fully implemented, in particular concerning awards of compensation to victims of torture and prosecution of perpetrators;

(l) Take effective steps to ensure that all persons reporting acts of torture or ill-treatment are protected from intimidation and from any unfavourable consequences of their action in making such a report;

(m) Establish and promote effective machinery within the prison system to receive and investigate reports of sexual violence and provide protection and psychological and medical assistance to victims;

(n) Act without delay to protect the civilian population in areas of armed conflict in northern Uganda from violations by the Lord's Resistance Army and members of the security forces. In particular, the State party should protect internally displaced persons confined in camps, which are constantly exposed to attacks from the Lord's Resistance Army;

(o) Take the necessary steps, as a matter of extreme urgency and in a comprehensive manner, to prevent the abduction of children by the Lord's Resistance Army and to facilitate the reintegration of former child soldiers into society;

(p) Take effective measures, including judicial measures, to prevent mob justice;

(q) Take immediate and effective steps to put an end to customary torture in the area of Karamuja.

98. **The Committee further recommends that the State party:**

(a) Establish an effective national legal aid scheme;

(b) Enhance its efforts to conclude the legislative process and enact the new refugee bill and subsequently take all measures to ensure its full implementation in practice, in line with international refugee and human rights law;

(c) Enact the Prison Bill of 2003 to counter widespread torture in local government prisons;

(d) Continue the discussions with regard to the Optional Protocol to the Convention and consider becoming party to it as soon as possible;

(e) Consider making the declaration under article 22 of the Convention.

99. **The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crimes, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions and penal and disciplinary sentences. Information is further requested on any compensation and rehabilitation provided to the victims.**

100. **The State party is encouraged to disseminate widely the reports submitted by Uganda to the Committee and the conclusions and recommendations, in appropriate languages, through official websites, the media and NGOs.**

101. **The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraph 97, subparagraphs (h), (i), (j), (n) and (o) above.**

102. **The State party is invited to submit its next periodic report, which will be considered as the second, by 25 June 2008.**

BAHRAIN

103. The Committee considered the initial report of Bahrain (CAT/C/47/Add.4) at its 653rd and 656th meetings (CAT/C/SR.653 and 656), held on 12 and 13 May 2005, and adopted, at its 663rd meeting (CAT/C/SR.633), the following conclusions and recommendations.

A. Introduction

104. The Committee welcomes the initial report of Bahrain although it regrets that the report, due in April 1999, was submitted with a five-year delay.

105. The Committee notes that the report does not fully conform to the Committee's guidelines for the preparation of initial reports and lacks information on practical aspects of implementation of the Convention's provisions.

106. The Committee welcomes the opportunity to discuss the report with a large delegation knowledgeable about diverse matters addressed in the Convention, and the full and constructive dialogue that resulted.

B. Positive aspects

107. The Committee notes the following positive developments:

(a) The extensive political, legal and social reforms on which the State party has embarked, including:

(i) The adoption of the National Action Charter in 2001 which outlines reforms aimed at enhancing non-discrimination, due process of law and the prohibition of torture and arbitrary arrest and stating, inter alia, that any evidence obtained through torture is inadmissible;

(ii) The promulgation of the amended Constitution;

(iii) The creation of the Constitutional Court in 2002;

(iv) The establishment of a new bicameral parliament with an elected chamber of deputies;

(v) Decree No. 19 of 2000 giving effect to the new constitutional provision establishing the Higher Judicial Council, drawing a clear dividing line between the executive branch and the judiciary and thereby reinforcing a separation of powers stipulated in the Constitution;

(vi) Decree No. 4 of 2001 abolishing the State Security Court which had jurisdiction over offences against the internal and external security of the State and emergency legislation, which are now heard by the ordinary criminal courts;

(vii) Decree No. 11 of 2001 repealing the State Security Law;

(b) The State party's accession to international human rights treaties including the Convention against Torture in 1998 and the Convention on the Elimination of All Forms of Discrimination against Women in 2002 and assurances from the delegation that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights "have been agreed upon and are in the process of ratification";

(c) The withdrawal of its reservation to article 20 of the Convention;

(d) The visit to Bahrain in 2001 by the Working Group on Arbitrary Detention which was granted unrestricted access to all prisons and police station holding cells and was able to speak freely and without witnesses to prisoners it selected at random;

(e) The publication of the foreign worker's manual;

(f) Reports that systematic torture no longer takes place following the 2001 reforms.

C. Subjects of concern

108. The Committee expresses its concern at:

(a) The persistent gap between the legislative framework and its practical implementation with regard to the obligations of the Convention;

(b) The lack of a comprehensive definition of torture in the domestic law as set out in article 1 of the Convention;

(c) The large number of allegations of torture and other cruel, inhuman or degrading treatment or punishment of detainees committed prior to 2001;

(d) Reports of incommunicado detention of detained persons following the ratification of the Convention and prior to 2001, for extended periods, particularly during pre-trial investigations;

(e) The inadequate access to external legal advice while in police custody, to medical assistance and to family members, thereby reducing the safeguards available to detainees;

(f) The apparent failure to investigate promptly, impartially and fully the numerous allegations of torture and ill-treatment and to prosecute alleged offenders, and in particular the pattern of impunity for torture and other ill-treatment committed by law enforcement personnel in the past;

(g) The blanket amnesty extended to all alleged perpetrators of torture or other crimes by Decree No. 56 of 2002 and the lack of redress available to victims of torture;

(h) The inadequate availability in practice of civil compensation and rehabilitation for victims of torture prior to 2001;

(i) Certain provisions of the draft law on counter-terrorism which, if adopted, would reduce safeguards against torture and could re-establish conditions that characterized past abuses under the State Security Law. These provisions include, inter alia, the broad and vague definition of terrorism and terrorist organizations and the transfer from the judiciary to the public prosecutor of authority to arrest and detain, in particular, to extend pre-trial detention;

(j) Lack of access by independent monitors to visit and inspect all places of detention without prior notice, notwithstanding the assurances of the State party that it will allow some access by civil society organizations;

(k) The absence of data on complaints of torture and ill-treatment, and the results of investigations or prosecutions related to the provisions of the Convention;

(l) Information received regarding limits on human rights non-governmental organizations to conduct their work, in particular regarding activities relevant to the Convention, within the country and abroad;

(m) The different regimes applicable, in law and in practice, to nationals and foreigners in relation to their legal right to be free from conduct that violates the Convention. The Committee reminds the State party that the Convention and its protections are applicable to all acts that are in violation of the Convention that occur within its jurisdiction, from which it follows that all persons are entitled, in equal measure and without discrimination, to the rights contained therein;

(n) The rejection by the House of Deputies in March 2005 of the proposal to establish an independent national human rights commission;

(o) The overbroad discretionary powers of the sharia court judges in the application of personal status law and criminal law and, in particular, reported failures to take into account clear evidence of violence confirmed in medical certificates following violence against women;

(p) Reports of the beating and mistreatment of prisoners during three strikes in 2003 at Jaw Prison, followed by an agreement to establish an investigative commission whose findings, however, have not been made public.

D. Recommendations

109. **The Committee recommends that the State party:**

(a) Adopt in domestic penal law a definition of torture in terms consistent with article 1 of the Convention, including the differing purposes set forth therein, and ensure that all acts of torture are offences under criminal law and that appropriate penalties taking into account the grave nature of the offences are established;

(b) Provide complete and disaggregated information about the number of detainees who have suffered torture or ill-treatment, including any deaths in custody, the results of investigations into the causes, and whether any officials were found responsible;

(c) Respect the absolute nature of article 3 in all circumstances and fully incorporate it into domestic law;

(d) Consider steps to amend Decree No. 56 of 2002 to ensure that there is no impunity for officials who have perpetrated or acquiesced in torture or other cruel, inhuman or degrading treatment;

(e) Ensure that its legal system provides victims of past acts of torture with redress and an enforceable right to fair and adequate compensation;

(f) Ensure that any measure taken to combat terrorism, including the draft law, is in accordance with Security Council resolutions which require, inter alia, that anti-terrorism measures be carried out with full respect for the applicable rules of, inter alia, international human rights law, including the Convention;

(g) Establish an independent body with a mandate to visit and/or supervise places of detention without prior notice, and allow impartial and NGOs to make visits to prisons and places where the authorities keep detainees;

(h) Fully ensure the independence of the judiciary and include female judicial officials in its judicial system;

(i) Consider adopting a Family Code, including measures to prevent and punish violence against women, especially domestic violence, including fair standards of proof;

(j) Ensure that all detained persons have immediate access to a doctor and a lawyer, as well as contact with their families, and that detainees held by the Criminal Investigation Department are given prompt access to a judge;

(k) Take effective measures to prevent and redress the serious problems commonly faced by foreign workers, particularly female domestic workers;

(l) Consider the establishment of a national human rights institution in accordance with the Paris Principles;

(m) Remove inappropriate restrictions on the work of NGOs, especially those dealing with issues related to the Convention;

(n) Ensure that law enforcement, civil, military and medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual deprived of his/her liberty are trained to recognize the physical consequences of torture and respect the absolute prohibition of torture;

(o) Provide information to the Committee about the proposed committee for the prevention of vice and promotion of virtue, including whether it exercises a precise jurisdiction in full conformity with the requirements of the Convention and is subject to review by ordinary judicial authority.

110. **The Committee recommends that the next periodic report comply with its guidelines and include:**

(a) Statistical data, disaggregated by crime, age, gender and nationality, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as on the related investigations, prosecutions, and penal and disciplinary sentences;

(b) Information on any compensation and rehabilitation provided to the victims;

(c) Detailed information on the practical implementation of legislation and the recommendations of the Committee;

(d) A core document with updated information in conformity with the guidelines.

111. **The Committee encourages the State party to consider making the declarations under articles 21 and 22 of the Convention and ratifying the Optional Protocol to the Convention.**

112. **The State party is encouraged to widely disseminate the reports submitted by Bahrain to the Committee as well as the Committee's conclusions and recommendations, in appropriate languages and through official websites, the media and NGOs.**

113. **The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 10, subparagraphs (e), (m) and (o).**

114. **The State party is invited to submit its second periodic report by April 2007.**

IV. FOLLOW-UP ON RECOMMENDATIONS AND OBSERVATIONS ON STATES PARTIES REPORTS

115. At its thirtieth session, in May 2003, the Committee began a routine practice of identifying, at the end of each set of concluding observations, a limited number of recommendations that are of a serious nature and warrant a request for additional information following the dialogue with the State party concerning its periodic report. The Committee identifies conclusions and recommendations regarding the reports of States parties which are serious, can be accomplished in a one-year period, and are protective. The Committee has requested those States parties reviewed since the thirtieth session of the Committee to provide the information sought within one year.

116. In order to assist the Committee in this practice, the Committee established the position of Rapporteur on follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position, in accordance with rule 68, paragraph 2, of the rules of procedure.

117. In reporting to the Committee on the results of the follow-up procedure, the Rapporteur has noted its congruence with the aim cited in the preamble to the Convention, which emphasizes the desire of the United Nations "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment". With this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture" (art. 2, para. 1) and the undertaking "to prevent … other acts of cruel, inhuman or degrading treatment or punishment …" (art. 16). She recalled that, in its concluding observations and recommendations, the Committee recommends specific actions designed to enhance each State party's ability to promptly and effectively implement the measures necessary and appropriate to preventing acts of torture and thereby assists States parties in bringing their law and practice into full compliance with the Convention.

118. The Rapporteur has welcomed the follow-up information provided by six States parties as of 20 May 2005, when its thirty-fourth session concluded, indicating the commitment of the States parties to an ongoing process of dialogue and cooperation aimed at enhancing compliance with the requirements of the Convention. The documentation received will be given a document number and made public. The Rapporteur has assessed the responses received particularly as to whether all of the items designated by the Committee for follow-up (normally between three and five issues) have been addressed, whether the information provided is responsive, and whether further information is required.

119. With regard to the States parties that have not supplied the information requested, the Rapporteur will write to solicit the outstanding information. The chart below details, as of 20 May 2005, the conclusion of the Committee's thirty-fourth session, the status of follow-up replies to concluding observations since the practice was initiated. As of that date, the replies from seven States parties remained outstanding.

120. As the Committee's mechanism for monitoring follow-up to concluding observations was established in May 2003, this chart describes the results of this procedure from its initiation until the close of the thirty-fourth session in May 2005.

State party	Date due	Date reply received	Further action taken/required
Azerbaijan	May 2004	7 July 2004	Request further clarification
Cambodia		31 August 2003	
Republic of Moldova		31 August 2003	
Cameroon	November 2004		Reminder to State party
Colombia	November 2004		Reminder to State party
Latvia	November 2004	3 November 2004	Request further clarification
Lithuania	November 2004	7 November 2004	Request further clarification
Morocco	November 2004	22 November 2004	Request further clarification
Yemen	November 2004	22 October 2004	Request further clarification
Bulgaria	May 2005		Reminder to State party
Chile	May 2005		Reminder to State party
Croatia	May 2005		Reminder to State party
Czech Republic	May 2005	28 April 2005	
Germany	May 2005		State party requested an extension of the deadline to 30 June 2005
Monaco	May 2005		Reminder to State party
New Zealand	May 2005	9 June 2005	
Argentina	November 2005		
Greece	November 2005		
United Kingdom	November 2005		

V. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION

121. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned.

122. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

123. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

124. The Committee's work under article 20 of the Convention continued during the period under review. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed. However, in accordance with article 20, paragraph 5, of the Convention, the Committee may, after consultations with the State party concerned, decide to include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly.

125. In the framework of its follow-up activities Mr. Rasmussen, the rapporteur on article 20, continued to carry out activities aiming at encouraging States parties on which enquiries had been conducted and the results of such enquiries had been published, to take measures to implement the Committee's recommendations. Mr. Rasmussen maintained contact with such States in order to obtain information about the measures taken by these States so far.

VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

126. Under article 22 of the Convention, individuals who claim to be victims of a violation by a State party of the provisions of the Convention may submit a complaint to the Committee against Torture for consideration, subject to the conditions laid down in that article. Fifty-six out of 151 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider complaints under article 22 of the Convention. The list of those States is contained in annex III. No complaint may be considered by the Committee if it concerns a State party to the Convention that has not recognized the Committee's competence under article 22.

127. Consideration of complaints under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents pertaining to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential.

128. Pursuant to rule 107 of the rules of procedure, with a view to reaching a decision on the admissibility of a complaint, the Committee, its working group, or a rapporteur designated under rules 98 or 106, paragraph 3, shall ascertain: that the individual claims to be a victim of a violation by the State party concerned of the provisions of the Convention; that the complaint is not an abuse of the Committee's process or manifestly unfounded; that it is not incompatible with the provisions of the Convention; that the same matter has not been and is not being examined under another procedure of international investigation or settlement; that the complainant has exhausted all available domestic remedies and that the time elapsed since the exhaustion of domestic remedies is not unreasonably prolonged as to render consideration of the claims unduly difficult for the Committee or the State party.

129. Pursuant to rule 109 of the rules of procedure, a complaint shall be transmitted as soon as possible after registration to the State party, requesting a written reply within six months. Unless the Committee, the working group or a rapporteur decide, because of the exceptional nature of the case, to request a reply only in respect of the question of admissibility, the State party shall include in its reply explanations or statements relating both to the admissibility and the merits of the complaint, as well as to any remedy that may have been provided. A State party may apply, within two months, for the complaint to be rejected as inadmissible. The Committee, or the Rapporteur for new complaints and interim measures, may agree or refuse to split consideration of admissibility from that of the merits. Following a separate decision on admissibility, the Committee sets the deadline for submissions on a case-by-case basis. The Committee, its working group or rapporteur(s) may request the State party concerned or the complainant to submit additional written information, clarifications or observations, and shall indicate a time limit for their submission. Within such time limits as indicated by the Committee, its working group or rapporteur(s), the State party or the complainant may be afforded an opportunity to comment on any submission received from the other party. Non-receipt of submissions or comments should not generally delay the consideration of the complaint. If the State party and/or the complainant is unable to submit the information requested within set deadlines, they are urged to apply for an extension of the deadline. In the absence of such a request, the Committee or its working group may decide to consider the admissibility and/or merits of the complaint on the basis of the information contained in the file. At its thirtieth session, the Committee decided to include a standard paragraph to that effect in any note verbale or letter of

transmittal to the State party/complainant, which sets a deadline for comments on submissions of the other party. This paragraph replaces the former practice of sending out reminders that resulted in delays in the examination of complaints in the past.

130. The Committee decides on a complaint in the light of all information made available to it by the complainant and the State party. The findings of the Committee are communicated to the parties (article 22, paragraph 7, of the Convention and rule 112 of the rules of procedure) and are made available to the general public. The text of the Committee's decisions declaring complaints inadmissible under article 22 of the Convention is also made public without disclosing the identity of the complainant, but identifying the State party concerned.

131. Pursuant to rule 115, paragraph 1, of its rules of procedure, the Committee may decide to include in its annual report a summary of the communications examined. The Committee shall also include in its annual report the text of its decisions under article 22, paragraph 7, of the Convention.

A. Pre-sessional working group

132. At its thirty-third session, the Committee's pre-sessional working group met for five days prior to the plenary session to assist the plenary in its work under article 22. The following members participated in the working group: Mr. El-Masry, Mr. Yakovlev, Mr. Prado-Vallejo and Mr. Yu Mengjia. At its thirty-fourth session, a working group which was composed of Mr. El-Masry, Mr. Yakovlev and Mr. Prado-Vallejo met for four days to assist the Committee in discharging its duties under article 22.

B. Interim measures of protection

133. Complainants frequently request preventive protection, particularly in cases concerning imminent expulsion or extradition, and invoke in this connection article 3 of the Convention. Pursuant to rule 108, paragraph 1, at any time after the receipt of a complaint, the Committee, its working group, or the Rapporteur for new complaints and interim measures may transmit to the State party concerned a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violations. The State party shall be informed that such a request does not imply a determination of the admissibility or the merits of the complaint. The Rapporteur for new complaints and interim measures regularly monitors compliance with the Committee's requests for interim measures. The State party may inform the Committee that the reasons for the interim measures have lapsed or present arguments why the interim measures should be lifted. The Rapporteur, the Committee or its working group may withdraw the request for interim measures.

134. The Rapporteur for new complaints and interim measures has developed the working methods regarding the withdrawal of requests for interim measures. Where the circumstances suggest that a request for interim measures may be reviewed before the consideration of the merits, a standard sentence should be added to such a request, stating that the request is made on the basis of the information contained in the complainant's submission and may be reviewed, at the initiative of the State party, in the light of information and comments received from the State party and any further comments, if any, from the complainant. Some States parties have adopted

the practice of systematically requesting the Rapporteur to withdraw his request for interim measures of protection. The Rapporteur has taken the position that such requests need only be addressed if based on new information which was not available to him when he took his initial decision on interim measures.

135. Also during the period under review, the Committee conceptualized the formal and substantive criteria applied by the Rapporteur for new complaints and interim measures in granting or rejecting requests for interim measures of protection (see CAT/NONE/2004/1/Rev.1). Apart from timely submission of a complainant's request for interim measures of protection under rule 108, paragraph 1, of the Committee's rules of procedure, the basic admissibility criteria set out in article 22, paragraphs 1 to 5, of the Convention, must be met by the complainant for the Rapporteur to act on his or her request. The requirement of exhaustion of domestic remedies can be dispensed with, if the only remedies available to the complainant are without suspensive effect, i.e. remedies that do not automatically stay the execution of an expulsion order, or if there is a risk of immediate deportation of the complainant after the final rejection of his or her asylum application. In such cases, the Rapporteur may request the State party to refrain from deporting a complainant, while his or her complaint is under consideration by the Committee, even before domestic remedies have been exhausted. As for substantive criteria to be applied by the Rapporteur, a complaint must have a substantial likelihood of success on the merits for it to be concluded that the alleged victim would suffer irreparable harm in the event of his or her deportation.

C. Progress of work

136. At the time of adoption of the present report the Committee had registered 269 complaints with respect to 24 countries. Of them, 69 complaints had been discontinued and 47 had been declared inadmissible. The Committee had adopted final decisions on the merits with respect to 111 complaints and found violations of the Convention in 32 of them. Overall, 42 complaints remained pending for consideration.

137. At its thirty-third session, the Committee declared inadmissible complaints Nos. 163/2000 (*S.V. v. Canada*) and 218/2002 (*R.C. v. Sweden*).

138. Also at its thirty-third session, the Committee adopted decisions on the merits in respect of complaints Nos. 133/1999 (*Falcon Ríos v. Canada*), 207/2002 (*Dimitrijevic v. Serbia and Montenegro*) and 223/2002 (*Sohab Uddin v. Sweden*). The text of these decisions is reproduced in annex VIII, section A, to the present report.

139. In its decision on complaint No. 223/2002 (*S.U.A. v. Sweden*), the Committee considered that the complainant's expulsion to Bangladesh would not violate article 3 of the Convention, in the absence of a foreseeable, real and personal risk of being tortured upon return to that country.

140. In case No. 133/1999 (*Falcon Ríos v. Canada*), the complainant claimed that his expulsion to Mexico would expose him to a risk of torture, since he and his father had been tortured and his mother and older sister had been raped by Mexican soldiers because of his uncle's suspected links with the Ejército Zapatista de Liberación Nacional (EZLN). The Committee declared the complaint admissible, even though the complainant had not applied to the Federal Court for leave to appeal the Minister's decision not to grant a stay of his removal on humanitarian grounds. It argued that since an application on humanitarian grounds is not an effective remedy that must be exhausted in order to satisfy the requirement of exhaustion of domestic remedies, as it depends on the discretionary authority of a Minister, the question of an

appeal against such a ministerial decision did not arise under article 22, paragraph 5, subparagraph (b), of the Convention. On the merits, the Committee found that the complainant had provided sufficient medical evidence to establish that his expulsion to Mexico would violate article 3 of the Convention.

141. In its decision on complaint No. 207/2002 (*Dragan Dimitrijevic v. Serbia and Montenegro*), the Committee found that the State party's failure to investigate the complainant's alleged racially motivated torture by the Serbian police and to ensure his right to complain to, and to have his case promptly and impartially investigated by, the public prosecutor, thereby also depriving him of the possibility to file a civil suit for compensation, violated article 2, paragraph 1, read in conjunction with article 1, and articles 12, 13 and 24 of the Convention.

142. At its thirty-fourth session, the Committee declared inadmissible complaint No. 211/2002 (*P.A.C. v. Australia*).

143. Also at its thirty-fourth session, the Committee adopted decisions on the merits in respect of complaints Nos. 171/2000 (*Jovica Dimitrov v. Serbia and Montenegro*), 194/2001 (*I.S.D. v. France*), 195/2002 (*Mafhoud Brada v. France*), 212/2002 (*Kepa Urra Guridi v. Spain*), 220/2002 (*R.D. v. Sweden*), 221/2002 *(M.M.K. v. Sweden*), 222/2002 (*Z.E. v. Switzerland*), 226/2003 (*Tharina Ali v. Sweden*) and 233/2003 (*Ahmed Hussein Mustafa Kamil Agiza v. Sweden*). The text of these decisions is reproduced in annex VIII, section A, to the present report.

144. In its decisions on complaints Nos. 194/2001 (*I.S.D. v. France*), 220/2002 (*R.D. v. Sweden*), 221/2002 (*M.M.K. v. Sweden*) and 222/2002 (*Z.E. v. Switzerland*), the Committee considered that the complainants had failed to demonstrate that they would run a foreseeable, real and personal risk of being subjected to torture upon return to their countries of origin. The Committee therefore concluded, in each case, that the removal of the complainants to those countries would not constitute a violation of article 3 of the Convention.

145. In its decision on complaint No. 171/2000 (*Jovica Dimitrov v. Serbia and Montenegro*), the Committee found that the State party had violated article 2, paragraph 1, read in conjunction with article 1, and articles 12, 13 and 14 of the Convention, as the complainant, a Serbian citizen of Roma origin, had been tortured in police custody and since the State party had failed to investigate his allegations and to ensure his right to complain about, and to obtain fair and adequate compensation for, the torture suffered.

146. In case No. 195/2002 (*Mafhoud Brada v. France*), the complainant, a former pilot of the Algerian air force, was deported to Algeria in spite of the Committee's request to stay his deportation while his complaint was being considered and despite the fact that domestic proceedings were still pending before the Bordeaux Administrative Court of Appeal, which subsequently ruled that the deportation violated article 3 of the European Convention on Human Rights. Based on the Court's conclusion that the complainant was at risk of torture in Algeria, the Committee found a violation of article 3 and, for the first time, of article 22 of the Convention, on the ground that the State party's non-compliance with the Committee's request for interim measures had rendered futile the complainant's right to complain conferred by article 22.

147. In its decision on complaint No. 212/2002 (*Kepa Urra Guridi v. Spain*), the Committee found that by pardoning three officers of the Guardia Civil, who had tortured the complainant, and by commuting their one-year prison sentence to a suspension from duty for one month and one day, the State party had violated article 2, paragraph 1 and article 4, paragraph 2, of the

Convention. It also found a violation of article 14, paragraph 1, arguing that the obligation to redress acts of torture includes measures such as restitution, compensation, rehabilitation, guarantees of non-repetition, as well as judicial or administrative sanctions against persons liable for acts of torture.

148. In its decision on complaint No. 226/2003 (*Tharina Ali v. Sweden*), the Committee considered that the complainant had established that her expulsion to Bangladesh would expose her to a risk of being subjected to torture, in violation of article 3 of the Convention, in the light of medical evidence corroborating her uncontested allegation that she had been tortured in the recent past in retaliation for her and her husband's political activities, as well as the fact that she was still wanted in Bangladesh.

149. In case No. 233/2003 (*Ahmed Hussein Mustafa Kamil Agiza v. Sweden*), the complainant was expelled to Egypt following a decision by the executive, rather than the judiciary, based on national security grounds. The expulsion was carried out with the assistance of a foreign intelligence service and in the light of diplomatic assurances provided to Sweden by Egypt. A number of allegations of mistreatment emerged after the complainant's return to Egypt. The Committee found that the immediate expulsion, without giving the complainant an opportunity to have his case reviewed by an independent body, was in breach of article 3 of the Convention. It also found a violation of the complainant's right to an effective complaint under article 22 of the Convention, as he had been deprived of an opportunity to seize the Committee prior to his expulsion and because the State party had withheld relevant information concerning his allegations of ill-treatment. One Committee member appended a separate opinion to the Committee's decision.

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 the[1] Committee against Torture

153. **The Rapporteur Mandate.** 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: to monitor compliance with the Committee's decisions by sending notes verbales to States parties inquiring about measures adopted pursuant to the Committee's decisions; to recommend 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; to meet 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; to conduct, with the approval of the Committee, follow-up visits to States parties; to prepare periodic reports to the Committee on his/her activities.

154. From the date of the Rapporteur's mandate the following paragraph will be added to a decision in which the Committee finds a violation(s) of the Convention: "The Committee urges the State party to ... [the remedy] and, 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."

155. **Statistical data.** To date 269[2] cases have been registered against the following countries: Argentina (3 - all inadmissible); Australia (20 - 1 violation; 7 no violation; 10 discontinued; 1 pending; 1 inadmissible); Austria (3 - 1 violation; 1 no violation; 1 inadmissible); Azerbaijan (1 - pending); Bulgaria (1 - pending); Canada (42 - 2 violations; 7 no violation; 8 pending; 12 discontinued; 10 inadmissible; 3 suspended); Denmark (9 - 2 inadmissible; 2 discontinued; 5 no violation); Ecuador (1 - discontinued); Finland (1 - no violation); France (30 - 2 violations; 1 pending; 2 no violation; 20 discontinued; 5 inadmissible); Germany (1 - no violation); Greece (1 - no violation); Hungary (1 - inadmissible); Netherlands (14 - 1 violation; 11 no violation; 1 inadmissible; 1 discontinued); Norway (4 - 2 inadmissible; 2 pending); Russian Federation (1 - discontinued); Senegal (1 - pending); Serbia and Montenegro (7 - 4 violations; 3 pending); Spain (8 - 2 violations; 1 no violation; 5 inadmissible); Sweden (59 - 11 violations; 11 pending; 9 inadmissible; 8 discontinued; 20 no violation); Switzerland (52 - 3 violations; 12 pending; 5 inadmissible; 22 no violation; 10 discontinued); Tunisia (7 - 4 violations; 1 inadmissible; 1 discontinued; 1 pending); Turkey (1 - inadmissible); Venezuela (1 - violation). By the end of the thirty-fourth session, the Committee had adopted final decisions on the merits with respect to 111 complaints and found violations of the Convention in 32 of them (see table below); interim measures were granted in 21 cases and acceded to by the States parties in 18; follow-up information was provided by the State party in 13 cases (1 submission in a case in which the Committee had not found a violation of the Convention); it had discontinued 69 complaints and declared 47 inadmissible. Overall, 56 complaints remained pending for consideration.

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
No. 8/1991 *Halimi-Nedibi Quani v. Austria*	18 Nov. 1993	Yugoslav	12	None	The State party is requested to ensure that similar violations do not occur in the future.	No information provided	Request information
No. 13/1993 *Mutombo v. Switzerland*	27 April 1994	Zairian to Zaire	3	Requested and acceded to by the State party	The State party has an obligation to refrain from expelling Mr. Mutombo to Zaire, or to any other country where he runs a real risk of being expelled or returned to Zaire or of being subjected to torture.	No information provided	Request information
No.15/1994 *Tahir Hussain Khan v. Canada*	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
No. 21/1995 *Alan v. Switzerland*	8 May 1996	Turkish to Turkey	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning Ismail Alan to Turkey.	No information provided	Request information
No. 34/1995 *Aemei v. Switzerland*	29 May 1997	Iranian to Iran	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning the complainant and his family to Iran, or to any other	No information provided	Request information

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
No. 34/1995 *Aemei v. Switzerland* (*cont'd*)					country where they would run a real risk of being expelled or returned to Iran. The Committee's finding of a violation of article 3 of the Convention in no way affects the decision(s) of the competent national authorities concerning the granting or refusal of asylum. The finding of a violation of article 3 has a declaratory character. Consequently, the State party is not required to modify its decision(s) concerning the granting of asylum; on the other hand, it does have a responsibility to find solutions that will enable it to take all necessary measures to comply with the provisions of article 3 of the Convention. These solutions may be of a legal nature (e.g. decision to admit the applicant temporarily), but also of a political nature		

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
No. 34/1995 *Aemei v. Switzerland* (*cont'd*)					(e.g. action to find a third State willing to admit the applicant to its territory and undertaking not to return or expel him in its turn).		
No. 39/1996 *Tapia Páez v. Sweden*	28 April 1997	Peruvian to Peru	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning Gorki Ernesto Tapia Paez to Peru.	No information provided	Request information
No. 41/1996 *Kisoki v. Sweden*	8 May 1996	Zairian to Zaire	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning Pauline Muzonzo Paku Kisoki to Zaire.	No information provided	Request information
No. 43/1996 *Tala v. Sweden*	15 Nov. 1996	Iranian to Iran	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning Kaveh Yaragh Tala to Iran.	No information provided	Request information
No. 59/1996 *Encarnación Blanco Abad v. Spain*	14 May 1998	Spanish	12 and 13	None	Relevant measures	No information provided	Request information
No. 60/1996 *M'Barek v. Tunisia*	10 Nov. 2004	Tunisian	12 and 13	None	The Committee requests the State party to inform it within 90 days of the steps taken in response to the Committee's observations.	Ongoing See first follow-up report (CAT/C/32/FU/1). On 15 April 2002, the State party challenged the Committee's decision. During the thirty-third	Arrange meeting with State party

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
No. 60/1996 *M'Barek v. Tunisia* (*cont'd*)						session the Committee considered that the Rapporteur should arrange to meet with a representative of the State party.	
No. 63/1997 *Arana v. France*	5 June 2000	Spanish to Spain	Complainant's expulsion to Spain constituted a violation of article 3	Requested not acceded to by the State party, which claimed to have received Committee's request after the expulsion of the complainant.[3]	Measures to be taken	On 8 January 2001, the State party provided follow-up information, in which it stated that, although the Administrative Court of Pau had found the informal decision to directly hand over the complainant from the French to the Spanish police to be unlawful, the decision to deport him was lawful. The State party added that the ruling, which was currently being appealed, was not typical of the jurisprudence on the subject. It also submitted that since 30 June 2000, a new administrative procedure allowing for a summary judgement suspending a decision, including a deportation decision, had been instituted. The conditions that need to be proven to exist for	

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
No. 63/1997 *Arana v. France* (*cont'd*)						a deportation decision to be suspended are more flexible than previously: that the urgency of the situation justifies such a suspension and that there is a serious doubt as to the legality of the decision. Thus, there is no longer any necessity of proving that the consequences of the decision would be difficult to repair.	
No. 88/1997 *Avedes Hamayak Korban v. Sweden*	16 Nov. 1998	Iraqi to Iraq	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning the complainant to Iraq. It also has an obligation to refrain from forcibly returning the complainant to Jordan, in view of the risk he would run of being expelled from that country to Iraq.	No information provided	Request information
No. 89/1997 *Ali Falakaflaki v. Sweden*	8 May 1998	Iranian to Iran	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning Ali Falakaflaki to Iran.	No information provided	Request information
No. 91/1997 A. v. The Netherlands	13 Nov. 1998	Tunisian to Tunisia	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning the complainant to Tunisia or to	No information provided	Request information

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
No. 91/1997 A. v. The Netherlands (*cont'd*)					any other country where he runs a real risk of being expelled or returned to Tunisia.		
No. 97/1997 *Orhan Ayas v. Sweden*	12 Nov. 1998	Turkish to Turkey	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning the complainant to Turkey or to any other country where he runs a real risk of being expelled or returned to Turkey.	No information provided	Request information
No.101/1997 *Halil Haydin v. Sweden*	20 Nov. 1998	Turkish to Turkey	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning the complainant to Turkey, or to any other country where he runs a real risk of being expelled or returned to Turkey.	No information provided	Request information
No. 110/1998 *Chipana v. Venezuela*	10 Nov. 1998	Peruvian to Peru	Complainant's extradition to Peru constituted a violation of article 3	Granted but not acceded to by the State party[4]	None	On 13 June 2001, the State party reported on the conditions of detention of the complainant in the prison of Chorillos, Lima. On 23 November 2000, the Ambassador of Venezuela to Peru, together with representatives of the Peruvian administration, visited the complainant in prison. The	Request update

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
No. 110/1998 *Chipana v. Venezuela* (*cont'd*)						team interviewed the complainant for 50 minutes, and she informed them that she had not been subjected to any physical or psychological mistreatment. The team observed that the prisoner appeared to be in good health. She had been transferred in September 2000 from the top security block to the "medium special security" block, where she had other privileges such as one hour of visits per week, two hours per day in the courtyard, and access to working and educational activities. By note verbale dated 18 October 2001, the State party forwarded a second report by the Defensor del Pueblo (Ombudsman) dated 27 August 2001 about the complainant's conditions of detention. It included a report of a visit to the complainant in prison carried out on 14 June 2001 by a member of the Venezuelan	

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
No. 110/1998 *Chipana v. Venezuela* (*cont'd*)						Embassy in Peru together with the Head of Criminal and Penitentiary Affairs in Peru. The prisoner stated that her conditions of detention had improved and that she could see her family more often. However, she informed them of her intention to appeal her sentence. According to the Ombudsman, the complainant had been transferred to a block where she had more privileges. Furthermore, since 4 December 2000, all the top security prisons in the country had a new regime consisting of: 1. Visits. Removal of booths; any family member or friend can visit with no restrictions. 2. Media. Prisoners have access to any media without restriction. 3. Lawyers. Lawyers may visit without restrictions four times a week. 4. Courtyard. Prisoners have freedom of movement until 10 p.m. The Ombudsman concluded that the complainant had more flexible conditions of	

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
No. 110/1998 *Chipana v. Venezuela* (*cont'd*)						detention due to her personal situation and to the changes introduced. Moreover, her health was good, except that she was suffering from depression. She had not been subjected to any physical or psychological mistreatment, she had family visits weekly and she was involved in professional and educational activities in the prison.	
No. 113/1998 *Ristic v. Serbia and Montenegro*	11 May 2001	Yugoslav	12 and 13	None	The Committee urges the State party to carry out such investigations without delay and to provide an appropriate remedy.	Ongoing See first follow-up report (CAT/C/32/FU/1). During the thirty-third session, the Rapporteur reported on a meeting he had had on 22 November 2004, with a representative of the State party. Following a new postmortem investigation into the complainant's death, on 11 November 2004, the District Court in Sabaca transmitted new information to the Institute of Forensic Medicine in Belgrade for an additional examination. The State party indicated its	Request update

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
No. 113/1998 *Ristic v. Serbia and Montenegro* (*cont'd*)						intention to update the Committee on the outcome of this examination. On 25 March 2005, the Committee received information from the Humanitarian Law Centre in Belgrade, to the effect that the First Municipal Court in Belgrade had ordered the State party to pay compensation of 1 million dinars to the complainant's parents for failure to conduct an expedient, impartial and comprehensive investigation into the causes of the complainant's death, in compliance with the decision of the Committee against Torture. The Rapporteur requested confirmation that this compensation was paid as well as copies of the relevant documents, judgement etc. from the State party.	

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
No.120/1998 *Shek Elmi v. Australia*	25 May 1999	Somali to Somalia	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning the complainant to Somalia or to any other country where he runs a risk of being expelled or returned to Somalia.	On 23 August 1999 the State party responded to the Committee's Views. It informed the Committee that on 12 August 1999, the Minister for Immigration and Multicultural Affairs had decided that it was in the public interest to exercise his powers under section 48B of the Migration Act 958 to allow Mr. Elmi to make a further application for a protection visa. Mr. Elmi's solicitor was advised of this on 17 August 1999, and Mr. Elmi was personally notified on 18 August 1999. On 1 May 2001, the State party informed the Committee that the complainant had voluntarily departed Australia and subsequently "withdrew" his complaint against the State party. It explained that the complainant had lodged his second protection visa application on 24 August 1999. On	In light of the complainant's departure no further action requested under follow-up.

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
No.120/1998 *Shek Elmi v. Australia* (*cont'd*)						22 October 1999, Mr. Elmi and his adviser attended an interview with an officer of the Department. The Minister of Immigration and Multicultural Affairs in a decision dated 2 March 2000 was satisfied that the complainant was not a person to whom Australia has protection obligations under the Convention relating to the Status of Refugees and refused to grant him a protection visa. This decision was affirmed on appeal by the Principal Tribunal members. The State party advised the Committee that his new application was comprehensively assessed in light of new evidence which had arisen following the Committee's consideration. The Tribunal was not satisfied as to the complainant's credibility and did not accept that he was who he said he was - the son of a leading elder of the Shikal clan.	

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
No. 133/1999 *Falcon Rio v. Canada*	30 Nov. 2004	Mexican to Mexico	3	Requested and acceded to by the State party	Relevant measures	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 would inform the Committee of the outcome. If the complainant could establish one of the motives for protection under the Immigration and Protection of Refugee's Law he would be able to present a request for permanent residence in Canada. The Committee's decision would be taken into account by the examining officer and the complainant would be heard orally if the Minister considered it necessary. Since the request for asylum had been 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 would not be restricted to assessing facts after the	Update to be requested

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
No. 133/1999 *Falcon Rio v. Canada* (*cont'd*)						denial of the initial request but would be able to examine all the facts and information, old and new, presented by the complainant. In this context, it contested the Committee's finding 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 and referred to previous cases of the Committee in which the Committee itself found such remedies to be effective.[5] It argued that the risk of torture could constitute a humanitarian motive and that the court could be requested to grant suspensive effect pending such a decision. According to the State party, at the time of the	

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
No. 133/1999 *Falcon Rio v. Canada* (*cont'd*)						consideration of the report to the Committee, the authorities had not yet completed their reassessment of the risk of return.	
No. 149/1999 *A.S. v. Sweden*	24 Nov. 2000	Iranian to Iran	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning the complainant to Iran or to any other country where she runs a risk of being expelled or returned to Iran.	On 22 February 2001, the State party informed the Committee that on 30 January 2001, the Aliens Appeals Board had examined a new application for a residence permit lodged by the complainant. The Board decided to grant the complainant a permanent residence permit in Sweden and to quash the expulsion order. The Board also granted the complainant's son a permanent residence permit.	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
No. 161/2000 *Hajrizi Dzemajl et al. v. Yugoslavia*	21 Nov. 2002	Yugoslav	16, para. 1, 12 and 13[6]	None	The Committee urges the State party to conduct a proper investigation into the events that occurred on 15 April 1995, prosecute and punish the persons responsible for those acts and provide the complainants with redress, including fair and adequate compensation, and to inform	Ongoing See first follow-up report (CAT/C/32/FU/1). Following the thirty-third session, and while welcoming the State party's provision of compensation to the complainants for the violations found, the Committee considered that the	Update on implementation to be requested

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
No. 161/2000 *Hajrizi Dzemajl et al. v. Yugoslavia* (*cont'd*)					it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to its observations.	State party should be reminded of its obligation to conduct a proper investigation into the facts of the case.	
No. 171/2000 *Dimitrov v. Serbia and Montenegro*	3 May 2005	Not applicable	2, para. 1, in connection with 1, 12, 13 and 14	Not applicable	The Committee urges the State party to conduct a proper investigation into the facts alleged by the complainant and, 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 its observations.	90 days has not expired	No action required
No.185/2001 *Chedli Ben Ahmed Karoui v. Sweden*	8 May 2002	Tunisian to Tunisia	3	Granted and acceded to by the State party	None	No further consideration under follow-up procedure. See first follow-up report (CAT/C/32/FU/1) in which it was stated that, on 4 June 2002, the Board revoked the expulsion decisions regarding the complainant and his family. They were also granted permanent residence permits on the basis of this decision.	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

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
No. 187/2001 *Thabti, Dhaou Belgacem v. Tunisia* No. 188/2001 *Abdelli, Imed v. Tunisia* No. 189/2001 *Ltaief Bouabdallah v. Tunisia*	14 Nov. 2003	Tunisian	12 and 13	None	The Committee urges the State party to conduct an investigation into the complainant's allegations of torture and ill-treatment and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to its observations.	Ongoing See first follow-up report (CAT/C/32/FU/1). On 16 March 2004, the State party challenged the Committee's decision. At the thirty-third session the Committee requested the Special Rapporteur to meet with a representative of the State party.	Meeting with State party to be arranged
No. 195/2002 *Brada v. France*	17 May 2005	Algerian to Algeria	3 and 22	Granted but not acceded to by the State party[7]	Pursuant to rule 112, paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, of the steps the State party has taken in response to the Committee's observations, including measures of compensation for the breach of article 3 of the Convention and the determination, in consultation with the country (also a State party to the Convention) to which the complainant was returned, of his current whereabouts and state of well-being.	90 days has not expired	No action required

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
No. 207/2002 *Dimitrijevic, Dragan v. Serbia and Montenegro*	24 Nov. 2004	Serbian	2, para. 1, in connection with 1, 12, 13 and 14	None	The Committee urges the State party to conduct a proper investigation into the facts alleged by the complainant.	The 90 day period expired in February 2005 with no information provided.	Reminder to State party
No. 212/2002 *Urra Guridi v. Spain*	17 May 2005	Not applicable	2, 4 and 14	None	In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee urges the State party to ensure in practice that those individuals responsible for acts of torture be appropriately punished, to ensure the complainant full redress and to inform the Committee, within 90 days from the date of the transmittal of this decision, of all steps taken in response to the Committee's observations.	90 days has not expired	No action required
No. 226/2003 *Tharina v. Sweden*	6 May 2005	Bangladeshi to Bangladesh	3	Granted and acceded to by the State party	Given the specific circumstances of the case, the deportation of the complainant and her daughter would amount to a breach of article 3 of the Convention. The Committee wishes to be informed, within 90 days from the date of the transmittal of this	90 days has not expired	No action required

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
No. 226/2003 *Tharina v. Sweden* (*cont'd*)					decision, of the steps taken in response to its observation.		
No. 233/2003 *Agiza v. Sweden*	20 May 2005	Egyptian to Egypt	3 x 2 (substantive and procedural violations) and 22 x 2[8]	None	In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee requests the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the Committee's observations. The State party is also under an obligation to prevent similar violations in the future.	90 days has not expired	No action required

Complaints in which the Committee has found no violations of the Convention up to the thirty-fourth session but in which it requested follow-up information

Case	Date of adoption	Nationality of complainant and country of removal if applicable	Violations found	Interim measures granted and State party's response	Remedy	Follow-up	Further action
No. 214/2002 *M.A.K. v. Germany*	12 May 2004	Turkish to Turkey	No violation	Granted and acceded to by the State party. Request by the State party to withdraw interim measures requested refused by the Rapporteur on new communications	Although the Committee found no violation of the Convention it welcomed the State party's readiness to monitor the complainant's situation following his return to Turkey and requested the State party to keep the Committee informed about the situation.	On 20 December 2004, the State party informed the Committee that the complainant had agreed to leave German territory voluntarily in July 2004 and that in a letter of 28 June 2004 his lawyer stated that he would leave Germany on 2 July 2004. In the same correspondence, as well as by telephone on 27 September 2004, his lawyer stated that the complainant did not wish to be monitored by the State party in Turkey but would call upon its assistance only in the event of arrest. For this reason, the State party does not consider it necessary to make any further efforts to monitor the situation at the moment.	No further action is required

Notes

[1] The present report reflects information up to the end of the thirty-fourth session

[2] The figure 270 appears on the database but one case against Serbia and Montenegro was registered twice in error.

[3] No comment by Committee.

[4] The Committee stated, "Furthermore, the Committee is deeply concerned at the fact that the State party did not accede to the request made by the Committee under rule 108, paragraph 3, of its rules of procedure that it should refrain from expelling or extraditing the complainant while her communication was being considered by the Committee, and thereby failed to comply with the spirit of the Convention. The Committee considers that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying the procedure. Compliance with the provisional measures called for by the Committee in cases it considers reasonable is essential in order to protect the person in question from irreparable harm, which could, moreover, nullify the end result of the proceedings before the Committee."

[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.

[6] Regarding article 14, the Committee declared that article 16, paragraph 1, of the Convention does not mention article 14 of the Convention. Nevertheless, article 14 of the Convention does not mean that the State party is not obliged to grant redress and fair and adequate compensation to the victim of an act in breach of article 16 of the Convention. The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision. The Committee is therefore of the view that the State party has failed to observe its obligations under article 16 of the Convention by failing to enable the complainants to obtain redress and to provide them with fair and adequate compensation.

[7] "The Committee observes that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party's action in expelling the complainant in the face of the Committee's request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee's final decision on the merits futile and devoid of object. The Committee thus concludes that in expelling the complainant in the circumstances that it did the State party breached its obligations under article 22 of the Convention."

[8] (1) The Committee observes, moreover, that by making the declaration under article 22 of the Convention, the State party undertook to confer upon persons within its jurisdiction the right to invoke the complaints jurisdiction of the Committee. That jurisdiction includes the power to indicate interim measures, if necessary, to stay the removal and preserve the subject matter of the case pending final decision. In order for this exercise of the right of complaint to be meaningful rather than illusory, however, an individual must have a reasonable period of time before execution of a final decision to consider whether, and if so to in fact, seize the Committee under

its article 22 jurisdiction. In the present case, however, the Committee observes that the complainant was arrested and removed by the State party immediately upon the Government's decision of expulsion being taken; indeed, the formal notice of decision was only served upon the complainants counsel the following day. As a result, it was impossible for the complainant to consider the possibility of invoking article 22, let alone seize the Committee. As a result, the Committee concludes that the State party was in breach of its obligations under article 22 of the Convention to respect the effective right of individual communication conferred thereunder.

(2) Having addressed the merits of the complaint, the Committee must address the failure of the State party to cooperate fully with the Committee in the resolution of the complaint. The Committee observes that, by making the declaration provided for in article 22 extending to individual complainants the right to complain to the Committee alleging a breach of a State party's obligations under the Convention, a State party assumes an obligation to cooperate fully with the Committee, through the procedures set forth in article 22 and in the Committee's rules of procedure. In particular, article 22, paragraph 4, requires a State party to make available to the Committee all information relevant and necessary for the Committee appropriately to resolve the complaint presented to it. The Committee observes that its procedures are sufficiently flexible and its powers sufficiently broad to prevent an abuse of process in a particular case. It follows that the State party committed a breach of its obligations under article 22 of the Convention by neither disclosing to the Committee relevant information, nor presenting its concerns to the Committee for an appropriate procedural decision

VII. FUTURE MEETINGS OF THE COMMITTEE

156. In accordance with rule 2 of its rules of procedure, the Committee holds two regular sessions each year. In consultation with the Secretary-General, the Committee took decisions on the dates of its regular session for the biennium 2006-2007. Those dates are the following:

Thirty-sixth	1-19 May 2006
Thirty-seventh	13-25 November 2006
Thirty-eighth	7-26 May 2007
Thirty-ninth	12-23 November 2007

157. The dates of the pre-sessional working groups for the same biennium will be as follows: 24-28 April 2006, 6-10 November 2006, 30 April-4 May 2007 and 5-9 November 2007.

158. The Committee has requested additional meeting time, as per paragraph 14 of A/59/44 and the programme budget implications are contained in annex IX to the present report.

VIII. ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE ON ITS ACTIVITIES

159. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly. Since the Committee holds its second regular session of each calendar year in late November, which coincides with the regular sessions of the General Assembly, it adopts its annual report at the end of its spring session, for appropriate transmission to the General Assembly during the same calendar year. Accordingly, at its 668th meeting, held on 20 May 2005, the Committee considered and unanimously adopted the report on its activities at the thirty-third and thirty-fourth sessions.

