



**United Nations**

# **Report of the Committee against Torture**

**Forty-fifth session  
(1–19 November 2010)**

**Forty-sixth session  
(9 May–3 June 2011)**

**General Assembly  
Official Records  
Sixty-sixth session  
Supplement No. 44 (A/66/44)**



**General Assembly**  
Official Records  
Sixty-sixth session  
Supplement No. 44 (A/66/44)

## **Report of the Committee against Torture**

**Forty-fifth session**  
**(1–19 November 2010)**

**Forty-sixth session**  
**(9 May–3 June 2011)**



**United Nations • New York, 2011**

*Note*

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

## Contents

<i>Chapter</i>	<i>Paragraphs</i>	<i>Page</i>
I. Organizational and other matters .....	1–24	1
A. States parties to the Convention .....	1–3	1
B. Sessions of the Committee .....	4	1
C. Membership and attendance at sessions .....	5	1
D. Agendas .....	6–7	1
E. Participation of Committee members in other meetings.....	8–10	1
F. Oral report of the Chairperson to the General Assembly .....	11	2
G. Activities of the Committee in connection with the Optional Protocol to the Convention .....	12–13	2
H. Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture .....	14	3
I. Informal meeting with the States parties to the Convention.....	15	3
J. Participation of non-governmental organizations.....	16–17	3
K. Participation of national human rights institutions .....	18	3
L. Rules of procedure.....	19	3
M. Reporting guidelines.....	20	4
N. General Assembly resolution 65/204.....	21–23	4
O. Examination of reports .....	24	4
II. Submission of reports by States parties under article 19 of the Convention .....	25–40	5
A. Invitation to submit periodic reports.....	27	5
B. Optional reporting procedure.....	28–35	5
C. Preliminary evaluation of the optional reporting procedure .....	36–38	7
D. Reminders for overdue initial reports.....	39–40	7
III. Consideration of reports submitted by States parties under article 19 of the Convention.....	41–61	9
A. Examination of reports submitted by States parties.....	41–46	9
B. Concluding observations on States parties' reports.....	47–61	10
Bosnia and Herzegovina.....	48	10
Cambodia.....	49	19
Ecuador.....	50	32
Ethiopia .....	51	41
Mongolia .....	52	54
Turkey .....	53	63
Finland.....	54	74

	Ghana .....	55	81
	Ireland.....	56	91
	Kuwait .....	57	100
	Mauritius .....	58	107
	Monaco.....	59	114
	Slovenia.....	60	117
	Turkmenistan.....	61	124
IV.	Follow-up to concluding observations on States parties' reports.....	62–78	137
V.	Activities of the Committee under article 20 of the Convention.....	79–83	149
VI.	Consideration of complaints under article 22 of the Convention.....	84–123	150
	A. Introduction .....	84–88	150
	B. Interim measures of protection .....	89–93	150
	C. Progress of work.....	94–116	151
	D. Follow-up activities .....	117–123	158
VII.	Future meetings of the Committee .....	124–125	203
VIII.	Adoption of the annual report of the Committee on its activities .....	126	204
Annexes			
I.	States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as at 3 June 2011 .....		205
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 3 June 2011.....		211
III.	States parties that have made the declarations provided for in articles 21 and 22 of the Convention, as at 3 June 2011 .....		212
IV.	Membership of the Committee against Torture in 2011 .....		215
V.	States parties that have signed, ratified or acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as of 3 June 2011 .....		216
VI.	Membership of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2011 .....		219
VII.	Fourth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment .....		221
VIII.	Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture.....		249
IX.	Rules of procedure .....		251
X.	Overdue reports, as at 3 June 2011 .....		288
	A. Initial reports .....		288
	B. Periodic reports.....		289