Annex I

STATES THAT HAVE SIGNED, RATIFIED OR ACCEDED TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, AS AT 20 MAY 2005

Participant	Signature	Ratification, Accession (a), Succession (b)
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994[a]
Algeria	26 November 1985	12 September 1989
Andorra	5 August 2002	
Antigua and Barbuda		19 July 1993[a]
Argentina	4 February 1985	24 September 1986
Armenia		13 September 1993[a]
Australia	10 December 1985	8 August 1989
Austria	14 March 1985	29 July 1987
Azerbaijan		16 August 1996[a]
Bahrain		6 March 1998[a]
Bangladesh		5 October 1998[a]
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	25 June 1999
Belize		17 March 1986[a]
Benin		12 March 1992[a]
Bolivia	4 February 1985	12 April 1999
Bosnia and Herzegovina		1 September 1993[b]
Botswana	8 September 2000	8 September 2000
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986
Burkina Faso		4 January 1999[a]
Burundi		18 February 1993[a]
Cambodia		15 October 1992[a]
Cameroon		19 December 1986[a]
Canada	23 August 1985	24 June 1987
Cape Verde		4 June 1992[a]
Chad		9 June 1995[a]
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988

Participant	Signature	Ratification, Accession (a), Succession (b)
Colombia	10 April 1985	8 December 1987
Comoros	22 September 2000	
Congo		30 July 2003[a]
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995[a]
Croatia		12 October 1992[b]
Cuba	27 January 1986	17 May 1995
Cyprus	9 October 1985	18 July 1991
Czech Republic		22 February 1993[b]
Democratic Republic of the Congo		18 March 1996[a]
Denmark	4 February 1985	27 May 1987
Djibouti		5 November 2002[a]
Dominican Republic	4 February 1985	
Ecuador	4 February 1985	30 March 1988
Egypt		25 June 1986[a]
El Salvador		17 June 1996[a]
Equatorial Guinea		8 October 2002[a]
Estonia		21 October 1991[a]
Ethiopia		14 March 1994[a]
Finland	4 February 1985	30 August 1989
France	4 February 1985	18 February 1986
Gabon	21 January 1986	8 September 2000
Gambia	23 October 1985	
Georgia		26 October 1994[a]
Germany	13 October 1986	1 October 1990
Ghana	7 September 2000	7 September 2000
Greece	4 February 1985	6 October 1988
Guatemala		5 January 1990[a]
Guinea	30 May 1986	10 October 1989
Guinea-Bissau	12 September 2000	
Guyana	25 January 1988	19 May 1988
Holy See		26 June 2002[a]
Honduras		5 December 1996[a]
Hungary	28 November 1986	15 April 1987
Iceland	4 February 1985	23 October 1996

Participant	Signature	Ratification, Accession (a), Succession (b)
India	14 October 1997	
Indonesia	23 October 1985	28 October 1998
Ireland	28 September 1992	11 April 2002
Israel	22 October 1986	3 October 1991
Italy	4 February 1985	12 January 1989
Japan		29 June 1999[a]
Jordan		13 November 1991[a]
Kazakhstan		26 August 1998
Kenya		21 February 1997[a]
Kuwait		8 March 1996[a]
Kyrgyzstan		5 September 1997[a]
Latvia		14 April 1992[a]
Lebanon		5 October 2000[a]
Lesotho		12 November 2001[a]
Liberia		22 September 2004[a]
Libyan Arab Jamahiriya		16 May 1989[a]
Liechtenstein	27 June 1985	2 November 1990
Lithuania		1 February 1996[a]
Luxembourg	22 February 1985	29 September 1987
Madagascar	1 October 2001	
Malawi		11 June 1996[a]
Maldives		20 April 2004[a]
Mali		26 February 1999[a]
Malta		13 September 1990[a]
Mauritania		17 November 2004[a]
Mauritius	18 March 1985	9 December 1992[a]
Mexico		23 January 1986
Monaco		6 December 1991[a]
Mongolia		24 January 2002[a]
Morocco	8 January 1986	21 June 1993
Mozambique		14 September 1999[a]
Namibia		28 November 1994[a]
Nauru	12 November 2001	
Nepal		14 May 1991[a]
Netherlands	4 February 1985	21 December 1988

Participant	Signature	Ratification, Accession (a), Succession (b)
New Zealand	14 January 1986	10 December 1989
Nicaragua	15 April 1985	
Niger		5 October 1998[a]
Nigeria	28 July 1988	28 June 2001
Norway	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986[a]
Poland	13 January 1986	26 July 1989
Portugal	4 February 1985	9 February 1989
Qatar		11 January 2000[a]
Republic of Korea		9 January 1995[a]
Republic of Moldova		28 November 1995[a]
Romania		18 December 1990[a]
Russian Federation	10 December 1985	3 March 1987
Saint Vincent and the Grenadines		1 August 2001[a]
San Marino	18 September 2002	
Sao Tome and Principe	6 September 2000	
Saudi Arabia		23 September 1997[a]
Senegal	4 February 1985	21 August 1986
Serbia and Montenegro		12 March 2001[b]
Seychelles		5 May 1992[a]
Sierra Leone	18 March 1985	25 April 2001
Slovakia		28 May 1993[b]
Slovenia		16 July 1993[a]
Somalia		24 January 1990[a]
South Africa	29 January 1993	10 December 1998
Spain	4 February 1985	21 October 1987
Sri Lanka		3 January 1994[a]
Sudan	4 June 1986	
Swaziland		26 March 2004[a]
Sweden	4 February 1985	8 January 1986
Switzerland	4 February 1985	2 December 1986
Syrian Arab Republic		19 August 2004[a]

Participant	Signature	Ratification, Accession (a), Succession (b)
Tajikistan		11 January 1995[a]
The former Yugoslav Republic of Macedonia		12 December 1994[b]
Timor-Leste		16 April 2003[a]
Togo	25 March 1987	18 November 1987
Tunisia	26 August 1987	23 September 1988
Turkey	25 January 1988	2 August 1988
Turkmenistan		25 June 1999[a]
Uganda		3 November 1986[a]
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland	15 March 1985	8 December 1988
United States of America	18 April 1988	21 October 1994
Uruguay	4 February 1985	24 October 1986
Uzbekistan		28 September 1995[a]
Venezuela (Bolivarian Republic of)	15 February 1985	29 July 1991
Yemen		5 November 1991[a]
Zambia		7 October 1998[a]

Notes

[a] Accession (71 countries).

[b] Succession (6 countries).

Annex II

STATES PARTIES THAT HAVE DECLARED, AT THE TIME OF RATIFICATION OR ACCESSION, THAT THEY DO NOT RECOGNIZE THE COMPETENCE OF THE COMMITTEE PROVIDED FOR BY ARTICLE 20 OF THE CONVENTION, AS AT 20 MAY 2005

Afghanistan

China

Equatorial Guinea

Israel

Kuwait

Mauritania

Morocco

Poland

Saudi Arabia

Syrian Arab Republic

Annex III

STATES PARTIES THAT HAVE MADE THE DECLARATIONS PROVIDED FOR IN ARTICLES 21 AND 22 OF THE CONVENTION, AS AT 20 MAY 2005[a]

State party	Date of entry into force
Algeria	12 October 1989
Argentina	26 June 1987
Australia	29 January 1993
Austria	28 August 1987
Belgium	25 July 1999
Bosnia and Herzegovina	4 June 2003
Bulgaria	12 June 1993
Cameroon	11 November 2000
Canada	24 July 1987
Chile	15 March 2004
Costa Rica	27 February 2002
Croatia	8 October 1991
Cyprus	8 April 1993
Czech Republic	3 September 1996
Denmark	26 June 1987
Ecuador	29 April 1988
Finland	29 September 1989
France	26 June 1987
Germany	19 October 2001
Ghana	7 October 2000
Greece	5 November 1988
Hungary	26 June 1987
Iceland	22 November 1996
Ireland	11 April 2002
Italy	11 February 1989
Liechtenstein	2 December 1990
Luxembourg	29 October 1987
Malta	13 October 1990
Monaco	6 January 1992
Netherlands	20 January 1989
New Zealand	9 January 1990
Norway	26 June 1987
Paraguay	29 May 2002
Peru	7 July 1988
Poland	12 June 1993

State party	Date of entry into force
Portugal	11 March 1989
Russian Federation	1 October 1991
Senegal	16 October 1996
Serbia and Montenegro	12 March 2001
Slovakia	17 April 1995
Slovenia	16 July 1993
South Africa	10 December 1998
Spain	20 November 1987
Sweden	26 June 1987
Switzerland	26 June 1987
Togo	18 December 1987
Tunisia	23 October 1988
Turkey	1 September 1988
Uruguay	26 June 1987
Ukraine	12 September 2003
Venezuela	26 April 1994

States parties that have only made the declaration provided for in article 21 of the Convention, as at 20 May 2005

Japan	29 June 1999
Uganda	19 December 2001
United Kingdom of Great Britain and Northern Ireland	8 December 1988
United States of America	21 October 1994

States parties that have only made the declaration provided for in article 22 of the Convention, as at 20 May 2005[b]

Azerbaijan	4 February 2002
Burundi	10 June 2003
Guatemala	25 September 2003
Mexico	15 March 2002
Seychelles	6 August 2001

Notes

[a] A total of 51 States parties have made the declaration under article 21.

[b] A total of 56 States parties have made the declaration under article 22.

Annex IV

MEMBERSHIP OF THE COMMITTEE AGAINST TORTURE IN 2005

Name of Member	Country of Nationality	Term Expires on 31 December
Mr. Guibril CAMARA	Senegal	2007
Mr. Sayed Kassem EL-MASRY	Egypt	2005
Ms. Felice GAER	United States of America	2007
Mr. Claudio GROSSMAN	Chile	2007
Mr. Fernando MARIÑO	Spain	2005
Mr. Andreas MAVROMMATIS	Cyprus	2007
Mr. Julio PRADO VALLEJO	Ecuador	2007
Mr. Ole Vedel RASMUSSEN	Denmark	2005
Mr. Alexander M. YAKOVLEV	Russian Federation	2005
Mr. Xuexian WANG	China	2005

Annex V

COUNTRY RAPPORTEURS AND ALTERNATE RAPPORTEURS FOR THE REPORTS OF STATES PARTIES CONSIDERED BY THE COMMITTEE AT ITS THIRTY-THIRD AND THIRTY-FOURTH SESSIONS (IN ORDER OF EXAMINATION)

A. Thirty-third session

Report	Rapporteur	Alternate
Argentina: fourth periodic report (CAT/C/55/Add.7)	Mr. Grossman	Mr. Prado Vallejo
United Kingdom: fourth periodic report (CAT/C/67/Add.2)	Ms. Gaer	Mr. Mariño Menendez
Greece: fourth periodic report (CAT/C/61/Add.1)	Mr. Rasmussen	Mr. Mengjia

B. Thirty-fourth session

Canada: fourth and fifth periodic reports (CAT/C/55/Add.8) (CAT/C/81/Add.3)	Mr. Mavrommatis	Ms. Gaer
Switzerland: fourth periodic report (CAT/C/55/Add.9)	Mr. Grossman	Mr. El-Masry
Finland: fourth periodic report (CAT/C/67/Add.1)	Mr. El-Masry	Mr. Mengjia
Albania: initial report (CAT/C/28/Add.6)	Mr. Yakovlev	Mr. Rasmussen
Uganda: initial report (CAT/C/5/Add.32)	Mr. Mavrommatis	Mr. Camara
Bahrain: initial report (CAT/C/47/Add.4)	Ms. Gaer	Mr. Yakovlev

Annex VI

REQUEST FOR EXTENSION OF THE MEETING TIME OF THE COMMITTEE AGAINST TORTURE CONTAINED IN PARAGRAPH 14 OF A/59/44

PROGRAMME BUDGET IMPLICATIONS IN ACCORDANCE WITH RULE 25 OF THE RULES OF PROCEDURE OF THE COMMITTEE AGAINST TORTURE

1. The Committee against Torture requests the General Assembly to authorize the Committee to meet for an additional week per year as of its thirty-seventh session (November 2006).

2. The activities to be carried out relate to: programme 24 Human Rights and Humanitarian Affairs, and conference services; subprogramme 2.

3. Provisions have been made in the 2004-2005 programme budget for travel and per diem costs of the 10 members of the Committee to attend its two annual regular sessions in Geneva one of 15 working days the second of 10 working days, with each preceded by a five-day pre-session working group meeting, as well as for conference services to the Committee and the pre-session working group.

4. Should the General Assembly approve the Committee's request provisions for a total of 10 additional meetings (from 2006) would be required. The additional meetings of the Committee would require interpretation services in the six official languages. Summary records would be provided for the 10 additional meetings of the Committee. The proposed one-week extension would require an additional 50 pages of in-session and 30 pages of post-session documentation in the six languages.

5. Should the General Assembly accept the request made by the Committee against Torture, additional resources estimated at US$ 25,000 for per diem costs for the members of the Committee in relation to the extension of its November session from 2006 would be required under section 24 of the programme budget for the biennium 2006-2007. Furthermore, additional conference-servicing costs are estimated at US$ 697,486 from 2006 under section 2; and US$ 2,520 from 2006 under section 29 E.

6. The above requirements relating to the additional meetings of the Committee and the pre-sessional working group are enumerated in the table below:

Requirements relating to additional meetings of the Committee and the pre-sessional working group.

			2006 $
I.	Section 24.	Human rights: travel, per diem and terminal expenses	25 000
II.	Section 2.	General Assembly affairs and conference services: meeting servicing, interpretation and documentation	697 486
III.	Section 29E.	Office of Common Support Services: support services	2 520
	Total		725 000

Annex VII

GUIDELINES ON THE FORM AND CONTENT OF INITIAL REPORTS UNDER ARTICLE 19 TO BE SUBMITTED BY STATES PARTIES TO THE CONVENTION AGAINST TORTURE

1. Under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment each State party undertakes to submit a report on the measures taken to give effect to its undertakings under the Convention. The initial report is due within one year after the entry into force of the Convention for that State party and thereafter every four years unless the Committee requests other reports.

2. In order to assist States parties in fulfilling their obligations under article 19, the Committee has adopted the following general guidelines as to the form and content of initial reports. The present Guidelines replace the earlier version adopted by the Committee at its 82nd meeting (sixth session) in April 1991.

I. GENERAL INFORMATION

A. Introduction

3. In the introductory part of the report, cross-references to the expanded core document should be made regarding information of a general nature, such as the general political structure, general legal framework within which human rights are protected, etc. It is not necessary to repeat that information in the initial report.

4. Information on the process of preparing the report should be included in this section. The Committee considers that drafting of reports would benefit from broad-based consultations. It therefore welcomes information on any such consultations within Government, with national institutions for the promotion and protection of human rights, non-governmental organizations and other organizations that might have taken place.

B. General legal framework under which torture and other cruel, inhuman or degrading treatment or punishment is prohibited

5. In this section the Committee envisages receiving specific information related to the implementation of the Convention to the extent that it is not covered by the core document, in particular the following:

- A brief reference to constitutional, criminal and administrative provisions regarding the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;
- International treaties dealing with torture and other cruel, inhuman or degrading treatment or punishment to which the reporting State is a party;
- The status of the Convention in the domestic legal order, i.e. with respect to the Constitution and the ordinary legislation;

- How domestic laws ensure the non-derogability of the prohibition of any cruel, inhuman or degrading treatment or punishment;

- Whether the provisions of the Convention can be invoked before and are directly enforced by the courts or administrative authorities or whether they have to be transformed into internal laws or administrative regulations to be enforced by the authorities concerned. Should the latter be a requirement, the report should provide information on the legislative act incorporating the Convention into the domestic legal order;

- Judicial, administrative or other competent authorities with jurisdiction/a mandate covering matters dealt with in the Convention, such as the Constitutional Court, the Supreme Court, the ordinary and military courts, the public prosecutors, disciplinary bodies, administrative authorities in charge of police and prison administration, national institutions for the promotion and protection of human rights, etc. Provide an overview of the practical implementation of the Convention at the federal, central, regional and local levels of the State, and indicate any factors and difficulties that may affect the fulfilment of the obligations of the reporting State under the Convention. The report should include specific information related to the implementation of the Convention in such circumstances. Relevant documentation collected by the authorities or other private or public institutions is welcome.

II. INFORMATION IN RELATION TO EACH SUBSTANTIVE ARTICLE OF THE CONVENTION

6. As a general rule the report should include, in connection with each article, the following information:

- The legislative, judicial, administrative or other measures giving effect to the provisions;

- Concrete cases and situations where measures giving effect to the provisions have been enforced, including any relevant statistical data;

- Cases or situations of violation of the Convention, the reasons for such violations and the measures taken to remedy the situation. It is important for the Committee to obtain a clear picture not only of the legal situation, but also of the de facto situation.

Article 1

7. This article contains the definition of torture for the purposes of the Convention. Under this provision the report should include:

- Information on the definition of torture in domestic law, including indications as to whether such a definition is in full conformity with the definition of the Convention;

- In the absence of a definition of torture in domestic law in conformity with the Convention, information on criminal or legislative provisions that cover all cases of torture;

- Information on any international instruments or national legislation that contains or may contain provisions of wider application.

Article 2, paragraph 1

8. This provision introduces the obligation of the States parties to take effective measures to prevent acts of torture. The report should contain information on:

- Pertinent information on effective measures taken to prevent all acts of torture, inter alia with respect to: duration of police custody; incommunicado detention; rules governing the rights of arrested persons to a lawyer, a medical examination, contact with their family, etc.; emergency or anti-terrorist legislation that could restrict the guarantees of the detained person.

9. The Committee would welcome an assessment by the reporting State of the effectiveness of the measures taken to prevent torture, including measures to ensure that those responsible are brought to justice.

Article 2, paragraph 2

10. The report should contain information on effective measures to ensure that no exceptional circumstances are invoked, in particular:

- Whether legal and administrative measures exist to guarantee that the right not to be tortured is not subject to derogation during a state of war, a threat of war, internal political instability or any other public emergency.

Article 2, paragraph 3

11. The report should indicate:

- Whether legislation and jurisprudence exist with regard to the prohibition on invoking superior orders, including orders from military authorities, as a justification of torture; if these exist, information should be provided on their practical implementation;

- Whether there are any circumstances in which a subordinate is permitted lawfully to oppose an order to commit acts of torture, the recourse procedures available to him/her and information on any such cases that may have occurred;

- Whether the position of public authorities with respect to the concept of "due obedience" as a criminal law defence has any impact on the effective implementation of this prohibition.

Article 3

12. This article prohibits the expulsion, return or extradition of a person to a State where he/she might be tortured. The report should contain information on:

- Domestic legislation with regard to such prohibition;
- Whether legislation and practices concerning terrorism, emergency situations, national security or other grounds that the State may have adopted have had any impact on the effective implementation of this prohibition;
- Which authority determines the extradition, expulsion, removal or refoulement of a person and on the basis of what criteria;
- Whether a decision on the subject can be reviewed and, if so, before which authority, what are the applicable procedures and whether such procedures have suspensive effects;
- Decisions taken on cases relevant to article 3 and the criteria used in those decisions, the information on which the decisions are based and the source of this information;
- The kind of training provided to officials dealing with the expulsion, return or extradition of foreigners.

Article 4

13. It is implicit in the reporting obligations imposed by this article that each State shall enact legislation criminalizing torture in terms that are consistent with the definition in article 1. The Committee has consistently expressed the view that the crime of torture is qualitatively distinguishable from the various forms of homicide and assault that exist and therefore should be separately defined as a crime. The report should contain information on:

- Civil and military criminal provisions regarding these offences and the penalties related to them;
- Whether statutes of limitations apply to such offences;
- The number and the nature of the cases in which those legal provisions were applied and the outcome of such cases, in particular, the penalties imposed upon conviction and the reasons for acquittal;
- Examples of judgements relevant to the implementation of article 4;
- Existing legislation on disciplinary measures during the investigation of an alleged case of torture to be taken against law enforcement personnel responsible for acts of torture (e.g. suspension);
- Information on how established penalties take into account the grave nature of torture.

Article 5

14. Article 5 deals with the States parties' legal duty to establish jurisdiction over the crimes mentioned in article 4. The report should include information on:

- Measures taken to establish jurisdiction in the cases covered under (a), (b) and (c) of paragraph 1. Examples of cases where (b) and (c) were applied should also be included;

- Measures taken to establish jurisdiction in cases where the alleged offender is present in the territory of the reporting State and the latter does not extradite him/her to a State with jurisdiction over the offence in question. Examples of cases where (a) extradition was granted and (b) extradition was denied should be provided.

Article 6

15. Article 6 deals with the exercise of jurisdiction by the State party, particularly the issues concerning the investigation of a person who is in the territory and is alleged to have committed any offence referred to in article 4. The report should provide information on:

- The domestic legal provisions concerning, in particular, the custody of that person or other measures to ensure his/her presence; his/her right to consular assistance; the obligation of the reporting State to notify other States that might also have jurisdiction that such a person is in custody; the circumstances of the detention and whether the State party intends to exercise jurisdiction;

- The authorities in charge of the implementation of the various aspects of article 6;

- Any cases in which the above domestic provisions were applied.

Article 7

16. This article contains the obligation of the State to initiate prosecutions relating to acts of torture whenever it has jurisdiction, unless it extradites the alleged offender. The report should provide information on:

- Measures to ensure the fair treatment of the alleged offender at all stages of the proceedings, including the right to legal counsel, the right to be presumed innocent until proved guilty, the right to equality before courts, etc.;

- Measures to ensure that the standards of evidence required for prosecution and conviction apply equally in cases where the alleged offender is a foreigner who committed acts of torture abroad;

- Examples of practical implementation of the measures referred to above.

Article 8

17. By virtue of article 8 of the Convention, the States parties undertake to recognize torture as an extraditable offence for purposes of facilitating the extradition of persons suspected of having committed acts of torture and/or the related crimes of attempting to commit and complicity and participation in torture. The report should include information on:

- Whether torture and related crimes are considered by the reporting State as extraditable offences;
- Whether the reporting State makes extradition conditional on the existence of a treaty;
- Whether the reporting State considers the Convention as the legal basis for extradition in respect of the offences referred to above;
- Extradition treaties between the reporting State and other States parties to the Convention that include torture as an extraditable offence;
- Cases where the reporting State granted the extradition of persons alleged to have committed any of the offences referred to above.

Article 9

18. By virtue of this article the States parties undertake to provide mutual judicial assistance in all matters of criminal procedure regarding the offence of torture and related crimes of attempting to commit, complicity and participation in torture. Reports shall include information on:

- Legal provisions, including any treaties, concerning mutual judicial assistance that apply in the case of the above-mentioned offences;
- Cases involving the offence of torture in which mutual assistance was requested by or from the reporting State, including the result of the request.

Article 10

19. By virtue of this article and related article 16, States are obliged to train, inter alia, medical and law enforcement personnel, judicial officials and other persons involved with custody, interrogation or treatment of persons under State or official control on matters related to the prohibition of torture and cruel, inhuman or degrading treatment or punishment. The report should include information on:

- Training programmes on the above-mentioned subject for persons charged with the various functions enumerated in article 10 of the Convention;
- Information on the training of medical personnel dealing with detainees or asylum-seekers to detect physical and psychological marks of torture and training of judicial and other officers;

- The nature and frequency of the instruction and training;

- Information on any training that ensures appropriate and respectful treatment of women, juveniles, and ethnic, religious or other divers groups, particularly regarding forms of torture that disproportionately affect these groups;

- The effectiveness of the various programmes.

Article 11

20. By virtue of this article and related article 16, States are obliged to keep under review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment. The report should include information on:

- Laws, regulations and instructions concerning the treatment of persons deprived of their liberty;

- Information on measures requiring prompt notification of and access to lawyers, doctors, family members and, in the case of foreign nationals, consular notification;

- The degree to which the following rules and principles are reflected in the domestic law and practice of the State: the Standard Minimum Rules for the Treatment of Prisoners; the Basic Principles for the Treatment of Prisoners; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Code of Conduct for Law Enforcement Officials;

- Any independent bodies or mechanisms established to inspect prisons and other places of detention and to monitor all forms of violence against men and women, including all forms of sexual violence against both men and women and all forms of inter-prisoner violence, including authorization for international monitoring or NGO inspections;

- Information on measures to ensure that all such places are officially recognized and that no incommunicado detention is permitted;

- Mechanisms of review of the conduct of law enforcement personnel in charge of the interrogation and custody of persons held in detention and imprisonment and results of such reviews, along with any qualification or requalification procedures;

- Information on any safeguards for the protection of individuals especially at risk.

Article 12

21. On the basis of this article and related article 16, the State must ensure that its competent authorities proceed to a prompt and impartial investigation when there is reason to believe that under its jurisdiction an act of torture or cruel, inhuman or degrading treatment or punishment has been committed. The report should identify:

- The authorities competent to initiate and carry out the investigation, both at the criminal and disciplinary levels;
- Applicable procedures, including whether there is access to immediate medical examinations and forensic expertise;
- Whether the alleged perpetrator is suspended from his/her functions while the investigation is being conducted and/or prohibited from further contact with the alleged victim;
- Information on the results of cases of prosecution and punishment.

Article 13

22. By virtue of this article and related article 16, States parties must guarantee the right of any individual who alleges that he/she has been subjected to torture or cruel, inhuman or degrading treatment or punishment to complain and to have his/her case promptly and impartially investigated, as well as the protection of the complainant and witnesses against ill-treatment or intimidation. The report should include information on:

- Remedies available to individuals who claim to have been victims of acts of torture or other cruel, inhuman or degrading treatment or punishment;
- Remedies available to the complainant in case the competent authorities refuse to investigate his/her case;
- Mechanisms for the protection of the complainants and the witnesses against any kind of intimidation or ill-treatment;
- Statistical data disaggregated, inter alia, by sex, age, crime and geographical location on the number of complaints of torture and cruel, inhuman or degrading treatment or punishment submitted to the domestic authorities and the results of the investigations. An indication should also be provided of the services to which the persons accused of having committed torture and/or other forms of ill-treatment belong;
- Information on the access of any complainant to independent and impartial judicial remedy, including information on any discriminatory barriers to the equal status of all persons before the law, and any rules or practices preventing harassment or retraumatization of victims;

- Information on any officers within police forces and prosecutorial or other relevant offices specifically trained to handle cases of alleged torture or cruel, inhuman and degrading treatment or violence against women and ethnic, religious or other minorities;

- Information on the effectiveness of any such measures.

Article 14

23. This article deals with the right of victims of torture to redress, fair and adequate compensation and rehabilitation. The report should contain information on:

- The procedures in place for obtaining compensation for victims of torture and their families and whether these procedures are codified or in any way formalized;

- Whether the State is legally responsible for the offender's conduct and, therefore, obliged to compensate the victim;

- Statistical data or, at least, examples of decisions by the competent authorities ordering compensation and indications as to whether such decisions were implemented, including any information about the nature of the torture, the status and identification of the victim and the amount of compensation or other redress provided;

- The rehabilitation programmes that exist in the country for victims of torture;

- Information on any measures other than compensation to restore respect for the dignity of the victim, his/her right to security and the protection of his/her health, to prevent repetitions and to assist in the victim's rehabilitation and reintegration into the community.

Article 15

24. Under this provision the State must ensure that statements made as a result of torture will not be used as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. The report should contain information on:

- Legal provisions concerning the prohibition of using a statement obtained under torture as an element of proof;

- Examples of cases in which such provisions were applied;

- Information on whether derivative evidence is admissible, if applicable in the State party's legal system.

Article 16

25. This article imposes upon States the obligation to prohibit acts of cruel, inhuman or degrading treatment or punishment. The report should contain information on:

- The extent to which acts of cruel, inhuman or degrading treatment or punishment have been outlawed by the State party; information on whether these acts are defined or otherwise dealt with in domestic law;

- Measures which may have been taken by the State party to prevent such acts;

- Living conditions in police detention centres and prisons, including those for women and minors, including whether they are kept separate from the rest of the male/adult population. Issues related to overcrowding, inter-prisoner violence, disciplinary measures against inmates, medical and sanitary conditions, most common illnesses and their treatment in prison, access to food and conditions of detention of minors should, in particular, be addressed.

Annex VIII

DECISIONS OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION

A. Decisions on merits

Communication No. 133/1999

Submitted by: Mr. Enrique Falcon Ríos (represented by counsel, Mr. Istvanffy Stewart)

Alleged victim: Complainant

State party: Canada

Date of complaint: 6 May 1999

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

Meeting on 23 November 2004,

Having concluded its consideration of complaint No. 133/1999, submitted to the Committee against Torture by Mr. Enrique Falcon Ríos under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Enrique Falcon Ríos, a Mexican citizen, born in 1978. On arrival in Canada on 2 April 1997 he applied for refugee status. His application was rejected. He claims that his forced return to Mexico would constitute a violation by Canada of article 3 of the Convention, and that the hearing on his claim for refugee status violated article 16 of the Convention. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the attention of the State party on 18 May 1999. At the same time, acting under rule 108 of its rules of procedure, it requested the State party not to expel the complainant to Mexico while his complaint was being considered.

The facts as submitted by the complainant

2.1 The complainant lived and worked on the farm of his uncle, his father's half-brother, a soldier, in the State of Chiapas. His uncle, who had bought the farm in February 1995, had deserted from the army in December 1996, without telling his family; he had also been accused of having links with the Ejército Zapatista de Liberación Nacional (EZLN) and of treason against the homeland.

2.2 On 29 December 1996, the complainant and his family were taken by soldiers to a military camp for questioning about, in particular, the whereabouts of the complainant's uncle. They were released at 7 a.m. but were ordered not to leave their home. On 15 February 1997 the army returned, soldiers smashed the door and the windows of the house and again took the family to a military camp for further questioning. This time, however, they were mistreated, and the complainant's mother and sister were raped in the presence of the complainant and his father. The soldiers then tortured the father, hitting him on the temple with a pistol butt until he lost consciousness. The complainant's hands were tied behind his back and he was hit in the stomach; a hood was put over his head to induce a feeling of asphyxiation. The soldiers continued to question him about where his uncle was hiding; since the complainant could not reply, they stripped him and cut him near the genitals with a knife; they then tied his testicles and yanked them while continuing to question him. Lastly, they dipped his head in a tub filled with excrement in an attempt to obtain the information they wanted.

2.3 The complainant states that when he and his family returned to the farm they were kept under military surveillance. On 20 March 1997 the soldiers returned; the complainant, his father, his mother and his elder sister were taken to different military camps. The two younger sisters, aged 6 and 9, were left alone in the house. It was the last time that the complainant saw his family. The complainant was again tortured: the soldiers placed a bag over his head and beat him severely, including around the head, thereby causing problems with his sight. They burned his arms to make him sign documents proving he had links with EZLN. The complainant finally signed the documents when the soldiers began to burn his face. They then photographed him, took his fingerprints and falsified an EZLN identity document.

2.4 The complainant states that he lost consciousness after drinking a glass of water containing an unknown substance. When he came to, he had been set free in an unknown location. He claims he was in an armed conflict zone when he regained consciousness.

2.5 Subsequent to these events, the complainant decided to leave his country on 22 March 1997. He arrived in Canada on 2 April 1997 and immediately applied for asylum.

2.6 On 20 March 1998 the Refugee Protection Division of the Immigration and Refugee Board determined that the complainant was not a refugee within the meaning of the Convention relating to the Status of Refugees as defined in the Immigration Act, because his account was not credible. It was particularly critical of the implausible circumstances attending his uncle's desertion and the falsification of an EZLN card, there being no evidence that the movement issues identity cards to its members. On 17 April 1998 the complainant submitted an application for judicial review of the Board's decision. In a decision issued on 30 April 1999, the Federal Court of Canada (First Instance Division) rejected the application for judicial review of the decision by the Refugee Protection Division, as the complainant had been unable to demonstrate any error that would justify intervention by the Court.

The complaint

3.1 The complainant asserts that his rights were grossly violated in Mexico, and considers that should he return to Mexico he would again be tortured, or even executed, by the Mexican Army.

3.2 In support of his allegations of the risk of a violation of article 3 of the Convention, the complainant submits a medical certificate that concludes that "the marks on the patient's body are compatible with the torture that he states he suffered", and a psychological report stating that he "was bruised, weakened by the torture he had undergone and events associated with trauma" and that "without effective support, which implies the acquisition of refugee status", it was to be feared that he "will act on his suicidal impulses".

3.3 Regarding the current situation in Mexico, the complainant stresses that there is total impunity for soldiers and police officers who commit offences against the population. In support of this assertion, he makes reference in particular to a report produced by the International Federation of Human Rights in 1997, which states that "illegal arrests, kidnappings, disappearances, extrajudicial killings, cases of torture, judicial proceedings conducted without any guarantee of individual rights, are the result, on the one hand, of the attribution to the army of ever-greater responsibility in areas relating to public security, and of the emergence, which is tolerated and even encouraged, of paramilitary groups, and, on the other hand, of the failure of the judicial machinery to guarantee and protect the rights of victims and of those subject to prosecution", adding that there is a "blatant process of militarization leading to very serious human rights violations".

3.4 In his letter dated 5 May 1999, the complainant submits that the Federal Court did not apply the criteria appropriate to a fair hearing. He claims he was not heard by an impartial, independent tribunal and was not given a fair hearing. He claims that he was the victim of improper handling, which could not but result in a denial of refugee status.

State party's observations on admissibility and merits

4.1 On 15 January 2003, more than three years after the Committee informed it of the complaint, the State party submitted its observations on the admissibility and merits of the complaint.

4.2 According to the State party, the complainant has not exhausted domestic remedies. He made no request for leave or judicial review to the Federal Court of Canada regarding the refusal to grant a ministerial stay of removal on humanitarian grounds. Had he believed that the decision embodied an error of law or a significant factual error, he could have requested review by the Federal Court of the decision, which he failed to do. The complainant has not established that judicial review of an application for a ministerial stay of removal can be considered one of the exceptions provided for by the Convention (unreasonable delay and absence of effective relief).

4.3 According to the State party, such a judicial review could genuinely improve the complainant's situation. If a judicial review is accepted, the Federal Court sends the file back to the body which took the original decision or to another body for reconsideration with a view to reaching a fresh decision. The review could be conducted without unreasonable delay. The Federal Court also has authority to order the stay of an expulsion order pending consideration of an application for judicial review. The applicant must then demonstrate that the application concerns a serious issue to be settled by the Court, that he would suffer irreparable harm if no stay were granted, and that the balance of arguments lies in his favour. In this case the complainant did not submit an appeal, and has thus not exhausted all the effective remedies available.

4.4 The State party maintains that the procedure provided for by the Convention should not permit the complainant to escape the consequences of his own negligence and his failure to avail himself of available domestic remedies. It emphasizes that, even where a person risks inhuman or degrading treatment in the event of being sent home, he must respect the forms of and deadlines for domestic procedures before making application to international bodies.

4.5 The State party adds that such a person can also submit an application for a pre-removal risk assessment. If the application is granted, the individual may be authorized to remain in Canada.

4.6 The State party asserts that the communication does not meet the minimum requirements for compatibility with article 22 of the Convention. There are no substantial grounds for believing that someone is at risk of torture unless it is established that he or she personally will run such a risk in the State to which he or she will be returned. The Convention requires States parties to protect persons who are exposed to a foreseeable, real and personal risk of torture. The State party cites the decision in *Aemi v. Switzerland*[a] in which the Committee established that expulsion of the complainant would have the foreseeable consequence of exposing him to a real and personal risk of torture. The State party also refers to the Committee's general comment No. 1 on the implementation of article 3 of the Convention.[b]

4.7 As for the human rights situation in Mexico, the State party points out that the situation has considerably improved since the complainant left, and in this connection refers to a number of reports of 2001 (Working Group on Arbitrary Detention, Special Rapporteur on the question of torture, Special Rapporteur on extrajudicial, summary or arbitrary executions). It adds that Mexico is a party to the Convention against Torture and the International Covenant on Civil and Political Rights and its first Optional Protocol, besides the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture, and the Inter-American Convention on Forced Disappearance of Persons.

4.8 The State party refers to the decision by the Refugee Protection Division, which, after having heard the complainant, concluded that his testimony contained significant gaps. It remarks that the complainant was vague about his uncle's rank in the army (which appears to have undermined his credibility), the unlikely circumstances of his uncle's desertion, the submission of a photograph supposedly taken following an assault which shows no injury, and the implausibility of a false EZLN card being made and given to the complainant, as it has never been established that the group issues identity cards to its members. According to the State party, if the army had forced the complainant to sign the card to prove his membership of EZLN, it would have kept it as evidence. The Federal Court considered all the findings of the Refugee Protection Division and found no reason to intervene.

4.9 The State party points out that the complainant was not a political activist when he lived in Mexico. It notes that the Refugee Protection Division was better placed than the Committee to draw conclusions as to the complainant's credibility.

4.10 According to the State party, the communication does not disclose any compelling circumstance substantiating the possibility of a real and foreseeable personal risk of torture, and is therefore inadmissible as incompatible with article 22 of the Convention.

4.11 As for the alleged violation of article 16, the State party asserts that the complainant has utterly failed to establish that the hearing before the Refugee Protection Division constituted such a violation. It avers that the allegations of bias on the part of members of the Division, based on the questions that they put to the complainant, are without foundation. The State party concludes that the Committee should accordingly find the communication inadmissible.

4.12 The State party recalls the Federal Court's conclusion that the complainant had not demonstrated that the decision by the Refugee Protection Division was based on an error of fact, or on an arbitrary finding, or that it failed to take account of the available evidence. It notes that the Federal Court affirmed that the complainant had not demonstrated bias on the part of members of the panel. It adds that the standard set by article 3 of the Convention was applied by the national authorities in assessing the risk to the complainant of deporting him, and that the Committee should not rely instead on its own conclusions.

4.13 The State party points out that facts and evidence are for national authorities to assess, and that the Committee should not re-evaluate findings of fact or review the application of national legislation. It invokes the case law of the Human Rights Committee, which is on record as saying that it is not that Committee's place to question the evaluation of evidence by the domestic courts unless the evaluation amounted to a denial of justice,[c] a precedent that should also be accepted by the Committee against Torture.

4.14 The State party concludes that the communication is without foundation, and that the complainant has not demonstrated a violation of articles 3 and 16 of the Convention.

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

5.1 In observations dated 9 November 2003, the complainant maintains that he did avail himself of the option of requesting a judicial review of the decision denying him refugee status, and that that was the final remedy. The principal remedy available to him was judicial review of the refusal to grant him refugee status in March 1998.

5.2 The complainant observes that his case was cited in a study prepared by a multidisciplinary group on shortcomings in the Canadian system of public hearings for refugees in Canada, in October 2000. The hearing at which he appeared was apparently a travesty, and his case was reportedly perceived as an example of abuse in the conduct of oral proceedings.

5.3 In response to the State party's argument concerning the possibility of judicial review of the decision to deny him relief on humanitarian grounds, the complainant asserts that such a remedy would be based on the same facts as his application for refugee status. He emphasizes the futility, in his case, of seeking such a remedy when the Federal Court has already taken a position on the merits of the case. It is inconceivable that such an appeal would have provided effective relief. And the general rule of exhausting domestic remedies requires only that remedies offering effective relief be exhausted.

5.4 The complainant notes that the new procedure, termed pre-removal risk assessment by the Government of Canada, was not in existence prior to mid-June 2002 and was thus not available to him. He claims that this procedure does not respect Canada's obligations under international law or the Canadian Charter of Rights and Freedoms, owing to the absence of an independent decision-making mechanism and a lack of impartiality.

5.5 The complainant continues to assert that he was tortured by members of the Mexican Army in 1996 and 1997, shortly before he submitted his communication to the Committee. In support of his application he provided medical and psychological reports as well as photographs showing that he had been tortured. He asserts that there are no inconsistencies in his account, and that there is ample proof that a great many Mexicans in the south-east of Mexico have been involved in similar incidents.

5.6 The complainant contests the State party's argument that the human rights situation in Mexico has improved since he left the country. He maintains that there are only general statements of intent by the Mexican authorities, and that minimal progress has been made towards eradicating torture or ending impunity for those committing it.

5.7 The complainant defends the credibility of his claims about his uncle's desertion and disappearance. He maintains that persecution of members of Zapatista groups and of groups supporting them takes place throughout the whole country, contrary to the assertions by the State party. He claims to have been tortured because of his supposed sympathy for the Zapatistas. He bears scars as a result of torture, and, if deported to Mexico, would be in imminent danger of detention or torture. He points out that the conflict in Chiapas is not over. He adds that the complainant of the psychological report on his mental state is a member of the support network in Montreal for victims of violence and a recognized expert in such cases.

5.8 The complainant maintains that the Canadian asylum procedure has been sharply criticized by the Canadian bar and by the Canadian Council for Refugees. He asserts that the procedure militates against the right to a hearing with proper safeguards and results in abuses comparable to those committed in his own case.

5.9 The complainant contests the State party's argument that questioning by his counsel in the examination was not restricted. He reminds the Committee of the restrictions on the questions that his counsel was authorized to raise: counsel was not allowed to ask questions about torture or the context in which it occurred.

Issues and proceedings before the Committee as to admissibility

6. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a) and (b), of the Convention, that the same matter has not been and is not being considered under another procedure of international investigation or settlement, and that the complainant has exhausted all domestic remedies; this rule does not, however, apply if it is established that application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief to the victim.

7.1 The Committee takes note of the complainant's allegations to the effect that the Federal Court, in ruling on his case, did not apply the criteria appropriate to a fair hearing and that the internal procedure as conducted violated article 16 of the Convention. In the Committee's view, however, the complainant has not successfully demonstrated that the incidents on which his complaint is based amount to the cruel, inhuman or degrading treatment referred to in article 16 of the Convention. The complaint being insufficiently substantiated, the Committee finds this part of the communication inadmissible.

7.2 As regards the arguments relating to article 3 of the Convention, the Committee takes note of the State party's comments to the effect that internal remedies had not been exhausted since the complainant did not apply to the Federal Court for approval or judicial review of the refusal to allow him humanitarian status.

7.3 The Committee observes that at its twenty-fifth session, in its concluding observations on the report of the State party,[d] it considered the question of requests for ministerial stays on expulsion on humanitarian grounds. It expressed particular concern at the apparent lack of independence of the civil servants deciding on such appeals, and at the possibility that a person could be expelled while an application for review was under way. It concluded that those considerations could detract from effective protection of the rights covered by article 3, paragraph 1, of the Convention. It observed that although the right to assistance on humanitarian grounds is a remedy under the law, such assistance is granted by a minister on the basis of purely humanitarian criteria and not on a legal basis, and is thus ex gratia in nature. The Committee has also observed that when judicial review is granted, the Federal Court returns the file to the body which took the original decision or to another decision-making body and does not itself conduct a review of the case or hand down any decision. The decision depends, rather, on the discretionary authority of a minister and thus of the executive. The Committee adds that since an appeal on humanitarian grounds is not a remedy that must be exhausted to satisfy the requirement for exhaustion of domestic remedies, the question of an appeal against such a decision does not arise. The Committee thus concludes that all the necessary conditions have been met, and that article 22, paragraph 5 (b), does not prevent it from considering the communication.

7.4 The Committee also recalls its case law[e] to the effect that the principle of exhaustion of domestic remedies requires the petitioner to use remedies that are directly related to the risk of torture in the country to which he would be sent, not those that might allow him to remain where he is.

7.5 The Committee also notes the State party's claim that the complainant could also have requested a review of the risks of return to his country before being expelled, and if the application had been granted he might have been authorized to remain in Canada. On this point the Committee observes, in the light of the material on file, that if, in the related proceedings, an individual resubmitted an application for asylum that had already been evaluated by the Refugee Protection Division, as in the present case, only fresh evidence would be taken into consideration, otherwise the application would be rejected. In its view, therefore, this procedure would not afford the complainant an effective remedy; the Committee has consistently held that only effective remedies need to be exhausted.

7.6 In the light of the foregoing, the Committee finds the communication admissible insofar as it relates to a violation of article 3, and thus proceeds to discuss the case on its merits.

Issues and proceedings before the Committee as to the merits

8.1 As provided in article 3, paragraph 1, the Committee must decide whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if he were returned to Mexico. In order to take this decision, the Committee must take into account all relevant considerations, in accordance with article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However,

the purpose of this analysis is to determine whether the person concerned would personally be in danger of being subjected to torture in the country to which he would be returned. It follows that the existence in a country of a consistent pattern of gross, flagrant or mass violations of human rights is not in itself a sufficient reason for establishing that a particular person would be in danger of being subjected to torture if he were returned to that country. There must be other reasons to suggest that the person concerned would personally be in danger. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person cannot be subjected to torture in his own particular situation.

8.2 The Committee draws attention to its general comment No. 1 on the implementation of article 3, which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (para. 6).

8.3 The Committee recalls the report on its visit to Mexico from 23 August to 12 September 2001 (CAT/C/75), and stresses that recent reports on the human rights situation in Mexico have concluded that although efforts have been made to eliminate torture, many cases of torture are still reported. However, in line with the reasoning previously advanced, although it might be possible to assert that there still exists in Mexico a pattern of human rights violations, that in itself would not constitute sufficient cause for finding that the complainant was likely to be subjected to torture on his return to Mexico; additional reasons must exist indicating that the complainant would be personally at risk.

8.4 The Committee notes that the State party has at no time challenged the authenticity of the medical and psychological reports on the complainant's case. In the Committee's view, those reports lend considerable weight to his allegation that he was tortured during the interrogations he underwent in a military camp. According to the medical report, Mr. Falcon Ríos bore numerous scars from cigarette burns on various parts of his body, and scars from knife wounds to both legs. The conclusion of the reporting physician was that "the marks on the patient's body are compatible with the torture that he states he suffered".

8.5 The Committee notes the State party's point that the Refugee Protection Division concluded that the complainant's testimony contained significant gaps. However, it also notes that, according to the psychologist's report, the complainant displayed "great psychological vulnerability" as a result of the torture to which he had allegedly been subjected. The same report states that Mr. Falcon Ríos was "very destabilized by the current situation, which presents concurrent difficulties", and that he was "bruised, weakened by the torture he had undergone and events associated with trauma". In the Committee's view, the vagueness referred to by the State party can be seen as a result of the psychological vulnerability of the complainant mentioned in the report; moreover, the vagueness is not so significant as to lead to the conclusion that the complainant lacks credibility. In considering the foregoing and formulating its opinion, the Committee has had due regard for its established practice, according to which it is not the Committee's place to question the evaluation of evidence by the domestic courts unless the evaluation amounts to a denial of justice.

8.6 The Committee also takes note of, and attaches due weight to, the evidence and arguments put forward by the complainant concerning his personal risk of being subjected to torture: the fact that he has been arrested and tortured in the past because he was suspected of having links with EZLN; the scars he continues to bear as a result of acts of torture which he suffered; the fact that the conflict between the Government of Mexico and the Zapatista movement is not yet over and that some members of his family are still missing. In the light of the foregoing, and after due deliberation, the Committee considers that there is a risk of the complainant being arrested and tortured again on returning to Mexico.

9. In the light of the foregoing, the Committee concludes that removal of the complainant to Mexico would constitute a violation by the State party of article 3 of the Convention.

10. In accordance with rule 111, paragraph 5, of its rules of procedure, the Committee requests the State party to inform it, within 90 days, of the steps it has taken in response to the present views.

Notes

[a] Communication No. 34/1995, decision adopted on 9 May 1997.

[b] General comment No. 1 (1996) of the Committee against Torture on the implementation of article 3 of the Convention in the context of article 22.

[c] Communication No. 584/1994, decision adopted on 22 July 1996, para. 5.3.

[d] See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 44* (A/56/44), para. 58 (f).

[e] Communication No. 170/2000, *Anup Roy v. Sweden*, decision adopted on 23 November 2001, para. 7.1.

Communication No. 171/2000

Submitted by:	Mr. Jovica Dimitrov, represented by the Humanitarian Law Center and the European Roma Rights Center)
Alleged victims:	The complainant
State party:	Serbia and Montenegro
Date of the complaint:	29 August 2000 (initial submission)

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

Meeting on 3 May 2005,

Having concluded its consideration of complaint No. 171/2000, submitted to the Committee against Torture by Mr. Jovica Dimitrov under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Jovica Dimitrov, a Serbian citizen of Roma origin, residing in Serbia and Montenegro. He claims to be a victim of violations of article 2, paragraph 1, read in connection with article 1, article 16, paragraph 1; and articles 12, 13 and 14 taken alone and/or read in connection with article 16, paragraph 1, by Serbia and Montenegro, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by the Humanitarian Law Center (HLC), based in Belgrade, and by the European Roma Rights Center (ERRC), based in Budapest, both non-governmental organizations.

The facts as presented by the complainant

2.1 In the early hours of 5 February 1996, the complainant was arrested at his home in Novi Sad, in the Serbian Province of Vojvodina, and taken to the police station in Kraljevica Marka Street. The arresting officer presented no arrest warrant nor did he inform the complainant why he was being taken into custody. The complainant himself made no attempt to resist arrest. During the ensuing interrogation, the arresting officer struck the complainant repeatedly with a baseball bat and a steel cable, and kicked and punched him all over his body. The complainant lost consciousness on several occasions. Apart from brief breaks, the ill-treatment lasted from 6.30 a.m. to 7.30 p.m., leaving the complainant with numerous injuries on his buttocks and left shoulder. After 7.30 p.m., the complainant was released, again without being shown an arrest warrant or a release order, nor was he told the reason for his arrest and detention. According to the complainant, this was in contravention of articles 192 (3), 195 and 196 (3) of the Criminal Procedure Code (CPC), which deals with police powers of arrest and detention.

2.2 Following his release, the complainant returned home and spent the next 10 days in bed, being nursed by his sister. On 9 February 1996, he went to see a doctor who examined him and ordered continued bed rest. He prepared a report describing his injuries as follows: "Left upper arm: livid-red and brown discoloration 10 x 8 cm with slightly raised red edges; right shoulder blade and shoulder: livid-red discolorations in the form of stripes 3 x 11 cm, and 4 x 6 cm on the shoulders; gluteal part of the body: blue-livid discolorations of the size of a man's palm on both sides; outside of the left mid-thigh: distinct red stripe 3x5 cm; inside of right knee: light blue swelling 5x5 cm; area around ankle and soles (both legs): slight, light blue swelling." The conclusions and opinion was that the "patient should be referred to a neurologist and a laboratory for tests". The complainant also provides a statement from his sister, who states that he was arrested at 6.30 in the morning on 5 February, held in detention until 7.30 p.m., and that upon return his face was swollen, and he had bruises on his shoulders, back, legs and over his kidneys. There was clotted blood on his legs and his backside was dark blue all over. He had to stay in bed for 10 days and put on compresses, and take pills for the pain. He told her that he had been beaten with a steel wire and baseball bats and had fainted from the beating.

2.3 Fearing possible reprisals by police and not fully aware of his legal rights, the complainant did not file a criminal complaint with the Novi Sad Municipal Public Prosecutor's Office until 7 November 1996. In the complaint he alleged that an unidentified police officer had committed the crime of extracting a statement by force in violation of 65 of the Serbian Criminal Code (SCC). According to the complainant, he had been arrested several times prior to the incident in question and had been interrogated about several unrelated criminal offences. The complainant considers that the ill-treatment to which he was subjected was intended to obtain his confession for one or more of these crimes.

2.4 The complaint was immediately registered by the Public Prosecutor's Office. But only on 17 September 1999 (more than 3½ years after the incident and 34 months since the complainant had filed the criminal complaint) did the Public Prosecutor's Office request the investigating judge of the Novi Sad Municipal Court to undertake preliminary "investigatory actions". Such an investigation precedes the possible institution of formal judicial investigations, for which the identity of the suspect must be ascertained. The investigating judge of the Novi Sad Municipal Court accepted the Public Prosecutor's request and opened a case file. Since that date, the prosecuting authorities have taken no concrete steps with a view to identifying the police officer concerned. According to the complainant, if the intent of the investigating judge was really to identify the police officer in question, he could have heard other police officers present at the police station at the time of the abuse, and especially the on-duty shift commander, who must have known the names of all officers working that particular shift. Finally, the complainant indicated in his criminal complaint that during his detention in the police station he was taken to the Homicide Division, which in and of itself could have served as one of the starting points for an official investigation into the incident at issue. No investigation has been undertaken.

2.5 According to the complainant, under article 153 (1) of CPC, if the Public Prosecutor finds on the basis of the evidence that there is reasonable suspicion that a certain person has committed a criminal offence, he should request the investigating judge to institute a formal judicial investigation further to articles 157 and 158 of CPC. If he decides that there is no bases for the institution of a formal judicial investigation, he should so inform the complainant, who can then exercise his prerogative to take over the prosecution of the case on his own behalf - i.e. in his capacity of a "private prosecutor". As the Public Prosecutor failed formally to dismiss

his complaint, the complainant concludes that he was denied the right personally to take over the prosecution of the case. As CPC sets no time limit in which the Public Prosecutor must decide whether to request a formal judicial investigation into the incident, this legal provision is open to abuse.

The complaint

3.1 The complainant claims that he has exhausted all available criminal domestic remedies by having filed a complaint with the Public Prosecutor's Office. In the complainant's view, civil/administrative remedies would not provide sufficient redress in his case.[a]

3.2 The complainant submits that the allegations of violations of the Convention should be interpreted against a backdrop of systematic police brutality to which the Roma and others in the State party are subjected, as well as the generally poor human rights situation in the State party.[b] He claims a violation of article 2, paragraph 1, read in connection with articles 1, and 16, paragraph 1, for having been subjected to ill-treatment for the purposes of obtaining a confession, or otherwise intimidating or punishing him.[c]

3.3 He claims a violation of article 12 alone and/or read in connection with 16, paragraph 1, as the State party's authorities failed to conduct an official investigation into the incident that gave rise to this complaint for more than 3½ years, and almost 34 months after the complainant filed a criminal complaint with the Public Prosecutor's Office. To date, the officer remains unidentified and, consequently, the institution of formal judicial investigations is impossible. Since the Public Prosecutor's Office has failed formally to dismiss the complainant's criminal complaint, he cannot personally take over the prosecution of the case in the capacity of a "private prosecutor". The complainant also alleges that the public prosecutors in Serbia and Montenegro seldom institute criminal proceedings against police officers accused of misconduct and delay the dismissal of complaints, sometimes for years, thereby denying the injured party the right to prosecute his/her own case.

3.4 The complainant claims a violation of articles 13 alone or read in connection with article 16 of the Convention as, despite having exhausted all criminal domestic remedies, he has received no redress for the violation of his rights. To date, the State party's authorities have not even identified the police officer concerned.[d]

3.5 Article 14 is said to have been violated since the complainant was denied a criminal remedy and has thus been barred from obtaining fair and adequate compensation in a civil lawsuit. The complainant explains that under domestic law, there are two different procedures through which compensation for criminal offences may be pursued: by criminal proceedings under article 103 of CPC following criminal proceedings, and/or by civil action for damages under articles 154 and 200 of the Law on Obligations. The first avenue was not an option, as no criminal proceedings were instituted, and the second was not availed of by the complainant, as it is the practice of the State party's courts to suspend civil proceedings for damages arising from criminal offences until prior completion of the respective criminal proceedings. Even if the complainant had attempted to avail himself of this recourse, he would have been prevented from pursuing it as, under articles 186 and 106 of the Civil Procedure Code he would have to identify the name of the respondent. Since the complainant to date remains unaware of the name of the officer against whom he is claiming violations of his rights, the institution of a civil action would have been impossible.

The State party's submission on admissibility and merits and the complainant's comments thereon

4.1 On 14 January 2003, the State party provided its submission on the admissibility and merits of the complaint. It contests the complainant's allegations and submits that police officers of the Secretariat of Internal Affairs in Novi Sad attempted three times to deliver a request for an interview to the complainant to discuss the contents of his complaint. As the complainant was never at home at the time of delivery, these requests were delivered to the complainant's wife. The complainant failed to contact the Secretariat of Internal Affairs.

4.2 The State party submits that the Municipal State Prosecutor's Office in Novi Sad received a report from the Secretariat of Internal Affairs of Novi Sad on 2 October 1997, which confirmed that after checking its files, it was established that the complainant had not been brought to nor detained in any of its premises. The Secretariat of Internal Affairs provided the same information on 4 February 1999, at the request of the Municipal State Prosecutor's Office of 23 December 1998.

4.3 Finally, the State party submits that the complainant and two other persons had perpetrated 38 offences in the Czech Republic, for which they were sentenced to 10 years of imprisonment. The Municipal Court of Novi Sad ordered that the complainant's name be placed on a list of wanted persons, to serve prison sentence No. I.K. 265/97 of 5 May 1998.[e] It submits that, on 25 September 2002, the complainant was still in the Czech Republic.[f]

5.1 On 25 November 2003, the complainant commented on the State party's submission and argues that it suggests that as a convicted criminal he is not entitled to complain against police ill-treatment, and that given the circumstances, the investigating authorities did everything to investigate the incident at issue and provide redress. He recalls that the authorities did not interview anyone connected with the incident and ignored the medical certificate documenting the injuries sustained by the complainant. It did not interview the complainant's sister, who had nursed him after the incident, the doctor who examined him, the police officers on duty the day the incident occurred, or the complainant's lawyers. Neither did they request the Czech authorities through inter-State legal assistance procedure to interview the complainant.

5.2 He submits that apart from the State party's failure to investigate the incident, it has failed to provide the Committee with a plausible alternative explanation as to how the victim's injuries could have been inflicted other than through acts of its agents. In the complainant's view, by failing seriously to contest the facts and/or the legal arguments put forward, the State party has in effect expressed its tacit, yet clear, acceptance of both.[g]

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention that the same matter has not been, and is not being examined under another procedure of international investigation or settlement. With respect to the exhaustion of domestic remedies, the Committee took note of the information provided by the complainant about the criminal complaint which he

filed with the public prosecutor. The Committee considers that the insurmountable procedural impediments faced by the complainant as a result of the inaction of the competent authorities rendered the application of a remedy that may bring effective relief to the complainant highly unlikely. In the absence of pertinent information from the State party, the Committee concludes that in any event, domestic proceedings, if any, have been unreasonably prolonged. With reference to article 22, paragraph 4, of the Convention and rule 107 of the Committee's rules of procedure, the Committee finds no other obstacle to the admissibility of the complaint. Accordingly, it declares the complaint admissible and proceeds to its examination on the merits.

Consideration on the merits

7.1 The complainant alleges violations by the State party of article 2, paragraph 1, in connection with article 1, and of article 16, paragraph 1, of the Convention. The Committee notes the complainant's description of the treatment to which he was subjected during his detention, which can be characterized as severe pain or suffering intentionally inflicted by public officials in the context of the investigation of a crime, as well as his sister's statement and the medical report. It also notes the State party's failure to adequately address this claim and respond to the complainant's allegations. In the circumstances, the Committee concludes that due weight must be given to the complainant's allegations and that the facts, as submitted, constitute torture within the meaning of article 1 of the Convention.

7.2 Concerning the alleged violation of articles 12 and 13 of the Convention, the Committee notes that the Public Prosecutor did not request the judge to initiate a preliminary investigation until 34 months after the criminal complaint was filed on 7 November 1996, and that no further action was taken by the State party to investigate the complainant's allegations. The State party has not contested this claim. The Committee also notes that the failure to inform the complainant of the results of any investigation effectively prevented him from pursuing a "private prosecution" of his case before a judge. In these circumstances, the Committee considers that the State party has failed to comply with its obligation, under article 12 of the Convention, to carry out a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. In the same vein, it also disregarded its obligation, under article 13, to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities.

7.3 As for the alleged violation of article 14 of the Convention, the Committee notes the complainant's allegations that the absence of criminal proceedings deprived him of the possibility of filing a civil suit for compensation. In view of the fact that the State party has not contested this allegation, and given the passage of time since the complainant initiated legal proceedings at the domestic level, the Committee concludes that the State party has also violated its obligations under article 14 of the Convention in the present case.

8. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 2, paragraph 1, in connection with articles 1, 12, 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. The Committee urges the State party to conduct a proper investigation into the facts alleged by the complainant and, 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 Views expressed above.

Notes

[a] He refers to international jurisprudence to support this claim.

[b] In this context, the complainant provides reports from various national and international non-governmental organizations and the concluding observations of CAT of 1998. See *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 44* (A/54/44), paras. 35-52.

[c] To support his argument that the treatment he received was torture and/or cruel, inhuman and/or degrading treatment or punishment, he refers to the United Nations Code of Conduct for Law Enforcement Officials, the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Council of Europe Declaration on the Police and the European Court of Human Rights.

[d] The complainant refers to communication No. 59/1996, *Encarnacio Blanco Abad v. Spain,* Views adopted on 14 May 1998.

[e] No further information is provided on this conviction.

[f] It does not state for how long the complainant has been in the Czech Republic.

[g] In this regard, he refers to decisions of the Human Rights Committee, in particular communication No. 88/1981, *Gustavo Raul Larrosa Bequio v. Uruguay*, Views adopted on 29 March 1983, para. 10.1.

Communication No. 194/2001

Submitted by: I.S.D. (represented by counsel, Mr. Didier Rouget)

Alleged victim: The complainant

State party: France

Date of submission: 8 August 2001

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

Meeting on 3 May 2005,

Having concluded its consideration of communication No. 194/2001, submitted by Ms. I.S.D. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is I.S.D., born on 6 November 1972, a Basque of Spanish nationality who is currently being held in the Ávila II prison in Spain. She is represented by counsel. The complainant approached the Committee on 8 August 2001 stating that she had been a victim of violations by France of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by virtue of her expulsion to Spain.

The facts as submitted by the complainant

2.1 The complainant states that in 1997, fearing arrest and torture by the Spanish security forces, she took refuge in France. In November 1997, she was arrested by the French police, who brought her before the examining magistrate in the Paris Procurator's Anti-Terrorist Section. She was later charged with possession of false administrative documents and participation in a criminal association and was immediately imprisoned.

2.2 On 12 February 1999, the complainant was sentenced to three years' imprisonment, one of them suspended, for the above-mentioned offences. She appealed to the Paris Court of Appeal.

2.3 On 31 August 1999, the Minister of the Interior issued an order for her expulsion from French territory as a matter of absolute urgency, which was not served on her immediately.

2.4 On 12 October 1999, the Paris Court of Appeal sentenced her without the right to appeal to three years' imprisonment, one of them suspended, and five years' ban on entry into France, in respect of the charges against her.

2.5 The complainant was due to be released on 28 October 1999. She says that, fearing torture by the Spanish security forces and in order to prevent her expulsion to Spain, she began a hunger strike on 28 September 1999. She states that, as a result of her very poor state of health following her long hunger strike, she weighed only 39 kg and was therefore taken to the Fresnes prison hospital.

2.6 At 6 a.m. on 28 October 1999, the day of the complainant's release, the French police served her with the expulsion order issued on 31 August 1999 by the Minister of the Interior, as well as a second decision taken on 27 October 1999 by the Prefect of Val de Marne, specifying Spain as the country of destination. The complainant was immediately taken in an ambulance by the French police from Fresnes prison to the Franco-Spanish border post of La Junquera for expulsion to Spain, and then taken to the Bellvitge hospital in Barcelona.

2.7 The complainant alleges that she was arrested by the Spanish Civil Guard at her home in Hernani, Gipúzcoa, on 30 March 2001 and that on the following day, while being held in custody, she was urgently transferred to the San Carlos hospital in Madrid, where she remained until 7 p.m., because of torture inflicted on her: beatings, *la bolsa*,[a] touching and attachment of electrodes to her body. She adds that she was subjected to 16 hours of questioning and continuous violence, and held in custody without contact with her lawyer or her family for more than five days before being brought before a judge.

2.8 The complainant alleges that on the same day, 31 March 2001, in the presence of an examining magistrate and a court-appointed lawyer, she was obliged to make a statement which the Civil Guards had forced her to learn by heart, by threatening further torture.

2.9 The complainant points out that on 4 April 2001, before the National High Court, she refused to enter a plea and complained of the torture she had suffered. An order to imprison her then arrived, and she was taken to the Soto del Real prison. Following her arrest, she was accused of participating in several acts of violence.

2.10 As far as the requirement of exhausting domestic remedies in France is concerned, the complainant states that she was unable to seek an effective remedy in the French courts against the expulsion order of 31 August 1999 or the decision of 27 October 1999, since they were served on her on 28 October 1999, the day of her release. She states that she had been cut off from all contact with her counsel, and that she had been immediately taken to the border post of La Junquera for expulsion to Spain and was therefore unable to seek an effective remedy against measures that had already been carried out. However, her counsel did lodge an appeal a posteriori, which was submitted on 23 December 1999 and received by the court on 27 December 1999, and is now pending before the administrative court, which has not yet issued its judgement.

2.11 The complainant states that the same matter has not been submitted under any other procedure of international investigation or settlement.

The complaint

3.1 According to the complainant, France did not comply with its obligations under the Convention, since she was expelled to Spain although there were substantial grounds for believing that she would be in danger of being subjected to torture in Spain. She states, first, that

she had taken refuge in France in 1997 for fear of torture in Spain, and, secondly, that she had been found guilty by the French authorities of being an alleged militant of the secessionist organization ETA and that, despite the serious accusations made against her, no request for her extradition had been made by the Spanish authorities. She adds that her expulsion to Spain meant that she could enjoy no protection from the courts.

3.2 The complainant states that she was the subject of an "extradition in disguise", since France was well aware of the risks she would face on Spanish soil, especially as attention had been drawn to those risks by certain public figures and international bodies, as well as several non-governmental organizations.

3.3 The complainant alleges that France infringed article 3, paragraph 2, of the Convention, since the practice of torture persists in Spain, and a State party to the Convention must bear such circumstances in mind when taking a decision regarding expulsion.

State party's observations on admissibility

4.1 In a reply dated 6 March 2002, the State party disputes the admissibility of the complaint on the grounds that domestic remedies have not been exhausted. It considers that the appeal against the expulsion order is still pending before the Paris administrative court, and that the complainant failed to lodge an appeal seeking the annulment of the order specifying Spain as the country of destination. Such an appeal would have enabled the competent administrative court to check whether the decision was in conformity with France's international commitments, in particular article 3 of the Convention.

4.2 The State party notes that such an appeal could have been lodged as soon as the decision had been notified; the decision contained an indication of the appeal procedure and deadlines. Moreover, the appeal could have been accompanied by an application for a stay of execution and a request for the temporary suspension of the enforcement of the decision under article L.10 of the Code of Administrative Courts and Administrative Courts of Appeal, which was in force at that time.

4.3 The State party adds that although, in the decision of 9 November 1999 in relation to *Josu Arkauz Arana v. France*,[b] the Committee concluded that the complaint was admissible, in view of the fact that "an appeal against the … deportation order issued in respect of the complainant … would not have been effective or even possible, since it would not have had a suspensive effect and the deportation measure was enforced immediately following notification thereof, leaving the person concerned no time to seek a remedy [, and] … the Committee [against Torture] therefore decided that the communication was admissible", the State party nevertheless invites the Committee to re-examine its position in the light of the following considerations. The possibility of automatic enforcement of expulsion measures on grounds of public order is allowed for under article 26 bis of the ordinance of 2 November 1945. It addresses the need to deport effectively and promptly aliens whose presence in France constitutes a threat to public order, insofar as allowing them to remain at liberty in France could not but lead to a resumption of their activities endangering public order. However, French law allows judges of administrative courts discretion to order a stay of execution of deportation measures or the temporary suspension of their application.

4.4 The State party also notes that the Act of 30 June 2000, which entered into force on 1 January 2001, enhanced the powers of interim relief judges by providing, in particular, for the stay of measures infringing on a fundamental freedom, the judge being required to rule within 48 hours from the lodging of the application.

The complainant's comments on the State party's observations

5.1 In her comments on the State party's reply, the complainant recalls that with regard to domestic remedies, it was only at 6 a.m. on 28 October 1999 that the authorities notified her of the content of the expulsion order issued on 31 August 1999 by the Minister of the Interior. The French authorities appear to have deliberately kept her in ignorance of the expulsion order issued against her two months previously. At the same time, the police notified her of the decision taken by the Prefect of Val de Marne to specify Spain as the country of destination.

5.2 The complainant adds that she had been held in Fresnes prison, cut off from any contact with her family and her counsel, and was absolutely unable to warn them of her imminent expulsion. She was thus materially prevented by the French authorities from lodging an appeal against the expulsion order and the Prefect's decision. Similarly, it was materially impossible for her, at 6 a.m., to apply to an administrative court for a stay of execution or the temporary suspension of these two decisions. In addition, in that regard, the Government of France refers to the Act of 30 June 2000, which was not in force at the time of the events.

5.3 The complainant states that domestic remedies cannot be considered to be effective and available, and that such remedies cannot give satisfaction to an individual who is a victim of a violation of article 3 of the Convention, since they cannot prevent the expulsion of the person concerned to a country where he or she faces a risk of torture. The complainant notes that, under article 22, paragraph 5 (b), of the Convention, the rule of the exhaustion of domestic remedies does not apply. She adds that the application of domestic remedies is unreasonably prolonged, whereas judicial decisions are enforced immediately after the person concerned is notified of them.

5.4 The complainant points out in that regard that her complaint displays great similarities with the *Arana* case. In this case too, domestic remedies cannot be regarded as effective and available since such remedies cannot give satisfaction to an individual who is the victim of a violation of article 3 of the Convention, as they cannot prevent the expulsion of the person concerned to a country where he or she faces the risk of torture. Hence, she was unable to seek an effective remedy before the French courts against measures which had already been enforced, or to apply to the judge of an administrative court for a stay of execution or for suspension.

5.5 Lastly, the complainant maintains that in her case the rule of the exhaustion of domestic remedies does not apply since the application of domestic remedies is unreasonably prolonged, whereas judicial decisions are enforced immediately after the person concerned is notified of them.

The Committee's decision on admissibility

6.1 At its twenty-ninth session the Committee considered the question of the admissibility of the complaint and ascertained that the same matter had not been and was not being examined under another procedure of international investigation or settlement. Concerning the question of

whether domestic remedies had been exhausted, the Committee noted that it had been impossible for the complainant to seek an effective remedy against the expulsion order and the decision specifying Spain as the country of destination, as there had been no time to act between the serving of the orders and the enforcement of the expulsion. The Committee considered that in the present case, the criterion followed in the *Arkauz Arana* case applied, since an appeal against the ministerial deportation order issued in respect of the complainant on 31 August 1999 but served on the very day of her expulsion, at the same time as the order indicating the country of destination, would not have been effective or even possible, since the deportation measure was enforced immediately following notification thereof, leaving the person concerned no time to seek a remedy. The Committee therefore found that article 22, paragraph 5 (b), did not preclude it from declaring the communication admissible.

6.2 Accordingly, the Committee against Torture decided on 20 November 2002 that the communication was admissible.

State party's observations on the merits

7.1 The State party, in its observations of 22 October 2003, notes that in accordance with the decision on admissibility in the *Arana* case, the issue before the Committee in the present case is not whether the complainant was actually subjected to acts in breach of article 3 in March 2001 but whether, on the date of the enforcement of the removal measure, the French authorities could have considered that she would face real risks in the event of her return to Spain. But it was not possible to reach that conclusion on the basis of examination of her situation.

7.2 The State party adds that there is no reason to rule out sending members of ETA back to Spain as a matter of principle. There is no "consistent pattern of gross, flagrant or mass violations of human rights" within the meaning of article 3, paragraph 2, of the Convention in Spain. Spain conducts a policy of prevention and punishment of terrorist actions carried out by ETA, as is perfectly legitimate, provided that the measures taken in that regard comply with fundamental guarantees. The State party recalls that Spain is a State governed by the rule of law that has entered into international commitments relating to human rights, and respect for individual freedoms is ensured, inter alia, by the independence given to the judicial authorities. The State party further refers to a decision of 12 June 1998 handed down by the European Commission on Human Rights in a case concerning France, in which the Commission ruled that the mere fact of membership of ETA offered insufficient grounds for considering that, if sent back to Spain, the person concerned faced a serious risk of being subjected to treatment contrary to article 3 of the Convention.

7.3 The State party points out that no aspect of the consideration of the individual situation of the complainant led it to believe that she would be exposed to serious risks of torture or ill-treatment within the meaning of article 3 of the Convention if she were sent back to Spain. Moreover, the State party notes that the complainant did not apply to the French Office for the Protection of Refugees and Stateless Persons for refugee status or for the issue of a residence permit on grounds of territorial asylum. Since the complainant did not take those steps, she did not indicate the personal risks to which she now claims to have been exposed. Similarly, she did not during her detention take any steps to seek admission to another country, although she was aware of the fact that she had been banned from French territory under a judicial decision and that on leaving prison she would be liable to be sent back to Spain. The complainant was not the subject of any national or international arrest warrant, nor a request for extradition. No parallels

can therefore be drawn with the Committee's decision in the *Arana* case. It has been shown that, on arrival in Spain, the complainant was not handed over to the police services as she claims, but was released to her family. According to newspaper articles, no proceedings were engaged against her in Spain at the time, thus explaining why she was left at liberty. It was not until 30 March 2001, 17 months after her return to Spain, that the complainant was arrested by the Spanish Civil Guard. She had remained in Spain for that entire period, during which she had furthermore been very openly engaged in political activity on behalf of the Basque cause, rather than attempting to find a refuge in order to escape the "serious risks" of torture she reports. The complainant merely alleges that she was subjected to police surveillance. She makes no claim to have been subjected to house arrest or prevented from leaving Spain. The State party notes that it is difficult to understand why the complainant remained voluntarily on Spanish soil for more than a year and a half and engaged in pro-Basque political action.

7.4 The State stresses the absence of any link between the complainant's expulsion from French territory and her arrest by the Spanish authorities more than a year and a half later after she had remained in Spain of her own free will. Her weak state during the period immediately following her return does not suffice to explain the delay between the date of her removal and the date of her arrest, nor the extended period she spent in Spain.

7.5 The State party adds that it is beyond the bounds of credibility to maintain, as the complainant does, that the purpose of returning her to Spain was to enable the Spanish police to question her about events prior to her flight to France in 1997 and her return to Spain late in 1999.

7.6 In view of the nature of the acts in which the press claims she may have been implicated - 20 or so acts of violence, some of them deadly - the Spanish authorities would not have waited 17 months to question her about those cases if they had seriously believed that she was involved. The mere fact of her weak state could not have delayed her interrogation for 17 months if that had been behind her expulsion to Spain. The State party therefore maintains that it is more likely that her arrest after such a period of time was due to new factors, subsequent to her return, that could not have been taken into account by France at the time when the removal measure was enforced. It also emerges from newspaper articles that the complainant's membership of the "Ibarra" commando was not known at the time of her expulsion, and she was arrested in March 2001 immediately after being implicated by another ETA member. The State party asserts that it could not have taken these facts into account at the time when the expulsion order was enforced.

7.7 For all the above reasons, no failure to comply with the provisions of article 3 of the Convention can be deemed to have been established.

Comments by the complainant

8.1 In a letter of 31 December 2003, the complainant maintains that special situations conducive to the practice of torture exist in a very large number of countries considered democratic by the international community. There is no irrebuttable presumption that torture cannot exist in the States of the European Union.

8.2 The complainant recalls the provision of article 2 of the Convention that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture". She stresses that all the international human rights bodies have periodically and repeatedly observed persistent acts of torture and ill-treatment of persons suspected of acts of terrorism by members of the Spanish security forces, and have noted that the mechanism of incommunicado detention of persons held in police custody in Spain under its anti-terrorist legislation was conducive to the practice of torture. On several occasions officials found guilty of acts of torture have been pardoned by the Government of Spain, thus creating a climate of impunity and consequently encouraging the practice of torture. The complainant adds that all these observations are corroborated by NGOs and contradict the presumption put forward by the Government of France that torture does not exist in Spain.

8.3 The complainant repeats that prior to her expulsion she informed the French authorities that she refused to be expelled to Spain. For that reason she had undertaken a long hunger strike. The French authorities had had to transfer her by ambulance with medical personnel in attendance because of the deterioration in the state of her health. Numerous NGOs and public figures had contacted the Government in order to prevent her deportation to Spain, but without success.

8.4 The complainant refers to the recommendations of the Committee against Torture following its consideration of the second periodic report of France submitted on 6 May 1998, whereby the State party was to pay greater attention to the provisions of article 3 of the Convention, which applies equally to expulsion, refoulement and extradition.[c]

8.5 The complainant stresses that the fact that she was not arrested on arrival in Spain, nor interrogated by the security forces, was due to her very poor state of health after 31 days of hunger strike. She points out that it was incumbent on the State party to use every means to ensure the protection of individuals from torture. She further recalls that, in a letter of 11 January 2000 in reply to correspondence from a European Member of Parliament, the Minister of Justice of France asserted that there was a presumption that treatment in breach of article 3 of the European Convention on Human Rights would not take place in Spain. In this way the French Minister of Justice had given an official undertaking that the complainant would not be subjected to ill-treatment in Spain. This fact had encouraged her not to hide or flee, wrongly believing that she would not be subjected to ill-treatment. In March 2001, however, the Spanish authorities ordered her to be arrested and detained in custody, during which time she was subjected to ill-treatment. The undertaking by France that the complainant would not be tortured was thus not respected. There was a direct link between her expulsion by France to Spain and the torture to which she was subjected to in Spain.

8.6 Lastly, the complainant refers to the Committee's views concerning the complaint *T.P.S. v. Canada*,[d] whereby the fact that the complainant's fears were realized, and in particular the fact that he was actually subjected to torture after being removed to a country where he alleged that he was at risk of being subjected to ill-treatment of that nature, constituted a relevant factor in gauging the seriousness of his allegations. According to the complainant, it may be concluded from the fact that her fears were realized that her allegations that she would be personally at risk of being subjected to torture if she were deported to Spain were based on substantial, established and credible evidence. The State party's expulsion of the complainant to Spain therefore constituted a violation of article 3 of the Convention.

Issues before the Committee

9.1 The Committee must determine whether the expulsion of the complainant to Spain violated the State party's obligation under article 3, paragraph 1, of the Convention not to expel or return ("refouler") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In reaching its conclusion, the Committee must take into account all relevant considerations in order to establish whether the individual concerned would be at personal risk.

9.2 The Committee must determine whether the expulsion of the complainant to Spain constituted a failure by the State party to fulfil its obligation under that article not to expel or return ("refouler") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In reaching its conclusion, the Committee must, pursuant to article 3, paragraph 2, of the Convention, take into account all relevant considerations, including the existence in the State to which the complainant would be sent of a consistent pattern of gross, flagrant or mass violations of human rights, enabling the Committee to establish whether she was at personal risk. The purpose of the exercise, however, is to determine whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. Hence, the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person is in no danger of being subjected to torture in the specific circumstances of his case.

9.3 The issue before the Committee is whether, on the date of the enforcement of the removal measure, the French authorities could have considered that the complainant would be exposed to real risks in the event of her expulsion. In making a determination, the Committee takes into consideration all the facts submitted by the complainant and the State party. Consideration of the facts shows that the complainant has failed to satisfy the burden of proof and demonstrate in that expulsion to Spain placed her at personal risk of torture at the time of her expulsion. In this regard the evidence submitted by the complainant is insufficient, in that the primary focus is an allegation that she was tortured 17 months after being expelled from the State party.

9.4 The fact of torture does not, of itself, necessarily violate article 3 of the Convention, but it is a consideration to be taken into account by the Committee. The facts as submitted to the Committee show that the complainant, on her return to Spain, recovered her health without any interference and took an active part in political developments in the country, promoting her views without any need for secrecy or flight. Some 17 months went by before the alleged acts of torture. The complainant offers no convincing explanation of why her certain risk of torture, inter alia because of her familiarity with intelligence of vital importance to the security of the Spanish State, did not lead to immediate action against her. Neither does the complainant submit evidence concerning events in Spain prior to her expulsion from French territory that might lead the Committee to establish the existence of a substantiated risk. The complainant has not demonstrated any link between her expulsion and the events that took place 17 months later.

9.5 There being insufficient evidence of a causal link between the expulsion of the complainant in 1999 and the acts of torture to which she claims to have been subjected in 2001, the Committee considers that the State party cannot be said to have violated article 3 of the Convention in enforcing the expulsion order.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, consequently concludes that the expulsion of the complainant to Spain did not constitute a violation of article 3 of the Convention.

Notes

[a] This form of torture consists in covering the head with a plastic bag to cause asphyxia.

[b] Communication No. 63/1997, Views adopted on 9 November 1999, para. 11.5.

[c] See *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), para. 145.

[d] Communication No. 99/1997, Views adopted on 16 May 1997.

Communication No. 195/2002

Submitted by:	Mafhoud Brada (represented by counsel, Mr. de Linares of the International Federation of ACAT (Action by Christians for the Abolition of Torture)
Alleged victim:	The complainant
State party:	France
Date of complaint:	29 November 2001 (initial submission)

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

Meeting on 17 May 2005,

Having concluded its consideration of complaint No. 195/2002, submitted to the Committee against Torture by Mr. Mafhoud Brada under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant, Mr. Mafhoud Brada, a citizen of Algeria, was residing in France when the present complaint was submitted. He was the subject of a deportation order to his country of origin. He claims that his forced repatriation to Algeria constitutes a violation by France of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by the International Federation of ACAT (Action by Christians for the Abolition of Torture), a non-governmental organization.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention by note verbale dated 19 December 2001. At the same time, the Committee, acting in accordance with rule 108, paragraph 9, of its rules of procedure, requested the State party not to deport the complainant to Algeria while his complaint was being considered. The Committee reiterated its request in a note verbale dated 26 September 2002.

1.3 In a letter dated 21 October 2002 from the complainant's counsel, the Committee was informed that the complainant had been deported to Algeria on 30 September 2002 on a flight to Algiers and that he had been missing since his arrival in Algeria.

The facts as submitted by the complainant

2.1 The complainant, a fighter pilot since 1993, was a member of the Algerian Air Force squadron based in Bechar, Algeria. From 1994, the squadron was regularly used as a back-up for helicopter operations to bomb Islamist maquis areas in the region of Sidi Bel Abbes. The fighter aircraft were equipped with incendiary bombs. The complainant and other pilots were aware that the use of such weapons was prohibited. After seeing the destruction caused by these

weapons on the ground in photographs taken by military intelligence officers - pictures of dead men, women, children and animals - some pilots began to doubt the legitimacy of such operations.

2.2 In April 1994, the complainant and another pilot declared, during a briefing, that they would not participate in bombing operations against the civilian population, in spite of the risk of heavy criminal sanctions against them. A senior officer then waved his gun at the complainant's colleague, making it clear to him that refusal to carry out missions "meant death". When the two pilots persisted in their refusal to obey orders, the same officer loaded his gun and pointed it at the complainant's colleague, who was mortally wounded as he tried to escape through a window. The complainant, also wishing to escape, jumped out of another window and broke his ankle. He was arrested and taken to the interrogation centre of the regional security department in Bechar third military region. The complainant was detained for three months, regularly questioned about his links with the Islamists and frequently tortured by means of beatings and burning of his genitals.

2.3 The complainant was finally released owing to a lack of evidence of sympathy with the Islamists and in the light of positive reports concerning his service in the armed forces. He was forbidden to fly and assigned to Bechar airbase. Explaining that servicemen who were suspected of being linked to or sympathizing with the Islamists regularly "disappeared" or were murdered, he escaped from the base and took refuge in Ain Defla, where his family lived. The complainant also alleges that he received threatening letters from Islamist groups, demanding that he desert or risk execution. He forwarded the threatening letters to the police.

2.4 Later, when the complainant was helping a friend wash his car, a vehicle stopped alongside them and a submachine was fired in their direction. The complainant's friend was killed on the spot; the complainant survived because he was inside the car. The village police officer then advised the complainant to leave immediately. On 25 November 1994, the complainant succeeded in fleeing his country. He arrived at Marseille, France, and met one of his brothers in Orléans (Indre). In August 1995, the complainant made a request for asylum, which was later denied by the French Office for the Protection of Refugees and Stateless Persons (OFPRA). Since the complainant had made the request without the assistance of counsel, he was unable to appeal the decision to the Refugee Appeals Commission.

2.5 The complainant adds that, since he left Algeria, his two brothers have been arrested and tortured. One died in police custody. Moreover, since his desertion, two telegrams from the Ministry of Defence have arrived at the complainant's home in Abadia, demanding that he report immediately to Air Force headquarters in Cheraga in connection with a "matter concerning him". In 1998, the complainant was sentenced in France to eight years' imprisonment for a rape committed in 1995. The sentence was accompanied by a 10-year ban from French territory. As the result of a remission of sentence, the complainant was released on 29 August 2001.

2.6 Meanwhile, on 23 May 2001, the Prefect of Indre issued an order for the deportation of the complainant. In a decision taken on the same day, he determined that Algeria would be the country of destination. On 12 July 2001, the complainant lodged an appeal with the Limoges Administrative Court against the deportation order and the decision to return him to his country of origin. In an order dated 29 August 2001, the court's interim relief judge suspended

enforcement of the decision on the country of return, considering that the risks to the complainant's safety involved in a return to Algeria raised serious doubts as to the legality of the deportation decision. Nevertheless, in a judgement dated 8 November 2001, the Administrative Court rejected the appeal against the order and the designated country of return.

2.7 On 4 January 2002, the complainant appealed against this judgement to the Bordeaux Administrative Court of Appeal. He points out that such an appeal does not have suspensive effect. He also refers to recent case law of the Council of State which he maintains demonstrates the inefficacy of domestic remedies in two similar cases.[a] In those cases, which involved deportation to Algeria, the Council of State dismissed the risks faced by the persons concerned, but the Algerian authorities subsequently produced death sentences passed in absentia. On 30 September 2002, the complainant was deported to Algeria on a flight to Algiers and has been missing since.

The complaint

3.1 The complainant considers that his deportation to Algeria is a violation by France of article 3 of the Convention insofar as there are real risks of his being subjected to torture in his country of origin for the reasons mentioned above.

3.2 The complainant, supported by medical certificates, also maintains that he suffers from a serious neuropsychiatric disorder that requires constant treatment, the interruption of which would adversely affect his health. His doctors have considered these symptoms to be compatible with his allegations of torture. Moreover, the complainant's body shows traces of torture.

The State party's observations on the admissibility of the complaint

4.1 In a note verbale dated 28 February 2002, the State party challenged the admissibility of the complaint.

4.2 As its main argument, the State claimed that the complainant had not exhausted domestic remedies within the meaning of article 22, paragraph 5, of the Convention. On the date that the complaint was submitted to the Committee, the appeal to the Bordeaux Administrative Court of Appeal against the judgement upholding the order to deport the complainant was still pending. Moreover, there were no grounds for concluding that the procedure might exceed a reasonable time.

4.3 With regard to the complainant's argument that such an appeal did not suspend the deportation order, the State party maintained that the complainant had the option of applying to the interim relief judge of the Administrative Court of Appeal for suspension of the order. Indeed, the complainant had successfully made such an appeal to the Limoges Administrative Court.

4.4 Secondly, the State party maintained that the complaint submitted to the Committee was not in keeping with the provision of rule 107, paragraph 1 (b), of the rules of procedure that "the communication should be submitted by the individual himself or by his relatives or designated representatives or by others on behalf of an alleged victim when it appears that the victim is unable to submit the communication himself, and the complainant of the communication justifies his acting on the victim's behalf". However, the procedural documents did not indicate that the

complainant designated the International Federation of ACAT as his representative, and it had not been established that the complainant is unable to instruct that organization to act on his behalf. It therefore had to be ascertained whether or not the purported representative, who signed the complaint, was duly authorized to act on the complainant's behalf.

Comments by counsel

5.1 In a letter dated 21 October 2002, counsel set out her comments on the State party's comments as to admissibility.

5.2 In relation to the exhaustion of domestic remedies, counsel pointed out that, in accordance with the general principles of international law, the domestic remedies which must be exhausted are those which are effective, adequate or sufficient, in other words, which offer a serious chance of providing an effective remedy for the alleged violation. In this case, the annulment proceedings instituted before the Bordeaux Administrative Court of Appeal were still pending. Since that procedure had no suspensive effect, the deportation order against the complainant was enforced on 30 September 2002. Domestic remedies thus proved ineffective and inadequate.

5.3 Moreover, since the complainant was under the protection of the Committee by virtue of its request to the State party not to send him back to Algeria while his application was being considered, he had not considered it worthwhile to launch additional domestic proceedings, in particular interim relief proceedings for suspension.

5.4 In any event, the enforcement of the deportation order despite the pertinent arguments raised in the proceedings before the Bordeaux Administrative Court of Appeal rendered the appeal ineffective. Even if the Court were now to grant the complainant's appeal, it was unrealistic to imagine that Algeria would return him to France.

5.5 In response to the complaint that rule 107, paragraph 1, of the Committee's rules of procedure had not been respected, counsel referred to a statement signed by the complainant in person on 29 November 2001 authorizing the International Federation of ACAT to act on his behalf before the Committee.

The Committee's assessment in its decision on admissibility of the failure by the State party to accede to its request for interim measures pursuant to rule 108 of its rules of procedure

6.1 The Committee observed that any State party which made the declaration provided for under article 22 of the Convention recognized the competence of the Committee against Torture to receive and consider complaints from individuals who claimed to be victims of violations of one of the provisions of the Convention. By making this declaration, States parties implicitly undertook to cooperate with the Committee in good faith by providing it with the means to examine the complaints submitted to it and, after such examination, to communicate its comments to the State party and the complainant. By failing to respect the request for interim measures made to it, the State party seriously failed in its obligations under article 22 of the Convention because it prevented the Committee from fully examining a complaint relating to a violation of the Convention, rendering action by the Committee futile and its comments worthless.

6.2 The Committee concluded that the adoption of interim measures pursuant to rule 108 of the rules of procedure, in accordance with article 22 of the Convention, was vital to the role entrusted to the Committee under that article. Failure to respect that provision, in particular through such irreparable action as deporting an alleged victim, undermined protection of the rights enshrined in the Convention.

Decision of the Committee concerning admissibility

7.1 The Committee considered the admissibility of the complaint at its thirtieth session and declared the complaint admissible in a decision of 29 April 2003.

7.2 Concerning the *locus standi* of the International Federation of ACAT, the Committee noted that the statement signed by the complainant on 29 November 2001 authorizing the organization to act on his behalf before the Committee was in the file submitted to it, and therefore considered that the complaint complied with the conditions set out in rules 98.2 and 107.1 of its rules of procedure.

7.3 On the exhaustion of domestic remedies, the Committee noted that on 2 January 2002 the complainant had appealed to the Bordeaux Administrative Court of Appeal against the ruling of the Limoges Administrative Court upholding the deportation order, and that that appeal had no suspensive effect. Concerning the State party's argument that the complainant had had, but did not pursue, the option of applying to the interim relief judge of the Bordeaux court to suspend enforcement of the deportation order, the Committee noted that the State party had not indicated that the complainant should make such application by a specific deadline, implying that the application could in theory have been made at any time up to the moment when the Administrative Court of Appeal ruled on the merits of the appeal.

7.4 The Committee also noted that the complaint did not constitute an abuse of the right to submit a communication and was not incompatible with the Convention.

7.5 The Committee also noted that on 30 September 2002, after communicating its comments on the admissibility of the complaint, the State party had enforced the order for the deportation of the complainant to Algeria.

7.6 In the circumstances, the Committee considered that it ought to decide whether domestic remedies had been exhausted when examining the admissibility of the complaint. In its view it was unarguable that, since the deportation order had been enforced before the Administrative Court of Appeal reached a decision on the appeal, the complainant, from the moment he was deported to Algeria, had no opportunity to pursue the option of applying for suspension.

7.7 The Committee noted that, when it called for interim measures of protection such as those that would prevent the complainant from being deported to Algeria, it did so because it considered that there was a risk of irreparable harm. In such cases, a remedy which remains pending after the action which interim measures are intended to prevent has taken place is, by definition, pointless because the irreparable harm cannot be averted if the domestic remedy subsequently yields a decision favourable to the complainant: there is no longer any effective remedy to exhaust after the action which interim measures were intended to prevent has taken

place. In the present case, the Committee felt no appropriate remedy was available to the complainant once he had been deported to Algeria, even if the domestic courts in the State party were to rule in his favour at the conclusion of proceedings which were still under way after the extradition.

7.8 In the present case, according to the Committee, the essential purpose of the appeal was to prevent the deportation of the complainant to Algeria. In this specific case, enforcing the deportation order rendered the appeal irrelevant by vitiating its intended effect: it was inconceivable that, if the appeal went in the complainant's favour, he would be repatriated to France. In the circumstances, in the Committee's view, the appeal was so intrinsically linked to the purpose of preventing deportation, and hence to the suspension of the deportation order, that it could not be considered an effective remedy if the deportation order was enforced before the appeal concluded.

7.9 To this extent, the Committee was of the view that returning the complainant to Algeria despite the request made to the State party under rule 108 of the rules of procedure, and before the admissibility of the complaint had been considered, made the remedies available to the complainant in France pointless, and the complaint was accordingly admissible under article 22, paragraph 5, of the Convention.

The State party's submission on interim measures of protection and the merits of the complaint

8.1 The State party submitted its observations on 26 September and 21 October 2003.

8.2 Regarding interim measures (paras. 6.1 and 6.2) and the Committee's repeated view that "failure to respect a call for interim measures pursuant to rule 108 of the rules of procedure, in particular through such an irreparable action as deporting the complainant, undermines protection of the rights enshrined in the Convention", the State party registers its firm opposition to such an interpretation. According to the State party, article 22 of the Convention gives the Committee no authority to take steps binding on States parties, either in the consideration of the complaints submitted to it or even in the present case, since paragraph 7 of the article states only that "[t]he Committee shall forward its views to the State party concerned and to the individual". Only the Committee's rules of procedure, which cannot of themselves impose obligations on States parties, make provision for such interim measures. The mere failure to comply with a request from the Committee thus cannot, whatever the circumstances, be regarded as "undermining protection of the rights enshrined in the Convention" or "rendering action by the Committee futile". The State party explains that when receiving a request for interim measures, cooperating in good faith with the Committee requires it only to consider the request very carefully and to try to comply with it as far as possible. It points out that until now it has always complied with requests for interim measures, but that that should not be construed as fulfilment of a legal obligation.

8.3 Concerning the merits of the complaint and the reasons for the deportation, the State party considers the complaint to be unfounded for the following reasons. First, the complainant never established, either in domestic proceedings or in support of his complaint, that he was in serious danger within the meaning of article 3 of the Convention. The State party refers to the Committee's case law whereby it is the responsibility of an individual who claims he would be in danger if sent back to a specific country to show, at least beyond reasonable doubt, that his

fears are serious. The Committee has also stressed that "for article 3 of the Convention to apply, the individual concerned must face a foreseeable and real risk of being subjected to torture in the country to which he/she is being returned, and that this danger must be personal and present"[b] and that invoking a general situation or certain specific cases is not sufficient. According to the State party, while the complainant describes himself as a fighter pilot and an officer of the Algerian Armed Forces who has deserted for humanitarian reasons, he provides no proof. To establish that he is a deserter he has merely presented the Committee with two telegrams from the Algerian Air Force addressed to his family home; both are extremely succinct and merely request him "to present himself to the Air Force authorities in Béchar for a matter concerning him", without further details or any mention of his rank or former rank. In the State party's view it is very difficult to believe that the complainant was unable to produce any other document to substantiate the fears he expressed.

8.4 Secondly, even if the complainant did establish that he was a fighter pilot and a deserter, his account contains various contradictions and implausibilities that discredit the fears invoked. In particular, he maintains that in early March, when along with another pilot he refused to participate in bombing operations against the civilian population, he knew that he risked heavy penalties by refusing to obey orders; he points out that such penalties were more severe for officers and, given the situation in Algeria, would have been handed down in time of war and included the death penalty. While the other pilot had been shot on the spot for disobeying orders, the complainant had apparently been released after only three months in prison for the same conduct, his only punishment, once he had been cleared of suspected Islamist sympathies, being that he was forbidden to fly and assigned to the airbase. When he deserted from the airbase and fled to his family's village, an attempt was supposedly made to kill the complainant with a submachine gun fired from an intelligence vehicle: his neighbour was killed on the spot while he himself - the sole target - escaped once again.

8.5 The State party considers that the complainant's personal conduct renders his claims implausible. While he claims to have deserted in 1994 on humanitarian grounds as a conscientious objector, consciously exposing himself to the risk of very severe punishment, his humanitarian concerns seem totally at odds with his violent criminal conduct on arrival in France and subsequently. Scarcely a year after supposedly deserting on grounds of conscientious objection, the complainant perpetrated a common crime of particular gravity, namely, aggravated rape with the added threat of a weapon, and while in prison for that crime showed he was a continuing danger to society by making two violent attempts to escape.

8.6 In any case, the State party maintains that the complainant's alleged fears cannot be held to represent a serious danger of torture and inhuman or degrading treatment within the meaning of article 3 of the Convention. The complainant maintained that he faced two kinds of danger in the event of being sent back to Algeria: one, the result of his desertion, consisting in the punishment laid down in the Algerian military criminal code for such cases; the other related to the possibility that he might in the future again be accused of Islamist sympathies. The State party considers that the danger of imprisonment and other criminal penalties for desertion does not in itself establish a violation of article 3 of the Convention since these are the legal punishments for an ordinary offence in the estimation of most States parties to the Convention. It is important to note that, although the complainant maintains that punishment in the event of desertion may in extreme cases extend to the death penalty, he does not claim that he himself would incur that penalty. In fact, according to the State party, he could not: it emerges from his own account that his desertion was an individual act, unrelated to combat operations, after he had

been suspended from flying and assigned to the airbase, while it emerges both from his written submission and from details of Algerian legislation compiled by Amnesty International and submitted on the complainant's behalf that the death penalty might possibly be applicable only in the case of a group desertion by officers. Secondly, although the complainant maintains that he was suspected of Islamist sympathies and tortured under questioning after refusing to obey orders, the State party concludes from the Committee's case law[c] that past torture, even where it is established that it was indeed inflicted in circumstances coming within the scope of the Convention, does not suffice to demonstrate a real and present danger for the future. In the present case, the State party stresses that it emerges from the complainant's own written submission that he was acquitted of accusations of Islamist sympathies. The State party further considers that the potential danger of the complainant's facing fresh charges of Islamist sympathies in the future does not seem substantial within the meaning of article 3 of the Convention, nor yet credible in terms of his own account, which suggests that his service file was sufficient for the military authorities to clear him of all suspicion in this regard and he was acquitted of the charges. Besides, it is hardly credible that he would have been released and assigned to the airbase if the military authorities had still had the slightest doubt about the matter. Since they had kept him on the actual airbase, the military authorities had clearly been convinced that not the slightest suspicion of sympathy towards the Armed Islamist Group (GIA) could be held against him. Here the State party notes that no complaint admissible by the Committee could arise out of the complainant's allegations that he had received death threats from armed Islamist groups, since such threats by a non-governmental entity not occupying the country were in any case beyond the scope of the Convention. Similarly, the State party notes that, although the complainant shows with the help of medical certificates that he suffers from a neuro-psychiatric disorder, he does not establish that this disorder, about which he gives no details, could not be adequately treated in Algeria.

8.7 The State party maintains that the dangers alleged by the complainant were given a fair and thorough review under domestic procedures. It recalls the Committee's case law whereby it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice.[d] The question before the Committee is whether the complainant's deportation to the territory of another State violated France's obligations under the Convention, which means that it should be asked whether, when the French authorities decided to enforce the deportation order against the individual in question, they could reasonably consider in the light of the information available to them that he would be exposed to real danger if sent home. In actual fact, the dangers the complainant said he would face should he be sent back to his country of origin had been successively reviewed in France four times in six years by three different administrative authorities and one court, all of which had concluded that the alleged dangers were not substantial. In a judgement of 8 November 2001, the Limoges Administrative Court rejected the appeal against the deportation order submitted by the complainant on 16 July 2001 and the decision establishing Algeria as the country of destination, opening the way to enforcement of the order. The court considered that the complainant's allegations "lacked any justification". The complainant, who appealed the judgement to the Bordeaux Administrative Court of Appeal on 4 January 2002, makes no claim to the Committee that the manner in which the evidence he produced was evaluated by the Court of Appeal "was clearly arbitrary or amounted to a denial of justice". The complainant's application for political refugee status to OFPRA had previously been rejected, on 23 August 1995, on the grounds that he had not submitted sufficient evidence

to prove that he was personally in one of the situations for which article 1 (A) (2) of the 1951 Convention relating to the Status of Refugees provides. The complainant had subsequently refrained from submitting his case to the Refugee Appeals Commission (CRR), an independent jurisdiction which carries out de facto and de jure reviews of OFPRA decisions, thus acquiescing in the decision taken in this regard. The complainant's situation had again been reviewed by the Minister of the Interior on 19 December 1997 further to the circular of 24 June 1997 on the regularization of the residence status of certain categories of illegal aliens, which allows prefects to issue residence permits to individuals who claim to be at risk if returned to their country of origin. Once again, the complainant limited himself to stating that he was a former member of the Armed Forces who had deserted from the Algerian Army and been threatened by GIA. For want of details, and in the absence of any justification for his allegations, his application was rejected. Once more, the complainant did not contest this decision in the competent domestic court. Before determining Algeria as the country to which he should be deported, the Prefect of Indre had conducted a further review of the risks he would run if returned to that country.

8.8 In the State party's view, by the day the deportation order was enforced, the complainant's situation must be said to have been fairly reviewed without his showing that he would be in serious and present danger of torture or inhuman treatment if returned to Algeria. The State party argues that the complainant continues to fail to offer evidence of such danger to support his complaint to the Committee.

8.9 In the circumstances, the State party was persuaded that the complainant's appeal to the Committee was but a device to gain time, thus abusing the State party's tradition, hitherto always respected, of suspending enforcement of a deportation order pending the Committee's decision on the admissibility of a complaint.

8.10 The State party explains that despite this delaying tactic the Government of France would have acceded to the Committee's request for interim measures, albeit non-binding ones, if keeping the complainant, a demonstrably dangerous common criminal, in France had not also presented a particularly disproportionate risk to public order and the safety of third parties when set against the absence of any real benefit the complainant could hope to derive from his appeal. It was a fact that, during his first year in France, the complainant had committed aggravated rape, threatening his victim with a weapon, for which crime he had been imprisoned in July 1995 and sentenced by the Loiret Criminal Court to eight years' imprisonment and a 10-year judicial ban from French territory. He had furthermore demonstrated the firmly rooted and persistent nature of the danger he represented to public order by two violent attempts to escape during his imprisonment, in September 1995 and July 1997, each punished by a term of eight months' imprisonment. In a situation that was extremely prejudicial to public safety, the State party explains that it nevertheless delayed enforcement of the deportation order long enough for a final review of the complainant's situation, to see whether he could be kept in France as the Committee wished. Once again, he was found not to have substantiated his alleged fears; in the circumstances, there was no justification for continuing to hold in France an individual who had more than demonstrated that he was a danger to public order and whose complaint to the Committee was quite clearly no more than a ploy to gain time, despite the obvious good faith of the human rights associations that had supported his application. The State party particularly stresses that house arrest would not have provided any guarantee, given the complainant's

violent history of escape attempts. In the circumstances, the State party concluded that sending the complainant back to his country of origin was not likely to give rise to a "substantial danger" within the meaning of article 3 of the Convention.

8.11 As to the complainant's current situation, the State party explains that the Algerian authorities, from whom the Government of France had requested information, reported on 24 September 2003 that he was living in his home district of Algeria.

Comments by counsel

9.1 Counsel submitted comments on the State party's submission on 29 October and 14 November 2003. On the binding nature of requests for interim measures, counsel recalls that in two cases[e] where States parties to the Convention carried out deportations contrary to the Committee's opinion, the Committee found that action further to its terms of reference, which could include the rules of procedure under which suspension had been requested, was a treaty obligation.

9.2 Concerning the reasons put forward by the State party for enforcing the deportation order, counsel maintains that the complainant trained as a fighter pilot in Poland. Furthermore, according to counsel, his criminal act and his two escape attempts a year earlier did not mean that he would not have rebelled against bombing operations on civilian populations: counsel describes the considerable unrest in the Algerian Army at the time, as illustrated by the escape of an Algerian lieutenant to Spain in 1998. As for the State party's contention that the complainant had not shown he was in serious danger of being tortured if he were returned to Algeria, since past torture does not suffice to establish the existence of a real and present danger in the future, counsel contends that the complainant actually was tortured, that modesty made him very reticent about the after-effects on his genitals, that he had to be treated for related psychiatric problems, and that the administrative court had been told only very vaguely about the torture, while a medical certificate had been submitted to the Bordeaux Administrative Court of Appeal. As to the future, counsel submits that the possible charges against the complainant, aggravated by the facts of his desertion and flight to France, made the danger of torture, by the Algerian military security in particular, sufficiently substantial to be taken into consideration. The State party argues that the dangers alleged by the complainant had already been reviewed thoroughly and fairly under domestic procedures; counsel acknowledges that OFPRA rejected the complainant's application for refugee status - on what grounds counsel does not know, since the application was refused while the complainant was in prison. Counsel also acknowledges that the complainant did not refer his case to CRR. She points out that the Limoges Administrative Court likewise refused to overturn the decision establishing Algeria as the country of return although the interim relief judge had suspended the decision. Lastly, the complainant's more detailed submission to the Bordeaux Administrative Court of Appeal should have urged the administration to greater caution and, thus, to suspend his deportation.

9.3 Concerning the danger represented by the complainant and the risk to public safety, counsel maintains that he committed a serious act, but did not thereby pose a serious risk to the general public. On 18 March 1999, the complainant married a French citizen and had a daughter. When he left prison, no immediate attempt was made to deport him although the administration could have again tried to do so. According to counsel, it was only following a chance incident, in the form of a dispute with security officers, that the deportation order was reactivated.

9.4 In relation to the complainant's present situation, counsel considers that the State party's information is incorrect. She states that neither she nor his family in France have had any news of him and that his brother in Algiers denies that he is living at the address given by the State party. Even if the complainant was where the State party said he was, remote though it is, counsel questions why there has been no word from him; that could indicate that he is missing.

Supplementary submissions by counsel

10. On 14 January 2004, counsel submitted a copy of the decision by the Bordeaux Administrative Court of Appeal of 18 November 2003 overturning the judgement of the Limoges Administrative Court of 8 November 2001 and the decision of 23 May 2001 in which the Prefect of Indre ordered the complainant to be returned to his country of origin. Concerning the decision to expel the complainant, the Court of Appeal reasoned as follows:

> "Considering
>
> "that [the complainant] claims that he was subjected to torture and, several times, to attempted murder on account of his desertion from the national army because of his opposition to the operations to maintain order directed against the civilian population;
>
> "that in support of his submissions to the court and concerning the risks of inhuman or degrading treatments to which his return to this country [Algeria] would expose him, he has supplied various materials, and notably a decision of the United Nations Committee against Torture concerning him, which are of such a nature as to attest to the reality of these risks;
>
> "that these elements, which were not known to the Prefect of Indre, have not been contradicted by the Minister of the Interior, Internal Security and Local Liberties, who, despite the request addressed to him by the court, did not produce submissions in defence before the closure of proceedings;
>
> "that, in these circumstances, [the complainant] must be considered as having established, within the meaning of article 27 bis cited above of the ordinance of 2 November 1945 [providing that an alien cannot be returned to a State if it is established that his life or liberty is threatened there or he would be exposed to treatment contrary to article 3 of the European Convention], that he is exposed in Algeria to treatments contrary to article 3 of the European Convention on Human Rights and Fundamental Freedoms;
>
> "that, as a result, his request for the annulment of the decision to return him to his State of origin taken by the Prefect of Indre on 23 May 2001 is well founded."