XI.	Country Rapporteurs and alternate Rapporteurs for the reports of States parties considered by the Committee at its forty-fifth and forty-sixth sessions .....	299
XII.	Decisions of the Committee against Torture under article 22 of the Convention .....	300
A.	Decisions on merits .....	300
	Communication No. 310/2007: <i>Chahin v. Sweden</i> .....	300
	Communication No. 319/2007: <i>Singh v. Canada</i> .....	314
	Communication No. 333/2007: <i>T.I. v. Canada</i> .....	324
	Communication No. 336/2008: <i>Singh Khalsa et al. v. Switzerland</i> .....	331
	Communication No. 338/2008: <i>Mondal v. Sweden</i> .....	340
	Communication No. 339/2008: <i>Amini v. Denmark</i> .....	349
	Communication No. 341/2008: <i>Hanafi v. Algeria</i> .....	357
	Communication No. 344/2008: <i>A.M.A. v. Switzerland</i> .....	372
	Communication No. 349/2008: <i>Güclü v. Sweden</i> .....	380
	Communication No. 350/2008: <i>R.T-N. v. Switzerland</i> .....	387
	Communication No. 352/2008: <i>S.G. et al. v. Switzerland</i> .....	398
	Communication No. 357/2008: <i>Jahani v. Switzerland</i> .....	411
	Communication No. 369/2008: <i>E.C.B. v. Switzerland</i> .....	421
	Communication No. 373/2009: <i>Aytulun and Güclü v. Sweden</i> .....	430
	Communication No. 375/2009: <i>T.D. v. Switzerland</i> .....	437
	Communication No. 379/2009: <i>Bakatu-Bia v. Sweden</i> .....	443
	Communication No. 419/2010: <i>Ktiti v. Morocco</i> .....	458
B.	Decisions on admissibility .....	464
	Communication No. 395/2009: <i>H.E-M. v. Canada</i> .....	464
	Communication No. 399/2009: <i>F.M-M. v. Switzerland</i> .....	470





## **I. Organizational and other matters**

### **A. States parties to the Convention**

1. As at 3 June 2011, the closing date of the forty-sixth session of the Committee against Torture (hereinafter referred to as “the Committee”), there were 147 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”). 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. The list of States which have signed, ratified or acceded to the Convention is contained in annex I to the present report. The list of States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention is provided in 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 on the United Nations website (<http://treaties.un.org>).

### **B. Sessions of the Committee**

4. The Committee against Torture has held two sessions since the adoption of its last annual report. The forty-fifth session (954th to 981st meetings) was held at the United Nations Office at Geneva from 1 to 19 November 2010, and the forty-sixth session (982nd to 1019th meetings) was held from 9 May 2011 to 3 June 2011. An account of the deliberations of the Committee at these two sessions is contained in the relevant summary records (CAT/C/SR.954-1019).

### **C. Membership and attendance at sessions**

5. The membership of the Committee remained the same during the period covered by the report. The list of members with their term of office appears in annex IV to the present report.

### **D. Agendas**

6. At its 954th meeting, on 1 November 2010, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/45/1) as the agenda of its forty-fifth session.

7. At its 982nd meeting, on 9 May 2011, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/46/1) as the agenda of its forty-sixth session.

### **E. Participation of Committee members in other meetings**

8. During the period under consideration, Committee members participated in different meetings organized by the Office of the United Nations High Commissioner for Human

Rights (OHCHR): the eleventh Inter-Committee Meeting, held in Geneva from 28 to 30 June 2010, was attended by Ms. Felice Gaer and Mr. Claudio Grossman; the latter also participated in the twenty-second meeting of chairpersons held in Brussels on 1 and 2 July 2010. The first session of the Inter-Committee Meeting working group on follow-up to concluding observations, inquiries, visits and decisions, held in Geneva from 12 to 14 January 2011, was attended by Ms. Gaer and Mr. Fernando Mariño.

9. In the context of the treaty body strengthening process, Mr. Alessio Bruni, Ms. Gaer, Mr. Luis Gallegos and Mr. Xuexian Wang participated in a joint treaty body consultation with members of the Committee on Economic, Social and Cultural Rights in Geneva on 7 May 2011. The objectives of the consultations between treaty body members organized by the Human Rights Treaty Division of OHCHR were (a) to provide an open space for members of treaty bodies to identify options for the future of their work and the treaty body system as a whole, including by addressing their working methods, and (b) to allow treaty body members to discuss in advance issues tabled by the Inter-Committee Meeting and the Meeting of Chairpersons in order to be able to identify grounds for agreement.

10. The Chairperson of the Committee, Mr. Grossman, participated in the informal technical consultation with States parties held in Sion, Switzerland, on 12 and 13 May 2011. The technical consultation's main objectives were (a) to identify ways to improve treaty periodic reporting and implementation as well as States' cooperation with treaty bodies and (b) to share good practices, expectations and innovative approaches as experienced by States.

## **F. Oral report of the Chairperson to the General Assembly**

11. Further to the invitation to the Chairperson of the Committee to present an oral report on the work of the Committee and to engage in an interactive dialogue with the General Assembly at its sixty-fifth session under the sub-item entitled "Implementation of human rights instruments" (General Assembly resolution 64/153, para. 27), the Chairperson of the Committee presented an oral report to the General Assembly at its sixty-fifth session on 19 October 2010. The oral report may be found on the OHCHR website (<http://www2.ohchr.org/english/bodies/cat/index.htm>).