The State party's comments on the supplementary submissions

11.1 On 14 April 2004, the State party contended that the question before the Committee was whether the refoulement of the complainant to another State violated France's obligations under the Convention; in other words whether, when the French authorities decided to enforce the

deportation order they could reasonably think, in the light of the information available to them, that Mr. Brada would be exposed to substantial danger if sent home. The State party alludes to the Committee's case law holding that an individual claiming to be in danger if returned to a specific country is responsible, at least beyond reasonable doubt, for establishing that his fears are substantial. According to the State party, however, the complainant had produced no evidence before either the administrative court or the administrative authorities to substantiate his alleged fears about being returned to Algeria. The interim relief judge of the Limoges Administrative Court, to whom the complainant appealed against the decision of 29 August 2001 to deport him to Algeria, suspended the decision as to where the complainant should be deported pending a final judgement on the merits, so as to protect the complainant's situation should his fears prove justified. Noting, however, that the complainant's allegations were not accompanied by any supporting evidence, the Administrative Court subsequently rejected the appeal in a ruling dated 8 November 2001.

11.2 Ruling on 18 November 2003 on the complainant's appeal against the ruling by the Limoges Administrative Court of 8 November 2001, the Bordeaux Administrative Court of Appeal found that, given the seriousness of his crimes, the Prefect of Indre could legitimately have considered that the complainant's presence on French territory constituted a serious threat to public order, and that his deportation was not, in the circumstances, a disproportionate imposition on his private and family life.

11.3 The Court went on to overturn the judgement of the Limoges Administrative Court and the decision by the Prefect of Indre to remove the individual in question to his country of origin on the strength of article 3 of the European Convention on Human Rights and article 27 bis of the order of 2 November 1945 prohibiting the deportation of an alien to a country where it is established that he would be exposed to treatment contrary to article 3 of the Convention.

11.4 According to the State party, particular stress should be placed on the fact that, in so doing, the Administrative Court of Appeal based its ruling on evidence which, it noted expressly, was new. It deduced that, in the circumstances, the complainant's allegations must be considered well founded unless contradicted by the Minister of the Interior, and thus overturned the decision establishing the country of destination.

11.5 The State party stresses that the Court's proviso - unless contradicted by the Ministry of the Interior - should not be understood to indicate that the administration was prepared to acknowledge that the complainant's submissions were compelling. The Court was unable to take account of evidence produced by the administration for the defence only because of the rules on litigious proceedings deriving from article R.612.6 of the Code of Administrative Justice: the defence brief produced by the Ministry of the Interior reached the Court some days after the termination of pre-trial proceedings.

11.6 Furthermore, the State party explains that the key point on which the Court based its decision is the very decision the Committee used to find the present complaint admissible. In pronouncing on admissibility, however, the Committee did not take any stand on the merits of the complaint, nor on the establishment by the complainant, beyond reasonable doubt, of the facts he invoked, since they could only be evaluated in the context of the decision on the merits

of the complaint. The State party concludes that, given the reasoning behind it, the decision by the Administrative Court of Appeal does nothing to strengthen the complainant's position before the Committee.

11.7 This being so, the State party alludes to the Committee's recently reiterated view that it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice. The ruling by the Administrative Court of Appeal shows precisely that the manner in which the domestic courts examined the facts and evidence produced by the complainant cannot be regarded as clearly arbitrary or tantamount to a denial of justice.

11.8 In conclusion, the State party maintains that France cannot be held to have ignored its treaty obligations by removing the individual in question to his country of origin after checking several times, before arriving at that decision, that the complainant could not reasonably be considered to be exposed to danger if he were sent home. With regard to the Committee's case law, it cannot be supposed that the French authorities could reasonably have considered that he would be exposed to real danger in the event of being sent home when they decided to enforce the deportation order against him.

Comments by counsel

12. In her comments of 11 June 2004, counsel maintains that the State party violated article 3 of the Convention. She adds that she had had a telephone conversation with the complainant, who said he had been handed over by the French police to Algerian agents in the plane; on leaving Algiers airport in a van, he was handed over to the Algerian secret services who kept him in various different venues for a year and half before releasing him without documents of any kind, apparently pending a judgement, the judgement in absentia having been annulled. The complainant claims he was severely tortured.

Consideration of the merits

13.1 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture upon return to Algeria. The Committee observes, at the outset, that in cases where a person has been expelled at the time of its consideration of the complaint, the Committee assesses what the State party knew or should have known at the time of expulsion. Subsequent events are relevant to the assessment of the State party's knowledge, actual or constructive, at the time of removal.

13.2 In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country

does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances. In deciding a particular case, the Committee recalls that, according to its general comment No. 1 on article 3 of the Convention, it gives "considerable weight" to the findings of national authorities.

13.3 At the outset, the Committee observes that at the time of his expulsion on 30 September 2002, an appeal lodged by the complainant with the Bordeaux Administrative ourt of Appeal on 4 January 2002 was still pending. This appeal contained additional arguments against his deportation that had not been available to the Prefect of Indre when the decision of expulsion was taken and of which the State party's authorities were, or should have, been aware still required judicial resolution at the time he was in fact expelled. Even more decisively, on 19 December 2001, the Committee had indicated interim measures to stay the complainant's expulsion until it had had an opportunity to examine the merits of the case, the Committee having established, through its Special Rapporteur on interim measures, that in the present case the complainant had established an arguable risk of irreparable harm. This interim measure, upon which the complainant was entitled to rely, was renewed and repeated on 26 September 2002.

13.4 The Committee observes that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party's action in expelling the complainant in the face of the Committee's request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee's final decision on the merits futile and devoid of object. The Committee thus concludes that in expelling the complainant in the circumstances that it did the State party breached its obligations under article 22 of the Convention.

13.5 The Committee observes, turning to the issue under article 3 of the Convention, that the Bordeaux Administrative Court of Appeal, following the complainant's expulsion, found upon consideration of the evidence presented that the complainant was at risk of treatment in breach of article 3 of the European Convention, a finding which would/could encompass torture (see paragraph 10 above). The decision to expel him was thus, as a matter of domestic law, unlawful.

13.6 The Committee observes that the State party is generally bound by the findings of the Court of Appeal, with the State party observing simply that the Court had not considered the State's brief to the Court, which arrived after the relevant litigation deadlines. The Committee considers, however, that this default on the part of the State party cannot be imputed to the complainant and, moreover, that whether the Court's consideration would have been different remains speculative. As the State party itself states (see paragraph 11.7), and with which the Committee agrees, the judgment of the Court of Appeal, which includes the conclusion that his expulsion occurred in breach of article 3 of the European Convention, cannot, on the basis of the

information before the Committee, be regarded as clearly arbitrary or tantamount to a denial of justice. As a result, the Committee also concludes that the complainant has established that his removal was in breach of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

14. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the deportation of the complainant to Algeria constituted a breach of articles 3 and 22 of the Convention.

15. Pursuant to rule 112, paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, of the steps the State party has taken in response to the views expressed above, including measures of compensation for the breach of article 3 of the Convention and determination, in consultation with the country (also a State party to the Convention) to which the complainant was returned, of his current whereabouts and state of well-being

Notes

[a] The complainant refers to the *Chalabi* and *Hamani* cases.

[b] Communication No. 197/2002, *U.S. v. Finland,* Views adopted on 1 May 2003, para. 7.8.

[c] Ibid.

[d] Communication No. 219/2002, *G.K. v. Switzerland*, Views adopted on 7 May 2003.

[e] Communication No. 110/1998, *Núñez Chipana v. Venezuela*, Views adopted on 10 November 1998; and communication No. 99/1997, *T.P.S. v. Canada*, Views adopted on 16 May 2000.

Communication No. 207/2002

Submitted by: Mr. Dragan Dimitrijevic (represented by counsel)

Alleged victims: The complainant

State party: Serbia and Montenegro

Date of the complaint: 20 December 2001

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

Meeting on 24 November 2004,

Having concluded its consideration of complaint No. 207/2002, submitted to the Committee against Torture by Mr. Dragan Dimitrijevic under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant,

Adopts the following decision under article 22, paragraph 7, of the Convention

1. The complainant is Mr. Dragan Dimitrijevic, a Serbian citizen of Romani origin born on 7 March 1977. He claims to have been the victim of violations by Serbia and Montenegro of articles 2, paragraph 1, read in conjunction with article 1; article 16, paragraph 1; and articles 12, 13 and 14 taken alone and/or together with article 16, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by the non-governmental organizations Humanitarian Law Centre, based in Belgrade, and European Roma Rights Centre, based in Budapest.

The facts as submitted by the complainant

2.1 The complainant was arrested on 27 October 1999 at around 11 a.m. at his home in Kragujevac, Serbia, in connection with the investigation of a crime. He was taken to the local police station located in Svetozara Markovica Street. Upon arrival he was handcuffed to a radiator and beaten up by several police officers, some of whom the complainant knew by their first names or their nicknames. The police officers kicked and punched him all over his body while insulting his ethnic origins and cursing his "Gypsy mother". One of the officers struck the complainant with a large metal bar. Some time later the officers unfastened the complainant from the radiator and handcuffed him to a bicycle. Then they continued punching and beating him with their nightsticks and the metal bar. Although the complainant began to bleed from his ears, the beating continued until he was released at about 4.30 p.m.

2.2 As a result of the ill-treatment the complainant had to stay in bed for several days. He sustained injuries on both arms and legs, an open wound on the back of his head and numerous injuries all over his back. For several days following the incident he bled from his left ear, and his eyes and lips remained swollen. Fearing reprisals by the police, the complainant did not go to hospital for treatment. Consequently, there is no official medical certificate documenting the

injuries. The complainant, however, has provided the Committee with written statements from his mother, his sister and a cousin indicating that he was in good health when he was arrested and severely injured at the time of his release.

2.3 On 31 January 2000, the complainant, through counsel, filed a criminal complaint with the Kragujevac Municipal Public Prosecutor's Office alleging that he had been the victim of the crimes of slight bodily harm and civil injury, as provided for under articles 54 (2) and 66 of the Serbian Criminal Code, respectively. As there was no response for almost six months following the submission of the complaint, the complainant wrote a letter to the Public Prosecutor's Office on 26 July 2000 requesting an update on the status of the case and invoking, in particular, article 12 of the Convention. At the time the complainant submitted his case to the Committee, i.e. more than 23 months after the submission of the criminal complaint, no response had been received from the Public Prosecutor.

2.4 The complainant claims that he has exhausted available domestic criminal remedies and refers to international jurisprudence according to which only a criminal remedy can be considered effective and sufficient in addressing violations of the kind at issue in the instant case. He also refers to the relevant provisions of the State party's Criminal Procedure Code (CPC) setting forth the obligation of the Public Prosecutor to undertake measures necessary for the investigation of crimes and the identification of the alleged perpetrators.

2.5 Furthermore, under article 153 (1) of CPC, if the Public Prosecutor decides that there is no basis for the institution of a formal judicial investigation he must inform the complainant, who can then exercise his prerogative to take over the prosecution in the capacity of a "private prosecutor". However, CPC sets no time limit within which the Public Prosecutor must decide whether to request a formal judicial investigation. In the absence of such a decision the victim cannot take over the prosecution of the case on his own behalf. Prosecutorial inaction following a complaint filed by the victim therefore amounts to an insurmountable impediment in the exercise of the victim's right to act as a private prosecutor and to have his case heard before a court. Finally, even if there were a legal possibility for the victim himself to file for a formal judicial investigation because of the inaction of the Public Prosecutor, it would in effect be unfeasible if the police and the Public Prosecutor had failed to identify all of the alleged perpetrators beforehand, as in the instant case. Article 158 (3) of CPC provides that the person against whom a formal judicial investigation is requested must be identified by name, address and other relevant personal data. *A contrario*, such a request cannot be filed if the alleged perpetrator is unknown.

The complaint

3.1 The complainant claims that the acts described constitute a violation of several provisions of the Convention, in particular article 2, paragraph 1, read in conjunction with article 1; article 16, paragraph 1; and articles 12, 13 and 14 taken alone and/or together with article 16, paragraph 1. Such acts were perpetrated with a discriminatory motive and for the purpose of extracting a confession or otherwise intimidating and/or punishing him. He also submits that his allegations should be interpreted in the context of the serious human rights situation in the State party and, in particular, the systematic police brutality to which Roma and others are subjected. In evaluating his claim the Committee should take into account his Romani ethnicity and the fact that his membership in a historically disadvantaged minority group renders him particularly

vulnerable to degrading treatment. All else being equal, a given level of physical abuse is more likely to constitute "degrading or inhuman treatment or punishment" when motivated by racial animus and/or coupled with racial epithets than when racial considerations are absent.

3.2 With respect to article 12 read alone or taken together with article 16, paragraph 1, of the Convention, the complainant claims that the State party's authorities failed to conduct a prompt, impartial and comprehensive investigation into the incident at issue, notwithstanding ample evidence that an act of torture and/or cruel, inhuman and degrading treatment or punishment had been committed. Public prosecutors seldom institute criminal proceedings against police officers accused of violence and/or misconduct even though such cases are in the category of those that are officially prosecuted by the State. When the victims themselves or NGOs on their behalf file complaints against police misconduct, public prosecutors as a rule fail to initiate proceedings. They generally restrict themselves to requesting information from the police authorities and, when none is forthcoming, they take no further action. Judicial dilatoriness in proceedings involving police brutality often results in the expiration of the time period envisaged by law for the prosecution of the case. Notwithstanding the proclaimed principle of the independence of the judiciary, practice makes clear that public prosecutors' offices do not operate on this principle and that both they and the courts are not independent of the agencies and offices of the Ministry of Internal Affairs. This is especially true with respect to incidents of police misconduct.

3.3 With respect to article 13 of the Convention, the complainant submits that the right to complain implies not just a legal possibility to do so but also the right to an effective remedy for the harm suffered. In view of the fact that he has received no redress for the violations at issue, he concludes that his rights under article 13, taken alone and/or in conjunction with article 16, paragraph 1, of the Convention, have been violated.

3.4 The complainant further claims that his rights under article 14, taken alone and/or in conjunction with article 16, paragraph 1, of the Convention, have been violated. By failing to provide him with a criminal remedy the State party has barred him from obtaining "fair and adequate compensation" in a civil lawsuit, "including the means for as full a rehabilitation as possible". Pursuant to domestic law, the complainant had the possibility of seeking compensation by way of two different procedures: (i) criminal proceedings, under article 103 of the Criminal Procedure Code, which should have been instituted on the basis of his criminal complaint; or (ii) in a civil action for damages under articles 154 and 200 of the Law on Obligations. Since no formal criminal proceedings followed as a result of his complaint with the Public Prosecutor, the first avenue remained closed to him. As regards the second avenue, the complainant filed no civil action for compensation given that it is standard practice of the State party's courts to suspend civil cases for damages arising out of criminal offences until the completion of the respective criminal proceedings. Had the complainant decided to sue for damages immediately following the incident, he would have faced another insurmountable procedural impediment caused by the inaction of the Public Prosecutor's Office, namely, articles 186 and 106 of the Civil Procedure Code, which stipulate that both parties to a civil action - the plaintiff and the respondent - must be identified by name, address and other relevant personal data. Since the complainant to date remains unaware of this information, and as it was the duty of the Public Prosecutor's Office to establish these facts, instituting a civil action for compensation would have clearly been procedurally impossible and therefore rejected by the civil court.

State party's submissions on the admissibility and the merits of the complaint

4. The complaint with its accompanying documents was transmitted to the State party on 17 April 2002. Since the State party did not respond to the Committee's request, under rule 109 of the rules of procedure, to submit information and observations in respect of the admissibility and merits of the complaint within six months, a reminder was sent on 12 December 2002. On 20 October 2003, the State party informed the Committee that the Ministry on Human and Minority Rights was still in the process of collecting data from the relevant authorities with a view to responding on the merits of the complaint. No response, however, has been received by the Committee.

Issues and proceedings before the Committee

5.1 The Committee notes the State party's failure to provide information with regard to the admissibility or merits of the complaint. In the circumstances, the Committee, acting in accordance with rule 109, paragraph 7, of its rules of procedure, is obliged to consider the admissibility and the merits of the complaint in the light of the available information, due weight being given to the complainant's allegations to the extent that they have been sufficiently substantiated.

5.2 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not the complaint is admissible under article 22 of the Convention. In the present case the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. With respect to the exhaustion of domestic remedies, the Committee took note of the information provided by the complainant about the criminal complaint that he filed with the Public Prosecutor. The Committee considers that the insurmountable procedural impediment faced by the complainant as a result of the inaction of the competent authorities rendered the application of a remedy that may bring effective relief to the complainant highly unlikely. In the absence of pertinent information from the State party the Committee concludes that the domestic proceedings, if any, have been unreasonably prolonged. With reference to article 22, paragraph 4, of the Convention and rule 107 of the Committee's rules of procedure the Committee finds no other obstacle to the admissibility of the complaint. Accordingly, it declares the complaint admissible and proceeds to its examination on the merits.

5.3 The complainant alleges violations by the State party of article 2, paragraph 1, in connection with article 1, and of article 16, paragraph 1, of the Convention. The Committee notes in this respect the description made by the complainant of the treatment he was subjected to while in detention, which can be characterized as severe pain or suffering intentionally inflicted by public officials in the context of the investigation of a crime, and the written testimonies of witnesses to his arrest and release that the complainant has provided. The Committee also notes that the State party has not contested the facts as presented by the complainant, which took place more than five years ago. In the circumstances, the Committee concludes that due weight must be given to the complainant's allegations and that the facts, as submitted, constitute torture within the meaning of article 1 of the Convention.

5.4 Concerning the alleged violation of articles 12 and 13 of the Convention, the Committee notes that the Public Prosecutor never informed the complainant about whether an investigation was being or had been conducted after the criminal complaint was filed on 31 January 2000. It also notes that the failure to inform the complainant of the results of such investigation, if any, effectively prevented him from pursuing "private prosecution" of his case before a judge. In these circumstances the Committee considers that the State party has failed to comply with its obligation, under article 12 of the Convention, to carry out a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. The State party also failed to comply with its obligation, under article 13, to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities.

5.5 As for the alleged violation of article 14 of the Convention, the Committee notes the complainant's allegations that the absence of criminal proceedings deprived him of the possibility of filing a civil suit for compensation. In view of the fact that the State party has not contested this allegation and given the passage of time since the complainant initiated legal proceedings at the domestic level, the Committee concludes that the State party has also violated its obligations under article 14 of the Convention in the present case.

6. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 2, paragraph 1, in connection with article 1, and articles 12, 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

7. The Committee urges the State party to conduct a proper investigation into the facts alleged by the complainant and, 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 views expressed above.

Communication No. 212/2002

Submitted by: Mr. Kepa Urra Guridi (represented by counsel, Mr. Didier Rouget)

Alleged victim: The complainant

State party: Spain

Date of complaint: 8 February 2002

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

Meeting on 17 May 2005,

Having concluded its consideration of complaint No. 212/2002, submitted to the Committee against Torture by Mr. Kepa Urra Guridi under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following decision under article 22, paragraph 7, of the Convention.

1. The complainant, submitted on 8 February 2002, is Kepa Urra Guridi, a Spanish national born in 1956. He alleges that he is a victim of a violation by Spain of articles 2, 4 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Mr. Didier Rouget.

The facts as submitted

2.1 On 22 January 1992, the Spanish Civil Guard launched a police operation in Vizcaya Province to dismantle the so-called "Bizkaia combat unit" of the organization Euskadi Ta Askatasuna (ETA). In all, 43 people were arrested between then and 2 April 1992; many of them have reportedly been tortured and held incommunicado. The complainant was arrested on 22 January 1992 by Civil Guard officers as part of these operations.

2.2 The complainant alleges that, in the course of his transfer to the Civil Guard station, the officers took him to open ground where they subjected him to severe abuse. He was stripped, handcuffed, dragged along the ground and beaten. He states that after six hours of interrogation, he had to be taken to hospital because his pulse rate was very high, he could not speak, he was exhausted and unconscious, and was bleeding from his mouth and nose. The hospital doctors ascertained that he had injuries to his head, face, eyelids, nose, back, stomach, hip, arms and legs. He also had a neck injury which left him unable to move. The complainant maintains that this serious ill-treatment can be categorized as torture within the meaning of article 1 of the Convention.

2.3 The complainant filed suit with the Vizcaya Provincial Court alleging that he had been tortured, and on 7 November 1997 the Court found three Civil Guards guilty of torture. Each officer received a prison sentence of four years, two months and one day, was disqualified from serving in State security agencies and units for six years and one day, and suspended from duty for the duration of his prison sentence. Under the terms of the sentence, the Civil Guards were ordered to pay compensation of 500,000 pesetas to the complainant. The Court held that the injuries sustained by the complainant had been caused by the Civil Guards in the area of open country where he was taken following his arrest.

2.4 The Public Prosecutor's Office appealed the sentence to the Supreme Court, asking for the charges to be reviewed and the sentences reduced. In its judgement of 30 September 1998, the Supreme Court decided to reduce the Civil Guards' prison sentence to one year. In its judgement, the Court held that the Civil Guards had assaulted the complainant with a view to obtaining a confession about his activities and the identities of other individuals belonging to the Bizkaia combat unit. It took the view that "fact-finding" torture of a degree exceeding cruel or degrading treatment had been established, but held that the injuries suffered by the complainant had not required medical or surgical attention: the first aid the complainant had received was sufficient. The Court considered that a sentence of one year's imprisonment was in proportion to the gravity of the offence.

2.5 While the appeal was pending before the Supreme Court, one of the Civil Guards continued to work in French territory as an anti-terrorism coordinator with the French security forces, and with the authorization of the Ministry of the Interior embarked on studies with a view to promotion to the grade of Civil Guard commander.

2.6 The Ministry of Justice initiated proceedings to have the three convicted Civil Guards pardoned. The Council of Ministers, at its meeting of 16 July 1999, granted pardons to the three Civil Guards, suspending them from any form of public office for one month and one day. Notwithstanding this suspension, the Ministry of the Interior kept one of the Civil Guards on active duty in a senior post. The pardons were granted by the King in decrees published in Spain's Official Gazette.

2.7 The complainant alleges that he has exhausted all available domestic remedies and has not submitted the matter to any other procedure of international investigation.

The complaint

3.1 The complainant alleges that article 2 of the Convention has been violated because the various acts of the Spanish political and judicial authorities effectively legitimize the practice of torture, leading torturers to believe that they are virtually immune from prosecution, and demonstrating that the authorities condone serious ill-treatment that can be classified as torture.

3.2 The complainant alleges a violation of article 4 of the Convention. He argues that an example should be made of State officials found guilty of torture. In his view, both the reductions in prison terms and the pardons granted to the torturers violate the right of victims to obtain effective justice. He claims that the authorities of the State party, by taking decisions that effectively reduce the sentences and the actual punishment meted out to State officials convicted of torture, have violated article 4 of the Convention.

3.3 He further claims that there has been a violation of article 14 of the Convention, since the pardoning of the Civil Guards is tantamount to denying the fact of the complainant's torture and suffering. According to the complainant, the State party should have redressed the wrong he had suffered as a victim of torture and taken steps to ensure that such acts did not happen again. He adds that the pardon accorded to the torturers encourages the practice of torture within the Civil Guard. According to the complainant, remedial measures cover all the damages suffered by the victim, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as well as prevention, investigation and punishment of the persons responsible. In this regard, he cites the studies carried out by the United Nations Commission on Human Rights on the impunity of perpetrators of violations of human rights and on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights, as well as the judgement of the Inter-American Court of Human Rights in the case of *Velásquez Rodríguez v. Honduras.*

3.4 The complainant believes that systematic practice in the State party, exemplified by failure to investigate cases of torture promptly and impartially, protracted investigations, the imposition of minimum sentences, the retention in the security bodies of persons accused of torture and the promotion, decoration and pardoning of persons accused of torture, allows torture to go unpunished. He refers to the conclusions and recommendations of the Committee with reference to the second, third and fourth periodic reports submitted by the State party, in which it expressed concern at the lenient sentences imposed on persons accused of torture and recommended that the State party impose appropriate punishments.

State party's observations on the admissibility and merits of the complaint

4.1 The State party considers the complaint inadmissible because it says that the complainant has failed to exhaust domestic remedies. It argues that the complainant should have appealed against the royal decrees of 1999 that granted the pardons. It states that both the Supreme Court and the Court of Jurisdictional Disputes have held that a pardon may be subject to judicial review. It adds that the Convention against Torture has been incorporated into domestic law and may be invoked directly before the courts and, if the complainant maintains that granting pardons violates the Convention, he should have put this argument to the Spanish courts.

4.2 As to the merits, the State party maintains that the victim of a crime has no right to block a pardon, the granting of which is a prerogative of the King acting in accordance with the Constitution. It claims that, according to the position adopted by the human rights treaty bodies, victims have no right to ask for anyone to be convicted, and accordingly it would be a contradiction to grant them the right to block a pardon. When a crime is investigated ex officio, the granting of a pardon does not provide for the victim's involvement and, therefore, the interests of the victim of the crime are unaffected. The State party adds that it was the Civil Guards themselves who requested the pardon.

4.3 The State party claims that the complainant received the full compensation awarded to him by the court.

4.4 The State party indicates that, until such time as a guilty verdict was handed down in the complainant's case, the accused went about their business as normal, which included one of them taking a course of studies with a view to promotion, as anyone is legally entitled to do in the absence of measures affecting their rights. Upon conviction, the Civil Guards lodged an

application for pardon with the Vizcaya Provincial Court, with the request that the sentence should not be carried out until a decision had been reached on their request for a pardon. Although the Court did not manage to order execution of the sentence, the complainant could have asked it to do so. Once the pardon had been granted, the Civil Guards were suspended from duty for one month and one day.

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

5.1 On the admissibility of the complaint, the complainant indicates that, in the circumstances of his case, there were no domestic remedies against the granting of a pardon. He adds that neither the 1870 statute on pardons nor the position adopted by the Constitutional Court permits a private individual to object to a pardon. He cites the Constitutional Court judgement of 5 October 1990, which says that pardons "as a gesture of grace, shall be decided upon by the executive and granted by the King. Such decisions shall not be examined on their merits by the courts, including this Constitutional Court". The complainant maintains that the most recent judgements of the Constitutional Court, those handed down between January and March 2001, did not introduce a means of appealing against pardons but merely gave the sentencing court a certain degree of procedural control. The victim is not informed that a pardon has been granted and is thus denied the opportunity to appeal. The complainant states that the pardon procedure specifies that the victim of the pardoned crime should be given a hearing. He objected to the pardons when consulted, but his views were not binding.

5.2 On the merits, the complainant maintains that the pardon granted by the authorities to Civil Guards convicted of torture is incompatible with the purpose and object of the Convention, inasmuch as it calls into question the absolute nature of the prohibition of torture and other cruel, inhuman or degrading treatment. Granting pardons creates a climate of impunity that encourages State officials to commit further acts of torture. When the pardon was granted, the accused's sense that impunity prevailed was validated by the Spanish authorities' common practice of pardoning individuals accused of torture. The State party should have redressed the wrongs suffered by the complainant and taken steps to ensure that such torture did not happen again. The complainant insists that the pardon granted to the Civil Guards denies the very existence of the torture and ill-treatment of which he was the victim.

Issues and proceedings before the Committee

6.1 Before examining the merits of a communication, the Committee against Torture must determine whether it is admissible under article 22 of the Convention.

6.2 The State party is of the view that the communication is inadmissible because domestic remedies have not been exhausted. It claims that, if the complainant considers that his rights under the Convention have been violated by the pardoning of the three Civil Guards, he ought to have put this argument to the Spanish courts. The complainant maintains that there were no available and effective means of challenging the granting of a pardon.

6.3 The Committee observes that the State party confined itself to asserting that recent decisions by the courts permit the judicial review of pardons, and that the Convention against Torture can be invoked before the domestic courts; it did not indicate what specific remedies were available to the complainant, nor what degree of judicial review pardons would be subject

to. The Committee notes that, although the injured party may not be a party to pardon proceedings in a material sense, he or she can be heard if he or she opposes the pardon, and that, according to the State party, the injured party has no right as such to request that no pardon be allowed. The Committee recalls that it is necessary to exhaust only those remedies that have a reasonable chance of success, and is of the view that, in the present case, the complainant did not have such remedies available. Accordingly, the Committee considers the communication admissible under article 22, paragraph 5 (b), of the Convention.

6.4 The Committee notes that the complainant has alleged violations of articles 2 and 4 of the Convention, maintaining that the State party has failed in its obligations to prevent and punish torture. These provisions apply to the extent that the acts of which the complainant was a victim are considered to be torture within the meaning of article 1 of the Convention. The Committee takes note of the complainant's allegation that his treatment constituted torture within the meaning of the Convention. In the Committee's view, however, it is unnecessary to rule on whether the treatment meted out to the complainant was consistent with the concept of torture within the meaning of article 1 of the Convention, since the State party has not contradicted the complainant's allegation that he was tortured. The Committee notes that the courts that tried the complainant's case concluded that he had indeed been tortured. The Committee must, however, rule on the State party's argument that the complainant does not have a right to object to the granting of the pardon, and that the complainant therefore does not qualify as a victim in the meaning of article 22, paragraph 1, of the Convention. The Committee points out that the State party has not denied that the complainant was tortured, allowing criminal proceedings to be brought against the Civil Guards who injured the complainant and accepting that the treatment suffered by the complainant was described during the trial as torture, and that three people were in principle found guilty.

6.5 The Committee accordingly considers that the complaint raises issues of importance in connection with article 2, paragraph 1, article 4, paragraph 2, and article 14, paragraph 1, of the Convention, which should be examined on their merits.

6.6 As to the alleged violation of article 2 of the Convention, the Committee notes the complainant's argument that the obligation to take effective measures to prevent torture has not been honoured because the pardons granted to the Civil Guards have the practical effect of allowing torture to go unpunished and encouraging its repetition. The Committee is of the view that, in the circumstances of the present case, the measures taken by the State party are contrary to the obligation established in article 2 of the Convention, according to which the State party must take effective measures to prevent acts of torture. Consequently, the Committee concludes that such acts constitute a violation of article 2, paragraph 1, of the Convention. The Committee also concludes that the absence of appropriate punishment is incompatible with the duty to prevent acts of torture.

6.7 With regard to the alleged violation of article 4, the Committee recalls its previous jurisprudence to the effect that one of the purposes of the Convention is to avoid allowing persons who have committed acts of torture to escape unpunished. The Committee also recalls that article 4 sets out a duty for States parties to impose appropriate penalties against those held responsible for committing acts of torture, taking into account the grave nature of those acts. The Committee considers that, in the circumstances of the present case, the imposition of lighter penalties and the granting of pardons to the Civil Guards are incompatible with the duty to impose appropriate punishment. The Committee further notes that the Civil Guards were not

subject to disciplinary proceedings while criminal proceedings were in progress, though the seriousness of the charges against them merited a disciplinary investigation. Consequently, the Committee considers that there has been a violation of article 4, paragraph 2, of the Convention.

6.8 As to the alleged violation of article 14, the State party indicates that the complainant received the full amount of compensation ordered by the trial court and claims that the Convention has therefore not been violated. However, article 14 of the Convention not only recognizes the right to fair and adequate compensation but also imposes on States the duty to guarantee compensation for the victim of an act of torture. The Committee considers that compensation should cover all the damages suffered by the victim, which includes, among other measures, restitution, compensation and rehabilitation of the victim, as well as measures to guarantee the non-repetition of the violations, always bearing in mind the circumstances of each case. The Committee concludes that there has been a violation of article 14, paragraph 1, of the Convention.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, decides that the facts before it constitute a violation of articles 2, 4 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee urges the State party to ensure in practice that persons responsible for acts of torture are appropriately punished, to ensure that the complainant receives full redress and to inform it, within 90 days from the date of the transmittal of this decision, of all steps taken in response to the views expressed above.

Communication No. 220/2002

Submitted by:	Mr. R.D. (represented by counsel, Advokatfirman Peter Lindblom and Per-Erik Nilsson)
Alleged victim:	The complainant
State party:	Sweden
Date of the complaint:	8 November 2002

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

Meeting on 2 May 2005,

Having concluded its consideration of complaint No. 220/2002, submitted to the Committee against Torture by Mr. R.D. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is R.D., a Bangladeshi citizen, currently awaiting deportation from Sweden to Bangladesh. He claims to be a victim of violations of articles 3 and 16, by Sweden, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel, Advokatfirman Peter Lindblom and Per-Erik Nilsson.

1.2 On 12 November 2002, the State party was requested, pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant while his complaint is under consideration by the Committee. In the State party's submission on admissibility and the merits of 10 April 2003, it acceded to the Committee's request not to expel the complainant.

The facts as presented by the complainant

2.1 The complainant is a Christian and lived in a village about 10 km from Barisal City, Bangladesh, where his father worked as a clergyman. On 7 April 1986, his father was abducted from his house by unknown men. A few days later, he was found dead and his body mutilated. Shortly thereafter, the same men returned, beat his mother and warned her and the rest of the family not to complain to the authorities. The complainant's uncle was also murdered and his family was persecuted because of their religion. As a result of this persecution, he moved with his family to Barisal City.

2.2 The complainant states that he was subjected to threats and intimidation because of his religion. In 1988, he was recruited to the Bangladesh Freedom Party (BFP) and was politically active from 1990 to 1996. In 1991, he took up the post of deputy coordinator. In 1995, when the Bangladesh Nationalist Party (BNP) was in power, he was arrested after being falsely accused of

anti-State activities and kept in custody for five days. On release, he continued with his political activities. After the Awami League came to power in June 1996, he ceased his political activities, as the police had started arresting members of BFP. Several attempts were made to stop him from working with BFP and to induce him to join the Awami League. At the end of 1996, he went into hiding in another part of the city, before finally moving away.

2.3 In 1998 his mother told him that the police had been looking for him, and that he was accused of murder and anti-State activities. In 1999, when he visited his family in the city, he was warned that the police were going to arrest him, and he fled. Sometime in the same year, when the police could not find the complainant, they arrested his brother, tortured him in the police station and released him after two days. On another occasion in 1999, the complainant was attacked by members of the Awami League while on his way to visit his mother.

2.4 On 5 February 2000, the complainant entered Sweden and applied for asylum on the same day, on the grounds that he had been persecuted because of his religion and his involvement in BFP. Under the terms of the two arrest warrants issued in 1997, the complainant had been sentenced to life imprisonment for murder and anti-State activities and would be arrested if returned to Bangladesh. On 27 March 2001, the Migration Board denied his application.

2.5 On 18 June 2001, the complainant appealed the decision before the Aliens Appeal Board, stating that he had been subjected to torture, including rape and beatings for two days, while under arrest in 1997 or 1998. Thereafter, he was treated for a week, under police supervision, at Barisal Medical College. He claims that he was released after his mother had promised that he would join the Awami League.

2.6 The following medical information was provided referring to the conclusions of several Swedish doctors. Dr. Edston concluded that the complainant had been subjected to the following torture: hit with blunt instruments; stabbed with a screwdriver and a police truncheon; burned with cigarettes, a heated screwdriver and possibly a branding iron; beaten systematically on the soles of his feet; attempted suffocation by introducing hot water into his nose; "rolling" of the legs with bamboo rods; sexual violence including rape. He found that the complainant had suffered permanent physical damage in the form of pain in his left knee, reduction of mobility in his right shoulder, functional reduction in the movement of his left hand, and pain when defecating. Dr. Soendergaard found that there was no doubt that the complainant suffered from post-traumatic stress disorder. Dr. Hemingstam, a psychiatrist, stated that his symptoms were characterized by: difficulties in concentrating; lack of appetite; feelings of agony; restlessness; nightmares; and hallucinations with impulses to commit suicide. She concluded that there is a great risk of the complainant committing suicide if he were subjected to pressure and if he lost his supportive and nursing contacts. According to a certificate from the Fittja Clinic, the complainant feels confused, "disappears" and is difficult to reach during sessions, and that he has flashbacks of the torture to which he was subjected. Another psychiatrist, Dr. Eriksson, confirmed that the complainant was admitted to hospital in May 2001 because of a risk of suicide. She confirmed that he was deeply depressed and suicidal.

2.7 On 4 March 2002, the Aliens Appeals Board, although acknowledging that the scars could have been the result of beatings inflicted by his political opponents, found after consideration of the case as a whole that it was not probable that he was a refugee. It cited the

fact that the information about the torture to which the complainant had been subjected had not been disclosed prior to the Aliens Appeal Board as one of the reasons for questioning the complainant's claims.[a]

2.8 In May 2002, another application for a residence permit was submitted, together with further medical information. In two new medical reports of 2 and 9 April 2002, the doctors criticized the Aliens Appeal Board's decision and, as an explanation for the introduction of information on torture at a late stage in the proceedings, suggested that the support the complainant had been receiving from his psychiatrist had given him the confidence to talk openly about his torture. On 5 July 2002, the Board refused his appeal on the grounds that the new evidence provided did not demonstrate that he was a person in need of protection.

2.9 The complainant invokes reports by Amnesty International and the United States Department of State[b] which he claims support the conclusion that police torture of political opponents to extract information and to intimidate is often instigated and supported by the executive.

The complaint

3.1 It is claimed that the complainant's forced repatriation to Bangladesh would violate his rights under article 3 of the Convention, as there are substantial grounds for believing that he would be in danger of being subjected to torture. In support of his claim, he refers to his involvement in BFP, the persecution of his family, the medical reports concluding that he had previously been subjected to torture, his unjustifiable conviction for murder and anti-State activities, and the fact that there is said to be a consistent pattern of gross, flagrant and mass violations of human rights in Bangladesh.

3.2 As to his involvement in BFP, he states that many of the leaders of this party were convicted of the assassination of Sheikh Mujibur Rahman in 1975 and have been sentenced to death. He claims that because of the party members' support for their imprisoned leaders, the party members themselves have been stigmatized and are personally at risk of persecution by the police even under the BNP regime.

3.3 It is also claimed that his forced expulsion would, in itself, constitute a violation of article 16 of the Convention, in view of his fragile psychiatric condition and severe post-traumatic stress syndrome, resulting from the persecution, torture and rape to which the complainant and his family have been subjected.

The State party's submission on admissibility and merits

4.1 On 10 April 2003, the State party submitted its observations on the admissibility and merits of the complaint. It confirms that the complainant has exhausted domestic remedies but maintains that his claims have not been substantiated for purposes of admissibility, that he has not shown that there is a foreseeable, real and personal risk of being subjected to torture and that the claim of a violation of article 16, in view of his psychiatric condition, is incompatible with the provisions of the Convention.

4.2 The State party invokes to the Committee's general comment No. 1 on article 3 of the Convention, which spells out that a State party's obligation to refrain from returning a person to another State is only applicable if the person is in danger of being subjected to torture, as defined in article 1. There is no reference to "other acts of cruel, inhuman or degrading treatment or punishment" in article 3, as there is in article 16. Nor does article 16 contain a reference to article 3 as it does to articles 10-13. According to the State party, the purpose of article 16 is to protect those deprived of their liberty or who are otherwise under the factual power or control of the person responsible for the treatment or punishment.

4.3 The State party submits that although the general human rights situation in Bangladesh is "problematic", it has improved when seen from a long-term perspective. Parliamentary democracy was introduced in Bangladesh in 1991 and since then no systematic oppression of dissenters has been reported. However, it notes that violence is a pervasive feature of politics and the police reportedly use torture, beatings and other forms of abuse while interrogating suspects. The police are said to be reluctant to pursue investigations against people affiliated with the ruling party and the Government frequently uses the police for political purposes. Although the Constitution establishes Islam as the State religion, it also contains the right to practise the religion of one's choice. The Government generally respects this right but religious minorities are disadvantaged in practice in certain areas, including access to government jobs and political office.

4.4 In addition, the State party refers to a confidential report from a "study tour" of officials from the Aliens Appeal Board in October 2002, which states, inter alia, that: false documents are very common in Bangladesh; persecution for political reasons is a rare occurrence at the grass-roots level but leading politicians within the opposition, such as former members of Parliament, are subjected to false accusations, arrest and torture by the police; a suspect does not have access to an arrest warrant, since such a document is directed by the court to the police; the main reason for seeking asylum is to get a job and an income; and people at grass-roots level in politics who are harassed may seek refuge in other parts of the country.

4.5 According to the State party, the national authority conducting the asylum interview is in the best position to assess the complainant's credibility. In the present case, the Migration Board took its decision after interviewing the complainant for three hours. Taken together with the facts and the documentation of this case, the Board had ample time to make important additional observations. The State party relies on the opinions of the Migration Board and the Aliens Appeal Board.

4.6 Regarding the complainant's allegation that he risks persecution by private individuals because of his religion, the State party submits that the risk of being subjected to ill-treatment by a non-governmental entity or by private individuals, without the consent or acquiescence of the Government of the receiving country, falls outside the scope of article 3 of the Convention. In any event, the complainant has not substantiated his claim that he risks treatment in accordance with article 3. The State party notes that the complainant has not provided any details to the Swedish immigration authorities about the religious persecution that he and his family were

allegedly subjected to. The complainant stated that the persecution which had led to his father's death in 1986 ceased shortly afterwards when the family moved to Barisal City. There is no evidence that the complainant himself was the target of religious persecution.

4.7 Regarding the complainant's allegation that he risks torture because of his involvement with BFP, the State party submits that the complainant has repeatedly stated that he was exposed to maltreatment by his political opponents in the Awami League, which was the party in power in Bangladesh at the relevant time, and that he fears its supporters may kill him if he returns. But the risk of being maltreated by political opponents who are in the opposition[c] cannot be attributed to the State party and must be regarded as falling outside the scope of article 3. Should a risk exist, it would probably be of a local character since the complainant has only been politically active at the local level. There is no indication that he has anything to fear from BNP, which is currently in power.

4.8 Concerning the allegations of past torture, the State party submits that the complainant did not mention, either during the asylum interview held in March 2000 or at the meeting with representatives of the Aliens Appeal Board in July 2002 relating to his new application, that he had suffered torture by the police. It was only in his first appeal to the Aliens Appeal Board on 18 June 2001 that the authorities were informed that the complainant had been tortured by police in 1995 and in 1997 or 1998. When initially examined in August 2001, he complained of torture by the police in 1997 and assaults by political opponents and Muslims in 1996 and 1999 but made no mention of torture in 1995.

4.9 The State party refers to the medical report in which it is concluded that the complainant was subjected to torture in the manner he stated and recalls the Aliens Appeals Board's comment that the scars could be the result of the assault by Awami League supporters. However, the aim of the Committee's examination is to establish whether the complainant would be currently at risk of torture if returned. Even if it were to be considered established through the evidence that the complainant was tortured in 1997, this does not mean that he has substantiated his claim that he will risk torture in the future.

4.10 The State party challenges the validity of the documents provided to prove his conviction for murder and anti-State activities. It states that following inquiries by the Swedish Embassy in Dhaka, it was established, after looking at the court records, that the complainant was not one of the 18 accused and convicted of murder, as claimed by him and allegedly confirmed in a lawyer's affidavit. In the State party's view, the results of this inquiry call into question the complainant's credibility and the general veracity of his claims. As to the two arrest warrants submitted to support his claims, the State party notes that the complainant has not explained how he obtained such documents.

4.11 In addition, the State party points to various inconsistencies and contradictions in the complainant's evidence. It refers to the Migration Board's reasoning that it was not probable that the complainant, who was a Christian and whose father had been a clergyman, would have been working for several years for a party whose primary goal is to protect the Islamic character of Bangladesh. Neither did the Board think it credible that a Christian would have been given the post of deputy coordinator. For this reason, the Board found that it was unlikely that the

authorities had arrested the complainant for his political activities, or that he had been convicted of murder and anti-State activities. The State party considers it difficult to believe that the complainant would have been released in 1997 by the Magistrates Court following his mother's promise that he would work for the Awami League, considering his claims, allegedly evidenced in the warrants submitted, that in 1997 the police were instructed to arrest him for the purpose of bringing him to court to answer charges of murder. It notes that the complainant had his passport renewed shortly before his departure, which strongly indicates that he was not of interest to the authorities.

4.12 The State party enumerates the reasons why the complainant should not fear ill-treatment by the Bangladeshi authorities in the event of return: he has not been politically involved since 1996; he told the interviewing official of the Migration Board that it was his mother who had planned for him to leave; although he alleges to have been tortured in 1997 he made no effort to leave immediately and stayed on for several years thereafter; the fact that the complainant's mother asked, in an interview with a newspaper, the Bangladeshi authorities to help him makes no sense if the authorities themselves were the ones whom he feared would ill-treat him.

4.13 Regarding article 16, the State party refers to the Committee's decisions in the cases of *G.R.B. v. Sweden*[d] and *S.V. et al. v.* Canada,[e] noting that the Committee did not find violations of article 16 in either case. Although it acknowledges that according to the medical evidence the complainant is suffering from post-traumatic stress syndrome and his health has deteriorated as a result of the decisions of the Swedish authorities to refuse him a residence permit, it considers that there is no basis for his fear of returning to Bangladesh. His family can support him on return and medical care is available for him, at least in the big cities. The State party notes that despite his health problems the complainant has attended school and has also worked in Sweden for considerable periods of time. In enforcing the expulsion order, the State party ensures that his health will be taken into account in deciding how the deportation will be carried out and the Bangladeshi authorities will not be informed of his return. In its view, the complainant has not substantiated his claim that an enforcement per se of the expulsion decision would amount to cruel, inhuman or degrading treatment, within the meaning of article 16 of the Convention.

4.14 On a procedural issue, the State party requests the Committee to extend its examination to the merits of the communication, as soon as possible, since the Committee's decision in this case may be of relevance to the Swedish immigration authorities' assessment of other asylum claims from Bangladeshi citizens.

The complainant's comments on the State party's submission

5.1 On 23 October and 22 November 2003, the complainant commented on the State party's submission and provided an update on the facts. It is stated that for fear that the complainant might commit suicide he was placed in a psychiatric clinic on 23 October 2003. He was discharged at the end of November 2003 and referred to non-institutional care. He claims that there is a direct link between his depressive state and his fear of being sent back to Bangladesh. He maintains that he has fully substantiated his claim and states that the overall purpose of article 16 is to protect an individual's health and welfare.

5.2 As to the information in the confidential report,[f] he claims that such reports are made in close cooperation with domestic authorities and the information is almost always provided by officials who depend on the benevolence of the political powers. He claims that Bangladeshis are looked upon with suspicion by the Swedish authorities and that the burden of proof is higher than that for any other asylum-seekers. On the issue of the alleged forged affidavit confirming the complainant's conviction for murder, it is argued that no objective evidence, other than a report from an investigator, was provided to prove that the complainant is not one of the convicted persons. This report does not contain any signature or name of the person purported to have signed it. Neither does it provide information on the competence of the investigator, who is merely referred to in the letter as a "lawyer". Finally, no information has been provided on whether the complainant's lawyer was given an opportunity to comment or refute the accusation of forgery which was directed against him and if so, what his response was.

5.3 The complainant reiterates that he has been sentenced to life imprisonment and for this reason will be arrested by the police. In addition, he states that as his case has attracted interest in the Swedish mass media, there is a risk that it may also have attracted the attention of the Bangladeshi authorities, thus adding to the risk that he may be subjected to torture if returned. As to the issue of his passport, the complainant states that "everything - passports included - are for sale".

Supplementary submissions of the State party and the complainant

6.1 On 19 February 2004, the State party submitted that the complainant's condition had improved as he had been discharged from the psychiatric clinic. As to the confidential report, the State party submits that a copy of the report was sent to the complainant's former counsel on 19 May 2003. A copy of the Swedish embassy's report was also sent on the following day.

6.2 The State party highlights some of the notes made in his medical records while in compulsory psychiatric care including: the fact that although his emotional and formal contact with the doctors was bad, he was not inhibited with the other patients; he did not cooperate to any appreciable extent; it is unclear how much of his behaviour is in fact attributable to acting on his part, in view of his present situation. The State party also refers to the recent case of *T.M. v. Sweden*,[g] in which the Committee referred to the significant shift in political power in Bangladesh in reaching its conclusion that the complainant has failed to substantiate his claim of a risk of torture.

6.3 On 19 and 28 March 2004, the complainant sent a further medical report to highlight the severe form of post-traumatic stress syndrome from which he is suffering.

6.4 On 26 October 2004, in response to a request by the Secretariat for a copy of the judgement, concerning the 18 persons accused and convicted of murder, in which the State party claims the complainant's name does not appear, the State party expresses regret that it is not in a position to provide this judgement at short notice and would need around two months to obtain a copy. In any event, it argues that the burden is on the complainant, who invoked the judgement, to produce a copy. No copy has been presented to the Swedish authorities, or to the Committee, nor has he provided any explanation as to why this has not been done. On 31 November 2004, the Committee, through the Secretariat, requested a copy of this judgement in English. On 22 April 2005, the State party provided the Committee with a copy of the judgement, in which the complainant's name does not appear.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being examined under another procedure of international investigation or settlement.

7.2 Concerning the claim under article 16 relating to the complainant's expulsion in light of his mental health, the Committee recalls its prior jurisprudence that the aggravation of the condition of an individual's physical or mental health by virtue of a deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of article 16.[h] The Committee notes the medical evidence presented by the complainant demonstrating that he suffers from severe post-traumatic stress syndrome, most probably as the consequences of the torture suffered by him in 1997. The Committee considers, however, that aggravation of the complainant's state of health that might be caused by his deportation is in itself insufficient to substantiate this claim, which is accordingly considered inadmissible.

7.3 As to the claim under article 3 concerning torture, the Committee considers, particularly in light of the complainant's account of his previous torture, that he has substantiated this claim, for purposes of admissibility. In the absence of any further obstacles to the admissibility of this claim, the Committee accordingly proceeds with its consideration on the merits.

Consideration on the merits

8.1 The issue before the Committee is whether the removal of the complainant to Bangladesh would violate the State party's obligation, under article 3 of the Convention, not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.2 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Bangladesh. In assessing this risk, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.3 The Committee observes that the State party has not contested the complainant's claim that he was tortured and notes that the Aliens Appeal Board was of the view that the complainant's political opponents may have been responsible for this torture. However, the

Committee notes that seven years have passed since the torture took place, that the complainant's alleged level of responsibility in the Bangladesh Freedom Party was low and that his participation was at the local level only. In addition, it observes that the complainant has provided no evidence, documentary or otherwise, either to the State party or to the Committee, to demonstrate that he had been convicted and sentenced to life imprisonment for murder. In fact, it is clear from the judgement provided by the State party on 22 April 2005 that the complainant's name is not among the list of those convicted. For these reasons, and considering the fact that the Government has changed since the alleged torture, the Committee considers that the complainant has failed to show that substantial grounds exist to prove that he would be at a real and personal risk of being subjected to torture if removed from Sweden.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the complainant has not substantiated his claim that he would be subjected to torture upon return to Bangladesh and therefore concludes that the complainant's removal to that country would not constitute a breach by the State party of article 3 of the Convention.

Notes

[a] No further information is provided on the reasoning of the Aliens Appeal Board.

[b] Amnesty International, *Report 2002* and Bangladesh: Torture and Impunity (ASA 13/011/2000); Amnesty International, Bangladesh: Politically-motivated detention of opponents must stop, press release issued 6 September 2002 (ASA 13/012/2002); United States Department of State, Country Reports on Human Rights Practices.

[c] The Bangladesh National Party has been in power again since 2001.

[d] Communication No. 86/1997, decision adopted on 15 May 1998.

[e] Communication No. 49/1996, decision adopted on 15 May 2001.

[f] This report has not been provided, but the State party states that it will provide it at the Committee's request.