## **G. Activities of the Committee in connection with the Optional Protocol to the Convention**

12. As at 3 June 2011, there were 59 States parties to the Optional Protocol (see annex V to the present report). As required by the Optional Protocol to the Convention, on 16 November 2010, a joint meeting was held between the members of the Committee and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter "the Subcommittee on Prevention"). Both the Committee and the Subcommittee on Prevention (membership of the Subcommittee on Prevention is included in annex VI) strengthen the modalities for cooperation, such as the mutual sharing of information, taking into account confidentiality requirements.

13. A further meeting was held between the Committee and the Chairperson of the Subcommittee on Prevention on 10 May 2011 where the latter submitted its fourth public annual report to the Committee (CAT/C/46/2). The Committee decided to include it in the present annual report (see annex VII) and to transmit it to the General Assembly.

## **H. Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture**

14. A joint statement with the Subcommittee on Prevention, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture was adopted to be issued on 26 June 2010, the United Nations International Day in Support of Victims of Torture (see annex VIII to the present report).

## **I. Informal meeting with the States parties to the Convention**

15. At its forty-sixth session, on 16 May 2011, the Committee held an informal meeting with States parties to the Convention, which was attended by representatives of 31 States parties. The Committee and the States parties discussed the following issues: the methods of work of the Committee; the harmonization of working methods between treaty bodies; the optional reporting procedure of the Committee, which consists of lists of issues to be transmitted prior to the submission of periodic reports; and general comments.

## **J. Participation of non-governmental organizations**

16. At its forty-sixth session, on 12 May 2011, the Committee held an informal meeting with representatives of 16 non-governmental organizations (NGOs) that usually provide information to the Committee, and discussed the following issues: the methods of work of the Committee; the harmonization of working methods between treaty bodies; the optional reporting procedure of the Committee; and general comments.

17. The Committee has long recognized the work of non-governmental organizations and met with them in private, with interpretation, on the day immediately before the consideration of each State party report under article 19 of the Convention. The Committee expresses its appreciation to the NGOs for their participation in these meetings and is particularly appreciative of the attendance of national NGOs which provide immediate and direct information.

## **K. Participation of national human rights institutions**

18. Similarly, the Committee has recognized the work of national human rights institutions (NHRIs); Country Rapporteurs, together with any other Committee member wishing to attend, have met with the representative of the NHRI, if required, before the consideration of each State party report under article 19 of the Convention. The Committee expresses its appreciation for the information it receives from these institutions, and looks forward to continuing to benefit from the information it derives from these bodies, which has enhanced its understanding of the issues before the Committee.

## **L. Rules of procedure**

19. At its forty-fifth session, the Committee completed the revision of its rules of procedure, amended previously at its thirteenth (November 1996), fifteenth (November 1997) and twenty-eighth (May 2002) sessions, and adopted its revised rules of procedure (CAT/C/3/Rev.5; see annex IX to the present report).

## **M. Reporting guidelines**

20. At its forty-fifth and forty-sixth sessions, the Committee continued to discuss the revision of its treaty-specific reporting guidelines, in the light of the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document (as contained in HRI/GEN/2/Rev.6). However, in the light of its continued evaluation of its optional reporting procedure, the Committee discussed the relevance of also adopting guidelines for reports submitted under this procedure and/or general common guidelines.

## **N. General Assembly resolution 65/204**

21. At its forty-fifth session, the Committee welcomed General Assembly resolution 65/204 of 21 December 2010, in which the Assembly authorized the Committee to meet for an additional week per session as a temporary measure, with effect from May 2011 until the end of November 2012, further to its request to the General Assembly for appropriate financial support to this effect.

22. The Committee also noted the request to the Secretary-General to submit to the General Assembly at its sixty-sixth session concrete proposals on the human rights treaty bodies, building on the work of the Secretary-General pursuant to Human Rights Council resolution 9/8 of 24 September 2008 and of the treaty bodies in this regard, to improve their effectiveness and to identify efficiencies in their working methods and costs in order to better manage their workloads and programmes of work, bearing in mind budgetary constraints and taking account of the varying burdens on each treaty body.

23. At its forty-sixth session, the Committee continued to discuss measures to improve the effectiveness of its working methods and costs in order better to manage its workloads and programmes of work. Along these lines, it decided, *inter alia*, that it will continue its evaluation of the optional reporting procedure (see chap. II, sect. C).

## **O. Examination of reports**

24. In the light of General Assembly resolution 65/204 authorizing it to meet for an additional week per session as a temporary measure, at its forty-fifth session, the Committee decided to increase the number of States parties' reports examined from six to eight for its May session and from six to nine for its November session, maintaining a dialogue with representatives of States parties of five hours per report.