[g] Communication No. 228/2003, Views adopted on 18 November 2003.

[h] Communication No. 83/1997, decision adopted on 15 May 1998; communication No. 49/1996, decision adopted on 15 May 2001; and communication No. 228/2003, decision adopted on 18 November 2003.

Communication No. 221/2002

Submitted by: Mr. M.M.K. (represented by counsel)

Alleged victim: The complainant

State party: Sweden

Date of complaint: 19 November 2002

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

Meeting on 3 May 2005,

Having concluded its consideration of complaint No. 221/2002, submitted to the Committee against Torture by Mr. M.M.K. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. M.M.K., a Bangladeshi citizen currently residing in Sweden, where he has requested asylum. He claims that his removal to Bangladesh in the event of the rejection of his refugee claim would constitute a violation of articles 3 and 16 of the Convention by Sweden. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 21 November 2002. Pursuant to rule 108, paragraph 1, of the Committee's revised rules of procedure, the State party was requested to refrain from expelling the complainant to Bangladesh pending the consideration of his case by the Committee. On 8 January 2002, the State party informed the Committee that it had decided to stay the enforcement of the decision to expel the complainant to Bangladesh until further notice.

The facts as submitted by the complainant

2.1 In 1993, while living in Bangladesh, the complainant was appointed as the local welfare secretary of the Jatiya Party in Mymensingh. He held that position until going to Sweden in 2002. His duties included informing Bangladeshi citizens about their rights and about the widespread corruption in the country. In 1995, the complainant received kidnapping and death threats by followers of the Bangladesh Nationalist Party (BNP), and thereafter from 1999 to 2002 by followers of the Awami League.

2.2 Between 1993 and 1996, the complainant studied in India and went back to Bangladesh during holidays and whenever his duties with the Jatiya Party demanded it. For almost a year during 1995 to 1996, he was not in Bangladesh at all out of fear of being kidnapped and because of death threats.

2.3 In 1995, while on holidays in Bangladesh, the complainant was kidnapped by followers of BNP and held for four days. During this time he was allegedly severely maltreated and his arms and hands were slashed with knives. The purpose was to make him stop his political activities and his fight against corruption. After four days he was left in the street, and passers-by brought him to hospital. He reported the incident to the police, but was not able to name any of his kidnappers as he had been blindfolded during the ill-treatment. The police were unable to arrest anyone involved.

2.4 In June 1995, the complainant was falsely accused of murder in his home town, Mymensingh. For this reason, and because the police were looking for him, he did not stay at home, but mostly in Dhaka. He continued to carry out his political activities in other parts of the country.

2.5 In September/October 1999, the complainant was arrested while taking part in a demonstration in Dhaka. He was accused of kidnapping. He states that the accusation was false and that according to the police report the Awami League was responsible for it. He was released on bail in January/February 2000 after complaining of torture. Throughout his custody, the complainant was subjected to torture, at least once a week for two or three days at a time. He describes the torture as follows: his hair was shaved and water was dropped on his head and poured through his nostrils; he was subjected to electric shocks; and he was hit with clubs, truncheons and long sticks. He was also subjected to electric shocks by being forced to urinate in hot water into which electric cables had been plunged. The purpose was to obtain a confession and to stop him from being politically active. According to the complainant's counsel in Bangladesh, the responsible authorities acknowledged that he had been subjected to maltreatment but not to "more severe forms of torture", and that sometimes a little force or torture was necessary to obtain "the truth". The case against the complainant is still pending.

2.6 After his release, the complainant was treated for some time in a private clinic for his mental and physical sequellae of the torture. In May/June 2000, although the complainant had only regained about 70 per cent of his former capacity, he resumed his political activities.

2.7 In July 2000, the complainant was again arrested and falsely accused of illegal possession of arms and drug dealing. He was refused bail on account of the seriousness of the charges and remanded in custody for two and a half months awaiting trial. He indicates that his father "arranged" for his pending case not to be joined with the murder case. While on remand he was subjected to mental torture, and forced to watch while others were tortured. Upon release on bail in September 2000, he again received medical treatment.

2.8 In February 2001, the complainant left Bangladesh, not because of an isolated incident but because of everything that had happened to him since 1995 and because he feared being killed either by followers of the Awami League or BNP, and of being subjected to torture again. That BNP and its coalition partners won the elections in October 2001 did not allay his fear.

2.9 On 14 February 2001, the complainant entered Sweden, and requested asylum on the same day. Counsel requested a delay of the examination of the case until 31 January 2002, to obtain documentary evidence of the complainant's case from Bangladesh. The Migration Board rejected counsel's request for such a delay.

2.10 While in Sweden, the complainant was informed that the police in Bangladesh had been looking for him and that they had a warrant for his arrest, as he had not appeared in court. He requested medical assistance in Sweden at the clinic for asylum-seekers in Fittja.

2.11 On 19 December 2001, the Migration Board denied his application. The Board did not consider credible that the complainant had been persecuted by Bangladeshi authorities since, although wanted for murder, he had been able to travel back and forth between Bangladesh and India. It also noted that one page of the complainant's passport had been torn out, and that it was not probable that he was released on bail given the serious charges against him. In its conclusion, the Board also stated that it did not consider it probable that the complainant had been subjected to torture, or that he had a well-founded fear of being subjected to torture or corporal punishment.

2.12 The complainant appealed to the Aliens Appeal Board. The Board was presented with documentary evidence from Bangladesh, including two medical reports. A third medical report from the clinic for asylum-seekers in Fittja was also submitted by counsel. Counsel suggested that if the Board had had doubts about the authenticity of the documents, it should investigate the matter through the Swedish Embassy in Dhaka. The Board did not initiate such an investigation. Counsel requested the Board to consider another medical investigation; this was not deemed necessary.

2.13 On 6 August 2002, the Aliens Appeal Board upheld the decision of the Migration Board, arguing that it is easy to obtain false documents in Bangladesh and therefore they had to be considered of low evidentiary value. It concluded that the complainant's information about his political activities and that he had been subjected to "torture" did not justify the conclusion that he would risk political persecution or torture in Bangladesh if returned there.

The complainant's submission

3.1 The complainant argues that there are substantial grounds for believing that he would be subjected to torture if returned to Bangladesh, and that this would constitute a violation of article 3 of the Convention by Sweden.

3.2 He claims that the execution of the deportation order would in itself constitute a violation of article 16 of the Convention, in view of his fragile psychiatric condition and severe post-traumatic stress disorder resulting from the torture he was subjected to.

3.3 The complainant argues that his personal fear of torture has been substantiated throughout the asylum hearings and medical reports. He argues that the Aliens Appeal Board did not consider it necessary to have his injuries investigated nor to check the authenticity of the documents, including the medical reports, provided from Bangladesh. Further, he argues that the Board did not question his information about what he was subjected to or what happened to him in Bangladesh.

The State party's submission

4.1 On 19 May 2003, the State party submitted its observations on the admissibility and merits of the case. It submits that the claim under article 3 should be declared inadmissible, since it lacks the minimum of substantiation to make it compatible with provisions of the Convention.

4.2 As regards the complaint related to article 16, the State party submits that it should be declared inadmissible, since this provision does not apply in the present case. According to the Committee's general comment No. 1 on the implementation of article 3, the obligation on a State party to refrain from returning a person to another State is only applicable if the person is in danger of being subjected to torture as defined in article 1 of the Convention. Article 3 of the Convention does not contain a reference to "other acts of cruel, inhuman or degrading treatment or punishment" as does article 16, nor does article 16 contain a reference to article 3. For the State party, the purpose of article 16 is to protect persons deprived of their liberty or who are otherwise under the factual power or control of the person responsible for the treatment or punishment, and the complainant is not a victim in that sense. In any event, the claim under article 16 lacks the minimum substantiation to make it compatible with provisions of the Convention.

4.3 Alternatively, the State party submits that the complainant's claims are unfounded.

4.4 Regarding the complainant's claim under article 3, the State party acknowledges that the general human rights situation in Bangladesh is problematic, but contends that it has improved from a long-term perspective, and that persecution for political reasons is rare at the grass-roots level and may under any circumstances be avoided by seeking refuge in another part of the country.

4.5 The jurisprudence in respect of article 3 requires that the complainant face a foreseeable, real and personal risk of being tortured in the country to which he is returned, and the Swedish authorities apply the same test as that under article 3 when considering an application for asylum under the Aliens Act. The State party submits that the domestic authorities are in a strong position to assess claims from Bangladeshi asylum-seekers, since Sweden received 1,427 such requests between 1990 and 2000, and residence permits were granted in 629 cases.

4.6 In relation to the complainant's allegation that he risks being ill-treated by political opponents upon return to Bangladesh, the State party submits that the risk of being subjected to ill-treatment by a non-governmental entity or by private individuals, without the consent or acquiescence of the Government of the receiving country, falls outside the scope of article 3 of the Convention.

4.7 As regards the complainant's claim that he risks being tortured by the police, the State party notes that he was allegedly arrested and tortured by police on instructions from the then ruling party, the Awami League, because of his political activities for the Jatiya Party, and that false accusations from that party resulted in the criminal charges which are still pending against him. However, in October 2001, the Awami League was replaced by a Government coalition consisting of BNP and three smaller parties, among them a faction of the Jatiya Party. Since the Awami League is currently in opposition, the risk of being exposed to harassment by the authorities instigated by that party should have been seriously reduced.

4.8 As regards BNP supporters' alleged ill-treatment of the complainant in 1995, the State party submits that there is nothing to indicate that the Bangladeshi authorities had anything to do with it at all, or that the complainant has anything to fear from the parties currently in power.

4.9 The State party notes that the complainant has not submitted any concrete evidence of his membership in and activities for the Jatiya Party. From what he told the Swedish immigration authorities, he did not hold a leading position within the party. An eventual risk of harassment on account of his political activities would therefore only be of a local character, and he could avoid harassment by moving within the country, as he did when he was charged with murder in 1995.

4.10 The State party notes that the complainant only produced one certificate from Bangladesh and one certificate from the Fittja health centre in support of his allegations of past torture. The certificate from Bangladesh is undated and merely states that the complainant arrived at the clinic on 15 October 2000, after being subjected to physical torture, and was treated for physical injuries and mental depression. However, during the interview with the Migration Board, the complainant emphasized that when he was arrested in July 2000 he was subjected to mental but not physical torture. The certificate from Fittja does not include an assessment of whether the complainant was tortured and does not mention physical injuries or post-traumatic stress disorder.

4.11 The State party has engaged the Swedish Embassy in Dhaka to look into the two ongoing criminal cases against the complainant, through a local lawyer. He found that the complainant had been acquitted of the murder charges on 29 August 2000, but that he is accused in another case pending before the court. Accordingly, no murder case was pending against the complainant when Swedish authorities examined his asylum application. Notwithstanding reported shortcomings of the judicial system in Bangladesh, the complainant cannot argue that he did not receive a fair trial in respect of the murder charges against him, and may also be acquitted in the case of kidnapping against him. In the case of kidnapping, he has legal representation and may appeal to a higher court. The State party recalls that the higher courts in Bangladesh are reported to display a significant degree of independence from the executive.

4.12 Should the circumstances be such that the complainant risks being detained upon return to Bangladesh, either to be tried or to serve a prison sentence, this does not justify the conclusion that he risks being subjected to torture. The complainant has not shown how he would be in danger of such politically motivated persecution as would render him particularly vulnerable to torture during a possible period of detention.

4.13 As to the claim under article 16, the State party contests the complainant's allegation that because of his "fragile psychiatric condition and severe PTSD", his deportation would amount to cruel, inhuman or degrading treatment within the meaning of article 16, paragraph 1. The State party refers to the Committee's jurisprudence in *G.R.B v. Sweden*,[a] and *S.V. et al. v. Canada*,[b] and the jurisprudence of the European Court of Human Rights, and submits that only in very exceptional circumstances may a removal per se constitute cruel, inhuman or degrading treatment. Such exceptional circumstances have not been presented in the complainant's case:

(a) Firstly, because the complainant has presented scant medical evidence in connection with his asylum application. Before the Migration Board, he did not produce any medical evidence at all. Before the Aliens Appeals Board, he submitted a medical certificate

from the Fittja health care centre, which states that he is severely traumatized; it does not state that he suffers from PTSD or that he contemplated suicide. In addition, the case file of the immigration authorities reveals that the complainant, despite his health problems, worked in a restaurant in Stockholm. The State party submits that the fact that the complainant did not produce any medical evidence until his application was pending before the Aliens Appeals Board may indicate that his medical condition has deteriorated primarily as a consequence of the Migration Board's decision to reject his asylum application;

(b) Secondly, there is no substantial basis for the complainant's fear of returning to Bangladesh. He has family in Bangladesh to support him, and medical care is available if needed, at least in a big city like Dhaka where most of the family members live;

(c) Thirdly, the enforcement authorities in Sweden are obligated to implement the deportation in a human and dignified manner that takes into account the alien's health.

The complainant's comments

5.1 In comments dated 28 July 2003, counsel submits that the complainant was not aware that he had been acquitted in the case of murder until he received the State party's submission. The results of the investigations undertaken by Sweden that there were in fact two criminal cases against the complainant in Bangladesh show that the documents were authentic.

5.2 Counsel reiterates that the complainant has submitted credible evidence to support his allegations of previous torture and charges against him in Bangladesh.

5.3 In respect of the State party's reference to its experience with Bangladeshi asylum-seekers, counsel refers to a UNHCR report which reveal that out of 245,586 applications from asylum-seekers submitted in Sweden between 1990 and 1999, only 1,300 were made by Bangladeshi citizens. Furthermore, in respect of the State party's contention that the complainant's risk of being maltreated by political opponents falls outside the scope of article 3, it is submitted that the complainant does not claim a risk of maltreatment by political opponents, but by the Bangladeshi police.

5.4 In respect of the State party's contention that the maltreatment of the complainant by supporters of the Awami League should have ceased, since the Awami League is no longer in power, whereas a faction of the Jatiya Party is part of the Government coalition, counsel submits that false accusations were also made against the complainant by BNP supporters. BNP supporters in fact initiated the criminal case against him in 1995. The complainant was only acquitted in August 2000, more than five years after the charges were filed. As regards the other charges against him which are still pending, he continues to risk detention and thereby to be subjected to torture by police.

5.5 Regarding the argument that the complainant presented insufficient evidence to support his claims, counsel submits that in the proceedings before the Aliens Appeals Board, he requested a medical forensic and psychiatric examination, but the Board did not consider this to be necessary. Nevertheless, counsel requested the Kris- och Traumacentrum (KTC) to perform such an examination, but this institution could not do so in the autumn of 2002.

5.6 As to the contention that the complainant stated before the Migration Board that he had only been subjected to mental torture during his detention from July to October 2000, while the medical certificate from Bangladesh stated that he suffered from both physical and medical injuries following the torture, counsel recalls that it is not uncommon for victims of torture not to be able to remember exactly what happened to them in each and every instance.

5.7 Counsel submits that, as regards the change of Government, those working for the Freedom Party[c] are still in opposition to the Government and are subject to false accusations, detention and torture by police.

Additional comments by the State party and the complainant

6.1 By note of 12 September 2003, the State party refers to counsel's allegation concerning the supporters of the Freedom Party, and assumes that the reference to the Freedom Party is an oversight and that the complainant still claims that he was affiliated with the Jatiya Party. It recalls that a faction of the Jatiya Party is part of the present Government of Bangladesh.

6.2 It submits that while counsel indicates that the complainant is currently an active member of the political opposition in Bangladesh, there is nothing in the information to the Swedish immigration authorities to indicate this. The charge of kidnapping was based on a complaint initiated by the Awami League. The State party considers that the transfer of political power has therefore substantially reduced the complainant's risk of being subjected to detention and torture. The State party also suggests that the Bangladeshi authorities do not take a great interest in the complainant, since he could travel about the country for several years doing political work, despite the fact that he was charged with murder.

6.3 In further submissions of 9 and 11 December 2003, counsel submits that the complainant does not belong to the faction of the Jatiya Party that is part of the current Government in Bangladesh, the Naziur Rahmen faction. He alleges that this faction pressures members of his group, the Ershad faction, to change their affiliation. The complainant has described his political activities in detail before the Migration Board and the Aliens Appeals Board, and neither institution questioned his activities.

6.4 In respect of the State party's suggestion that the complainant is not of interest to the Bangladeshi authorities since he could move about in the country while being charged with murder, counsel submits that his movements were limited, and that because Bangladesh did not have a centralized data system he was not apprehended by the police before 1999.

6.5 Counsel submits documentation to the effect that the complainant was examined by doctors at KTC in December 2003. The psychiatrist concluded that it was beyond doubt that Mr. M.M.K. had been tortured in the way he described. He also concluded that the complainant was suicidal. The forensic report lists a number of findings of scars and injuries which are typical for victims of violence and support the complainant's description of torture.

6.6 Counsel also submits a declaration by the Vice-Chairman of the Jatiyo Party Central Committee, confirming that the complainant has been an active member of the party since 1991 and that he was subjected to Government harassment and persecution for his political beliefs.

6.7 By note of 23 April 2004, the State party submits that the new documentation from counsel is too late and should not be considered by the Committee. In the event that the Committee decides to consider the additional documentation, it should take into account that it was submitted long after the national authorities had determined his case and shortly before the Committee was about to decide it. The fact that medical evidence is obtained and produced at such a late date is generally likely to diminish its value. With regard to the pending court case against the complainant, the Swedish Embassy had engaged a lawyer who reported to the Embassy on 29 February 2004 that the court of Bogra had not yet been able to complete the proceedings and issue a judgement in the case, since no witness had turned up to give evidence.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that the State party acknowledges that domestic remedies have been exhausted.

7.2 In respect of the State party's contention that the claim under article 3 should be declared inadmissible for lack of minimal substantiation, the Committee observes that it has received detailed information about pending court cases against the complainant, one of which could result in the complainant's arrest and detention upon return to Bangladesh, and that the complainant has described in detail his activities for a political party and experience of torture. The Committee considers that this claim should be examined on the merits.

7.3 To the extent that the complainant argues that the State party would be in breach of article 16 by exposing him to possible ill-treatment, the Committee observes that only in very exceptional circumstances may a removal per se constitute cruel, inhuman or degrading treatment. Such exceptional circumstances have not been presented in the complainant's case. Accordingly, the claim under article 16 is inadmissible *ratione materiae*, as incompatible with the provisions of the Convention.

7.4 With regard to the State party's contention that counsel's further documentation was submitted too late and should not be considered by the Committee, the Committee notes that this documentation was not submitted in response to a request for information from the Committee within a specific deadline, as set out in rule 109, paragraph 6, of the rules of procedure, but after a recent medical examination of the complainant and a recent declaration by the Vice-Chairman of the Jatiya Party Central Committee. While the Committee considers that the parties to the proceedings should submit arguments and evidence within set deadlines, it considers that new evidence of critical importance to the Committee's assessment of the complaint may be submitted as soon as it is made available to either party.

7.5 The Committee notes that this new documentation was submitted three months after it was made available to the complainant. However, it finds that in the circumstances of the present case, where the State party rejected the complainant's request for a medical examination and where the medical certificates are inconclusive on the issue of the complainant's experience

of torture, a new medical certificate must be admitted for the evaluation of the complaint by the Committee. The new documentation was transmitted to the State party for comments, to ensure equality of arms, and the State party has commented on it. The Committee therefore finds that it should consider the new medical documentation made available to it. In the same context, it also admits as evidence the declaration by the Vice-Chairman of the Jatiya Party Central Committee.

7.6 The Committee accordingly declares the claim under article 3 admissible and proceeds to its consideration on the merits.

Consideration of the merits

8.1 The Committee must decide whether the forced return of the complainant to Bangladesh would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. It follows that, in conformity with the Committee's jurisprudence, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient ground for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.2 The Committee takes note of the complainant's information about the general human rights situation in Bangladesh, in particular recurrent incidents of police violence against prisoners and political opponents. The State party, while conceding the occurrence of police torture and violent clashes between political opponents, nevertheless considers that the higher levels of the judiciary display a significant degree of independence.

8.3 The Committee observes that the main reason the complainant's fears to be at personal risk of torture if returned to Bangladesh is that he was previously subjected to torture by the police, and that he risks detention upon return to Bangladesh because of criminal charges pending against him.

8.4 The Committee notes that the Swedish immigration authorities have thoroughly evaluated the complainant's case and considered whether the complainant risked torture or persecution in Bangladesh; they concluded that he was not at risk.

8.5 With regard to the complainant's allegations of torture, the Committee considers that while the other medical certificates submitted in this case do not clearly support the complainant's version, the medical report from Sweden submitted in March 2004 does support Mr. M.M.K.'s contention that he was subjected to torture and ill-treatment. The fact that the medical examination took place several years after the alleged incidents of torture and ill-treatment does not, in the present case, allay the importance of this medical report. However, the Committee considers that while it is probable that the complainant was subjected to torture, the question is whether he risks torture upon return to Bangladesh at present.

8.6 In response to this question, the Committee notes the State party's contention that since the Awami League is currently in political opposition, the risk of being exposed to harassment on the part of the authorities instigated by members of that party has diminished. The State party further argues that the complainant does not have anything to fear from the political parties now in power, since he is a member of one of the coalition parties. While noting the complainant's explanation that he supports a faction of the Jatiya Party that is opposed to that part of the party in Government, the Committee does not consider that this fact per se justifies the conclusion that the complainant would be at risk of persecution and torture at the hand of supporters of the Government faction of the Jatiya Party or BNP.

8.7. Finally, with regard to the complainant's allegation that since he risks detention in respect of the pending criminal charges against him and that detention is inevitably followed by torture, the Committee concludes that the existence of torture in detention as such does not justify a finding of a violation of article 3, given that the complainant has not demonstrated how he personally would be at risk of being tortured.

8.8 In light of the foregoing, the Committee finds that the complainant has not established that he himself would face a foreseeable, real and personal risk of being tortured within the meaning of article 3 of the Convention.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Bangladesh by the State party would not constitute a breach of article 3 of the Convention.

Notes

[a] Communication No. 83/1997, Views adopted on 15 May 1998.

[b] Communication No. 49/1996, Views adopted on 15 May 2001.

[c] Apparently a misspelling; see paragraph 6.1, which was not challenged to by counsel.

Communication No. 222/2002

Submitted by: Z.E. (represented by counsel, Mr. Marcel Zingast)

On behalf of: The complainant

State party: Switzerland

Date of complaint: 28 November 2002

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

Meeting on 3 May 2005,

Having concluded its consideration of complaint No. 222/2002, submitted by Mr. Z.E. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant, Mr. Z.E., a Pakistani national, is currently in Switzerland, where he applied for asylum on 27 September 1999. His application was rejected, and he maintains that sending him back to Pakistan would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He asks the Committee to apply interim measures of protection since, on the date he lodged his complaint, he faced imminent deportation. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the attention of the State party on 3 December 2002. At the same time, acting pursuant to article 108, paragraph 1, of its rules of procedure, it asked the State party not to deport the complainant to Pakistan while his complaint was under consideration. The State party agreed to that request on 3 February 2003.

The facts as submitted by the complainant

2.1 The complainant, baptized a Roman Catholic, converted to Islam in 1990 while at university under the influence of his fellow students and in order to improve his career prospects. His conversion was not based on genuine conviction and, conscience-riven, he reverted openly to Christianity in 1996 and had himself rebaptized by a Catholic priest.

2.2 At the University of Lahore, however, the complainant was still regarded as a Muslim and was appointed President of the Muslim Students Federation in 1997. At the same time he was visiting Christian prisoners as a member of the Christian "Prison Fellowship" prisoner aid

association. Discovering this in December 1998, Muslim Students Federation officials threatened to kill him and the complainant had to leave the university. Federation officials also pressed the police to bring criminal proceedings against the complainant under article 295c of the Pakistani Criminal Code.

2.3 In early January 1999 the complainant was detained at a police station, where he was ill-treated and threatened with death. He was lucky enough to be able to escape through the lavatory window. He then went into hiding and arranged to flee to Switzerland.

2.4 The complainant submitted an application for asylum in Switzerland on 27 September 1999. The application was rejected by the Federal Office for Refugees by decision dated 10 January 2002. An appeal by the complainant was also rejected, by the Swiss Asylum Review Commission, in a ruling dated 5 August 2002. In a letter dated 9 August 2002, the Federal Office for Refugees set 4 October 2002 as the date on which he should leave Switzerland. On 26 September 2002, the applicant lodged an application for review with suspensive effect with the Swiss Asylum Review Commission. The Commission found the application manifestly groundless in a decision dated 10 October 2002. It rejected the application in a ruling dated 13 November 2002. The complainant is no longer authorized to live in Switzerland and may be expelled to Pakistan at any time.

The complaint

3.1 The complainant asserts that he is in danger of being immediately arrested by the police, tortured or ill-treated or even condemned to death or summarily executed if he is deported to Pakistan.

3.2 In justification of his fear, the complainant points out that the Muslim Students Federation has brought proceedings for blasphemy against him. He supports this assertion with a letter from the President of the Christian Lawyers Association (CLA) dated 17 August 2002, stating that proceedings under article 295c of the Pakistani Criminal Code have been instituted against Z.E. and suspended for the time being owing to the absence of the individual concerned, but that they will be immediately resumed upon his return to Pakistan. The President of CLA also refers to three death sentences passed on Christians under article 295c of the Pakistani Criminal Code. The complainant draws attention, with particular reference to reports by Amnesty International and the Asian Human Rights Commission, to the risks that declared apostates face when they come before the Pakistani justice system.

3.3 The complainant also submits a letter from his father dated 20 June 2002, explaining that under pressure from the Muslim Students Federation the police have been going to his home every month to try and arrest his son pursuant to article 295c of the Criminal Code. The letter makes it plain that the complainant is accused of having insulted the Prophet, cast the Koran into disrepute and spurned Islam, and can therefore expect the death penalty.

3.4 The complainant explains that, even if he were not to be arrested, his life and physical safety would be in danger because the police would afford him no protection against threats from his former fellow students and supporters of the Muslim Students Federation.

Comments by the State party on admissibility and the merits

4.1 By letter dated 3 February 2003, the State party indicated that it did not challenge the admissibility of the complaint. It added that the deportation order against the complainant would not be enforced until the Committee lifted its precautionary measure.

4.2 By letter dated 28 May 2003, the State party submitted its comments on the merits of the complaint. It began by setting out the reasons why, following a detailed review of the complainant's allegations, the Swiss Asylum Review Commission, like the Federal Office for Refugees, was not convinced that Z.E. was seriously at risk of prosecution if deported to Pakistan.

4.3 In its decision dated 5 August 2002, the Asylum Review Commission found it surprising that the complainant, Christian by background and religion, had been able to practise his religion, visit Christian prisoners every week and attend Christian congresses abroad, sometimes for several months each year, while on the other hand being the President of the faculty Muslim Students Federation without his fellow students noticing that he was not a Muslim. Such a situation, if true, at the very least indicated that there was a modicum of tolerance in Pakistan, even assuming that the complainant had concealed his religion on being appointed President of the Federation. Indeed, the State party argues, the fact that the complainant had been prepared to serve as President of the Muslim Students Federation at his faculty showed beyond any doubt that he was not all worried about being disturbed or threatened.

4.4 Other evidence also challenged the notion that the complainant had been persecuted by the authorities or was wanted for blasphemy: between January and July 1999, according to the State party, the complainant lived undisturbed at his family's second home in Johannabad, some 20 kilometres from Lahore. Although he claims to have been at his uncle's home in Karachi in August and September 1999, where again he encountered no problems, the complainant had a new passport issued in Lahore on 12 August 1999. The State party argues that the complainant must plainly have stated his religion in order to obtain the passport.

4.5 Presented with a request to review its decision, in which the complainant mentioned for the first time that he had renounced Islam in 1996, the Swiss Asylum Review Commission turned down the request in a fresh decision on 13 November 2002, referring in the main to an interim decision of 10 October 2002 by the reporting magistrate who pointed out that the complainant could not satisfactorily explain why he had not mentioned his apostasy before the review proceedings. The reporting judge also observed that the evidence supplied by the complainant would not alter the Commission's conclusions regarding the blasphemy proceedings. In the course of those proceedings the complainant had produced two reports from the Lahore police (dated 16 June 1994 and 9 February 1998), the first relating to an alleged kidnapping and the second, to allegations that the complainant had had intimate relations with, or even raped, a Muslim woman. In the view of both the reporting judge and the Commission, the two reports proved that the complainant had no longer been having problems with the authorities by the time he left Karachi.

4.6 The State party then proceeds to discuss the grounds for the Commission's decisions in the light of article 3 of the Convention and the Committee's case law. It considers that the complainant has done no more than remind the Committee of the arguments raised before the national authorities, producing no new evidence that might challenge the Commission's

decisions of 5 August and 13 November 2002. Among other things, the State party considers that the complainant fails to explain the inconsistencies and contradictions in his allegations to the Committee; quite the contrary, he confirms them.

4.7 As regards the complainant's fears of being immediately arrested by the police if sent back to Pakistan and of his life and physical safety being threatened by his former fellow students and supporters of the Muslim Students Federation, and the letter from the complainant's father stating that, under pressure from the Muslim Students Federation, the police were going to his home every month to try and arrest his son, the State party finds it surprising that, according to an e-mail message dated 28 October 2002 from the President of CLA, no complaint has been lodged against him. The State party draws attention, furthermore, to the blatant contradiction between that e-mail and the letter dated 17 August 2002 (see paragraph 3.2 above), both signed by the same individual.

4.8 In the course of his appeal before the Swiss Asylum Review Commission, the complainant produced his passport, issued in Lahore on 12 August 1999 when, according to him, the local security forces were looking for him in connection with a criminal charge of blasphemy. Moreover, the complainant had apparently not encountered the slightest problem when, leaving Pakistan, he departed from Karachi airport on 5 September 1999. The State party finds it highly improbable that a person wanted by the police for a capital offence could have a new passport issued and take off from Karachi airport without incident.

4.9 Citing the Committee's case law to the effect that article 3 affords no protection to complainants who simply claim they are afraid of being arrested on returning to their home countries[a] and in view of the foregoing, the State party argues it may reasonably be concluded that the complainant would not be in danger of arrest if sent home to Pakistan. Even if he were, that "would not constitute substantial grounds for believing that he would be in danger of being subjected to torture".[b]

4.10 The State party finds the importance which the complainant attaches to apostasy surprising, particularly since he did not make the claim until 26 September 2002 when he requested a review of the initial decision by the Swiss Asylum Review Commission. Given that the complainant finds the point crucial, the State party feels that he might reasonably have been expected to mention it earlier in the asylum proceedings. The complainant explains the omission in his application for review partly by saying that he was ashamed, partly by saying that he feared the consequences of his apostasy, and lastly by saying that he did not realize the importance of the point until after the Commission handed down its decision on 5 August 2002. The State party finds this explanation unconvincing.

4.11 Even if the allegations of apostasy were credible, they would not necessarily mean that the complainant would be in danger of being tortured if sent home to Pakistan. The complainant says that his fellow students discovered his apostasy in December 1998 and made serious threats against him thereafter. The State party points out that if the police or the complainant's Muslim opponents had really wanted to arrest or disturb him, they could easily have found him at his family's second home while he was living there between January and July 1999. But they did not. On the contrary, the complainant was left untroubled both at his second home and in Karachi, where he lived from August 1999 until his departure in September 1999. It is also

surprising, the State party finds, that the Lahore police report of 9 February 1998 explicitly mentions that the complainant is a Christian when the complainant claims to have presided over the branch of the Muslim Students Federation at his faculty from October to November 1997 onwards, his apostasy becoming common knowledge only in December 1998.

4.12 The State party alludes to the Committee's case law to the effect that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced for the risk of torture to qualify as "foreseeable, real and personal" for the purposes of article 3, paragraph 1, of the Convention.[c] Last, the State party refers to general comment No. 1, on the application of article 3, in which the Committee specifies that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion".

4.13 Christians in Pakistan do not, generally speaking, appear to the State party to be persecuted. In principle they can live their own lives without really being harassed. The complainant's case proves it, the State party argues, as his curriculum vitae shows. The complainant has, for example, regularly been able to attend various Christian congresses abroad. He has been able to visit Christian prisoners every week. Besides, his family, which is also Christian, seems to be able to live without major difficulty in Pakistan.

4.14 As regards threats to the complainant's life or physical safety from supporters of the Muslim Students Federation or his former fellow students, the State party points out that article 3 of the Convention must be interpreted in the light of article 1. Article 1 of the Convention defines the perpetrators of torture, limiting the scope of the notion to public officials or other persons acting in an official capacity, or others acting at the instigation of or with the consent or acquiescence of such officials or other persons. The definition thus excludes any extension of the article to cover cases in which torture is inflicted by a third party. The Committee has held that "the issue whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention".[d]

4.15 The State party explains that there have been instances of serious violence against churches and other Christian institutions in Pakistan, but they are certainly not tolerated by the authorities. President Musharraf publicly condemned the tragic attack in Islamabad in August 2002, following which the police arrested 27 Islamic extremists. The police arrested four suspects after an attack in Lahore in December 1992, one of them a Muslim clergyman. Furthermore, the Government of Pakistan has arranged better protection for Christian places of worship against extremist acts. The Protestant International Church in Islamabad, for instance, is one of the best protected buildings in Pakistan. And in recent months, the Government has outlawed seven Muslim fundamentalist organizations.[e]

4.16 Given the Government's reactions to serious violence against Christian churches, it can hardly be argued, in the State party's view, that the Government condones the violence or is loath to protect Christians. A mere claim by the complainant that the police "will afford him no protection against attempts on his life [by his former fellow students and Muslim Students Federation supporters]" gives no grounds for concluding otherwise. In the current case, the condition *ratione personae* is not met.

4.17 Lastly, the State party wholeheartedly endorses the grounds on which the Swiss Asylum Review Commission found that the complainant's allegations lacked credibility. It believes that the complainant's statements emphatically do not suggest there are substantial grounds for believing, in keeping with article 3, paragraph 1, of the Convention, that the complainant would be in danger of being tortured if sent back to Pakistan.

Complainant's comments on the State party's observations

5.1 In a letter dated August 2002, the complainant stands by the points made in his initial complaint.

5.2 He also relates the difficulties he faced in living in Pakistan after escaping from the police station in Lahore in early January 1999. He explains that he had to go into hiding between January and July 1999 at his family's second home in Johannabad, where he lived with the doors locked and windows darkened, being supplied with food in secret by his father while avoiding being spotted by the neighbours. His uncle had then hidden him for a month in Karachi.

5.3 On the subject of his passport, the complainant explains that it is customary in Pakistan to employ a go-between to deal with the formalities of obtaining a passport. That is what his father had done; it did not diminish the danger he had been in.

5.4 The complainant confirms that the police report of February 1998 refers to him as a Christian. He maintains, however, that his conversion to Islam was not known about outside the confines of the University of Lahore, which only discovered his apostasy in December 1998 and, thus, only informed the police sometime thereafter.

5.5 The complainant points out that, irrespective of the plausibility of the statements he made in the course of his application for asylum in Switzerland, the documents submitted testify to his conversion to Islam on 21 February 1990 and his second baptism in accordance with the Roman Catholic rite on 27 February 1996.

5.6 Lastly, while he does not deny that the Pakistani authorities are opposed to public acts of violence against Christians and Christian facilities, the complainant avers that he, as an apostate, and given the more restrictive law and jurisprudence relating to blasphemy, is in danger. He adds that pro-Islamic and anti-Christian sentiment is on the rise in Pakistani State institutions, including the police and the justice system, and that the laws on blasphemy are interpreted restrictively. He also alludes to an article dated 10 July 2003 about an editor at the *Frontier Post* daily newspaper who was sentenced to life imprisonment for publishing a letter that was found to be critical of Islam. Lastly, the complainant concludes that it is entirely plausible that, on returning to Pakistan, he will be immediately denounced for blasphemy, arrested by the police, tortured and condemned to death.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. In the present case the Committee also

notes that the State party has not challenged the admissibility of the complaint, which it therefore finds admissible. As both the State party and the complainant have commented on the merits of the complaint, the Committee now proceeds to examine the case on its merits.

6.2 The Committee must determine whether sending the complainant back to Pakistan would violate the State party's obligation under article 3 of the Convention not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, as called for in article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if sent back to Pakistan. In doing so, it must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The purpose of the exercise, however, is to determine whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. Hence the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person is in no danger of being subjected to torture in the specific circumstances of his case.

6.4 The Committee recalls its general comment No. 1 on the application of article 3, which reads:

> "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (para. 6).

6.5 In the present case, the Committee notes that the State party has drawn attention to inconsistencies and serious contradictions in the complainant's accounts and submissions which call into question the truthfulness of his claims. The Committee also takes note of the information furnished by the complainant on these points.

6.6 As regards the first part of the complaint, which concerns the risk of arrest by the police if the complainant returns to Pakistan, the complainant argues that there are criminal proceedings pending against him for blasphemy.[f] Yet the Committee observes that the letters from the complainant's father dated 20 June 2002 and the President of CLA dated 17 August 2002 which mention those proceedings are contradicted by the CLA President in the e-mail he sent on 28 October 2002; this has, incidentally, been remarked upon by the State party, but the complainant has made no comment. Similarly, the fact that the complainant spent seven months at his father's second home, then two months at his uncle's home without being troubled by the police when the police were supposed to be searching for him for blasphemy, particularly after he had escaped from a police station, does not seem plausible. The same can be said of the

complainant's acquisition of a new passport and untroubled departure from Karachi airport. The complainant's later comments on these points (see paragraphs 5.3 and 5.5 above) do not satisfactorily address these inconsistencies.

6.7 The second ground put forward by the complainant for his arrest has to do with his apostasy in 1996. The Committee observes that this argument was only put forward as a reaction to the Swiss authorities' decisions to turn down the complainant's application for asylum, and the complainant - who had a lawyer in attendance throughout the proceedings - has been unable to provide a consistent and convincing explanation for its tardy appearance. The complainant does not contest this point in his comments of 4 August 2002.

6.8 As regards the second part of the complaint, which concerns threats to the complainant's physical safety, the Committee finds, first, that the complainant has not substantiated his allegation of ill-treatment while in detention in early January 1999. Similarly, the assertion by the complainant that he is in danger of being tortured by the police and condemned to death if sent back to Pakistan are contradicted by the Committee's observations concerning the risks of arrest. This assertion, too, is supported by inadequately substantiated, not to say contradictory, arguments from the complainant in his comments of 4 August 2002.

6.9 In the light of the foregoing, the Committee concludes that the complainant has not demonstrated that there are substantial grounds for believing that sending him back to Pakistan would expose him to real, substantial and personal danger of being tortured within the meaning of article 3 of the Convention.

7. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention, concludes that the complainant's removal to Pakistan by the State party would not constitute a breach of article 3 of the Convention.

Notes

[a] Communication No. 57/1996 (*P.Q.L. v. Canada*): "… even if it were certain that the author would be arrested on his return to China because of his prior convictions, the mere fact that he would be arrested and retried would not constitute substantial grounds for believing that he would be in danger of being subjected to torture". The same applies a fortiori to the mere risk of being detained (communication No. 65/1997, *I.A.O. v. Sweden*).

[b] Ibid.

[c] Communication No. 94/1997 (*K.N. v. Switzerland*).

[d] Communication Nos. 83/1997 (*G.R.B. v. Sweden*), 130 and 131/1999 (*V.X.N. and H.N. v. Sweden*) and 94/1997 (*K.N. v. Switzerland*).

[e] Reuters report dated 14 August 2002.

[f] Following a complaint to the police from the Muslim Students Federation when it learned of the complainant's Christian activities while he was serving as President of the Federation.

Communication No. 223/2002

Submitted by: S.U.A. (represented by counsel)

Alleged victim: The complainant

State party: Sweden

Date of the complaint: 12 December 2002

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

Meeting on 22 November 2004,

Having concluded its consideration of complaint No. 223/2002, submitted to the Committee against Torture by S.U.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is S.U.A., a Bangladeshi citizen born in 1972 currently awaiting deportation from Sweden. He claims that his expulsion to Bangladesh would constitute a violation by Sweden of article 3 of the Convention. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 13 December 2002. Pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Bangladesh pending the consideration of his case by the Committee. On 6 February 2003 the State party informed the Committee that on 13 December 2002 the Swedish Migration Board decided to stay the enforcement of the decision to expel the complainant to Bangladesh.

The facts as submitted by the complainant

2.1 The complainant belongs to the Ershad faction of the Jatiya Party in Bangladesh, which is not part of the present Government coalition. He claims to have participated in activities organized by the Party in Mithapur, including meetings, demonstrations, distribution of pamphlets, construction of roads and schools and charity work. Because of his involvement with the Party he was kidnapped about 20 times by members of the governing Bangladesh Nationalist Party (BNP) who kept him for periods ranging from a few hours to one week and beat him. Those incidents were reported to the police who took no action.

2.2 The complainant was reportedly arrested by police on three occasions and taken to the Madariapur police station, where he was tortured. He was subjected, inter alia, to beatings, rape attempts, electric shocks, cigarette burns, beatings on the soles of the feet, was hanged from the ceiling and forced to drink dirty water. On one occasion he was accused of unspecified crimes and on the other two he was accused, respectively, of murder and violence in the course of a

demonstration. He denies the facts of which he was accused and claims that the purpose of the arrests was to bring his political activities to an end. Counsel states that, because of his mental condition, the complainant cannot recall the exact dates but it seems that such arrests took place in August 1996 and November 1998. The complainant also claims to have been convicted of attempted murder and sentenced to eight years' imprisonment.

2.3 Copies of the medical reports issued by three Swedish doctors in 2001 are attached to the complaint. They indicate that the complainant suffers from post-traumatic stress disorder, that the scars on his body are consistent with the acts of torture that he described and that he requires medical treatment.

2.4 The complainant argues that he has exhausted domestic remedies. His asylum application was rejected by the Swedish Migration Board on 21 February 2001 and his appeal of that decision was rejected by the Aliens Appeals Board on 3 June 2002.

The complaint

3.1 The complainant claims that he will be tortured again if he is returned to Bangladesh. In support of his claim he refers, inter alia, to NGO reports indicating that the use of torture by the police in Bangladesh is common.

State party's submissions on the admissibility and merits of the complaint

4.1 On 29 April 2003 the State party submitted its observations on the admissibility and merits of the complaint. It indicates that the complainant entered Sweden on 23 March 1999 using a forged passport which contained a forged certificate of permanent residence in Sweden. On the same day he applied for asylum and presented a genuine passport to the Swedish authorities.

4.2 The Migration Board interviewed the complainant on the same day. He stated, inter alia, that he started working for the Jatiya Party upon finishing his education in 1994. He also stated that he had been involved with the Party since 1983, when he was still at school. His activities consisted of organizing and speaking at party meetings and distributing leaflets. Four or five years ago he had been accused of murder by members of BNP and the Awami League and arrested by the police. He remained in custody for some 15 or 20 days before being released on bail and was acquitted at the trial. Other false allegations had been made against him. He had also been arrested by the police on several occasions, each of them for a short time.

4.3 A second interview was held by the Migration Board on 20 December 2000 in the presence of the complainant's legal counsel. He stated that he was suffering from ill-health and had to consult a physician. He was feeling constantly tense and nervous, had sleeping difficulties, poor appetite, loss of memory and nightmares. He also made a number of varying and contradictory statements concerning, inter alia, his alleged experience of different types of mistreatment by members of BNP on the one hand and the police on the other hand; the dates and length of the detention periods; the date when he started working for the Jatiya Party and his activities in the Party.

4.4 On 30 January 2001 the complainant's counsel filed written observations with the Migration Board in which he submitted, inter alia, that the complainant had been held at the police station in Madariapur and tortured on three different occasions. Furthermore, on numerous occasions he had been kidnapped and subjected to beatings with sticks and fists by supporters of BNP, which had resulted in serious damage to his elbow. The complainant had further been physically abused also by supporters of the Awami League. Both the complainant and his Party had reported these incidents to the police, who took no action.

4.5 On 21 February 2001, the Migration Board rejected the application for asylum and ordered the complainant's expulsion to Bangladesh. Noting that the information provided by the complainant at the two hearings and the subsequent written observations differed *inter se*, and that he had changed his statements during the second interview, the Board held that the complainant had not been able to provide a credible account of his situation in Bangladesh or his political activity in the Jatiya Party. Referring to a number of inconsistencies and peculiarities in his statements, the Board concluded that the complainant had not convinced it that it was probable that he was of interest to BNP, other political parties, or the authorities in Bangladesh. The Board further observed that the complainant's alleged political activities, irrespective of his lack of credibility, were legal under Bangladeshi law and that the kidnappings and beatings to which he had been subjected by political opponents were not sanctioned by the Bangladeshi authorities. While noting that persons held in detention in Bangladesh were often subjected to mistreatment by police personnel, the Board expressed its view that this was not an abuse that was sanctioned by the Bangladeshi authorities.

4.6 On 27 February 2001 the complainant lodged an appeal with the Aliens Appeals Board. He stated that a case in which he and three other persons were charged with murder of a BNP supporter was pending before the Faridpur court and submitted some "court documents" regarding the case, together with a letter from the lawyer who was said to represent him in the case. The complainant subsequently declared having been informed by his lawyer that he had been sentenced to eight years' imprisonment for attempted murder. He also submitted several medical certificates and records and a copy of what was purported to be a certificate issued by a Mr. Khan, a Member of Parliament in Bangladesh and member of the Central Committee of the Jatiya Party, indicating that he had been tortured and needed protection.

4.7 On 3 June 2002 the Board rejected the appeal. It held that the material before it did not support considering the complainant a refugee, nor that there was a risk that he would be subjected to inhuman or degrading treatment as defined in the Aliens Act. It further concluded that there were no grounds for granting him a residence permit for humanitarian reasons. In September 2002, the complainant filed a new application with the Aliens Appeals Board in which he asserted that an enforcement of the expulsion order would be inhumane. This new application was rejected on 15 October 2002.

4.8 The State party indicates that it is not aware of the same matter having been examined under another procedure of international investigation or settlement and that all available domestic remedies have been exhausted. It maintains, however, that the complaint should be considered inadmissible in accordance with article 22, paragraph 2, of the Convention, as it lacks the minimum substantiation that would render it compatible with article 22.

4.9 On the merits, the State party refers to the human rights situation in Bangladesh. It stated that, while remaining problematic, the situation had improved. Following the introduction of democratic changes in the early 1990s, no systematic repression of dissidents has been reported and a wide variety of human rights groups are generally permitted to conduct their activities. However, violence has been a pervasive element in the country's politics and supporters of different parties frequently clash with each other during rallies and demonstrations. The police reportedly use physical and psychological torture during arrest and interrogation and the perpetrators are rarely punished. The police are also said to be reluctant to pursue investigations against people affiliated with the ruling party, and the Government frequently uses the police for political purposes. Arbitrary arrests are common and lower-level courts are considered to be susceptible to pressures from the executive. The higher levels of the judiciary, however, display a significant degree of independence and often rule against the Government in criminal, civil and even politically controversial cases. While high-profile individuals could be arrested and harassed by the police, persecution for political reasons is rare at the grass-roots level. Court cases based on false accusations are common, but are primarily directed towards senior party officials. Individuals active in politics at the grass-roots level can avoid harassment by relocating within the country.

4.10 The State party contends that the Swedish authorities apply the same test when considering an application for asylum under the Aliens Act as the Committee will do when examining a complaint under the Convention. In its decision of 3 June 2002, the Aliens Appeals Board concluded that the evidentiary standard to be applied by it in deciding the complainant's appeal under the Aliens Act corresponded to that established by the Committee under article 3 of the Convention.

4.11 Between 1990 and 2000, 1,427 requests for asylum were filed by Bangladeshi citizens in Sweden. Residence permits were granted in 629 cases, inter alia on the ground that the applicant was in need of protection having regard to the risk of torture and other ill-treatment in the event of expulsion. The Swedish authorities therefore have significant experience in assessing claims from asylum-seekers from Bangladesh, and considerable weight must be attached to their opinions.

4.12 The State party draws the Committee's attention to the contradictory nature of the statements made by the complainant during the interview and those subsequently made by counsel on his behalf. It questions whether the latter may be considered to represent an accurate description of the account provided by the complainant during the interview. In any event, there can be no doubt that it is the statements made directly by the complainant to the officers of the Migration Board during the two interviews that offer the best basis on which to determine the veracity of his claims.

4.13 The State party observes that in the two interviews, the complainant provided contradictory information about two central elements of his account: (i) the identity of the political group(s) responsible for the alleged false murder allegation made against him;[a] and (ii) whether the allegation made against him and resulting in his arrest and torture occurred quite shortly before his departure, or four to five years earlier. Moreover, statements made by the complainant on these matters in the course of the second interview, as well as his different statements during this interview on the number of arrests and detentions to which he claimed to have been subjected, were difficult to reconcile with the information contained in the supplementary written observations submitted later by counsel on his behalf. While the

Committee in its case law has emphasized that complete accuracy cannot be expected from victims of torture, the contradictions contained in the complainant's statements to the Swedish authorities are of a nature to raise serious doubts as to the general credibility of his claims.

4.14 It should also be observed that, during the first interview, the complainant made no mention of ever having been subjected to deprivations of liberty by supporters of BNP, nor of having been subjected to torture by the police or BNP. Furthermore, whereas he stated during the second interview that he never reported the harassment to the police as he knew that he would receive no assistance from them, counsel's subsequent submissions indicate that both the complainant and the Jatiya Party reported the incidents to the police but that no action was taken against those involved. Repeatedly asked about his activities in support of the Party, the complainant only at the very end of the first interview stated that the reason why he was a subject of interest to the supporters of BNP was that he had been in charge of activities such as building roads in his community, a role very different from his other alleged tasks (preparing party meetings, handing out leaflets, etc.). However, when asked, he was unable to recall the date when he first undertook this task. Furthermore, the complainant's marital status remains uncertain, as the information he provided contains clear discrepancies.

4.15 The State party acknowledges that the complainant has been diagnosed as suffering from post-traumatic stress disorder. However, the medical evidence he provided does not demonstrate that his mental condition at the time of the second interview was such that it may explain the unclear and contradictory nature of his statements in respect of central aspects of his detention and torture. A distinction must be made between the complainant's medical condition at the time of the second interview and his physical and mental condition as reported in the subsequent medical certificates provided to the national authorities and the Committee. While at the time of the second interview he complained that he was feeling unwell, the above-mentioned certificates indicate that his medical condition during 2001 deteriorated progressively. Such certificates, dated August, September and October 2001 and August 2002, cannot be regarded as indicative of his medical condition at the time of the second interview. Furthermore, it does not appear from the certificates that the complainant, during his examination, made any reference to physical abuse at the hands of BNP supporters, but mentioned simply having been tortured twice by the police.

4.16 Regarding the complainant's allegations that there was an ongoing case against him for murder, the Swedish Embassy in Dhaka engaged a reliable lawyer to look into the matter. This lawyer examined the documents in Bengali submitted by the complainant and made inquiries with the Madaripur Magistrate's Court. On verifying the court's records, it was found that the case numbers indicated in the above documents referred to three different sets of proceedings concerning different accused individuals and different sections of the Penal Code. In none of the cases was there any accused with the complainant's name.

4.17 On two occasions the complainant submitted what purported to be copies of certificates issued by a Mr. Sahajahan Khan, Member of Parliament in Bangladesh and member of the Central Committee of the Jatiya Party. Following inquiries by the Swedish Embassy in Dhaka it was found that there is no Member of Parliament for the Jatiya Party by that name. There is a Member of Parliament for the Awami League named Shajahan Khan who is active in the Madaripur District.

4.18 The State party also states that the information provided by the complainant about his marital status is unclear. During the first interview with the Swedish Immigration Board he asserted that he was not married. However, a separate case was pending before the Aliens Appeals Board concerning a Bangladeshi woman who had arrived in Sweden in September 2002 and applied for asylum. Before the Migration Board, she claimed that her husband had disappeared 3½ years earlier and that she did not know where he was. She later stated, before the Aliens Appeal Board, having learned that her husband was residing in Sweden. In subsequent submissions to the Board her counsel stated that she was married to the complainant and offered to submit documentary evidence. To the State party's knowledge, no such evidence has yet been provided.

4.19 In view of the conclusions that may be drawn about the complainant's general credibility, the State party contends that while the medical evidence adduced may indicate that he at some point in time was subjected to severe physical abuse, great caution must be exercised in affording it probative value regarding the identity of the perpetrators. A possible risk of being subjected to ill-treatment by a non-governmental entity or by private individuals, without the consent or acquiescence of the Government of the receiving country, falls outside the scope of article 3 of the Convention.

4.20 Given the limited nature of the complainant's alleged political activities and the length of time that passed between the alleged instances of torture and his departure from the country, the State party questions whether the complainant today would be a political figure of such importance to his former political opponents that there can be substantial grounds for believing that he would be in danger of being subjected to persecution, either directly by supporters of BNP or any other party, or indirectly by the exercise of influence upon the police. Should such risk exist it would, in view of the complainant's purely local political role, be of a local character and he could therefore secure his safety by moving within the country.

4.21 In view of the complainant's submissions, the State party contends that he has not substantiated his claim and that there are no substantial grounds for holding that his expulsion would constitute a violation of article 3 of the Convention. Furthermore, the claim lacks the substantiation that is necessary in order to render the complaint compatible with article 22, and should therefore be declared inadmissible.

Comments by counsel

5.1 By submissions of 3 July 2003, 9 October 2003 and 23 April 2004, counsel contends that because of his psychiatric problems, the complainant sometimes gave different answers to the same questions and that such problems are the result of the torture to which he was subjected. He also argues that the complaint meets the admissibility requirements and recalls that torture is routinely practised in Bangladesh, as documented in well-known NGO reports. He provides copy of a medical certificate issued 8 May 2003 indicating that the complainant suffers from post-traumatic stress disorder and depression and has suicidal tendencies. Counsel further alleges that the complainant's wife also suffers from the same disorder and that she was subjected to torture in Bangladesh because of the complainant's political activities.

5.2 Regarding the documents provided by the complainant in support of his claim that there was an ongoing case against him before the Madaripur Magistrate's Court, the complainant still believes they are authentic. If they are not, he himself was a victim of fraud.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not the complaint is admissible under article 22 of the Convention. In the present case the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement, and that domestic remedies have been exhausted, as acknowledged by the State party. Furthermore, it notes the State party's statement that the complaint should be declared inadmissible for lack of substantiation. The Committee considers, however, that the State party's arguments raise only substantive issues which should be dealt with at the merits and not the admissibility stage. Since the Committee sees no further obstacles to admissibility, it declares the complaint admissible and proceeds with the consideration of the merits.

6.2 The issue before the Committee is whether the removal of the complainant to Bangladesh would violate the State party's obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

6.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Bangladesh. In assessing the risk the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the return country. However, the Committee recalls its constant jurisprudence that the aim of such determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights on a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances. Furthermore, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion but it does not have to meet the test of being highly probable.

6.4 The Committee has noted the medical reports certifying that the complainant suffers from post-traumatic stress disorder, as well as the doctors' assessment that the scars in his body are consistent with the acts of torture described by the complainant. It also notes the State party's doubts as to the identity of the perpetrators of such acts as well as the reports about the use of torture in Bangladesh and the frequent incidents of violence between supporters of different political parties.

6.5 Nevertheless, the complainant's account of his experiences to the Swedish authorities contained contradictions and lacked clarity on issues that are relevant to assessing his claim. The Swedish authorities drew conclusions about the complainant's credibility which, in the Committee's view, were reasonable and by no reckoning arbitrary.

6.6 The Committee finds that the information submitted by the complainant, including the local and low-level nature of his political activities in Bangladesh, does not contain evidence to support the claim that he will run a substantial risk of being subjected to torture if he returns to Bangladesh.

7. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the complainant to Bangladesh would not constitute a breach of article 3 of the Convention.

Notes

[a] During the first interview the complainant stated that he had been arrested by the police after being falsely accused of murder by "two or three opposition parties", specifically BNP and the Awami League. In the second interview he stated that he had never had any difficulty with the Awami League and that supporters of BNP had made a false charge against him.

Communication No. 226/2003

Submitted by: T.A. (represented by counsel, Ms. Gunnel Stenberg)

Alleged victims: The complainant and her daughter S.T.

State party: Sweden

Date of the complaint: 16 January 2003

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

Meeting on 6 May 2005,

Having concluded its consideration of complaint No. 226/2003, submitted to the Committee against Torture by T.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is T.A., a Bangladeshi citizen, who acts on behalf of herself and her daughter, S.T. born in 1996. Both are awaiting deportation from Sweden to Bangladesh. T.A. complains that their expulsion to Bangladesh would amount to a violation by Sweden of articles 3 and 16, and possibly of article 2, of the Convention. She is represented by Ms. Gunnel Stenberg.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 20 January 2003. Pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, the State party was requested not to expel the complainant and her daughter to Bangladesh pending the consideration of her case by the Committee. On 11 March 2003, the State party informed the Committee that it would stay the enforcement of the decision to expel the complainant and her daughter to Bangladesh while the case was under consideration by the Committee.

The facts as submitted by the complainant

2.1 The complainant and her daughter arrived in Sweden on 13 October 2000 on a tourist visa, to visit the complainant's sister residing in Sweden. They applied for asylum on 9 November 2000. On 24 September 2001, the Migration Board denied the application and ordered their expulsion. On 25 February 2002, the Aliens Appeals Board upheld the decision of the Migration Board. Two new applications for a resident permit on humanitarian grounds were subsequently denied by the Aliens Appeals Board. A third application was submitted on 17 December 2002. However, on 19 December 2002, the Aliens Appeals Board denied the application for a stay of execution of the expulsion order. The complainant alleges that she has exhausted all domestic remedies.

2.2 Before the Migration Board, the complainant stated that she became an active member of the Jatiya Party in Bangladesh in 1994, and that her husband had been active in the same party long before that. In 1996, she was appointed women's secretary in the local women's association of the party in Mirpur Thana, where the family lived. Her tasks were to inform people about the work done by the party, to speak at meetings and to participate in demonstrations. In 1999, after the split of the party, she and her husband remained in the faction led by Mr. Ershad.

2.3 On 7 September 1999, the police arrested the complainant in connection with a demonstration in which a grenade was thrown. She was mistreated and suffered injury to her toenail. She was released the next day. On 23 November 1999, members of the Awami League mistreated both the complainant and her husband. They accused him of the murder of one of the members of the League, which occurred during a demonstration in which he had participated. On around 21 January 2000 someone left a cut-off hand in front of their home. On 10 April 2000, members of the League vandalized their home while asking about the whereabouts of her husband, who had by then gone into hiding. She reported the case to the police, who refused to investigate the complaint when it was made clear to them that the perpetrators belonged to the Awami League.

2.4 On 16 August 2000, the police, accompanied by members of Awami League, arrested the complainant and her daughter at her parents' home, where she had moved. Her daughter, then 4 years old, was pushed so hard that she fell and injured her forehead. The complainant was taken to the police station, accused of illegal arm trading, and subjected to torture including rape, to make her confess the crime. She was hit with a rifle belt, strung up upside down until she started to bleed from her nose, stripped and burned with cigarette butts. Water was poured into her nose. She then was raped and lost consciousness. She was released the next day, after her father had paid a bribe to the police. She was forced to sign a document by which she promised not to take part in any political activity and not to leave her town or the country. After her release, the complainant was treated at a private clinic in Bangladesh. After her arrival in Sweden she was in contact with her relatives, who informed her that the Bangladeshi police had continued to search for her.

2.5 As evidence of her political activities, the complainant submitted to the Migration Board a receipt for the payment of the membership fee and a certificate from the Jatiya Party, which stated that she had joined the party in 1994 and was elected Joint Secretary in January 1996. She also submitted a medical report from a hospital in Bangladesh, dated 17 August 2000, which confirmed that she has been physically assaulted and raped. The report stated that there were several cigarette burns on her right thigh and hand, bruises on her wrist, a small incised wound on her right finger, a bluish mark on the back, and bleeding from the vagina and over the vulva. She also submitted a medical certificate, issued by a psychologist on 22 May 2001, which stated that her mental condition had worsened, that she had insomnia, nausea, vomiting, cold sweats, difficulties in concentrating and talking, feebleness, and strong memories of the rape. Another certificate, issued by a Swedish psychologist on 7 September 2001, showed that she had developed post-traumatic stress disorder syndrome accompanied by nightmares, flashbacks and severe corporal symptoms. The same certificate stated that her daughter suffered from constipation, lacked appetite, and had difficulties in sleeping. The child suffered from particular trauma as a consequence of being kept waiting for a decision on the residence permits.

2.6 The complainant points out that the Migration Board did not dispute that she had been tortured and raped. However, the Board concluded that these acts could not be considered to be attributable to the State of Bangladesh but had to be regarded as the result of the actions of individual policemen. The Board also stated that the Jatiya Party was in alliance with the Bangladesh National Party (BNP), which was currently in Government.

2.7 Before the Aliens Appeals Board, the complainant contested the findings of the Migration Board. She denied that the Ershad faction of the Jatiya Party was allied to BNP, and pointed out that, at the time of the appeal, the leader of her faction, Mr. Ershad, had left Bangladesh. Regarding the acts of torture and rape, she alleged that the police were part of the State of Bangladesh, that it was futile to complain against the police because the institution never investigated such complaints, and that the situation of the victim usually worsened if he or she decided to complain. She invoked reports of the United States Department of State and Amnesty International according to which torture was frequent and a matter of routine in Bangladesh. She also submitted three certificates dated 20 and 22 November 2001 and 22 February 2002, respectively, stating that the post-traumatic stress syndrome had grown worse and that there was a serious risk of suicide. One certificate stated that her daughter had nightmares and flashbacks of the incident in which their home was vandalized in Bangladesh, and that her emotional development had been impaired as a result.

2.8 By its decision of 25 February 2002, the Aliens Appeals Board considered that her torture and rape were not attributable to the State but to the isolated action of some policemen, that the complainant had been working for a legal party and had been an ordinary member without noticeable influence, and that because of the political change in Bangladesh there were no reasonable grounds for believing that she would be subjected to arrest and torture by the police if returned to her country.

2.9 As attachments to the new applications for a resident permit on humanitarian grounds, filed on 20 May and 1 July 2002, the complainant submitted additional medical evidence of her declining mental health and that of her daughter. The medical certificates, dated 19 and 22 April 2002 and 7 May 2002, showed that the complainant's mental health deteriorated after the decision of the Aliens Board. She suffered from a dissociated state of mind, experiencing a feeling of being present in the trauma she had been subjected to. She displayed increasing suicidal tendencies. Her daughter showed symptoms of serious trauma. On 26 May 2002, the complainant tried to commit suicide and was admitted to the psychiatric ward of St. Goran's Hospital in Stockholm on the same day for compulsory psychiatric treatment, on the basis of the risk of suicide. On 26 March 2002, a psychiatrist certified that she suffered from a serious mental disturbance, possibly from psychosis. According to another expert, the complainant's mental health further deteriorated after her release from hospital on 6 August 2002. She could no longer care for her daughter, who had been placed with another family. The expert suggested, however, that she receive ambulatory treatment, because while in hospital her mental health had worsened. As regards the complainant's daughter, the medical certificate stated that she had fallen into a serious and threatening state and that she would need a long period of psychotherapeutic treatment.

2.10 The Aliens Appeals Board denied the new applications on the basis that the evidence presented, as well as an assessment of the personal situation of the complainant as a whole, were insufficient to justify the issuance of residence permits. Regarding the complainant's daughter, the Board concluded that she had a network in Bangladesh consisting of her father, her maternal

grandparents and her mother's siblings, that the complainant and her daughter had been in Sweden only for two years, and that it was in the best interests of the child to return to a well-known environment and that her need for treatment would be best satisfied in such environment.

2.11 On 17 December 2002, a new application for humanitarian residence permits was filed. The new evidence consisted of reports of experts who had been in contact with the complainant and her daughter, as well as a report from the family unit of the social security authority in Rinkeby to Bromstergarden, an institution entrusted with the tasks of evaluating the needs of the child, the ability of the mother to take care of the child and whether the mother and child should be reunited, and of conducting support sessions. According to this evidence, the complainant's mental health was so bad that she could no longer connect with her daughter. This state of alienation not only had prevented her from giving her daughter the support she needed, but also had seriously threatened her daughter's mental equilibrium. Furthermore, one report concluded that the complainant had decided to take her own life and that of her daughter if she were forced to return to Bangladesh. Both the complainant and her daughter were in need of continuous psychotherapeutic contact.

The complaint

3.1 The complainant contends that there are substantial grounds for believing that she would be subjected to torture if forced to return to Bangladesh. She contends that the criteria established in article 3 of the Convention have been fulfilled. Neither the Migration Board nor the Aliens Appeals Board in any way questioned her statements about her political activities, the arrests by the police, the fact that these arrests were motivated by her political activities, the torture and the rape, or her information that the police continued to look for her after she left Bangladesh. She maintains that she risks the same treatment if returned to Bangladesh.

3.2 She contends that, considering the medical evidence in her case, the execution of the deportation order would in itself constitute a violation of article 16 of the Convention, and perhaps also of article 2 of the Convention, in view of her and her daughter's fragile psychiatric condition and severe post-traumatic stress disorder, which are the result of the persecution and torture to which she was subjected.

3.3 The complainant alleges that the description of the torture she suffered coincides with what is generally known about torture by the police in Bangladesh. She invokes various reports of Governments and international NGOs. According to these reports, torture practised by the police against political opponents is not only allowed by the executive, but is also often instigated and supported by it. Moreover, domestic courts are not independent and the decisions of the higher courts are often ignored by the executive.

3.4 The complainant challenges the Aliens Appeals Board's finding that because of the changed situation in Bangladesh after the elections of October 2001, she is no longer exposed to the risk of torture if returned. She argues that these elections did not constitute such a fundamental change in the political circumstances in Bangladesh that the grounds for persecution could be considered no longer to exist. The change of Government did not in itself mean that people who had been subjected to false accusations or charges on account of their political activities would be acquitted of these accusations. They still risked arrest by the police and subsequent ill-treatment and torture.

State party's submissions on the admissibility and the merits of the complaint

4.1 On 2 April 2003, the State party submitted its observations on the admissibility and the merits of the complaint. It acknowledges that all domestic remedies have been exhausted, but contends that the complaint is inadmissible since the complainant's claim that she is at risk of treatment in violation of article 3 of the Convention in the event of return to Bangladesh lacks the minimum substantiation that would render the complaint compatible with article 22 of the Covenant.

4.2 The State party also challenges the claim that the execution of the deportation order would, in itself, constitute a violation of articles 2 or 16 of the Convention in view of the complainant and her daughter's fragile psychiatric condition. The enforcement of the expulsion order cannot be considered an act of torture within the meaning of article 1 of the Convention and article 2 only applies to acts tantamount to torture within the meaning of article 1. Therefore, article 2 is not applicable in the context of the present case. Article 16 protects persons who are deprived of their liberty or who are otherwise under the factual power or control of the person responsible for the treatment or punishment, and the complainant can hardly be considered as a victim in that sense. The complaint is therefore considered inadmissible in accordance with article 22, paragraph 2, of the Convention.

4.3 On the merits, and with regard to the alleged violation of article 3 of the Convention, the State party indicates that although the general situation of human rights in Bangladesh is problematic, improvements have taken place during the last few years. Bangladesh has been a parliamentary democracy since 1991. Under the first BNP Government of 1991-1996, increasing efforts were made to protect human rights. In 1996 a new Government led by the Awami League came to power in elections generally declared free and fair by observers. BNP returned to power after elections on 1 October 2001. Although violence is a pervasive element in the country's politics and supporters of different political parties frequently clash with each other and with police during rallies and demonstrations, a wide variety of human rights groups are generally permitted to conduct their activities in the country. The police reportedly use torture and ill-treatment during interrogation of suspects and rape of women detainees in prisons or police custody has been a problem. However, there were no reports of such occurrences during 2001. The police are said to be often reluctant to pursue investigations against persons affiliated with the ruling party. The higher levels of the judiciary, however, display a significant degree of independence and often rule against the Government in criminal, civil and even politically controversial cases. The Aliens Appeals Board made a study tour to Bangladesh in October 2002. According to its classified report, there is no institutionalized persecution in Bangladesh and persecution for political reasons rare at the grass-roots level. The State party further adds that Bangladesh is a party to the Convention and since 2001 to the International Covenant on Civil and Political Rights.

4.4 The State party recalls that its authorities apply the same criteria set out in article 3 of the Convention to every asylum-seeker. In the complainant's case, the Migration Board took its decision after conducting two comprehensive interviews with the complainant. The State party considers that great weight must be attached to the opinions of the Swedish immigration authorities. It contends that the complainant's return to Bangladesh would not be in violation of article 3 of the Convention.

4.5 The State party considers that, even if it is considered established by medical certificates that the complainant was subjected to torture in the past, that does not mean that she has substantiated her claim that she will risk being tortured in the future if returned to Bangladesh. She claims that she risks torture as a consequence of her membership in the Jatiya Party and because she is still wanted by the police. However, in the elections of October 2001 the Jatiya Party won 14 seats in Parliament. The former ruling party and the complainant's persecutor, the Awami League, lost power. Since the Awami League is no longer in Government, there is no reason for the complainant to fear persecution from the police. Furthermore, she has not been in any leading position in the Jatiya Party. The complainant has not produced any evidence in support of her assertion that she is still wanted by the police or that she would still be in danger of persecution or torture if returned to Bangladesh.

4.6 The State party contends that even if there is still a risk of persecution from the Awami League, this is a non-governmental entity and its acts cannot be attributed to the Bangladeshi authorities. According to the Committee's jurisprudence, such persecution falls outside the scope of article 3 of the Convention. In addition, such persecution would be localized and the complainant could therefore improve her safety by moving within the country.

4.7 The State party also points out that the complainant was allegedly released by the police on 17 August 2000, and that she apparently made no effort to leave the country then. She was granted a visa on 22 August 2000. Even though she claims that she was hiding and wanted by the police, she could visit the Swedish Embassy in Dhaka on 28 August 2000 to have an entry visa stamped in her passport. These facts indicate that she might not have been in danger of being arrested even then. Moreover, although she claims having been forced to go into hiding in April 2000, she had no difficult in obtaining a passport for herself and her daughter in May 2000. Furthermore, she did not apply for asylum until almost two months after her arrival in Sweden. It is unlikely that a genuine asylum-seeker would wait for almost two months before approaching the Swedish authorities. Additionally, she has stated that her husband had been in hiding since January or April 2000, due to the persecution of the Awami League, and that she had not been able to contact him since then. Nevertheless, when she applied for a visa she gave the same address for her husband and for herself.

4.8 The State party concludes that the complainant neither produced sufficient evidence, nor do the circumstances invoked by her suffice to show that the alleged risk of torture fulfils the requirement of being foreseeable, real and personal. The State party, in response to a request for additional information from the Committee regarding the complainant's political activities and the status and activities of the complainant's husband, has informed the Committee that it does not have any knowledge and is not in a position to provide any information on this.

4.9 With regard to the alleged violation of articles 2 and 16, the State party maintains that the enforcement of the expulsion order cannot be considered an act of torture even if the complainant suffers from psychiatric problems, and that she cannot be considered either a victim of torture within the meaning of article 2, nor of cruel, inhuman or degrading treatment within the meaning of article 16. Furthermore, the State party recalls the Committee's jurisprudence on article 16, according to which the deterioration of the complainant's state of health possibly caused by his or her deportation would not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16 of the Convention. The State party states that only if very exceptional circumstances exist and when compelling humanitarian considerations are at stake may the enforcement of an expulsion decision entail a violation of article 16. Medical evidence

presented by the complainant indicates that she suffers from severe post-traumatic stress disorder and that her health condition has deteriorated as a result of the decisions to refuse her entry into Sweden and to expel her to Bangladesh. However, no substantial evidence has been submitted in support of her fear of returning to Bangladesh. In addition, her husband, parents and several others members of her family are in Bangladesh, and could support and help her. Furthermore, the migration authorities have not used any coercive measures against her or her daughter.

Complainant's comments on the State party's submissions on the admissibility and the merits of the communication

5.1 As to the admissibility of the complaint, the complainant maintains that the evidence submitted fulfils the minimum standard of substantiation that it is required in order to make the complaint compatible with article 22 of the Convention. She alleges that the State party has not contested these facts.

5.2 The complainant maintains that the execution of the order of expulsion should be deemed to constitute at least cruel, inhuman or degrading treatment on the part of the Swedish authorities. She contends that the evidence submitted to the Committee clearly shows that the execution of the order would constitute such treatment, at least in the case of her daughter. The social security authorities in Sweden could not find the execution of the order to be in any way in the best interests of the child. She also stresses the fact that she and her daughter are under the factual control of the Swedish authorities.

5.3 As to the merits of the complaint, the complainant maintains that the situation of human rights in Bangladesh is far worse than that described by the State party. Furthermore, the Migration Board, in making its assessment, did not have access to the medical evidence presented later in domestic proceedings. Its findings can therefore be considered to have rested on insufficient evidence.

5.4 The complainant contests the State party's allegation that because the Awami League no longer is in power in Bangladesh, there does not seem to be any reason for her to fear persecution by the police. She alleges that she belongs to a faction of the Jatiya Party (Ershad) which is still to a large extent in opposition to the present Government of Bangladesh. According to unanimous reports from several sources, torture by the police is routine, widespread, and carried out with total impunity. According to a recent report of Amnesty International torture has for many years been the most widespread human rights violation in Bangladesh; opposition politicians are among those who are subjected to torture; BNP blocks judicial processes against torture; and impunity for perpetrators is general. She alleges that no fundamental changes have taken place in Bangladesh: those who work for the Ershad faction of the Jatiya Party are still in opposition to the present Government; political opponents, whether they work at a high level or at the grass roots, are subjected to arrest by the police and to torture. In 2002, 732 women were raped, 106 of whom were killed after rape, 104 people were killed in police custody and 83 died after torture.

5.5 The complainant explains that her and her daughter's passports were issued on 14 May 2000 and that they applied for a visa at the Swedish Embassy in Dhaka on 25 June 2000, in order to visit the complainant's sister. These events took place prior to her arrest on 16 August 2000. After her release on 17 August 2000 she was first admitted to a clinic because of her injuries, where she received notice of the visa having been issued. Since she was

still ill, it took her some time to get everything in order for the departure. She explains that she did not apply for asylum immediately upon her arrival in Sweden because she was still not feeling very well after the torture. She decided to apply for asylum when she learned that the Bangladeshi police were still looking for her. She also states that she gave the same address for her husband in the passport for practical reasons, to avoid being questioned by the Embassy personnel and because in Bangladesh it is common for a wife to do that. The complainant's sister visited Bangladesh from December 2002 to February 2003, where she learned that the police were still looking for T.A.

5.6 The complainant notes that the authorities of the State party should take into particular consideration how its treatment may affect a child, and also whether treatment which might not constitute inhuman or degrading treatment when inflicted on an adult may nevertheless constitute such treatment when it is inflicted on a child.

5.7 The complainant, in response to a request for additional information from the Committee regarding her political activities and the status and activities of the complainant's husband, informed the Committee that she has not been able to be politically active in Sweden because the Jatiya Party no longer has any longer has any active organization there. Nor has she been able to be active in Bangladesh. However, Bangladeshi authorities are still interested in her. The complainant has been in contact with her parents. They have told her that four policemen in civilian clothes came to their home in September 2004, asking about her whereabouts and those of her husband. When T.A.'s parents told the police they had no information, the police searched the house looking for them. T.A.'s parents have also stated that the police search for T.A. at regular intervals.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee further notes that domestic remedies have been exhausted, as acknowledged by the State party, and that the complainant has sufficiently elaborated the facts and the basis of the claim for the purposes of admissibility. Accordingly, the Committee considers the complaint admissible and proceeds to its consideration of the merits.

7.1 The first issue before the Committee is whether the removal of the complainant to Bangladesh would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Bangladesh. In assessing the risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass

violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 The Committee has noted the State party's contention that since the Awami League is currently in political opposition, the risk that the complainant would be exposed to harassment by the authorities at the instigation of members of the party no longer exists. The State party further argues that the complainant does not have anything to fear from the political parties now in power, since she is a member of one of the parties represented in Parliament. However, the State party has not contested that the complainant had in the past been persecuted, detained, raped and tortured. The Committee notes the complainant's statement that she belongs to a faction of the Jatiya Party which is in opposition to the ruling party, and that torture of political opponents is frequently practised by State agents. Furthermore, the acts of torture to which the complainant was subjected appear not only to have been inflicted as a punishment for her involvement in political activities, but also as retaliation for the political activities of her husband and his presumed involvement in a political crime. The Committee also notes that her husband is still in hiding, that the torture to which she was subjected occurred in the recent past and has been medically certified, and that the complainant is still being sought by the police in Bangladesh.

7.4 In the circumstances, the Committee considers that substantial grounds exist for believing that T.A. may risk being subjected to torture if returned to Bangladesh. Having concluded this, the Committee does not need to examine the other claims raised by the complainant.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that, given the specific circumstances of the case, the deportation of the complainant and her daughter would amount to a breach of article 3 of the Convention.

9. 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.

Communication No. 233/2003[a]

Submitted by:	Mr. Ahmed Hussein Mustafa Kamil Agiza (represented by counsel, Mr. Bo Johansson, of the Swedish Refugee Advice Centre)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	25 June 2003

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

Meeting on 20 May 2005,

Having considered complaint No. 233/2003, submitted to the Committee against Torture by Mr. Ahmed Hussein Mustafa Kamil Agiza, under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Ahmed Hussein Mustafa Kamil Agiza, an Egyptian national born on 8 November 1962, detained in Egypt at the time of submission of the complaint. He claims that his removal by Sweden to Egypt on 18 December 2001 violated article 3 of the Convention. He is represented by counsel, who provides as authority to act a letter of authority issued by the complainant's father. The complainant himself, detained, is allegedly not allowed to sign any documents for external purposes without special permission from the Egyptian State Prosecutor, and according to counsel such permission cannot be expected.

The facts as presented

2.1 In 1982, the complainant was arrested on account of his family connection to his cousin, who had been arrested for suspected involvement in the assassination of the former Egyptian President, Anwar Sadat. Before his release in March 1983, he was allegedly subjected to torture. The complainant, active at university in the Islamic movement, completed his studies in 1986 and married Ms. Hanan Attia. He avoided various police searches, but encountered difficulties, such as the arrest of his attorney, when he brought a civil claim in 1991 against the Ministry of Home Affairs for suffering during his time in prison.

2.2 In 1991, the complainant left Egypt for Saudi Arabia for security reasons, and thereafter went to Pakistan, where his wife and children joined him. After the Egyptian Embassy in Pakistan refused to renew their passports, the family left in July 1995 for the Syrian Arab Republic under assumed Sudanese identities, in order to continue on to Europe. This plan failed, and the family moved to the Islamic Republic of Iran, where the complainant was granted a university scholarship.

2.3 In 1998, the complainant was tried in absentia in Egypt for terrorist activity directed against the State before a "Superior Court Martial", along with over 100 other accused. He was found guilty of belonging to the terrorist group "Al Gihad", and was sentenced, without possibility of appeal, to 25 years' imprisonment. In 2000, concerned that improving relations between Egypt and Iran would result in his being returned to Egypt, the complainant and his family bought air tickets, using Saudi Arabian identities, to Canada, and claimed asylum during a transit stop in Stockholm on 23 September 2000.

2.4 In his asylum application, the complainant claimed that he had been sentenced to "penal servitude for life" in absentia on charges of terrorism linked to Islamic fundamentalism,[b] and that, if returned, he would be executed, as others accused in the same proceedings allegedly had been. His wife contended that, if returned, she would be detained for many years, as the complainant's wife. On 23 May 2001, the Migration Board sought the opinion of the Swedish Security Police on the case. On 14 September 2001, the Migration Board held a "major inquiry" with the complainant, with a further inquiry following on 3 October 2001. During of the same month, the Security Police questioned the complainant. On 30 October 2001, the Security Police advised the Migration Board that the complainant held a leading position in an organization guilty of terrorist acts and was responsible for the activities of the organization. The Migration Board thereupon forwarded the complainant's case, on 12 November 2001, to the Government for a strength of the decision under chapter 7, section 11 (2) (2), of the Aliens Act. In the Board's view, on the basis of the information before it, the complainant could be considered entitled to claim refugee status; however, the Security Police's assessment, which the Board saw no reason to question, pointed in a different direction. The balancing of the complainant's possible need for protection against the Security Police's assessment thus had to be made by the Government. On 13 November 2001, the Aliens Appeals Board, whose view the Government had sought, shared the Migration Board's assessment of the merits and also considered that the Government should decide the matter. In a statement, the complainant denied belonging to the organization referred to in the Security Police's statement, arguing that one of the designated organizations was not a political organization but an Arabic-language publication. He also claimed that he had criticized Usama Bin Laden and the Taliban in a letter to a newspaper.

2.5 On 18 December 2001, the Government rejected the asylum applications of the complainant and of his wife. The reasons for these decisions are omitted from the text of the present decision at the State party's request and with the agreement of the Committee. Accordingly, it was ordered that the complainant be deported immediately and his wife as soon as possible. On 18 December 2001, the complainant was deported, while his wife went into hiding to avoid police custody.

2.6 On 23 January 2002, the Swedish Ambassador to Egypt met the complainant at Mazraat Tora prison outside Cairo.[c] The same day, the complainant's parents visited him for the first time. They allege that they when they met him in the warden's office, he was supported by an officer and was near breakdown, hardly able to shake his mother's hand, pale and in shock. His face, particularly the eyes, and his feet were swollen, with his cheeks and bloodied nose seemingly thicker than usual. The complainant allegedly said to his mother that he had been treated brutally upon arrest by the Swedish authorities. During the eight-hour flight to Egypt, in Egyptian custody, he allegedly was bound by his hands and feet. Upon arrival, he was allegedly subjected to "advanced interrogation methods" at the hand of Egyptian State security officers,

who told him that the guarantees provided by the Government of Egypt concerning him were useless. The complainant told his mother that a special electric device with electrodes was connected to his body, and that that he received electric shocks if he did not respond properly to orders.

2.7 On 11 February 2002, a correspondent for Swedish radio visited the complainant in prison. He reported that the complainant walked with difficulty, but he could not see any sign of torture. In response to a question by counsel, the correspondent stated that he had explicitly asked the complainant if he had been tortured, and that he had replied that he could not comment. After the initial visit, the Ambassador or other Swedish diplomats were permitted to visit the complainant on a number of occasions. Counsel states that what can be understood from the diplomatic dispatches up to March 2003 is that the complainant had been treated "relatively well", and that he had not been subjected to torture even if the prison conditions were harsh.

2.8 On 16 April 2002, the complainant's parents again visited him. He allegedly told his mother that after the January visit further electric shocks had been applied, and that for the last 10 days he had been held in solitary confinement. His hands and legs had been tied, and he had not been allowed to go to the toilet. As a subsequent visit, he told his parents that he was still in solitary confinement but no longer bound. He was allowed to go to the toilet once a day, and the cell was cold and dark. Referring to a security officer, he was said to have asked his mother, "Do you know what he does to me during the night?" He had also been told that his wife would soon be returned to Egypt and that she and his mother would be sexually assaulted in his presence. Thereafter, the complainant's parents visited him once a month until July 2002 and then every fortnight. According to counsel, the information available indicates that he is held in a 2-m^2 cell, which is artificially cooled, dark, and without a mattress. His toilet visits are said to be restricted.

2.9 In December 2002, the complainant's Egyptian lawyer, Mr. Hafeez Abu Saada, the head of an Egyptian human rights organization with knowledge of local conditions of detention and interrogation methods, met in Cairo with Mr. Thomas Hammarberg, head of the Olaf Palme International Centre. Mr. Abu Saada expressed his belief that the complainant had been subjected to torture.

2.10 On 5 March 2003, the Swedish Ambassador met the complainant with a human rights envoy from the Swedish Ministry for Foreign Affairs. The complainant allegedly stated for the first time that he had been subjected to torture. In response to the question why he had not mentioned this before, he allegedly responded, "It no longer matters what I say, I will nevertheless be treated the same way."

The complaint

3.1 Counsel claims that the reason that he lodged the complaint over 1½ years after the complainant's removal was that for a long period it was uncertain who was able to represent him. Counsel contends that the original intention had been for the lawyer who had represented the complainant in domestic proceedings in Sweden to submit the complaint; "due to the

circumstances", that lawyer found himself "unable to fulfil the commission" and transferred the case to present counsel "some months ago". Counsel adds that it had been difficult to obtain the complainant's personal consent to lodge a complaint.

3.2 As to the merits, counsel argues that the complainant's removal to Egypt by Sweden violated his right under article 3 of the Convention. He bases this proposition on what was known at the time the complainant was expelled, as viewed in the light of subsequent events. He contends that it has been satisfactorily established that the complainant was in fact subjected to torture after his return.

3.3 Counsel argues that torture is a frequently used method of interrogation and punishment in Egypt, particularly in connection with political and security matters, and that accordingly the complainant, accused of serious political acts, was at substantial risk of torture. In counsel's view, the State party must have been aware of this risk and as a result sought to obtain a guarantee that his human rights would be respected. Counsel emphasizes, however, that no arrangements had been made prior to expulsion as to how the guarantees in question would be implemented after the complainant's return to Egypt. Counsel refers to the judgement of the European Court of Human Rights in *Chahal v. The United Kingdom*,[d] where the Court found a guarantee provided by the Government of India to be, of its own, insufficient protection against human rights violations.

3.4 Subsequent events are said to bear out this view. Firstly, Amnesty International expressed concerns about the complainant's situation in communiqués dated 19 and 20 December 2001, and 10 and 22 January and 1 February 2002. Secondly, the conclusions drawn by the State party as a result of its visits should be discounted because they took place in circumstances that were unsatisfactory. In particular, the visits were short, took place in a prison that was not the one where the complainant was actually detained, were not conducted in private and no medical practitioners or experts were present. Thirdly, independent evidence tends to corroborate the allegation of torture. Weight should be given to the complainant's parents' testimony as, although supervised, not every word was recorded, as is usually the case with the official visits, and there was opportunity for him to share sensitive information, especially when bidding his mother farewell. In the course of these visits, supervision lessened, with persons entering and leaving the room. Counsel argues that it would not be in the parents' or the complainant's interests for them to have overrepresented the situation, as this would needlessly put him at risk of prejudicial treatment as well as distress the complainant's family still in Sweden. In addition, the parents, elderly persons without political affiliation, would thereby be placing themselves at risk of reprisal.

3.5 Furthermore, the complainant's Egyptian lawyer is well qualified to reach his conclusion, after meeting with the complainant, that he had been tortured. Mr. Hammarberg, for his part, considers this testimony reliable. In advice dated 28 January 2003 provided by Mr. Hammarberg to counsel, the former considered that there was prima facie evidence of torture. He was also of the view that there were deficiencies in the monitoring arrangements implemented by the Swedish authorities, given that during the first weeks after return there were no meetings, while subsequent meetings were neither private nor were medical examinations performed.

3.6 For counsel, the only independent evidence on the question - that of the radio correspondent - confirms the above conclusions, as the complainant declined to answer a direct question whether he had been tortured. He would not have done this had he not feared further

reprisals. The complainant also informed the Swedish Ambassador directly on 5 March 2003 that he had been subjected to torture, having by that point allegedly given up any hope that his situation would change.

3.7 Counsel concludes that the complainant's ability to prove torture has been very limited, though he has done his best to report on his experiences in prison. He has been unable to present a full statement of his experiences or corroborative evidence such as medical reports.

The State party's submissions on the admissibility and merits of the complaint

4.1 By submission of 5 December 2003, the State party contests both the admissibility and the merits of the complaint. It regards the complaint as inadmissible (i) for the time elapsed since the exhaustion of domestic remedies; (ii) as an abuse of process; and (iii) as manifestly ill-founded.

4.2 While accepting that neither the Convention not the Committee's case law prescribes a definitive time frame within which a complaint must be submitted, the State party submits that in light of the content of rule 107 (f)[e] of the Committee's rules of procedure, this cannot mean that a complaint could never be time-barred. The State party refers to the six-month limit applicable to cases submitted to the European Court of Human Rights, including with respect to expulsion cases arising under article 3 of the European Convention on Human Rights, and the strong rationale of legal certainty for both complainants and States underlying that rule. The State party argues that this principle of legal certainty must be considered as one of the fundamental principles inherent in the international legal order. As the Convention, as well as the European Convention, are both important parts of international human rights law, it would be natural for one regime to seek guidance from another on an issue on which the former is silent. In view of rule 107 (f) of the Committee's rules, therefore, a six-month limit could arguably serve as a point of departure for the Committee.

4.3 With respect to the present case, the State party argues that no convincing information has been provided for the delay in submitting the complaint of over 1½ years. As counsel derives his authority to act from the complainant's father rather than the complainant himself, there is no reason why this could not have been obtained at an earlier stage. Nor does it appear that any attempt was made shortly after expulsion to obtain authority to act from this or another relative, such as the complainant's wife in Sweden. The State party refers to the complaint submitted by the same counsel on behalf of the complainant's wife in December 2001,[f] where it was argued that her situation was so closely linked to that of the present complaint that it was impossible to argue her case without referring to his. The arguments advanced in her case show that counsel was well acquainted with the circumstances presently invoked, and he should not be allowed to argue that the delay was due to his involvement with the family's case until a much later stage. There is, in the State party's view, no reason why the present complainant could not have been included in the first complaint submitted in December 2001. Accordingly, the State party argues that in the interests of legal certainty, the time that has elapsed since exhaustion of domestic remedies is unreasonably prolonged, and the complaint is inadmissible pursuant to article 22, paragraph 2, of the Convention and rule 107 (f) of the Committee's rules of procedure.

4.4 The State party also argues that the complaint discloses an abuse of the right of submission, disputing whether the complainant can be considered to have justifiable interest in having his complaint considered by the Committee. The factual basis of the current complaint is the same as that submitted on his wife's behalf in December 2001,[g] with the crucial issue in both cases relating to the guarantees issued by the Egyptian authorities prior to and for the purpose of the expulsion of the complainant and his family. In its decision on that case, after having assessed the value of the guarantees and finding no violation of the Convention, the Committee already dealt with the very issue raised by the present complaint. The issue should accordingly be considered *res judicata*.

4.5 Furthermore, within the framework of the proceedings concerning the complaint by the complainant's wife, the same extensive information has been submitted concerning his past activities, present whereabouts and conditions of detention. As both complaints were submitted by the same counsel, the present complaint places an unnecessary burden both on the Committee and the State party. Accordingly, the complainant does not have a demonstrable interest in having his complaint examined by the Committee. It should thus be regarded as an abuse of the right of submission and inadmissible pursuant to article 22, paragraph 2, of the Convention and rule 107 (b) of the Committee's rules of procedure.[h]

4.6 Finally, the State party considers the complaint manifestly unfounded, as the complainant's claims fail to rise to the basic level of substantiation required in light of the arguments on the merits set out below. It should thus be declared inadmissible under article 22, paragraph 2, of the Convention and rule 107 (b) of the Committee's rules of procedure.

4.7 On the merits, the State party sets out the particular mechanisms of the Aliens Act 1989 applicable to cases such as the complainant's. While asylum claims are normally dealt with by the Migration Board and, in turn, the Aliens Appeals Board, under certain circumstances either body may refer the case to the Government, while appending its own opinion. This procedure is invoked if the matter is deemed to be of importance for the security of the State or otherwise for security in general, or for the State's relations with a foreign Power (chapter 7, section 11 (2) (2), of the Act). If the Migration Board refers a case, it must first be forwarded to the Aliens Appeals Board which provides its own opinion on the case.

4.8 An alien otherwise in need of protection on account of a well-founded fear of persecution at the hand of the authorities of another State on account of a reason listed in the Convention relating to the Status of Refugees (under chapter 3, section 2, of the Act) may, however, be denied a residence permit in certain exceptional cases, following an assessment of that alien's previous activities and requirements of the country's security (chapter 3, section 4, of the Act). However, no person at risk of torture may be refused a residence permit (chapter 3, section 3, of the Act). In addition, if a person has been refused a residence permit and has had an expulsion decision issued against him or her, an assessment of the situation at the enforcement stage must be made to avoid an individual being expelled to face, inter alia, torture or other cruel, inhuman or degrading treatment or punishment.

4.9 The State party recalls Security Council resolution 1373 (2001), which enjoins all Member States to deny safe haven to those who finance, plan, support or commit terrorist acts, or themselves provide safe haven. The Council called on Member States to take appropriate measures, consistent with international human rights and refugee law, to ensure that asylum-seekers have not planned, facilitated, or participated in, terrorist acts. It also called upon

Member States to ensure, in accordance with international law, that the institution of refugee status is not abused by perpetrators, organizers or facilitators of terrorist acts. In this context, the State party refers to the Committee's statement of 22 November 2001, in which it expressed confidence that responses to threats of international terrorism adopted by States parties would be in conformity with their obligations under the Convention.

4.10 The State party also recalls the report[i] of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment submitted to the General Assembly in 2002, in which the Special Rapporteur appealed to States "to ensure that in all appropriate circumstances the persons they intend to extradite, under terrorist or other charges, will not be surrendered unless the Government of the receiving country has provided an unequivocal guarantee to the extraditing authorities that the persons concerned will not be subjected to torture or any other forms of ill-treatment upon return, and that a system to monitor the treatment of the persons in question has been put into place with a view to ensuring that they are treated with full respect for their human dignity" (para. 35).

4.11 As to the facts of the present case, the State party details the information obtained by its Security Police, which led it to regard the complainant as a serious security threat. At the State party's request, this information, while transmitted to counsel for the complainant in the context of the confidential proceedings under article 22 of the Convention, is not set out in the Committee's public decision on the present complaint.

4.12 The State party observes that on 12 December 2001, after referral of the case from the Migration and Aliens Appeals Boards, a State Secretary of its Ministry for Foreign Affairs met with a representative of the Government of Egypt in Cairo. At the State party's request and with the Committee's agreement, details of the identity of the interlocutor have been deleted from the text of the decision. As the State party was considering excluding the complainant from protection under the Refugee Convention, the purpose of the visit was to determine the possibility, without violating Sweden's international obligations, including those arising under the Convention, of returning the complainant and his family to Egypt. After careful consideration of the option of obtaining assurances from the Egyptian authorities with respect to future treatment, the State party's Government concluded that it was both possible and meaningful to inquire whether guarantees could be obtained to the effect that the complainant and his family would be treated in accordance with international law upon return to Egypt. Without such guarantees, return to Egypt would not be an alternative. On 13 December 2002, the requisite guarantees were provided.

4.13 The State party then sets outs in detail its reasons for refusing, on 18 December 2001, the asylum claims of the complainant and his wife. These reasons are omitted from the text of this decision at the State party's request and with the agreement of the Committee.

4.14 The State party advises that the complainant's current legal status is, according to the Egyptian Ministries of Justice and the Interior, that he is presently serving a sentence for his conviction, in absentia, by a military court for, among other crimes, murder and terrorist activities. His family provided him with legal representation, and in February 2002, a petition for review of the case was filed with the President. By October 2002, this had been dealt with by the Ministry of Defence and would soon be handed to the President's Office for decision.

Turning to the monitoring of the complainant's situation after his expulsion, the State party advises that his situation has been monitored by the Swedish Embassy in Cairo, mainly by visits approximately once every month. As of the date of submission, there had been 17 visits.[j] On most occasions, visitors have included the Swedish Ambassador and on several other visits a senior official from the Ministry for Foreign Affairs.

4.15 According to the Embassy, these visits have over time developed into a routine, taking place in the prison superintendent's office and lasting an average of 45 minutes. At no time has the complainant been restrained in any fashion. The atmosphere has been relaxed and friendly, with the visitors and the complainant being offered soft drinks. At the end of the June 2002 visit, Embassy staff observed the complainant in seemingly relaxed conversation with several prison guards, awaiting return to detention. At all times he has been dressed in clean civilian clothes, with well-trimmed beard and hair. He appeared to be well nourished and not to have lost weight between visits. At none of the visits did he show signs of physical abuse or maltreatment, and he was able to move around without difficulty. At the request of the Ambassador, in March 2002, he removed his shirt and undershirt and turned around, disclosing no sign of torture.

4.16 In the Embassy's report of the first (January 2002) visit, the complainant did not seem to hesitate to speak freely, and told the Ambassador that he had no complaints as to his treatment in prison. Asked whether he had been subjected to any kind of systematic abuse, he made no claim to such effect. When asked during the April 2002 visit whether he had been in any way maltreated, he noted that he had not been physically abused or otherwise maltreated. During most visits he had complaints concerning his general health, including a bad back, gastric ulcer, kidney infection and thyroid problems, causing, inter alia, sleeping problems. He had seen a variety of internal and external medical specialists, and had had an MRI spinal examination, physiotherapy for his back and an X-ray thyroid gland examination. The X-ray revealed a small tumour for which he will undergo further tests. In August 2003, he expressed to the Ambassador, as he had done before, his satisfaction with the medical care received. At the November 2003 visit, he reported that a neurologist had recommended a back operation. He has received regular medication for various health problems.

4.17 During the May and November 2002 visits, the complainant made negative remarks about the general conditions of detention. He referred to the absence of beds or toilets in the cell, and that he was being held in a part of the prison for unconvicted persons. This generally improved after December 2002, when he was no longer kept apart from other prisoners and could walk in the courtyard. In January 2003, he was moved on health grounds to a part of the prison with a hospital ward. In March 2003, in response to a question, he said he was treated neither better nor worse than other prisoners; general prison conditions applied. At no subsequent visits did he make such complaints.

4.18 On 10 February 2002, that is, at an early stage of detention, the Swedish national radio reported on a visit by one of its correspondents with the complainant in the office of a senior prison official. He was dressed in a dark blue jacket and trousers and showed no external signs of recent physical abuse, at least on his hands or face. He did have some problems moving around, which he ascribed to a long-term back problem. He complained about not being allowed to read and about the lack of a radio, as well as lack of permission to exercise.

4.19 Further issues that have been brought up regularly between the complainant and Embassy staff are visits from family and lawyers. Following the June 2002 visit, a routine of fortnightly family visits appeared to have been established. At the time of submission this routine continued, though visits in May and June 2003 were restricted for security reasons. The complainant remarked that he had only received two visits from his lawyer, in February and March 2002. He had not requested to see his lawyer as he considered it meaningless. This issue was raised in the Embassy's follow-up meetings with Egyptian government officials, who affirmed that the complainant's lawyer is free to visit and that no restrictions apply.

4.20 As the complainant, on several occasions and in reply to direct questions, stated that he had not suffered abuse, the Ambassador concluded after the November 2002 visit that, although the detention was mentally trying, there was no indication that the Egyptian authorities had breached the guarantees provided. The State party details certain allegations subsequently made by the complainant and the actions it took in response thereto. At the request of the State party and with the Committee's agreement, details of these matters are not included in the text of this decision.

4.21 As to the application of the Convention, the State party observes that the present case differs from most article 3 complaints before the Committee in that the expulsion has already taken place. The wording of article 3 of the Convention, however, implies that the Committee's examination of the case must focus on the point in time when the complainant was returned to his country of origin. Events that have taken place or observations made thereafter may naturally be of interest in establishing whether the guarantees provided have been respected, and this bears on the assessment by the State party's Government that the complainant would not be treated contrary to the Convention, which was in fact correct. But while such developments are relevant, the State party maintains that the principal question in the current complaint is whether or not its authorities had reason to believe, at the time of the complainant's expulsion on 18 December 2001, that substantial grounds existed for believing him to be at risk of torture.

4.22 The State party refers to the Committee's constant jurisprudence that an individual must show a foreseeable, real and personal risk of torture. Such a risk must go beyond mere theory or suspicion, but does not have to be highly probable. In assessing such a risk, a standard which is incorporated into Swedish law, the guarantees issued by the Government of Egypt are of great importance. The State party recalls the Committee's decision on the complaint presented by the complainant's wife where the same guarantees were considered effective,[k] and refers to relevant decisions of the European organs under the European Convention on Human Rights.

4.23 In *Aylor-Davis v. France* (judgement of 20 January 1994), it was held that guarantees from the receiving country, the United States, were found to eliminate the risk of the applicant being sentenced to death. The death penalty could only be imposed if it was actually sought by the State prosecutor. By contrast, in *Chahal v. The United Kingdom*, the Court was not persuaded that assurances from the Government of India that a Sikh separatist "would enjoy the same legal protection as any other Indian citizen, and that he would have no reason to expect mistreatment of any kind at the hand of the Indian authorities" would provide an adequate guarantee of safety. While not doubting the good faith of the Government of India, it appeared to the Court that despite the efforts, inter alia, of the Indian Government and courts to bring

about reform, violations of human rights by members of the security forces in Punjab and elsewhere in India remained a recurrent problem. The case law thus suggests that guarantees may be accepted where the authorities of the receiving State can be assumed to have control of the situation.

4.24 Applying this test, the State party argues that the current case is more in line with *Aylor-Davis*. The guarantees were issued by a senior representative of the Government of Egypt. The State party points out that if assurances are to have effect, they must be issued by someone who can be expected to be able to ensure their effectiveness, as, in the State party's view, was presently the case in light of the Egyptian representative's senior position. In addition, during the December 2001 meeting between the Swedish State Secretary and the Egyptian official, it was made clear to the latter what was at stake for Sweden: as article 3 of the Convention is of an absolute character, the need for effective guarantees was explained at length. The State Secretary reaffirmed the importance for Sweden of abiding by its international obligations, including the Convention, and that as a result specific conditions would have to be fulfilled in order to make the complainant's expulsion possible. It was thus necessary to obtain written guarantees of fair trial, that he would not be subjected to torture or other inhuman treatment, and that he would not be sentenced to death or executed. The trial would be monitored by the Swedish Embassy in Cairo, and it should be possible to visit the complainant even after conviction. Moreover, his family should not be subjected to any kind of harassment. It was made clear that Sweden found itself in a difficult position, and that Egypt's failure to honour the guarantees would impact strongly on other similar European cases in the future.

4.25 The State party expands on the details of these guarantees. They are omitted from the text of this decision at the request of the State party, and with the consent of the Committee. The State party points out that the guarantees are considerably stronger than those provided in *Chahal* and are couched much more affirmatively, in positive terms of prohibition. The State party recalls that Egypt is a State party to the Convention, has a constitutional prohibition on torture and acts of, or orders to, torture are serious felonies under Egyptian criminal law.

4.26 For the State party, it is of interest in assessing the complaint whether the guarantees have been and are being respected. It recalls the allegations of ill-treatment made by the complainant's mother, and subsequently by non-governmental organizations, including the mother's description of his physical condition at her first visit on 23 January 2002. The State party's Ambassador's visit the same day immediately followed the mother's visit, and the Ambassador observed no signs of physical abuse. As observed, the complainant seemed to speak freely, made no complaints about torture, and in response to a direct question on systematic abuse in prison, made no claim to that effect. The State party thus argues that the allegation of ill-treatment on that date has been effectively refuted by its Ambassador's observations.

4.27 The State party asserts that judging from the numerous reports provided by the Ambassador, Embassy staff and the senior official of its Ministry for Foreign Affairs, the guarantees provided have proved effective vis-à-vis the complainant. Allegations made by him to the contrary have not been substantiated, and on numerous occasions, he confirmed to the Swedish Ambassador that he had not been tortured or ill-treated. The allegations of March 2003 were refuted by the Egyptian authorities. The complainant receives the medical care he requires as a result of his health problems, and legal assistance has been provided to him by his family. That his lawyer so far may not have taken sufficient action to achieve review of sentence is of no

relevance to the current complaint. In addition, his family visits him regularly. On the whole, considering the inherent constraints of detention, the complainant appears to be in fairly good health. The State party concludes that as the allegations of torture have not been substantiated, they cannot form the basis of the Committee's assessment of the case. The State party also points out that the case has been widely reported in national media and has received international attention. The Egyptian authorities can be assumed to be aware of this, and are likely to ensure as a result that he is not subjected to ill-treatment.

4.28 The State party recalls that in its decision on the complaint of the complainant's wife,[1] the Committee appeared to make a prognosis for her in the light of the information about the effectiveness of the guarantees regarding her husband, the present complainant, to whom she had linked her case solely on the basis of her relationship to him. The Committee declared itself "satisfied by the provision of guarantees against abusive treatment" and noted that they were "regularly monitored by the State party's authorities *in situ*". It went on to observe that Egypt "is directly bound properly to treat prisoners within its jurisdiction". In the State party's view, therefore, the Committee's conclusion that she had not made out a breach of article 3 in her complaint is of "essential importance" to the present complaint.

4.29 In conclusion, the State party argues that by obtaining the guarantees in question from the competent Egyptian official, it lived up to its commitments under the Convention while at the same time as fulfilling its obligations under Security Council resolution 1373 (2001). Prior to expelling the complainant, appropriate guarantees were obtained from the official best placed to ensure their effectiveness. The guarantees correspond in content to the requirements of the Special Rapporteur (see paragraph 4.10 above), while a monitoring mechanism was put into place and has been functioning for almost two years. Therefore, the complainant has not substantiated his claims that the guarantees have, in practice, not been respected. Should the Committee come to another conclusion, the crucial question is what the State party's Government had reason to believe at the time of the expulsion. As the complainant has not substantiated his claim under article 3, his removal to his country of origin was not in breach of that provision.

Counsel's comments on the State party's submissions

5.1 By letter of 21 January 2004, counsel disputed the State party's submissions both on admissibility and merits. On the State party's arguments concerning timely submission of the complaint, he argues that it was unclear for a long period who was entitled to represent the complainant. Counsel argues that his prior lawyer had been unable to arrange for a power of attorney to be signed prior to the complainant's rapid removal, and that the prior lawyer considered his responsibilities at an end once the complainant had been removed. Counsel argues that once the complainant had been removed and could not be consulted directly, it was necessary to obtain more information about his situation before carefully evaluating, together with his parents, whether it would be productive to file a complaint on his behalf. Counsel argues that the circumstances in the complaint brought by the complainant's wife were "completely different", as she had remained in Sweden and thus an urgent communication was necessary in order to prevent removal. In the present case, the complainant had already been expelled, and there was no urgent need to submit the complaint before a careful evaluation of its substance. He also points out that the six-month limit for submission refers only to complaints

presented under the European Convention, and that the existence of different treaty regimes poses no difficulty. In any case, counsel argues that the issue of principle before the Committee in terms of the satisfactory protection afforded by diplomatic assurances is so important that it should consider the case rather than declare it inadmissible.

5.2 Counsel denies that the complaint constitutes an abuse of the right of submission. While conceding that many of the "basic factors" in the cases of the complainant and his wife are the same and that the circumstances "coincide to a considerable degree", the current complainant is the individual at most serious risk of torture. His wife, who by contrast based her claim simply as a close relative to a person sought for terrorist activities, is in a subsidiary position facing a less serious risk than her husband. As a result there are "major differences" between the two cases and the complaint should thus not be declared inadmissible on this ground. Counsel also rejects the characterisation of the case as manifestly ill-founded.

5.3 On the merits, counsel refers, for a general picture of the gross, flagrant and widespread use of torture by Egyptian authorities, to reports of several human rights organizations. The human rights report of the Swedish Ministry for Foreign Affairs itself refers to frequent torture by Egyptian police, especially in terrorism-related investigations. Counsel argues that the complainant was not involved in any terrorist activities, and rejects any applicability of Security Council resolution 1373 (2001). In any event, this resolution could not override other international obligations such as the Convention. Counsel denies that the complainant participated in terrorist activities, including through those organizations in which the Security Police claimed he was involved. In any case, allegations of involvement with terrorist organizations would only have served to heighten the existing interest of the Egyptian authorities in the complainant, an individual convicted of terrorist offences, and this aggravating circumstance exacerbating the risk of torture should have been considered by the State party prior to expelling him.

5.4 For counsel, the key issue is not whether a guarantee was given by a Government official, but rather whether it can be implemented and, if so, how. The guarantee in question was obtained at short notice, was vague in its terms and provided no details on how the guarantees would be given effect with respect to the complainant; nor did the Government of Egypt provide, or the Swedish authorities request, any such information. Neither did the Swedish authorities conceive an effective and durable arrangement for monitoring, conducting the first visit over a month after the complainant's removal. This arrangement, coming shortly after the Committee had requested interim measures of protection with respect to the complainant's wife, appeared to be an ad hoc reaction rather than part of a properly conceived monitoring plan. Counsel reiterates his criticisms of the effectiveness of the monitoring arrangements, observing that standard routines in such cases applied by organizations such as the International Committee of the Red Cross had not been met. In addition, the Swedish authorities apparently did not seek to call any medical expertise, particularly after the complainant's direct allegation of torture in March 2003. Counsel contends that differences between the complainant's testimony to his parents, on one hand, and to Swedish authorities, unknown to him and accompanied by Egyptian authorities, on the other, are explicable.

5.5 Counsel criticizes the Committee's decision on the complaint presented by the complainant's wife, as the information that her husband had suffered ill-treatment was based on a variety of sources and could not be dismissed as unfounded. Counsel disputes the State party's interpretation of the jurisprudence of the European organs, viewing the content of the current

guarantee and that offered by India in *Chahal* as "basically the same". He observes that the Court did not doubt the good faith of the Government of India, but regarded the fundamental problem as human rights violations committed at the operational level by the security forces. In the present case, similarly, even assuming the same good will at the political level on the part of Egyptian authorities as on the part of the representative with whom the guarantees were agreed, the reality at the lower operational levels of the State security services and other authorities with whom the complainant was in contact is that torture is commonplace. The *Aylor-Davis* case, by contrast, is inapposite as the guarantee there was offered by a State the circumstances of which cannot be compared to those appertaining in Egypt.

5.6 With respect to the State party's statement that the Egyptian authorities rejected the allegations made by the complainant in March 2003, counsel observes that any contrary reaction would have been surprising, and that such refutation does not disprove the complainant's allegation. In counsel's view, the burden of proof to show ill-treatment did not occur rests with the State party, with the most effective capacity to present evidence and conduct appropriate supervision. Counsel submits that the State party has not discharged this burden.

5.7 While accepting that Egypt is a State party to the Convention, counsel observes that this formal act is regrettably no guarantee that a State party will abide by the commitments assumed. As to the prophylactic effect of media publicity, counsel argues that there was some coverage of the cases of the complainant and his wife around the time of the former's removal, but that thereafter interest has been limited. In any case, there is reason to doubt whether media coverage has any such protective effect, and even where coverage is intensive, its positive effect may be doubted.

5.8 Counsel submits that if the Committee were to accept guarantees such as those offered in the present case as sufficient protection against torture, one could not discount that large-scale deportations could take place after some standard form of assurance is provided by States with poor human rights records. At least in circumstances where there was a limited will and capability on the part of the removing State appropriately to monitor the consequences, the results could readily be wide scope for authorities of the receiving State to engage in and conceal torture and ill-treatment. As a result, counsel invites the Committee to find that there was (i) a violation by the State party of article 3 of the Convention at the time of the complainant's expulsion, in the light both of the information then available and of subsequent events; and (ii) that he has been subjected to torture after removal.

Supplementary submissions by the parties

6.1 By letter of 20 April 2004, counsel advised that on 18 February 2004, the complainant met his mother in prison. He informed her that he had been threatened by interrogation officers with death or torture, and the same day lodged a complaint that he had been tortured. On 19 February 2004, he was transferred to Abu-Zabaal prison some 50 km from Cairo, against which he protested by going on a hunger strike lasting 17 days. He was allegedly placed in a small punitive isolation cell measuring 1.5 m^2 in unhygienic conditions, receiving a bottle of water a day. On 8 March 2004, representatives of the Swedish Embassy visited him, with unknown results. On 20 March 2004, following unsuccessful attempts by the complainant's mother to visit him, it was announced that no family visits would be permitted outside major holidays owing to his status as a security prisoner with special restrictions. On 4 April 2004, he was returned to Masra Torah prison. On 10 April 2004, a retrial began before the 13th superior

military court on charges of joining and leading an illegal group or organization and criminal conspiracy, to which the complainant pleaded not guilty. A representative of Human Rights Watch was admitted, but family, journalists and representatives of the Swedish Embassy were not. The complainant's lawyer requested an adjournment in order that he could read the 2,000-page charge and prepare a defence. As a result, the trial was adjourned for three days, with the lawyer permitted only to make handwritten notes. In counsel's view, this information demonstrates that the complainant had been tortured in the past, has been threatened therewith and faces a considerable risk of further torture. It also shows that he has been treated in a cruel and inhumane manner as well as denied a fair trial.

6.2 By further letter of 28 April 2004, counsel advised that on 27 April 2004 the complainant had been convicted and sentenced to 25 years' imprisonment. He also contended that the court rejected a request from the complainant for a medical examination as he had been tortured in detention. In counsel's view, the complainant's statement to the court and the court's rejection of his request constitute a further clear indication that he had been subjected to torture.

7.1 By submission of 3 May 2004, the State party responded to counsel's letter of 20 April 2004. The State party advised that since the last (seventeenth) visit reported to the Committee on 5 December 2003, four further visits, on 17 December 2003, 28 January 2004, 8 March and 24 March 2004, had taken place. The State party advised that from December 2003 to January 2004, the complainant's situation remained broadly the same, and that he had taken up law studies. While complaining that his two cellmates disturbed the peace and quiet required for study, he managed to prepare for examinations that took place in the facility in January 2004. The reportedly maximum security Abu-Zabaal facility to which he was transferred was said to be a more customary facility for prisoners sentenced to long terms. At the same time, the prison director advised that the complainant had been ordered to spend 15 days in isolation as a disciplinary sanction for having attempted to instigate a rebellion amongst Masra Torah inmates. The State party had obtained separate corroborating evidence that (i) the complainant had attempted to start a prison riot by "shouting words calling for disobedience against the instructions and regulation of the prison"; and that (ii) restrictions had been imposed on correspondence and visiting rights for a period of three months. The State party observed that the complainant was found guilty of one of the two offences with which he was charged, namely having held a leading position in, and being responsible for, the terrorist organization Islamic Al-Fath Vanguards. He was sentenced to life imprisonment, hard labour (abolished in 2003) not being imposed. He is currently in Masra Torah prison awaiting decisions as to his future placement.

7.2 The State party maintained its earlier positions with respect to the admissibility of the complaint, as well as to the merits, that is, that the complainant has not substantiated his claims that the Egyptian authorities have not respected the guarantees in practice. It recalled that the crucial question is what the State party had reason to believe, in light of the guarantees given, at the time of the expulsion. The State party thus submitted that it has been in full conformity with its obligations under the Convention.

8.1 By letter of 3 May 2004, counsel argued that he had initially only been supplied with a verbatim version of the diplomatic report supplied after the first ambassadorial meeting in 23 January 2002 with the complainant. Counsel contended that the full report had just been

provided to him by a lawyer representing a third party deported at the same time as the complainant. Counsel contends that according to this report the complainant informed the Ambassador that he had been tortured (in the form of beating by prison guards) and subjected to cruel and degrading treatment (in the form of blindfolding, solitary confinement in a very small cell, sleep deprivation and refusal of prescribed medication). Counsel argued that the State party had not supplied this information to the Committee. Counsel further provided a report by Human Rights Watch critical of diplomatic assurances in this context,[m] as well as a statement dated 27 April 2004 of the Egyptian Organization for Human Rights critical of the complainant's retrial.

8.2 By letter of 4 May 2004, counsel provided his translation of the diplomatic report described. After describing a forced posture during the air transport to Egypt, the complainant is said to have told the Ambassador at the first meeting, in the presence of Egyptian officials, that he had been "forced to be blindfolded during interrogation, kept in too-narrow cells, 1.50 x 1.50 metres, during the same period, lack of sleep due to supervision in cells, a delay of ten days before [he] once gets access to his anti-gastric drugs (after medical examination), that [he] had been beaten by prison guards during transport to and from interrogation and threats from interrogation offices that it could affect his family if he did not tell everything about his time in Iran". The Ambassador concluded that he could not evaluate the veracity of these statements, but did not understand the claim to be of any form of systematic, physical torture. Counsel viewed this newly disclosed information as a clear indication that the complainant had been subjected to torture. Counsel also argued that the real reason that the complainant had been transferred to the Abu-Zaabal facility was because he had lodged a complaint of threatened torture. He also contended that the complainant was denied "real and fair possibilities" of preparing his defence and observed that the State party did not address issues arising from the complainant's trial.

8.3 By a further letter of 4 May 2004, counsel provided a statement of the same day by Human Rights Watch entitled "Suspected militant's unfair trial and torture claims implicate Sweden", in which the complainant's retrial as well as the State party's monitoring arrangements were criticized. Counsel also provided a letter sent to him by a Human Rights Watch researcher purporting to confirm the contents of the first diplomatic report described above and concluding that there were credible allegations of ill-treatment.

8.4 By submission of 5 May 2004, the State party advised that it considered the Committee to be in a position to take a decision on the admissibility and, if necessary, the merits of the complaint on the basis of the Convention and the information before the Committee. Accordingly, it did not intend to make additional submissions beyond those already made on 3 May 2004. It observed in conclusion that counsel's letter of 4 May 2004 raised, inter alia, issues falling outside the scope of the Convention.

The Committee's admissibility decision

9.1 At its thirty-second session, the Committee considered the admissibility of the communication. The Committee ascertained, as it was required to do under article 22, paragraph 5 (a), of the Convention, that the same matter had not been and was not being examined under another procedure of international investigation or settlement.

9.2 On the State party's argument that the present complaint was an abuse of process which rendered it inadmissible, the Committee observed that the complaint submitted on behalf of the complainant's wife in order to prevent her removal had necessarily been filed with dispatch, and had concerned, at least at the time of the Committee's decision, the issue of whether *at that point* the circumstances were such that her removal would be a violation of article 3 of the Convention. In reaching the conclusion that removal of the complainant's wife would not breach article 3, the Committee had considered the chronology of events up to the time of its decision, a necessarily wider inquiry than that at issue in the present case, which was focused upon the situation of the complainant at the time of his expulsion in December 2001. Indeed, the Committee had observed in its decision on the original complaint that it was not being presented with the issue of whether the present complainant's removal itself breached article 3. The two complaints related to different persons, one already removed from the State party's jurisdiction at the time of submission of the complaint and the other still within its jurisdiction pending removal. In the Committee's view, the complaints were thus not of an essentially identical nature, and it did not consider the current complaint to be a simple resubmission of an already decided issue. While submission of the present complaint with greater dispatch would have been preferable, the Committee considered that it would be inappropriate to take so strict a view that would consider the time taken in obtaining authorization from the complainant's father as so excessively delayed as amounting to an abuse of process.

9.3 As to the State party's inadmissibility argument grounded on rule 107 (f) of the Committee's rules of procedure, the Committee observed that this rule required the delay in submission to have made consideration of the case "unduly difficult". In the present case, the State party had had ready access to the relevant factual submissions and necessary argumentation and thus, while the timing of the submission of the two complaints may have been inconvenient, consideration of the present complaint could not be said to have been made unduly difficult by the lapse of 18 months from the date of the complainant's expulsion. The Committee thus rejected the State party's argument that the complaint is inadmissible on this ground.

9.4 The Committee noted that Egypt has not made the declaration provided for under article 22 recognizing the Committee's competence to consider individual complaints against that State party. The Committee observed, however, that a finding, as requested by the complainant, that torture had in fact occurred following the complainant's removal to Egypt (see paragraph 5.8) would amount to a conclusion that Egypt, a State party to the Convention, had breached its obligations under the Convention without it having had an opportunity to present its position. This separate claim against Egypt was thus inadmissible *ratione personae*.

9.5 In terms of the State party's argument that the remaining complaint was insufficiently substantiated for purposes of admissibility, the Committee considered that the complainant had presented a sufficiently arguable case with respect to Sweden for it to be determined on the merits. In the absence of any further obstacles to the admissibility of the complaint advanced by the State party, the Committee accordingly was ready to proceed with the consideration of the merits.

9.6. Accordingly, the Committee against Torture decided that the complaint was admissible, in part, as set out in paragraphs 9.2 to 9.5 above.

Supplementary submissions by the parties on the merits of the complaint

10.1 By letter of 20 August 2004, counsel for the complainant made additional submissions on the merits of the case, providing additional details on the complainant's retrial in April 2004. He stated that the complainant's defence counsel was only provided with copies of parts of the criminal investigation that had been conducted, despite a request to photocopy the investigation records. When the trial was resumed on 13 April, the complainant was only able to speak to his counsel for about 15 minutes. The State called a colonel of the State Security Investigation Sector to testify against the complainant, to the effect that the complainant had had a leading position since 1980 in the Jamaa group, as well as links since 1983 with Ayman al-Zawahiri, a central figure of the group. He further testified that the complainant had attended training camps in Pakistan and Afghanistan, and participated in weapons training sessions. Upon cross-examination, the colonel stated that the Jamaa leadership continually changes, that his testimony was based on secret information, that the sources thereof could not be revealed because of risks to their lives and that he (the colonel) had had a supplementary role in the investigation alongside other officers whom he did not know. According to counsel for the complainant, the court in its verdict of 27 April 2004 rejected the complainant's request for a forensic medical examination during the trial, but referred to a medical examination report by the prison doctor which indicated that the complainant had suffered injuries in prison.

10.2 Counsel refers to a Swedish television broadcast of 10 May 2004 entitled *Kalla Fakta*, examining the circumstances of the expulsion of the complainant and another individual.[n] The programme stated that the two men had been handcuffed when brought to a Stockholm airport, that a private jet of the United States of America had landed and that the two men were handed over to a group of special agents by Swedish police. The agents stripped the clothes from the men's bodies, inserted suppositories of an unknown nature, placed diapers upon them and dressed them in black overalls. Their hands and feet were chained to a specially designed harness, and they were blindfolded and hooded as they were brought to the plane. Mr. Hans Dahlgren, State Secretary at the Foreign Ministry, stated in an interview that the Government of Egypt had not complied with the fair trial component of the guarantees provided.

10.3 According to counsel for the complainant, following this programme, the Swedish Foreign Ministry sent two senior representatives to Egypt to discuss with the Government of Egypt how the two deportees had been treated. The results of the meeting are not known apart from an Egyptian denial of maltreatment and that an investigation under Egyptian leadership, but with international participation and medical expertise, would take place. Three separate investigations in Sweden are ongoing: (i) a *proprio motu* investigation by the Chief Ombudsman to determine whether the actions taken were lawful; (ii) a criminal investigation by the Stockholm Public Prosecutor, upon private complaint, into whether Swedish Security Police committed any crime in connection with the deportation; and (iii) an investigation by the Constitutional Committee of Parliament into the lawfulness of the handling of the cases by Sweden.

10.4 On 15 June 2004, the Aliens Appeals Board granted the complainant's wife and her five children permanent resident status in Sweden on humanitarian grounds. Later in June, the Government of Egypt through exercise of the prerogative of mercy reduced the complainant's 25-year sentence to 15 years' imprisonment. According to counsel for the complainant, the

complainant last met Swedish representatives in July 2004. For the first time, the meeting was wholly private. After the meeting, he met his mother and told her that prior to the meeting he had been instructed to be careful and to watch his tongue, receiving from an officer the warning "Don't think that we don't hear; we have ears and eyes".

10.5 As at 20 August 2004, the date of the submissions, there was no information concerning the announced inquiry in Egypt.[o] However, that day, the Swedish Minister for Foreign Affairs announced in a radio broadcast the receipt of a note from the Government of Egypt rejecting all allegations that the complainant had been tortured and considering an international inquiry unnecessary and unacceptable. The Minister for Foreign Affairs also considered that there was reason to be self-critical concerning the handling of the case by Sweden.

10.6 Counsel submits that the retrial fell patently short of international standards, being conducted in a military court with limited time and access available to the defence resulting in a conviction based on weak and insufficient evidence.[p] The failure to respect this portion of the guarantee, as conceded by State Secretary Dahlgren, raised of itself serious doubts as to the fulfilment of the remaining commitments. Counsel states that the complainant told his mother that he is sent to hospital only irregularly for his back problem, there being no indication that he has been examined by a forensic physician. In counsel's view, the information already made known, coupled with the finding by the prison doctor that the complainant had suffered medical injuries (see paragraph 8.1) and the refusal of the Egyptian authorities to allow an international investigation together show that he has been subjected to torture. The burden to prove the contrary must rest upon the State party, with its commensurately greater resources and influence upon proceedings.

10.7 Reiterating his previous arguments, counsel contends that the complainant faced substantial risks of torture at the time of expulsion irrespective of the guarantees obtained from a country with a record such as Egypt's. Counsel refers in this connection to a report on Sweden, dated 8 July 2004, of the Council of Europe, in which criticism was expressed about the use of guarantees.[q] Alternatively, counsel argues that the steps taken to prevent and monitor the guarantees were insufficient. In addition to the arguments already raised, no detailed plans or programmes featuring matters such as special orders on permissible interrogation techniques, confirmation that subordinate personnel were aware and would adhere to the guarantees, or a post-expulsion treatment and trial plan were implemented.

11.1 By submission of 21 September 2004, the State party responded, observing that further visits since its last submissions of 3 May 2004 took place on 4 May, 2 June, 14 July and 31 August 2004. Each visit, excepting the most recent, took place in Masra Torah prison where the complainant appears to be serving his sentence. The most recent visit took place at the Cairo university hospital. The State party refers to the complainant's improved legal situation, with the reduction of his sentence to 15 years' imprisonment with, according to the complainant, further reduction in the event of good behaviour. An assessment thereof is conducted automatically by the Egyptian Ministry of the Interior. The complainant's health situation has also improved since May when he fell ill with pneumonia. Upon his return to Masra Torah prison on 4 April 2004, his previous treatments and medication were resumed. In late August 2004, he underwent surgery at the Cairo university hospital on spinal discs. The

neurosurgeon involved informed the Embassy on 31 August that the operation had taken five hours, involving microsurgery, but had been successful and without complications. According to the physician, the back problems were of a type that could befall anyone and had no apparent cause.

11.2 Concerning general conditions at Masra Torah prison, the complainant offered Embassy staff no particular complaints when asked. Family visits have resumed upon his return to that prison. He was pleased to be informed of the permanent residence granted his wife and children, and has continued with his law studies and exams.

11.3 Following renewed allegations of ill-treatment by the complainant's counsel, his Egyptian lawyer and NGOs, the State party's Government made further investigative efforts. On 18 May 2004, it dispatched Ms. Lena Hjelm-Wallén, former Minister for Foreign Affairs and Deputy Prime Minister, as special envoy to Egypt, accompanied by the Director-General for Legal Affairs of the Swedish Ministry for Foreign Affairs. The envoy met with the Egyptian Deputy Minister of Justice and the Minister in charge of the General Intelligence Service (GIS), voicing the State party's concerns over the alleged ill-treatment in the first weeks following the complainant's return to Egypt. She requested an independent and impartial inquiry into the allegations, including international medical expertise. The Government of Egypt dismissed the allegations as unfounded, but agreed to undertake an investigation. Subsequently, on 1 June 2004, the Swedish Minister for Foreign Affairs dispatched a letter to the Egyptian Minister in charge of GIS, suggesting that in order for the Egyptian investigation to receive the widest possible international acceptance, it should be carried out with or by an independent authority and involve the judiciary and medical expertise, preferably international experts with recognized expertise in the investigation of torture. She also professed willingness to allow a Swedish official, such as a senior police officer or prosecutor, to assist. She added that it was crucial that the fight against terrorism be carried out with full respect for the rule of law and in conformity with international human rights obligations. In his answer of late July 2004, the responsible Egyptian Minister refuted the allegations of ill-treatment as unfounded, referring without detail to Egyptian investigations. While confirming the reduction of the complainant's sentence, he gave no direct answer to the Swedish request for an independent investigation.

11.4 The State party states that its Government is not content with the Egyptian response. In the process of considering possible further action, it is of the utmost importance that the Government receive a confirmation that such action will be in line with the complainant's own wishes, as further measures should not risk adversely affecting his legal interests, safety or welfare in any way. It is also necessary, in the circumstances, for the Government of Egypt to concur and cooperate in any further investigative efforts.

11.5 The State party reiterated its previous submissions that considerations based on a deficient retrial are outside the scope of the present case, which is concerned with whether the complainant's return to Egypt was in breach of the absolute ban on torture. It reiterates that the complainant has not substantiated his claim that he was ill-treated following return, and, thus, that the guarantees provided were not respected. The State party recalls that the crucial issue to be decided is what its Government, in view of the guarantees received, had reason to believe at the time of the expulsion. Accordingly, the State party has complied with its obligations under the Convention, including article 3.

11.6 By letter of 16 October 2004, counsel responded to the State party's supplementary submissions, pointing out that the circumstances of the four visits from May to August 2004 described by the State party remained unclear, but that it is likely that Egyptian officials were present and that it would be difficult to speak freely. The situation may have been different for the hospital visit. Counsel criticizes the State party for stating that it appeared that Masra Torah prison was the facility in which the complainant was serving his sentence, arguing that as it is well known that the complainant was held at the Esquebahl Torah prison; the State party appeared to be misinformed of the circumstances of his detention.

11.7 Counsel observes that the complainant's back condition had already been diagnosed in Sweden as moderate. These problems deteriorated after his return and in 2003 he was brought to a Cairo hospital for examination, where he was recommended for surgery. Only a year later was "absolutely necessary" surgery actually carried out. He stayed for 11 days in hospital under supervision and received controlled visits from family. Although far from recovered, he was then returned to prison in an ordinary transport vehicle rather than an ambulance. Counsel argues that the State party knew of but neglected to tend to the complainant's medical condition for $2^1/_2$ years, and in that time exposed him to treatment such as being kept in "very small" cells and with his arms tied behind his back. Apart from itself causing severe pain, such treatment seriously risked exacerbating his medical condition.

11.8 Counsel argues that the reduction in sentence does not affect how the complainant has been treated, is being and will be treated until release. As to law studies, it is not known whether and how the complainant has been able to pass any exams. Counsel rejects the claims that there has been a significant improvement in the complainant's situation during the summer of 2004, conceding only that the situation is an improvement on the one that prevailed just after his return, and arguing that as late as March 2004 the complainant was detained in a very small cell without adequate hygiene facilities and proper access to water. There remains a considerable risk that the complainant will be subjected to torture or treatment approximating it. In any event, counsel argues that the complainant's present condition does not establish how he was treated in the past.

11.9 Counsel points out that the complainant's Egyptian attorney has lodged a request for review of verdict to the Highest State Security Court, on grounds that the trial military court misjudged the evidence, that the preliminary investigation was afflicted with serious shortcomings, that defence rights were violated at trial and that during the investigation the complainant had been subjected to violence and torture. The attorney has also lodged a special complaint with the Egyptian Minister of the Interior, the Chief Public Prosecutor and the Director-General of the Prison Institutions, alleging improper treatment of the complainant during his hospitalisation, including being chained to the bed and rendered immobile on medical grounds, and being returned to prison prior to recuperation.

11.10 Counsel argues that after the publicity generated by the television broadcast referred to in paragraph 10.2, the State party shifted its position from a firm denial that torture had taken place to the "more reluctant position" shown by the measures it then took by way of dialogue with Egypt. Counsel points to Egypt's curt dismissal of the allegations as unfounded, without supplying any detail of the investigation allegedly conducted, giving rise to the Swedish requests for an investigation. This strongly suggests that the complainant was in fact tortured, as Egypt would benefit significantly from being able to demonstrate to other countries, through an independent investigation showing that the complainant had not been tortured, that Egypt could safely be trusted with the return of sensitive prisoners and to abide by assurances given.

11.11 Counsel refers to the State party's apparent unwillingness to further press the Egyptian authorities, with the State party citing possible prejudice to the complainant's legal interests or welfare. This suggests that the State party accepts, in contrast to its earlier view, that the complainant is at risk of external pressure in the event of an insistence on an independent investigation. In fact, the complainant, through his relatives, has repeatedly made known his desire for the fullest possible defence of his interests.

11.12 Counsel goes on to refer to relevant case law in national jurisdictions. In the case of Mr. Bilasi-Ashri, the Government of Egypt refused to accept a detailed set of assurances, including post-return monitoring, requested by the Austrian Minister of Justice following a decision to that effect by an Austrian court of appeal. In the case of *Ahmed Zakaev*, a British extradition court found that a real risk of torture was not discounted by assurances given in open court by a Russian deputy minister overseeing prisons. Counsel argues that a similarly rigorous approach, with effective protection provided by the legal system, ought to have been followed in the complainant's case.

11.13 Counsel expands on the earlier reference to involvement of the United States of America in the complainant's case in paragraph 10.2, referring to a book entitled *Chain of Command* by Seymour Hersh. This contended that "the Bromma action" (referring to the airport from which the complainant was removed) was carried out by members of the Special Access Program of the United States Department of Defense who were engaged in returning terrorist suspects to their countries of origin utilizing "unconventional methods". It is said that the complainant's removal was one of the first operations carried out under this programme and described by an operative involved as "one of the less successful ones". In counsel's view, this third-State involvement at the removal stage in an anti-terrorism context should have confirmed what the State party already knew from its knowledge of the common use of torture in Egypt and the complainant's particular vulnerability, that is, that a real risk of torture existed at the time of his removal, in breach of article 3.

11.14 By further letter of 16 November 2004, counsel provided a copy of a Human Rights Watch report to the Committee entitled "Recent Concerns regarding the Growing Use of Diplomatic Assurances as an Alleged Safeguard against Torture". The report surveys recent examples of State practice in the area of diplomatic assurances by Germany, the United States of America, the Netherlands, the United Kingdom and Canada. The report argues that such assurances are increasingly viewed as a way of escaping the absolute character of non-refoulement obligations, and are expanding from the anti-terrorism context into the area of refugee claims. It contends that assurances tend to be sought only from countries where torture is a serious and systematic problem, which thus acknowledges the real risk of torture presented in such cases.

11.15 In the light of national experience, the report concludes that assurances are not an adequate safeguard for a variety of reasons. Human rights protection is not amenable to diplomacy, with its tendency to untransparent process and to view the State-to-State relationship as the primary consideration. Such assurances amount to trusting a systematic abuser which otherwise cannot be trusted to abide by its international obligations. It also amounts to giving a systematic abuser a "pass" with respect to an individual case when torture is otherwise widespread. Finally, the effectiveness of post-return monitoring is limited by the undetectability

of much professionally inflicted torture, the absence of medical expertise from typical monitoring arrangements, the unwillingness of torture victims to speak out for fear of retribution, and the unwillingness of either the sending State or the receiving State to accept any responsibility for exposing an individual to torture.

11.16 In conclusion, the report refers to the 2004 report (A/59/324) to the General Assembly of the United Nations Special Rapporteur on the question of torture, who argued that, as a baseline, diplomatic assurances should not be resorted to in circumstances where torture is systematic, and that if a person is a member of a specific group that is routinely targeted and tortured, this factor must be taken into account. In the absence of either of these factors, the Special Rapporteur did not rule out the use of assurances provided that they reflect an unequivocal guarantee that is meaningful and verifiable.

12.1 By letter of 11 March 2005, the State party provided additional submissions on the merits of the complaint. It observed that the Swedish Embassy in Cairo had continued to monitor the complainant's situation, with further visits taking place in Toraj prison on 3 October and 21 November 2004 and 17 January and 2 March 2005. The State party notes for the sake of clarity that there are several buildings on the prison grounds, one of which is called Masra and another Estekbal. The complainant has been detained, and visits have taken place, in both parts of the prison compound at different times.

12.2 With respect to his legal situation, the complainant stated that he had instructed his Egyptian lawyer to lodge a petition with the President of Egypt for a new trial in a civil court, invoking Egypt's undertaking prior to his expulsion from Sweden that he was to be given a fair trial. He had not met with the lawyer in person; his mother appeared to be the one giving instructions to the lawyer. According to the complainant, she had subsequently been informed by the lawyer that the petition had been lodged. However, the complainant was not very hopeful with regard to the outcome of such a petition.

12.3 Concerning the health situation, the complainant was recovering according to plan from the back surgery he underwent in August 2004 at the university hospital in central Cairo. Back at the Torah prison, he had spent some time in the prison hospital before returning to a normal cell. He had received physiotherapy treatment and an MRI examination of his back. He complained about the lack of further physiotherapy sessions which, he stated, had to be held at the hospital. This was due to the fact that the necessary equipment was not available in the prison. In order to further strengthen his back, he had been scheduled for special magnetic treatment.

12.4 With regard to the issue of the general conditions of detention, the State party observes that by March 2005 the complainant was placed in a cell of his own. He continued to receive visits from his mother, who brought him books, clothes and extra food. She also appeared to be providing him with information about his family in Sweden on a regular basis. However, he complained that his request to call his wife and children had been denied. Moreover, it was his intention to continue with his law studies. He had managed to pass further exams during the autumn.

12.5 In addition to the measures described in its last submissions to the Committee on 21 September 2004, the State party states that it made further efforts to bring about an investigation into the ill-treatment allegedly suffered by the complainant at the hands of the

Egyptian authorities during the initial stage of the detention. In a letter of 29 September 2004 to the Egyptian Minister in charge of GIS, the Swedish Minister for Foreign Affairs, Ms. Laila Freivalds, noted that the letter she had received in July 2004 contained no information on the type of investigations that had been carried out by the Egyptian authorities and on which the Egyptian Minister's conclusions were based. She concluded, in turn, that under the circumstances she did not exclude the possibility that she would have to revert to the same matter at a later stage.

12.6 In the course of the Swedish Embassy's visit to the complainant on 3 October 2004, the question of the complainant's position in respect of further inquiries into the allegations of ill-treatment was raised again. When the issue was raised with him for the first time (during the visit of 14 July 2004), the complainant's prison sentence had recently been reduced to 15 years and he was concerned that new investigations might have a negative impact on the chances of further reductions being made as a consequence of good behaviour on his part. On 3 October 2004, however, the complainant's position had changed. He then declared that he was in favour of an independent inquiry and said that he was willing to contribute to such an inquiry.

12.7 In view of the importance attached by the State party to the complainant's own wishes in this regard, the State party regarded the complainant's new position as making way for further measures on its part. Since the envisaged inquiry would naturally require the additional approval and cooperation of the Government of Egypt, the Swedish Ambassador to Egypt was instructed on 26 October 2004 to raise this issue with the Egyptian Foreign Ministry at the highest possible level. The Ambassador consequently met with the Egyptian Minister for Foreign Affairs on 1 November 2004. The Ambassador conveyed the message that the Government of Sweden continued to be concerned about the allegations that the complainant had been exposed to torture and other ill-treatment during the initial period following his return to Egypt. The need for a thorough, independent and impartial examination of the allegations, in accordance with the principle of the rule of law and in a manner that was acceptable to the international community, was stressed by the Ambassador. In response, the latter was informed of the Minister's intention to discuss the matter with the Minister in charge of GIS. The Egyptian Minister for Foreign Affairs, however, anticipated two problems with regard to an international inquiry. Firstly, there was no tradition in Egypt when it came to inviting representatives of the international community to investigate domestic matters of this character. It would probably be viewed as an unwelcome interference in the country's internal affairs. Secondly, attempting to prove that ill-treatment had not occurred could pose a problem of a more technical nature, particularly in view of the fact that several years had passed since the ill-treatment allegedly took place.

12.8 As a follow-up to the meeting with the Minister for Foreign Affairs, the State party reports that its Ambassador met with the Undersecretary of State of GIS on 22 November and 21 December 2004. During the first of these meetings, the Undersecretary said that Egypt was anxious to comply, as far as possible, with the request by the Government of Sweden for an inquiry. However, during the second meeting, the Ambassador was handed a letter by the Minister in charge of GIS containing the Government of Egypt's formal answer to the renewed Swedish request for an inquiry. The content of the letter was similar to that of the previous letter from the same Minister in July 2004: the allegations concerning ill-treatment of the complainant were again refuted as unfounded; furthermore, no direct answer was provided to the request that an independent inquiry be conducted.

12.9 The matter was again brought up by Ms. Freivalds in connection with a visit to Stockholm on 15 February 2005 by the Egyptian Deputy Minister for Foreign Affairs responsible for multilateral issues. Ms. Freivalds informed the Deputy Minister of the complainant's case and the allegations made regarding his ill-treatment. She stressed that it ought to be in the common interest of Sweden and Egypt to look into those allegations and asked the Deputy Minister to use his influence with the Egyptian authorities on behalf of the Swedish position. The Deputy Minister assured her that he would raise the issue upon his return to Cairo.

12.10 The State party also points out that the issue of an international inquiry was raised with the United Nations High Commissioner for Human Rights, Ms. Louise Arbour, when she visited Stockholm in December 2004. On that occasion, Ms. Freivalds made clear that the Government of Sweden would welcome any efforts that might be undertaken by the High Commissioner to investigate the allegations that the complainant had been subjected to torture or other forms of ill-treatment while in detention in Egypt. The State party also observes that the investigation initiated by the Swedish Chief Parliamentary Ombudsman into the circumstances surrounding the execution of the Government's decision to expel the complainant from Sweden has not yet concluded.

12.11 The State party recalls that in May 2004, counsel for the complainant provided the Committee with a written account of the Embassy's report of its first visit on 23 January 2002 to the complainant after his return to Egypt. A copy of the report was submitted by counsel to the Committee in August 2004. In the State party's view, therefore, the Committee had thus been provided with all the information of relevance for its examination of the present case. Prior to explaining the fact that the report was not fully accounted for by the Government in its initial observations of 5 December 2003, the State party provides the following translation of the relevant portion of the Ambassador's report:

> "Agiza and [name of another person] had just been transferred to the Torah prison after having been interrogated for thirty days at the security service's facilities in another part of Cairo. Their treatment in the Torah prison was 'excellent'. However, they had a number of complaints that related to the time period between their apprehension in Sweden and the transfer to the Torah: excessive brutality on the part of the Swedish police when they were apprehended; forced to remain in uncomfortable positions in the airplane during the transport to Egypt; forced to be blindfolded during the interrogation period; detention in too-small cells [of] 1.5 x 1.5 meters during the same period; lack of sleep due to surveillance in the cells; a delay of ten days before Agiza, following a medical examination, had access again to his medication for gastric ulcer; blows from guards while transported to and from interrogation; threats from [the] interrogator that there could be consequences for Agiza's family if he did not tell everything about his time in Iran, etc. It is not possible for me to assess the veracity of these claims. However, I am able to note that the two men did not, not even [in answer to] my direct questions, in any way claim that they had been subjected to any kind of systematic, physical torture and that they consider themselves to be well treated in the Torah prison."

12.12 The State party argues that it has been aware of difficulties experienced by the Committee in the past with regard to upholding respect for the confidentiality of its proceedings. For that reason, the State party formulated its submissions with great care when they involved the unveiling of information that has been classified under the Swedish Secrecy Act. For the

State party, it was a question of balancing the need to reveal information in order to provide the Committee with the correct factual basis for the proper administration of justice, on the one hand, and the need to protect the integrity of Sweden's relations with foreign Powers, the interests of national security, and the security and safety of individuals, on the other.

12.13 The State party argues that its position in this regard should be seen against the background of the experience gained from the proceedings relating to the case of Hanan Attia.[r] In the State party's view, it became clear during those proceedings that the concerns in respect of confidentiality, which existed already at that time, were not unfounded. In that case, the Committee offered the State party in September 2002 the opportunity to withdraw its initial observations of 8 March 2002 and to submit a new version in view of the fact that the Committee could not guarantee that "any of the information submitted by the parties to the case would not be disclosed in any of its decisions or views on the merits of the case". Furthermore, in January 2003 counsel for Hanan Attia appended a briefing note from Amnesty International in London to his own observations, from which it was clear that counsel had made the State party's observations of 8 March 2002 available to Amnesty International.

12.14 The State party argues that its concerns with regard to the Committee's ability to uphold respect for the confidentiality of its proceedings were reflected in its repeated requests and comments concerning the confidentiality of the information that was in fact included in the initial observations of 5 December 2003 in the present case. However, in the light of the foregoing, the conclusion was drawn that only part of the classified information found in the Security Police's written opinion of 30 October 2001 to the Migration Board could be revealed. Another conclusion was that the information contained in the Embassy's report of its first visit on 23 January 2002 to the complainant in detention should not be fully revealed either. The reason for the latter conclusion was that it could not be ruled out that the information concerning ill-treatment provided by the complainant during the Embassy's first visit would later be found in the public domain and thus become known to the Egyptian authorities.

12.15 The State party concludes that for these reasons not all the information that emerged during the Embassy's first visit was revealed to the Committee. If such unconfirmed information had been released at that stage, and with the indirect assistance of the Government of Sweden, it could have resulted in reprisals against the complainant. The risk of reprisals was not deemed to be insignificant, irrespective of whether the information was correct or not. If the information regarding the complainant's ill-treatment was correct - although such treatment did not appear to amount to torture within the meaning of the Convention - this would have meant that the diplomatic assurances had not had the intended effect of protecting him against treatment in breach of Sweden's international obligations, including treatment prohibited under article 3 of the European Convention on Human Rights. In such a case, there was an apparent risk that the disclosure of the information would put the complainant at risk of further ill-treatment and maybe even of torture. On the other hand, if the disclosed information was incorrect, this could have had a negative impact on the relations between Sweden and Egypt. In turn, it could have led to problems as far as the Embassy's monitoring efforts were concerned. When the various risks involved were assessed, the conclusion was reached that the best course of action would be to await the report of the Embassy's next visit.

12.16 The State party points out that according to the Embassy's report of its second meeting with the complainant in the detention facility, there were at that time no indications of torture or other ill-treatment. However, even prior to the third visit on 14 April 2002, information was

circulating to the effect that the complainant's mother had stated publicly that her son had been tortured after his return to Egypt. The Embassy's report of the first visit on 23 January 2002 confirmed the information submitted by the complainant's mother, namely that the visit when she had allegedly noticed signs of ill-treatment on her son's body had been interrupted by the Swedish Ambassador's first visit. The fact that the Ambassador had reported that he had not been able to see any signs of physical abuse on that very same day led the State party to doubt the veracity of the claims made by the complainant's mother and affected its assessment of the credibility of the complainant's own information to the Ambassador on that day.

12.17 The State party observes that there was no new information from the complainant regarding ill-treatment during the following year and the view that the information submitted during the Embassy's first visit had been incorrect gradually gained in strength. It was essential that the Embassy's opportunities to carry out the monitoring on a regular basis not be hampered, which could have been the result if the State party had forwarded unconfirmed or incorrect information to the Committee during the first months of 2002. In view of the situation in April 2002, when the contents of a letter by the complainant's mother became known, it was not deemed appropriate to supplement, at that time, the information already submitted by the State party regarding the Embassy's first visit in its observations of 8 March 2002.

12.18 A different assessment was made by the State party when the complainant, on 5 March 2003, repeated his complaints of ill-treatment at the hands of the Egyptian authorities during the initial stages of his detention. The allegations were much more serious this time and included claims that he had been subjected to torture involving the use of electricity. The mere fact that the complainant came back more than a year later to what had allegedly occurred at the beginning of the detention period contributed a different assessment being made in March 2003. The allegations of torture were immediately raised with representatives of the relevant Egyptian authorities, who refuted them categorically. The State party accounted for the information submitted by the complainant, and the Egyptian authorities' reactions to it, in its submissions to the Committee of 26 March 2003. It should be reiterated that the information at issue was considerably more serious than that provided by the complainant a year earlier and that it concerned the same time period.

12.19 The State party further contends that by March 2003 the reasons for confidentiality were not as weighty as before. Even if the information from the Embassy's tenth visit on 5 March 2003 had ended up in the public domain despite the fact that the proceedings before the Committee were confidential in accordance with the applicable provisions of the Convention and the Committee's own rules of procedure, the damaging effects were no longer considered to be as serious as before. Following the State party's initial submissions to the Committee, information had already been in circulation that - if correct - amounted to a breach on the part of Egypt of the diplomatic assurances. Moreover, the issue of torture had already been raised with the Egyptian authorities in March 2003. Furthermore, the monitoring carried out by the Embassy had been going on for more than a year by that time and had become routine for both the Egyptian authorities, the Embassy and the complainant himself. It was thus no longer likely that there would be a negative impact on the monitoring such that it would be more difficult in the future to ensure the continued effectiveness of the assurances. The State party also stresses that the allegations made by the complainant during the first Embassy visit did not amount, in its view, to torture within the meaning of the Convention. It is, however, clear that the ill-treatment complained of at that time would have amounted to inhuman and perhaps also cruel treatment, had the allegations been substantiated.

12.20 The State party refers the Committee to the recent decision of the Grand Chamber of the European Court of Human Rights on 4 February 2005, in the case of *Mamatkulov et al. v. Turkey*. This case concerned the applicants' extradition in March 1999 to Uzbekistan under a bilateral treaty with Turkey. Both applicants had been suspected of homicide, causing injuries to others by the explosion of a bomb in Uzbekistan and an attempted terrorist attack on the President of Uzbekistan. Following their extradition, they were found guilty of various offences and sentenced to 20 and 11 years' imprisonment respectively.

12.21 Before the European Court, the applicants claimed that Turkey had violated, inter alia, article 3 of the European Convention. In defence, Turkey invoked assurances concerning the two applicants given by the Uzbek authorities. According to those assurances, which were provided by the Public Prosecutor of the Republic of Uzbekistan, the applicants would not be subjected to acts of torture or sentenced to capital punishment. The assurances also contained the information that Uzbekistan was a party to the Convention against Torture and accepted and reaffirmed its obligation to comply with the requirements of the provisions of the Convention "as regards both Turkey and the international community as a whole". Officials from the Turkish Embassy in Tashkent had visited the applicants in their respective places of detention in October 2001. They were reportedly in good health and had not complained about their prison conditions. Turkey also invoked medical certificates drawn up by military doctors in the prisons where the applicants were held.

12.22 The State party observes that the European Court assessed the existence of the risk primarily with reference to those facts which were known or ought to have been known to the State party at the time of the extradition, with information coming to light subsequent to the extradition potentially being of value in confirming or refuting the appreciation that had been made by the State party of the well-foundedness or otherwise of a complainant's fears. The Court concluded that it had to assess Turkey's responsibility under article 3 by reference to the situation that obtained on the date of the applicants' extradition, i.e. on 27 March 1999. While taking note of reports of international human rights organizations denouncing an administrative practice of torture and other forms of ill-treatment of political dissidents and the Uzbek regime's repressive policy towards such dissidents, the Court furthermore stated that, although those findings described the general situation in Uzbekistan, they did not support the specific allegations made by the applicants in the case and required corroboration by other evidence. Against the background of the assurances obtained by Turkey and the medical reports from the doctors in the Uzbek prisons in which the applicants were held, the Court found that it was not able to conclude that substantial grounds existed at the relevant date for believing that the applicants faced a real risk of treatment proscribed by article 3 of the European Convention.

12.23 The State party invites the Committee to adopt the same approach. It points out that assurances similar to those in the case before the European Court were indeed obtained by the Government of Sweden in the instant case. Although the guarantees given in this case did not refer to Egypt's obligations under the Convention against Torture, this is of no particular consequence since Egypt, like Uzbekistan, is in fact bound by the Convention. It is doubtful whether the value of assurances should be considered to be increased simply because they include a reference to a State's human rights obligations. The important factor must be that the State in question has actually undertaken to abide by the provisions of a human rights convention by becoming party to it. The fact that Egypt was a party to the Convention against Torture was known to the State party when it obtained the diplomatic assurances in this case and subsequently decided to expel the complainant.

12.24 The State party goes on to argue that the assurances obtained in the present case must be regarded as carrying even more weight than those in the case against Turkey since they were issued by the person in charge of the Egyptian security service. It is difficult to conceive of a person better placed in Egypt to ensure that the diplomatic guarantees would actually have the intended effect, namely to protect the complainant against treatment in breach of Sweden's obligations under several human rights instruments.

12.25 The State party acknowledges that no medical certificates have been invoked in the present case. However, the medical certificates obtained in the Turkish case had been issued by Uzbek military doctors working in the prisons where the applicants in that case were detained. In the State party's view, such certificates are of limited value in view of the fact that they had not been issued by experts who could be perceived as truly independent in relation to the relevant State authorities. Moreover, in the current case, the absence of corresponding medical certificates must reasonably be compensated by the monitoring mechanism put in place by the Government of Sweden. To date, almost 30 visits to the complainant in detention have been made by its Embassy in Cairo. The visits have taken place over a period of time that amounts to over three years. This should be compared to the single visit by two officials from the Turkish Embassy in Tashkent more than 2½ years after the extradition of the applicants in the case examined by the European Court.

12.26 By letter of 7 April 2005, counsel for the complainant made further submissions. As to his medical care, counsel argues that treatment following the complainant's surgery in August 2004 was interrupted prior to full recovery, and that he was denied medical treatment in the form of microelectric stimulation which he required.

12.27 Counsel observes that in December 2004 and January 2005, the expulsion of the complainant and a companion case was debated in the Swedish parliament and media. The Prime Minister and the Minister of Immigration stated that the expellees were terrorists and their removal was necessary to prevent further attacks and deny safe haven. According to counsel, these statements were presented to the complainant by Egyptian officials during an interrogation. For counsel, this demonstrates that the Egyptian security services are still interrogating the complainant and seeking to extract information, exposing him to ongoing risk of torture.

12.28 Counsel provides the conclusions (in Swedish with official English summary) dated 22 March 2005 of the investigations of the Parliamentary Ombudsman into the circumstances of the deportation from Sweden to Cairo, with an emphasis on the treatment of the expellees at Bromma airport. According to the Ombudsman's summary, a few days prior to 18 December 2001 the United States Central Intelligence Agency offered the Swedish Security Police the use of an aircraft for the complainant's direct expulsion to Egypt. The Security Police, after apparently informing the Minister for Foreign Affairs, accepted. At midday on 18 December, the Security Police were informed that United States security personnel would be on board the aircraft and they wished to perform a security check on the expellees. It was arranged for the check to be conducted in a police station at the airport.

12.29 Immediately after the Government's decision, in the afternoon of 18 December, the expellees were transported by Swedish police to Bromma airport. The United States aircraft landed shortly before 9 p.m. A number of United States security personnel, wearing masks, conducted the security check, which consisted of at least the following elements. The expellees had their clothes cut up and removed with a pair of scissors, their bodies were searched, their

hands and feet were fettered, they were dressed in overalls and their heads were covered with loosely fitted hoods. Finally, they were taken, in bare feet, to the aeroplane where they were strapped to mattresses. They were kept in this position during the entire flight to Egypt. It had been alleged that the expellees were also given a sedative per rectum, which the Ombudsman was unable to substantiate during the investigation. The Ombudsman found that the Security Police had remained passive throughout the procedure. The Ombudsman considered that, given that the offer from the United States was received only three months after the events of 11 September 2001, the Security Police could have been expected to inquire whether it involved any special arrangements with regard to security. No such inquiry was made, not even when the Security Police had been informed of the fact that United States security personnel would be present and wished to perform a security check. When the actual elements of the security check became obvious as it was performed, the attending Swedish police personnel remained passive.

12.30 In the Ombudsman's view, the investigation disclosed that the Swedish Security Police lost control of the situation at the airport and during the transport to Egypt. The United States security personnel took charge and were allowed to perform the security check on their own. Such total surrender of power to exercise public authority on Swedish territory was, according to the Ombudsman, clearly contrary to Swedish law. In addition, at least some of the coercive measures taken during the security check were not in conformity with Swedish law. Moreover, the treatment of the expellees, taken as a whole, must be considered to have been inhuman and thus unacceptable and may amount to degrading treatment within the meaning of article 3 of the European Convention. The Ombudsman emphasized that the inhuman treatment to which the expellees were subjected could not be tolerated. The Security Police should have decided to discontinue the expulsion proceedings and deserved severe criticism for their handling of the case.

12.31 Counsel observes that the Ombudsman declined to bring charges against any individuals, as it was not possible to hold any individual to account before a court. Counsel contends that, at least, the prolonged hooding amounted to torture, and that what occurred on the aircraft could also be formally imputed to Sweden. Counsel argues that in the prevailing atmosphere the State party ought to have been sceptical of United States motives in offering to transport the expellees to Egypt and reluctant to accept the Egyptian guarantees provided.

12.32 By letter of 12 April 2005, the State party also provided the summary of the Ombudsman's report, as "background information in full understanding that the execution of the Government's decision to expel the complainant from Sweden is not part of the case now pending before the Committee, which deals with the issue of the diplomatic assurances by Egypt with regard to the complainant".

12.33 By letter of 21 April 2005, counsel for the complainant submitted final remarks. He criticizes the modalities of the State party's most recent visits on the same basis as the earlier visits. As to medical care, the complainant has been re-examined twice at the facility where the 2004 surgery was performed and may require further surgery. Concerning the proposed international investigation, counsel argues that the only reason for Egypt's refusal to cooperate lies in its breach of the guarantees provided.

12.34 Counsel rejects the State party's reasons for concealing part of the initial ambassadorial report from the Committee, arguing that it can only be relevant to protect the complainant from Egyptian reprisals concerning his outspokenness as to the torture suffered. The complainant's

statement was made in the presence of the prison warden and other officials, and the Ambassador raised the issue with the Ministry for Foreign Affairs. In any event, having already endured reprisals, there was nothing left for the State party to protect against in withholding information. Mistreatment of the complainant was already in the public domain through the complainant's mother and Amnesty International shortly after January 2002. Counsel argues that the State party's position also reflects "weak confidence" in the integrity of the Egyptian guarantees. Counsel also questions how national security could be affected by public knowledge of the complainant's allegations. In sum, the only plausible reason for concealing the information was to avoid inconvenience and embarrassment to the State party.

12.35 Concerning his transmittal of information supplied in the context of the article 22 process to non-governmental organizations, counsel argues that at the time he saw no obstacle to doing so, neither the Convention nor the Committee's rules proscribing, in his view, such a course. He did not intend to disseminate the information to the media or the broader public. Following the Committee's advice that complaint information was confidential, counsel argues his capacity to defend the complainant was significantly reduced, particularly given the disparity of resources available to the State party. In any event, the State party has shared other confidential intelligence information with the Committee, belying its concerns that it would be inappropriate to disseminate sensitive information. Counsel argues that the conduct described is, contrary to the Ambassador's characterization, torture as understood by the Committee, bearing in mind that the complainant may have been reluctant to disclose the totality of circumstances to the Ambassador and that more serious elements emerged through the testimony of his mother.

12.36 With respect to the European Court's decision in *Mamatkulov et al.*, counsel seeks to distinguish the instant case. He emphasizes, however, that in both cases the speed with which the removal was undertaken denied an effective exercise of a complaint mechanism, a circumstance that for the European Court disclosed a violation of article 34 of the European Convention. In counsel's view, the *Mamatkulov* Court was unable to find a violation of article 3 of the European Convention as, in contrast to the present case, there was insufficient evidence before the Court. A further distinction is that the treatment at the point of expulsion clearly pointed, in the current case, to the future risk of torture. Given the prophylactic purpose of article 3, it cannot be correct that an expelling State simply transfers, through the vehicle of diplomatic assurances, responsibility for an expellee's condition to the receiving State.

12.37 Finally, counsel supplies to the Committee a report, dated 15 April 2005, by Human Rights Watch, entitled *Still at Risk: Diplomatic Assurances No Safeguard Against Torture*, surveying the contemporary case law and experiences of diplomatic assurances and concluding that the latter are not effective instruments of risk mitigation in an article 3 context. Concerning the current case, Human Rights Watch argues that "there is credible, and in some instances overwhelming, evidence that the assurances were breached" (p. 59).

Issues and proceedings before the Committee

Consideration of the merits

13.1 The Committee has considered the merits of the complaint, in the light of all information presented to it by the parties, pursuant to article 22, paragraph 4, of the Convention. The Committee acknowledges that measures taken to fight terrorism, including denial of safe haven,

deriving from binding Security Council resolutions are both legitimate and important. Their execution, however, must be carried out with full respect to the applicable rules of international law, including the provisions of the Convention, as affirmed repeatedly by the Security Council.[s]

Substantive assessment under article 3

13.2 The issue before the Committee is whether removal of the complainant to Egypt violated the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected by the Egyptian authorities to torture. The Committee observes that this issue must be decided in the light of the information that was known, or ought to have been known, to the State party's authorities *at the time* of the removal. Subsequent events are relevant to the assessment of the State party's knowledge, actual or constructive, at the time of removal.

13.3 The Committee must evaluate whether there were substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Egypt. The Committee recalls that the aim of the determination is to establish whether the individual concerned was personally at risk of being subjected to torture in the country to which he was returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person was in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned was personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person could not be considered to be in danger of being subjected to torture in his or her specific circumstances.

13.4 The Committee considers at the outset that it was known, or should have been known, to the State party's authorities at the time of the complainant's removal that Egypt resorted to consistent and widespread use of torture against detainees, and that the risk of such treatment was particularly high in the case of detainees held for political and security reasons.[t] The State party was also aware that its own security intelligence services regarded the complainant as implicated in terrorist activities and a threat to its national security, and for these reasons its ordinary tribunals referred the case to the Government for a decision at the highest executive level, from which no appeal was possible. The State party was also aware of the interest in the complainant by the intelligence services of two other States: according to the facts submitted by the State party to the Committee, the first foreign State offered through its intelligence service an aircraft to transport the complainant to the second State, Egypt, where, to the State party's knowledge, he had been sentenced in absentia and was wanted for alleged involvement in terrorist activities. In the Committee's view, the natural conclusion from these combined elements, that is, that the complainant was at a real risk of torture in Egypt in the event of expulsion, was confirmed when, immediately preceding expulsion, the complainant was subjected on the State party's territory to treatment in breach of, at least, article 16 of the Convention by foreign agents but with the acquiescence of the State party's police. It follows that the State party's expulsion of the complainant was in breach of article 3 of the Convention. The procurement of diplomatic assurances, which, moreover, provided no mechanism for their enforcement, did not suffice to protect against this manifest risk.

13.5 In light of this assessment, the Committee considers it appropriate to observe that its decision in the current case reflects a number of facts which were not available to it when it

considered the largely analogous complaint of *Hanan Attia*,[u] where, in particular, it expressed itself satisfied with the assurances provided. The Committee's decision in that case, given that the complainant had not been expelled, took into account the evidence made available to it up to the time the decision in that case was adopted. The Committee observes that it did not have before it the actual report of mistreatment provided by the current complainant to the Ambassador at his first visit and not provided to the Committee by the State party (see paragraph 14.10); the mistreatment of the complainant by foreign intelligence agents on the territory of the State party and acquiesced in by the State party's police; the involvement of a foreign intelligence service in offering and procuring the means of expulsion; the progressively wider discovery of information as to the scope of measures undertaken by numerous States to expose individuals suspected of involvement in terrorism to risks of torture abroad; the breach by Egypt of the element of the assurances relating to guarantee of a fair trial, which addresses the question of the weight that can be attached to the assurances as a whole; and the unwillingness of the Egyptian authorities to conduct an independent investigation despite appeals from the State party's authorities at the highest levels. The Committee observes, in addition, that the calculus of risk in the case of the wife of the complainant, whose expulsion would have taken place some years after that of the complainant, raised issues differing from the present case.

Procedural assessment under article 3

13.6 The Committee observes that the right to an effective remedy for a breach of the Convention underpins the entire Convention, for otherwise the protections afforded by the Convention would be rendered largely illusory. In some cases, the Convention itself sets out a remedy for particular breaches of the Convention,[v] while in other cases the Committee has interpreted a substantive provision to contain within it a remedy for its breach.[w] In the Committee's view, in order consistently to reinforce the protection of the norm in question and the understanding of the Convention, the prohibition on refoulement contained in article 3 should be interpreted as encompassing a remedy for its breach, even though it may not contain on its face such a right to remedy for a breach thereof.

13.7 The Committee observes that in the case of an allegation of torture or cruel, inhuman or degrading treatment having occurred, the right to remedy requires, after the event, an effective, independent and impartial investigation of such allegations. The nature of refoulement is such, however, that an allegation of breach of that article relates to a future expulsion or removal; accordingly, the right to an effective remedy contained in article 3 requires, in this context, an opportunity for effective, independent and impartial review of the decision to expel or remove, once that decision is made, when there is a plausible allegation that article 3 issues arise. The Committee's previous jurisprudence has been consistent with this view of the requirements of article 3, having found an inability to contest an expulsion decision before an independent authority, in that case the courts, to be relevant to a finding of a violation of article 3.[x]

13.8 The Committee observes that, in the normal course of events, the State party provides, through the operation of the Migration Board and the Aliens Appeals Board, for review of a decision to expel satisfying the requirements of article 3 of an effective, independent and impartial review of a decision to expel. In the present case, however, owing to the presence of national security concerns, these tribunals relinquished the complainant's case to the Government, which took the first and at once final decision to expel him. The Committee emphasizes that there was no possibility for review of any kind of this decision. The Committee recalls that the Convention's protections are absolute, even in the context of national security

concerns, and that such considerations emphasize the importance of appropriate review mechanisms. While national security concerns might justify some adjustments to be made to the particular process of review, the mechanism chosen must continue to satisfy the requirements of article 3 of effective, independent and impartial review. In the present case, therefore, on the strength of the information before it, the Committee concludes that the absence of any avenue of judicial or independent administrative review of the Government's decision to expel the complainant constitutes a failure to meet the procedural obligation to provide for effective, independent and impartial review required by article 3 of the Convention.

Frustration of the right under article 22 to exercise the right of complaint to the Committee

13.9 The Committee observes, moreover, that by making the declaration under article 22 of the Convention, the State party undertook to confer upon persons within its jurisdiction the right to invoke the complaints jurisdiction of the Committee. That jurisdiction includes the power to indicate interim measures, if necessary, to stay the removal and preserve the subject matter of the case pending final decision. In order for this exercise of the right of complaint to be meaningful rather than illusory, however, an individual must have a reasonable period of time before execution of a final decision to consider whether, and if so to in fact, seize the Committee under its article 22 jurisdiction. In the present case, however, the Committee observes that the complainant was arrested and removed by the State party immediately upon the Government's decision of expulsion being taken; indeed, the formal notice of decision was only served upon the complainant's counsel the following day. As a result, it was impossible for the complainant to consider the possibility of invoking article 22, let alone seize the Committee. As a result, the Committee concludes that the State party was in breach of its obligations under article 22 of the Convention to respect the effective right of individual communication conferred thereunder.

The State party's failure to cooperate fully with the Committee

13.10 Having addressed the merits of the complaint, the Committee must address the failure of the State party to cooperate fully with the Committee in the resolution of the current complaint. The Committee observes that, by making the declaration provided for in article 22 extending to individual complainants the right to complain to the Committee alleging a breach of a State party's obligations under the Convention, a State party assumes an obligation to cooperate fully with the Committee, through the procedures set forth in article 22 and in the Committee's rules of procedure. In particular, article 22, paragraph 4, requires a State party to make available to the Committee all information relevant and necessary for the Committee appropriately to resolve the complaint presented to it. The Committee observes that its procedures are sufficiently flexible and its powers sufficiently broad to prevent an abuse of process in a particular case. It follows that the State party committed a breach of its obligations under article 22 of the Convention by neither disclosing to the Committee relevant information, nor presenting its concerns to the Committee for an appropriate procedural decision.

14. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, decides that the facts before it constitute breaches by the State party of articles 3 and 22 of the Convention.

15. In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee requests the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the Views expressed above. The State party is also under an obligation to prevent similar violations in the future.

Notes

[a] The text of a separate opinion, dissenting in part, by Committee member Alexander Yakovlev is appended to the present document.

[b] Counsel explains the deviation from the actual sentence on the basis that a 25-year sentence amounted to the same, as few could be expected to survive that length of time in prison.

[c] Counsel states that the following information concerning the complainant's whereabouts and well-being originates from Swedish diplomatic sources, the complainant's parents, a Swedish radio reporter and the complainant's Egyptian attorney.

[d] Judgement of 15 November 1996.

[e] Rule 107 (f) provides: "With a view to reaching a decision on the admissibility of a complaint, the Committee, its Working Group or a rapporteur designated under rules 98 or 106, paragraph 3, shall ascertain: … (f) That the time elapsed since the exhaustion of domestic remedies is not so unreasonably prolonged as to render consideration of the claims unduly difficult by the Committee or the State party."

[f] *Hanan Ahmed Fouad Abd El Khalek Attia v. Sweden*, communication No. 199/2002, decision adopted on 17 November 2003.

[g] Ibid.

[h] Rule 107 (b) provides: "With a view to reaching a decision on the admissibility of a complaint, the Committee, its Working Group or a rapporteur designated under rules 98 or 106, paragraph 3, shall ascertain: … (b) That the complaint is not an abuse of the Committee's process or manifestly unfounded."

[i] A/57/173 of 2 July 2002.

[j] These took place on 23 January, 7 March, 14 April, 27 May, 24 June, 22 July, 9 September and 4 November 2002, as well as 19 January, 5 March, 9 April, 14 May, 9 June, 29 July, 25 August, 30 September and 17 November 2003.

[k] *Attia v. Sweden*, communication No. 199/2002, op. cit.

[l] Ibid.

[m] Human Rights Watch, "*Empty Promises"*: *Diplomatic Assurances No Safeguard against Torture*, April 2004, vol. 16, No. 4 (D).

[n] Counsel has supplied a transcript of the programme.

[o] Counsel supplies a public statement by Amnesty International, dated 28 May 2004, entitled "Sweden: Concerns over the treatment of deported Egyptians", calling for an "international, wide-ranging, independent and impartial investigation" (EUR 42/001/2004), and, to similar effect, a statement by Human Rights Watch, dated 27 May 2004, entitled "Sweden: Torture inquiry must be under United Nations auspices".

[p] Counsel cites in support the statement by Human Rights Watch, dated 4 May 2004, entitled "Suspected militant's unfair trial and torture claims implicate Sweden". See paragraph 8.3.

[q] Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Sweden (21-23 April 2003), document CommDH(2004)13, stating, at paragraph 19: "The second point relates to the use of diplomatic assurances regarding the treatment of deported aliens in the countries to which they are returned. This example, which is not unique to Sweden, clearly illustrates the risks of relying on diplomatic assurances. The weakness inherent in the practice of diplomatic assurances lies in the fact that where there is a need for such assurances, there is clearly an acknowledged risk of torture and ill-treatment. Due to the absolute nature of the prohibition of torture or inhuman or degrading treatment, formal assurances cannot suffice where a risk nonetheless remains. As the UN Special Rapporteur on Torture has noted, such assurances must be unequivocal and a system to monitor such assurances must be in place. When assessing the reliability of diplomatic assurances, an essential criteria must be that the receiving state does not practice or condone torture or ill-treatment, and that it exercises effective control over the acts of non-state agents. In all other circumstances it is highly questionable whether assurances can be regarded as providing indisputable safeguards against torture and ill-treatment."

[r] Communication No. 199/2002, op. cit.

[s] Security Council resolution 1566 (2004), third and sixth paragraphs; resolution 1456 (2003), para. 6, and resolution 1373 (2001), para. 3 (f).

[t] See, among other sources, *Official Records of the General Assembly, Fifty-first Session, Supplement No. 44* (A/51/44), paras. 180-222 and ibid., Fifty-eighth Session, Supplement No. 44 (A/58/44, paras. 37-44).

[u] Communication No. 199/2002, op. cit.

[v] See articles 12-14 in relation to an allegation of torture.

[w] See *Dzemajl v. Yugoslavia*, communication No. 161/2000, decision adopted on 21 November 2002, para. 9.6: "The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision. The Committee is therefore of the view that the State party has failed to observe its obligations under article 16 of the Convention by failing to enable the complainants to obtain redress and to provide them with fair and adequate compensation."

[x] *Arkauz Arana v. France*, communication No. 63/1997, decision adopted on 9 November 1999, paras. 11.5 and 12.

Appendix

Separate opinion of Committee member Mr. Alexander Yakovlev (dissenting, in part)

I respectfully disagree with the majority's finding on the article 3 issues. The Committee establishes, correctly, the time of removal as the key point in time for its assessment of the appropriateness, from the perspective of article 3, of the complaint's removal. As is apparent from the Committee's decision, the bulk of the information before it relates to events transpiring after expulsion, which can have little relevance to the situation at the time of expulsion.

It is clear that the State party was aware of its obligations under article 3 of the Convention, including the prohibition on refoulement. Precisely as a result, it sought assurances from the Government of Egypt, at a senior level, as to the complainant's proper treatment. No less an authority than the former Special Rapporteur of the Commission on Human Rights on the question of torture, Mr. Theo van Boven, accepted in his 2002 report to the General Assembly the use of such assurances in certain circumstances, urging States to procure "an unequivocal guarantee … that the persons concerned will not be subjected to torture or any other forms of ill-treatment upon return" (A/57/173, para. 35). This - precisely what the State party did - is now faulted by the Committee. At the time, the State party was entitled to accept the assurances provided, and indeed since has invested considerable effort in following up the situation in Egypt. Whatever the situation might be if the situation were to repeat itself today is a question that need not presently be answered. It is abundantly clear, however, that at the time that the State party expelled the complainant, it acted in good faith and consistent with the requirements of article 3 of the Convention. I would thus come to the conclusion, in the instant case, that the complainant's expulsion did not constitute a violation of article 3 of the Convention.

(*Signed*): Alexander Yakovlev

B. Decisions on inadmissibility

Communication No. 163/2000

Submitted by:	H.A.S.V. and F.O.C. (represented by counsel, Mr. Oscar Fernando Rodas)
Alleged victims:	The complainants
State party:	Canada
Date of complaint:	28 February 2000

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

Meeting on 24 November 2004,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainants are H.A.S.V., born in 1973, and his wife, F.O.C., born in 1975, both Mexican nationals. They applied for asylum on 28 May 1999, five months after arriving in Canada. Their requests were rejected by the Canadian Immigration and Refugee Board on 6 January 2000. The Federal Court of Canada confirmed this decision on 26 May 2000. The complainants claim that their forced return to Mexico would constitute a violation by Canada of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the attention of the State party on 27 April 2000.

1.3 According to the State party's submission dated 30 July 2003, the complainants' asylum requests were rejected on 6 January 2000. They left Canada on 18 July 2000 after a removal order was issued against them.[a] Ms. O.C. returned to Canada on 8 December 2000 with a work permit. Mr. S.V. returned to Canada on 9 December 2000, without a residence permit; he did not apply for refugee status and accordingly was sent back to Mexico the following day. He returned to Canada on 24 October 2001 and applied for refugee status on new grounds (different from those submitted in the present communication). On 7 February 2003, the Refugee Determination Division found that he lacked credibility owing to serious contradictions in his statements, and refused to grant him refugee status. The applicant did not appeal against this decision.[b]

The facts as submitted by the complainants

2.1 In November 1997, the complainants went to live in Tuxla, Las Rosas, State of Chiapas, Mexico, with Ms. O.C.'s uncle, O.C., who gave them work in the shop he ran. Ms. O.C. worked at the sales counter, while Mr. S.V. worked as a driver. O.C. turned the management of the business over to them after their marriage, on 19 February 1998.

2.2 O.C. left the business on 15 March 1998 and went to the capital, but asked the couple to pay him 15 per cent of each month's profits, saying that he would come and collect the money in person. The couple took care of the business, but the wife noticed that certain individuals, dressed in plain clothes, were watching them. Fearing that they might be thieves, the couple requested their staff not to keep large amounts of money in the till, and the husband lodged a complaint with the police.

2.3 On 20 September 1998, O.C. returned with some unknown men, who were armed. The wife, who was on her own, told him that her husband had gone out shopping and would be back soon. O.C. told the strangers to wait, because the husband was the only one who knew where the money was. When the husband arrived, one of the men pointed a gun at him and ordered him out, whereupon O.C. struck the man's hand that was holding the gun. When the man dropped the gun, O.C. seized the opportunity to run into the house with the other two strangers in pursuit. He managed to escape. The men then turned on the complainants: one of them pointed his gun at Ms. O.C., while the others are reported to have dealt with Mr. S.V. Ms. O.C. managed to escape, leaving her husband with the strangers.

2.4 Ms. O.C. went to the home of another uncle, who immediately set off to look for her husband. On his return, he said that he had found him unconscious in front of the shop and that he appeared to have been beaten up. He took him to a hospital to be treated and then lodged a complaint with the police. The police, however, allegedly told him that O.C. was a member of the Zapatista Army and that the complainants were his accomplices.

2.5 The complainants took refuge in Mexico City, where they were hidden by the husband's family. They claim there are rumours that their uncle went back to join the Zapatistas in the mountains.

2.6 The complainants left Mexico on 12 December 1998 and arrived in Canada the same day. They applied for refugee status on 28 May 1999. On 6 January 2000, the Convention Refugee Determination Division of the Canadian Immigration and Refugee Board found that the complainants were not "refugees within the meaning of the Convention". The complainant Ms. O.C. was found to lack credibility, while her husband did not make a statement because of memory problems ostensibly arising from the incidents described above. The complainants then decided to request leave to apply for a judicial review of the decision of the Refugee Determination Division. On 26 May 2000, the Federal Court of Canada denied the request. On December 2000, the complainant Mr. S.V. returned to Canada without a residence permit. He did not apply for refugee status and accordingly was sent back to Mexico the following day.

The complaint

3.1 The complainants maintain that their removal to Mexico would constitute a violation by Canada of article 3 of the Convention. They claim that their rights were seriously violated in Mexico and believe that they would be persecuted again if they returned there.

3.2 In support of these allegations, Mr. S.V. submits a medical certificate stating that he would not be competent to testify on his own behalf to the Refugee Determination Division. According to the certificate, this complainant has no memory of the assault he suffered in Mexico or of his life prior to the assault. He is incapable of recognizing familiar faces, and a psychologist has recommended that his wife should represent him in his application.

The State party's submission on admissibility

4.1 In a note verbale dated 30 July 2003, the State party maintains that, in respect of the complainant Ms. O.C., the communication is inconsistent with article 22, paragraph 5, of the Convention, since she had legal temporary worker status in Canada.

4.2 The State party contends that the communication does not present the minimum grounds requested in support of the complainants' allegation that their return to Mexico would constitute a violation of article 3 of the Convention. The facts and allegations presented to the Committee are said to be identical to those submitted to the national authorities. These authorities concluded that these facts and allegations were incoherent and revealed the existence of significant gaps in relation to essential and determinant aspects of the complainants' contentions, in particular with regard to their stay in Chiapas and the identity of Mr. S.V.'s aggressors. Invoking a loss of memory, he refused to testify before the Immigration and Refugee Board.

4.3 The State party further asserts that the communication is inadmissible since the complainants did not exhaust the available domestic remedies before applying to the Committee. They did not apply for exemption from the normal application of the Immigration Act on humanitarian grounds.[c]

4.4 According to the State party, the determination of humanitarian considerations is a statutory administrative procedure by which the complainants could have submitted new facts or new evidence in their favour to an immigration official. In such a submission, the complainants could have referred to any personal circumstances of a humanitarian nature, not only to the risks involved in their removal to Mexico. Had their application been turned down, the complainants could have requested leave to apply for judicial review of the decision. For the Federal Court to grant leave, they would only have needed to show that they had a "fairly arguable case" that would warrant remedial action if the request were granted.[d]

4.5 The State party argues that the complainants could have applied to the Federal Court for a stay of removal until completion of the judicial review process. This decision can in turn be appealed before the Federal Court of Appeal if the lower court judge certifies that a serious question of general importance is involved and states that question. The Federal Court of Appeal ruling may be appealed to the Supreme Court of Canada.

4.6 The State party further argues that an application for permanent residence in Canada based on the existence of humanitarian considerations is another remedy that might have brought relief to the complainants.

4.7 The State party recalls that, in *L.O. v. Canada*,[e] the Committee found the communication inadmissible because the complainant had not made such an application on humanitarian grounds and had thus not exhausted domestic remedies.

4.8 In the case of the complainant Mr. S.V., the State party notes, with regard to his second asylum request, that he did not request leave to apply for judicial review of the negative decision of the Refugee Determination Division. This remedy is still available to the complainant, even though the 15-day period established by the Immigration and Refugee Protection Act for the filing of such an application has in fact elapsed. If the complainant can demonstrate that there were special reasons for the delay in filing, a Federal Court judge may allow an extension of the deadline. The State party points out, however, that the complainant had an obligation to observe the time limits, and cites a European Court of Human Rights case[f] in which the Court found that, even in cases of removal to a country where there might be a risk of treatment contrary to article 3 of the European Convention on Human Rights, the formalities and time limits established in domestic law must be observed. That complaint had been rejected on grounds of non-exhaustion of domestic remedies.

4.9 The State party notes that in *R.K. v. Canada*[g] the Committee found that the complainant had not exhausted domestic remedies if he had not pursued a request for judicial review of a negative decision by the Refugee Determination Division and had not lodged a request for a ministerial waiver. In *P.S. v. Canada*[h] the Committee had found the communication inadmissible on the grounds that the complainant had not applied for judicial review of a decision denying his request for a ministerial waiver.

4.10 According to the State party, Mr. S.V. will not be deported from Canada without having had an opportunity to request an assessment of the risks involved in returning to his country. The Immigration and Refugee Protection Act provides that persons in Canada may apply for protection if they are subject to a removal order and fear that their removal would expose them to the risk of persecution on one of the grounds established in the Convention relating to the Status of Refugees or to the risk of being subjected to torture within the meaning of article 1 of the Convention against Torture, or would put their life at risk or expose them to the risk of cruel treatment. In the event of a negative decision regarding the pre-removal risk assessment, an application for judicial review may be made to the Federal Court.

4.11 Lastly, the State party argues that the complainant may apply for permanent residence on humanitarian grounds.

4.12 As to the complainant Ms. O.C., the State party emphasizes that she had temporary worker status in Canada until 8 December 2003. After that date she could apply for refugee status if she was afraid to return to Mexico, and if a removal order was issued against her she could apply for pre-removal risk assessment. She could also apply for permanent residence under the Live-in Caregiver Programme. Lastly, she could apply for permanent residence in Canada on the basis of humanitarian considerations. In each case, the decision would be subject to judicial review.

4.13 The State party maintains that the complainants have not exhausted the domestic remedies available to them and have not demonstrated that such remedies would be unreasonably prolonged or unlikely to bring effective relief. The complaint should therefore be found inadmissible.

The complainants' comments on the State party's submission

5. The State party's observations were transmitted to the complainants for comments on 19 August 2003. A reminder was sent on 2 October 2003, but no response has been received.

Issues and proceedings before the Committee

6.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. The Committee has ascertained that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the individual has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of the remedies has been unreasonably prolonged, or that it is unlikely, after a fair trial, to bring effective relief to the alleged victim.

6.3 The Committee has noted the State party's explanation made on 30 July 2003 that the complainants left the State party on 18 July 2000, in compliance with a removal order against them. Meanwhile, the State party has indicated that subsequent to their expulsion in July 2000, the complainants returned to Canada - the complainant's wife in December 2000, with a valid work permit, and the complainant in October 2001, after seeking asylum on grounds that differ from the allegations that are contained in the present communication. In the light of the above, and in absence of any observations from the complainants on the State party's submission or any further information on their current situation, the Committee considers that the complainants have failed to sufficiently substantiate their claim for purposes of admissibility. Therefore, it considers that the communication is manifestly unfounded.

7. The Committee consequently decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the complainants of the communication and to the State party.

Notes

[a] The exact date of the order is not provided.

[b] The State party declares, however, that Mr. S.V. will not be deported from Canada without having had an opportunity to request an assessment of the risks involved in returning to his country.

[c] Article 114 (2) of the Immigration Act, 1976: "The Governor in Council may, by regulation, authorize the Minister to exempt any person from any regulation made under subsection (1) or otherwise facilitate the admission of any person ... owing to the existence of ... humanitarian considerations."

[d] The Federal Court may intervene if it is satisfied that an administrative body has made an error of jurisdiction; erred in law in making a decision or an order, whether or not the error appears on the face of the record; based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it; or acted in any other way that was contrary to law.

[e] Communication No. 95/1997, Views adopted on 5 September 2000.

[f] *Bahaddar v. The Netherlands*, judgement (preliminary objections) of 19 February 1998.

[g] Communication No. 47/1996, decision adopted on 19 May 1998.

[h] *P.S. v. Canada*, communication No. 86/1997, decision adopted on 18 November 1999.

Communication No. 211/2002

Submitted by: Mr. P.A.C. (represented by counsel, Mr. Chandrani Buddhipala)

Alleged victim: The complainant

State party: Australia

Date of the complaint: 7 June 2002

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

Meeting on 3 May 2005,

Having concluded its consideration of complaint No. 211/2002, submitted to the Committee against Torture by Mr. P.A.C. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant is Mr. P.A.C., a Sri Lankan national of Tamil ethnic origin born on 15 March 1976 and, at the time of submission of the complaint, detained in immigration detention awaiting removal from Australia to Sri Lanka. He claimed that his expulsion to Sri Lanka would constitute a violation by Australia of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

The facts as presented

2.1 The complainant contends that, in 1990, aged 14, he and 14 other boys were recruited by the Tamil National Army, which was working with the Indian Army; they subsequently escaped. Thereafter, his father sent him to an area controlled by the Liberation Tigers of Tamil Eelam (LTTE). When asked to join LTTE, he declined but offered to assist in other ways, such as building bunkers and distributing food. He was thereupon forced to undertake three months' training with LTTE assisting those wounded on the battlefield. In 1995, when the Sri Lankan Army attacked Jaffna, his father took him to safety in Colombo, where he stayed with a friend. Without providing further detail, he states that he was physically abused at a Colombo police station. He then learned that his father had been detained in Jaffna by LTTE and later killed. Following his father's disappearance, he fled to Taipei but was forced to return to Sri Lanka (no details are provided). After his return, he claimed that he had learned that the Sri Lankan authorities were searching for him, and he fled to Australia.

2.2 The complainant entered Australia on a three-month tourist visa on 11 October 1995 and lodged an application for a protection visa on 12 December 1995. Following interviews, the delegate of the Department of Immigration rejected the claim on 19 November 1997, regarding the complainant as not credible on account of a variety of inconsistencies between his application and his interview testimony. The complainant concedes "certain minor

inconsistencies", but argues that they "are not significantly relevant" and that he was misled by another person who advised him not to disclose everything. On 12 December 1997, he applied for review of the decision.

2.3 On 28 September 1999, the Refugee Review Tribunal (RRT), following a hearing at which the complainant appeared with interpretation, affirmed the decision not to grant a protection visa. The Tribunal stated that it "does not attach importance to minor inconsistencies of detail arising from the [complainant's] original submission. The Tribunal has, however, carefully considered more serious inconsistencies and difficulties with the [complainant's] evidence which are addressed as they arise in this decision. Apart from a number of lesser discrepancies, there were major difficulties with key claims." After addressing these issues in turn, the Tribunal found that: "The extent of implausibilities, inconsistencies and other difficulties with the Applicant's evidence are such that, considering them all together, the Tribunal is satisfied that the [complainant's] claims have been fabricated."

2.4 On 25 October 1999, the complainant requested the Minister of Immigration, under section 417 of the Migration Act 1958, to substitute, in the public interest, a more favourable decision than that of the Tribunal. On 8 January 2000, this request was rejected. On 15 February 2002, a second request was filed under section 417, and rejected on 29 March 2003. On 2 May 2000, the complainant was detained in immigration detention for purposes of removal. On 10 May 2000, a third request under section 417 was filed, which was rejected on 24 November 2000. The same day, he lodged a second application for a protection visa on the grounds that the original application was invalid. On 22 May 2000, the Department determined that the original application had been validly made.

2.5 On 22 August 2000, the second application for a protection visa was rejected as the complainant had not established a real fear of persecution if returned to Sri Lanka. On 24 August 2000, he applied to RRT to appeal the refusal. On 30 October 2000, RRT cancelled the decision to refuse the second application for a protection visa, on the ground that the second application was invalid and that RRT thus had no jurisdiction. On 8 November 2000, a fourth request under section 417 was made, which was rejected on 11 December 2001. On 7 March 2001, the Federal Court dismissed an appeal against the decision of RRT. On 16 August 2001, the Full Federal Court dismissed an appeal against the Federal Court's decision. On 7 December 2001 and 19 February 2002, fifth and sixth requests under section 417 were made, which were rejected on 22 May 2002. On 28 February 2002, the complainant withdrew an application to the High Court for leave to appeal the Full Federal Court's decision.

2.6 On 7 June 2002, the complainant lodged the present complaint with the Committee, requesting interim measures to stay his removal. On 10 June, the Committee declined the request but registered and transmitted the complaint to the State party for comment. On 13 June 2002, the complainant was removed to Sri Lanka.

The complaint

3.1 The complainant contended that his return would violate article 3, and that he should be returned only if it could be demonstrated beyond reasonable doubt that the claim was false. He argued that the inconsistencies in his evidence were not such as to make his testimony unreliable. He contends that RRT used an unreasonably high standard of proof and that it "has not carefully considered whether there is a 'real chance' of the [complainant] being persecuted if he returns to

Sri Lanka. It is apparent from the RRT decision that the Tribunal has acted biasly [sic] and decided his case against the weight of evidence". The complainant criticized the reliability of the information concerning Sri Lanka that was before RRT. He finally contended that the second RRT decision finding lack of jurisdiction was "grossly unreasonable" when the Department had accepted his second application and interviewed him. The complainant argued that there were substantial grounds for fearing exposure to torture, contending that the existence of systematic human rights violations in a country sufficiently shows such grounds.[a]

The State party's observations on admissibility and merits

4.1 By submission of 17 November 2002, the State party contests the admissibility and merits of the complaint. On the claim that the decision to remove the complainant to Sri Lanka would violate article 3 of the Convention, the State party submits that his evidence lacked credibility and that the communication should be held inadmissible as incompatible with article 22, paragraph 2, of the Convention and rule 107, paragraph 1 (d), of the Committee's rules of procedure. Alternatively, the evidence is not sufficient to establish a real, foreseeable and personal risk of being subjected to torture and the communication should be dismissed for lack of merit.

4.2 The State party submits that refoulement cases, by their very nature, are about events outside the State party's immediate knowledge and control. In this context, the credibility of the complainant's evidence assumes greater importance and concerns both the admissibility and the merits of the case. It argues that in the course of determining his entitlement to a protection visa, the complainant was provided with ample opportunity to present his case but was consistently unable to demonstrate the bona fides of his claim. The State party, adopting the reasons advanced by RRT for its decision, rejects the complainant's contention that the inconsistencies in his evidence were not material. It points out that after a detailed examination of all the facts and available evidence, the Tribunal concluded unequivocally that the complainant lacked credibility and that his evidence was fabricated.

4.3 The State party submits that the Tribunal's approach in this case to the question of credibility is consistent with the principles applied by the Committee. The latter's jurisprudence establishes the principle that complete accuracy in the application for asylum is seldom to be expected of victims of torture.[b] Nevertheless, the Committee must satisfy itself that all the facts invoked by the complainant are "sufficiently substantiated and reliable".[c] Similarly, while RRT does not attach weight to minor inconsistencies, it is not required to accept at face value the claims of an applicant although it may give the benefit of the doubt to an applicant who is otherwise credible and plausible. In this case, the inconsistencies in the complainant's evidence were extensive and fundamental to his claim. The State party recalls that, while not bound to follow a domestic tribunal's findings of fact, the Committee will give considerable weight to the facts found by such a tribunal.[d] Therefore, appropriate weight should be given to the findings of RRT taking note of the inconsistencies in the complainant's evidence before the domestic authorities.

4.4 The State party submits that its obligations under article 3 of the Convention were taken into account before making the decision that the complainant was to be removed from Australia. Under section 417 of the Migration Act, the Minister for Immigration has a discretionary power to substitute a more favourable decision. All cases subject to an adverse decision by RRT are automatically referred for assessment under ministerial Guidelines on stay in Australia on

humanitarian grounds. The Guidelines include the obligation of non-refoulement under article 3 of the Convention. It was determined that the complainant did not meet the requirements of the Guidelines. The complainant also requested the Minister to exercise his discretion under section 417 on six separate occasions. The Minister generally does not consider repeat requests under section 417 in the absence of new information. A number of requests were considered not to meet the requirements of the Guidelines and not referred to the Minister. In the case of those requests referred to the Minister, he declined to consider an exercise of his discretion under section 417.

4.5 The State party points out, on this claim, that the complainant was unable to substantiate his claim for protection despite the opportunity to file two separate applications for a protection visa. The first RRT decision found that the complainant's evidence lacked credibility and that some evidence was fabricated. His claim was also separately assessed against the Guidelines for stay in Australian on humanitarian grounds, which include article 3 of the Convention. He did not provide the Committee with any new or additional evidence or sufficiently substantiate that the evidence is reliable for the purposes of article 22 of the Convention. Nor did he present any cogent or convincing argument that there is a real and foreseeable risk of being subjected to torture by Sri Lankan security forces upon return to Sri Lanka.

4.6 On the claim that there is a consistent pattern of gross violations of human rights in Sri Lanka and that, on this basis alone, there are substantial grounds for believing that the applicant would be in danger of being subjected to torture, the State party replies that the complainant incorrectly applied article 3, paragraph 2. It refers to the Committee's case law that the existence of a consistent pattern of gross violations of human rights is not sufficient on its own to meet the requirements of article 3. While the existence of such conditions may strengthen a complainant's claim, the Committee's jurisprudence establishes that the complainant must adduce additional evidence to show that there is something in his or her personal circumstances which contributes to a personal risk of torture if returned.[e]

4.7 Accordingly, evidence of a pattern of gross violations of human rights which affects the whole population in the State concerned is insufficient on its own to establish substantial grounds. Nor is evidence of civil strife or the breakdown of law and order necessarily sufficient to show substantial grounds that the particular individual is at risk of being subjected to torture. The State party thus concludes that to the extent that the complainant relies on the incorrect test the communication should be ruled inadmissible *ratione materiae* as incompatible with article 22, paragraph 2, of the Convention and rule 107, paragraph 1 (d), of the Committee's rules of procedure.

4.8 With respect to the current country situation, the State party accepts that in deciding whether to return a person, it must take into account all relevant factors, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights pursuant to article 3, paragraph 2. It notes that the complainant refers to several reports as evidence that there is a widespread pattern of gross violations of human rights in Sri Lanka and argues that this situation has not changed since his departure in 1995, but also argues that this material is of little value in an assessment of the current country situation since the majority of references date from 1997, 1998 and 1999. A single reference to the *Tamil Guardian* of 22 May 2002 concerns the peace agreement and provides no detailed reporting on the conduct of security forces.

4.9 The State party provides copies of relevant country situation reports. The State party concluded, having examined the reports on the internal situation within Sri Lanka, that while some risk of ill-treatment does exist owing to the difficult law and order situation in some regions, the evidence does not support the view that the risk to the complainant is such as to elevate his personal risk above that experienced by the population at large. To the extent that the complainant relies upon the current country situation, there is insufficient evidence that the risk is a real and foreseeable one that is personal to him. Accordingly, this aspect of the communication should be dismissed for lack of merit.

4.10 Concerning the additional claims that (i) the first RRT decision was tainted by bias and went against him despite the weight of evidence in his favour; and (ii) that the second RRT decision was unreasonable, the State party submits that this aspect of the communication should be dismissed as inadmissible *ratione materiae* on the grounds that it is incompatible with article 22, paragraph 2, of the Convention and rule 107, paragraph 1 (d), of the Committee's rules of procedure. Further, it argued that the complainant had failed to properly exhaust domestic remedies in relation to these two issues and this aspect of the communication should be dismissed pursuant to rule 107, paragraph 1 (f). Alternatively, this aspect of the communication should also be dismissed as lacking merit.

4.11 Firstly, the State party argues that the complainant has provided no argument or evidence to explain how the alleged procedural irregularities amount to a breach of any of the provisions of the Convention. As the Committee is not a judicial body with power to supervise domestic courts and tribunals, it is unclear on what basis the complainant asks the Committee to review the domestic procedural aspects of his claim to refugee status. Accordingly, this aspect of the communication should be dismissed as inadmissible *ratione materiae*, as incompatible with article 22, paragraph 2, of the Convention and rule 107, paragraph 1 (d), of the Committee's rules of procedure.

4.12 Second, the State party contends that this aspect of the communication must be dismissed for failure to exhaust domestic remedies. The complainant did not pursue judicial review of the first RRT decision which he now impugns as both biased and flawed owing to a misapplication of the law. Nor did he pursue an application for special leave to appeal to the High Court from the decision of the Full Federal Court concerning the second RRT decision. He provided no explanation as to why his application for special leave was withdrawn. Accordingly, he has failed properly to exhaust domestic remedies in relation to these two issues.

4.13 The State party reiterates that the complainant was provided with two opportunities to pursue his application for refugee status and enjoyed ample opportunity to demonstrate the bona fides of his claim. He was interviewed on arrival and submitted an application for a protection visa on 12 December 1995. On 21 December 1995 he provided a more detailed statement of facts by way of statutory declaration. All information provided to the Department was considered during the assessment of his first application. He was subsequently permitted to file a second application when questions about the validity of his first application were raised. He has thus had the benefit of his application for a protection visa being assessed by two different immigration officials in two separate decision-making processes. He exercised his right

to independent merits review of both adverse decisions and attended hearings before the Refugee Review Tribunal that were fair and unbiased. He was provided with assistance for the purpose of his application and subsequent RRT proceedings. He also pursued judicial review of the second RRT decision. His case was also assessed taking into account the obligation of non-refoulement under article 3 of the Convention.

Complainant's comments on the State party's submissions

5.1 By letter of 6 January 2003, counsel for the complainant was requested to make any comments on the State party's submissions within six weeks. By letter of 30 September 2003, counsel for the complainant was requested to comment forthwith and advised that failure to do so would result in the Committee's consideration of the case on the basis of the information before it. As at the date of the Committee's consideration of the case, no reply had been received.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 Pursuant to article 22, paragraph 5 (2) (b), of the Convention, the Committee is required to ascertain whether the complainant exhausted domestic remedies in respect of his claim, an issue it determines at the time of its consideration of the communication. The Committee observes that, in respect of the first RRT decision which concentrated on his credibility, the complainant pursued no appeal to the Federal Court and has offered no explanation for his failure to do so. In respect of the second RRT decision, the Committee observes that the complainant withdrew his application to the High Court for special leave to appeal, again without offering any reasons for this course of action. In the circumstances, the Committee must conclude that the complainant failed to exhaust available domestic remedies, as required by article 22, paragraph 5 (2) (b); the communication is accordingly inadmissible on this basis.

7. Accordingly, the Committee concludes:

(a) That the complaint is inadmissible; and

(b) That this decision shall be transmitted to the State party and to the complainant.

Notes

[a] In support, the complainant refers to the Country Reports of the United States Department of State of 1996 and 1997, Amnesty International reports of 1996 and 1998, and a variety of newspaper reports.

[b] *Kisoki v. Sweden*, communication No. 41/1996, Views adopted on 8 May 1996, para. 9.3; *Tala v. Sweden*, communication No. 43/1996, Views adopted on 15 November 1996, para. 10.3.

[c] *Aemei v. Switzerland*, communication No. 34/1995, Views adopted on 9 May 1997, para. 9.6.

[d] See general comment No. 1 on the implementation of article 3 in the context of article 22 of the Convention.

[e] *X, Y. and Z. v. Sweden*, communication No. 61/1996, Views adopted on 6 May 1998, para. 11.1; *Kisoki v. Sweden*, op. cit., para. 9.2; *Khan v. Canada*, communication No. 15/1994, Views adopted on 15 November 1994, para. 12.2; *X. v. Switzerland*, communication No. 27/1995, Views adopted on 28 April 1997, para. 10.3; *Aemei v. Switzerland*, op. cit., paras. 9.3 and 9.4; *Tapia Paez v. Sweden*, *c*ommunication No. 39/1996, Views adopted on 8 May 1997, para. 14.2; *Tala v. Sweden*, op cit., para. 10.1. See also *Vilvarajah et al. v. The United Kingdom*, 14 EHRR 248 (judgement of 30 October 1991), para. 111.

Communication No. 218/2002

Submitted by: Mr. L.J.R.C. (not represented by counsel)

Alleged victim: The complainant

State party: Sweden

Date of the complaint: 16 September 2002

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

Meeting on 22 November 2004,

Having concluded its consideration of complaint No. 218/2002, submitted to the Committee against Torture by Mr. L.J.R.C. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following decision under article 22, paragraph 7, of the Convention.

1. The complainant is Mr. L.J.R.C., an Ecuadorian citizen, born in 1977, currently facing deportation from Sweden to Ecuador. He claims that he would be at risk of being subjected to torture if returned to Ecuador in violation of article 3 of the Convention. He is not represented by counsel.

The facts as submitted by the complainant

2.1. The complainant performed his military service in 1997 and was a military trainee from January until the end of May 2000. On 13 May 2000, while he was at the military base of Cononaco, he allegedly witnessed the torture and summary execution of two members of the guerrilla group Fuerzas Armadas Revolucionarias del Ecuador-Defensores del Pueblo (FARE-DP) by members of the intelligence service of the Ecuadorian Army. After this incident, he began to receive threats from members of FARE-DP and members of the military. He told his brother, who was also a member of the military, about the incident. On 8 November 2000, his brother was tortured to death in a military camp. Before his death, his brother had received threats from his supervisors. After his brother's death, the complainant continued to be threatened, and he was forced to move several times within Ecuador. As the threats increased he decided to leave Ecuador. He arrived in Sweden on 23 March 2001, and applied for asylum on 27 April 2001.

2.2 On 19 June 2001, the Swedish Migration Board dismissed the complainant's asylum application. On 2 September 2002, the Appeal Aliens Board upheld the Migration Board's decision.

The complaint

3.1 The complainant alleges that he is at risk of being subjected to torture, ill-treatment, forced disappearance or summary execution if returned to Ecuador; his deportation in such circumstances would amount to a violation to article 3 of the Convention.

State party's observations on the admissibility and the merits of the complaint

4.1 By submission of 11 December 2002, the State party acknowledged that all domestic remedies had been exhausted. Nevertheless, it argues that the complaint is inadmissible because the complainant failed to substantiate his claim that he would be at risk of being tortured if returned to Ecuador.

4.2. The State party recalls that the complainant had two interviews with immigration authorities. In his first interview with the Migration Board, he stated that on 13 May 2000, when he was at Coronado camp as a military trainee, he witnessed the torture and murder by the military of two members of FARE-DP who were among a group of seven FARE-DP members who had been taken prisoner. Two of the prisoners managed to escape and thereafter persecuted the complainant because they wanted him to identify who was responsible for the torture and murder of their comrades. They also identified his brother, a soldier, telephoned him on 8 November 2000 and then tortured and maltreated him so badly that he died. Before dying, the complainant's brother told a colleague that it was the complainant himself who had been the target.

4.3 In a second interview with the Migration Board, the complainant provided a more detailed account of the above incident. He said that FARE-DP was very active in the jungle in border areas and it tried to carry out continuous guerrilla warfare. He visited his brother on 25 May 2000 and told him of the incident. Towards the end of June 2000, his brother, who had discovered that high-ranking officers had been involved in the incident, began to receive threatening phone calls. On 8 November 2000 his brother left his house and was assaulted and maltreated by two strangers. He was taken to the military hospital, where he died. His brother's wife reported the death to the police, who were unsuccessful in investigating the incident. Members of FARE-DP continued to phone his brother's house after his death, and the family had to move away. The complainant added that he never informed the police about the incident in the jungle, for fear of being killed by members of FARE-DP. He had never been personally contacted by FARE-DP members or received threats from them. The Board was informed by the complainant's counsel that FARE-DP members had illegally entered the complainant's brother's house in Quito and had destroyed some of the furniture.

4.4 On 19 July 2001, the Migration Board rejected the complainant's application for asylum and ordered that he be deported to Ecuador. It took into account that Ecuador had been a working democracy for several years, that the complainant remained in Ecuador almost a year after he had witnessed the torture and homicide, that he had never personally been persecuted or threatened by members of FARE-DP, and that he did not seek protection from the authorities in

spite of the fact that Government forces had done what they could to eliminate FARE-DP. The Board concluded that the complainant had not substantiated his claim that he risked persecution. The complainant appealed against the Board's decision, maintaining that he risked being tortured and that Government forces were unable to control FARE-DP activities. He added that should the circumstances that prompted the FARE-DP threats against him become known, his life would be at risk, but this time through violence from Government forces or the police. On 2 September 2002, the Aliens Appeals Board dismissed the appeal, endorsing the assessment made by the Migration Board. In addition, the Board noted that the complainant had applied for asylum more that a month after his arrival in Sweden. Regarding his statement that he risked persecution by Government forces or the police, the Board noted that the complainant was on guard duty when he witnessed the incident at Coronado camp, and it could not therefore have been unknown to the military that he knew about the incident. For as long as the complainant remained in Ecuador after the incident, it appeared that he had not been of any interest to the military or the police.

4.5 As to the general human rights situation in Ecuador, the State party notes that while according to some reports[a] it remains poor in many areas and that the police continue to torture and abuse suspects and prisoners with impunity, there have nevertheless been improvements. Domestic and international human rights groups operate without restriction in the country, and the Government has contracted some of these organizations to provide human rights training to the military and the police. Ecuador ratified the Convention against Torture on 30 March 1988, recognizing the competence of the Committee to receive and consider individual complaints.

4.6 As to the complainant's risk of torture at the hands of members of FARE-DP, the State party recalls the Committee's jurisprudence that the issue of whether a State party has an obligation to refrain from expelling a person who might risk torture by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention. It adds that it is clear that the Ecuadorian authorities do not tolerate the activities of FARE-DP, which they regard as criminal and have linked to a series of kidnapping and murder cases,[b] and that there is nothing to show that the Ecuadorian authorities could not afford the complainant adequate protection from FARE-DP.

4.7 As to the complainant's allegation that he is at risk of being tortured by members of Government forces, the State party notes that before Swedish immigration authorities, the complainant only mentioned in passing that he would risk being killed by Government forces should they learn about what he had experienced at Coronado. However, he said nothing about having been persecuted by Ecuadorian authorities but, on the contrary, he clearly stated that he had never had any problems with the Ecuadorian police or other authorities. He also stated that since he had never been accused of anything, he had been able to obtain permission to leave the country. Furthermore, the complainant gave inconsistent information as to who had threatened and killed his brother: before Swedish immigration authorities, he stated that it was members of FARE-DP, while in his complaint before the Committee, he maintains that his brother's

superiors first threatened him. The State party adds that the fact that the complainant was given permission to leave Ecuador by both the military and the police strongly suggests that he is not wanted by the Ecuadorian authorities. The military must also have learned that the complainant had witnessed the incident at Cononaco; yet, he did not seem to have attracted particular interest from the military or the police.

4.8 The State party concludes that the complainant has not substantiated his claim that he would risk a foreseeable, real and personal risk of torture if returned to Ecuador.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that the exhaustion of domestic remedies is not contested by the State party.

5.2 As to the complainant's allegation that he would be at risk of being tortured by members of FARE-DP, the Committee recalls its jurisprudence according to which the issue of whether a State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention, unless the non-governmental entity occupies and exercises quasi-governmental authority over the territory to which the complainant would be returned.[c] The Committee notes that the complainant has not disputed the State party's allegation that the Ecuadorian authorities do not tolerate FARE-DP activities carried out in border areas of the country, which they regard as criminal and link to a series of kidnapping and murder cases. Accordingly, the Committee decides that this part of the communication is inadmissible under article 22, paragraph 2, of the Convention.

5.3 As to the complainant's allegation that he would risk torture at the hands of Government forces if returned, the Committee notes that the information submitted by the complainant in substantiation of this claim remains general and vague, and does not in any way reveal the existence of a personal and foreseeable risk of torture to which he might be subjected in the event of his return to Ecuador. The information provided to the Committee by the complainant is at odds with his own account of the facts to the Swedish immigration authorities. He has not provided reliable information that he was tortured in the past nor that he had had any problem with the police or had attracted any interest from the military or the police while he continued to live in Ecuador, even after the events at Cononaco camp. The Committee accordingly considers that the threshold of admissibility has not been met in the complainant's case, and concludes that the complaint, as formulated, does not give rise to any arguable claim under the Convention.

5.4 The Committee finds, in accordance with article 22 of the Convention and rule 107 (b) of its rules of procedure, that the complaint is manifestly unfounded. Accordingly, the Committee decides that the complaint is inadmissible.

6. The Committee decides:

(a) That the complaint is inadmissible; and

(b) That this decision will be transmitted to the complainant and, for information, to the State party.

Notes

[a] 2001 United States Department of State Country Reports on Human Rights Practices and 2002 Amnesty International Report.

[b] United States Department of State, ibid.

[c] See *S.S. v. The Netherlands*, communication No. 191/2001, decision adapted on 5 May 2003, para. 6.4.