## II. Submission of reports by States parties under article 19 of the Convention

25. During the period covered by the present report, 14 reports from States parties under article 19 of the Convention were submitted to the Secretary-General. Initial reports were submitted by Djibouti, Madagascar and Rwanda. Second periodic reports were submitted by Qatar, Tajikistan and Togo. Third periodic reports were submitted by Mauritius and Senegal. A fifth periodic report was submitted by the Russian Federation. A combined fourth to sixth periodic report was submitted by Paraguay. Combined fifth and sixth periodic reports were submitted by Finland, Greece and Mexico. A sixth periodic report was submitted by Canada.

26. As at 3 June 2011, the Committee had received a total of 317 reports and had examined 295; there were 300 overdue reports, including 30 initial reports (see annex X to the present report).

### A. Invitation to submit periodic reports

27. Further to its decision taken at its forty-first session, the Committee continued, at its forty-fifth and forty-sixth sessions, to invite States parties, in the last paragraph of the concluding observations, to submit their next periodic reports within a four-year period from the adoption of the concluding observations, and to indicate the due date of the next report in the same paragraph.

### B. Optional reporting procedure

28. At its thirty-eighth session, in May 2007,<sup>1</sup> the Committee adopted a new optional reporting procedure on a trial basis which consists of the preparation and adoption of a list of issues to be transmitted to States parties prior to the submission of a State party's periodic report (known as the list of issues prior to reporting – LOIPR); the State party's replies to this list of issues would constitute the State party's report under article 19 of the Convention. The Committee was of the view that this procedure would assist States parties in preparing focused reports, would guide the preparation and content of the reports, would facilitate reporting by States parties and would strengthen their capacity to fulfil their reporting obligations in a timely and effective manner. However, this new procedure requires that these reports are considered within the shortest possible period of time after being received by the Committee, otherwise the added value of the procedure will be defeated as new lists of issues would have to be adopted and transmitted by the Committee to States parties to update the information they provided.

29. At its forty-second session, in May 2009,<sup>2</sup> the Committee decided to continue, on a regular basis, with this procedure. Since its establishment, information relating to the procedure has been available from a dedicated webpage (<http://www2.ohchr.org/english/bodies/cat/reporting-procedure.htm>).

30. As at 3 June 2011 and since the adoption of this reporting procedure, the Committee has adopted and transmitted to States parties lists of issues prior to reporting for reports due

---

<sup>1</sup> See Official Records of the General Assembly, Sixty-second Session, Supplement No. 44 (A/62/44), para. 23.

<sup>2</sup> *Ibid.*, Sixty-fourth Session, Supplement No. 44 (A/64/44), para. 27.

in 2009, 2010, 2011 and 2012; in total, 75 such lists have been adopted and transmitted to States parties. Of those States parties, 55 have accepted the list (73 per cent), 16 did not reply (23 per cent), one is currently preparing its report under the standard procedure, and three did not accept the list (4 per cent).

31. For reports due in 2009, the Committee adopted, and transmitted in 2008, lists of issues prior to reporting with regard to 11 States parties: Bosnia and Herzegovina, Cambodia, Czech Republic, Democratic Republic of the Congo, Ecuador, Greece, Kuwait, Monaco, Peru, South Africa and Turkey. Out of these 11 States parties, nine have formally or informally accepted this new reporting procedure (Bosnia and Herzegovina, Cambodia, Czech Republic, Ecuador, Greece, Kuwait, Monaco, Peru and Turkey), seven have submitted their report under this procedure (Bosnia and Herzegovina, Cambodia, Ecuador, Greece, Kuwait, Monaco and Turkey), and one (the Czech Republic) submitted its report under the standard procedure. These reports, with the exception of one, have already been examined by the Committee, namely at its forty-fifth and forty-sixth sessions, and Greece has been scheduled to be examined at the forty-seventh session of the Committee, considering that reports submitted under this procedure must be examined within the shortest possible period of time after their receipt.

32. For reports due in 2010, the Committee adopted, and transmitted in 2009, lists of issues prior to reporting with regard to nine States parties: Brazil, Finland, Hungary, Kyrgyzstan, Libyan Arab Jamahiriya, Mauritius, Mexico, Russian Federation and Saudi Arabia. Out of these nine States parties, eight have accepted this new reporting procedure (Brazil, Finland, Hungary, Kyrgyzstan, Libyan Arab Jamahiriya, Mauritius, Mexico and Russian Federation) and four have submitted their report under this procedure (Finland, Mauritius, Mexico and the Russian Federation). Two reports (Finland and Mauritius) were examined by the Committee at forty-sixth session and two (Mexico and the Russian Federation) have been scheduled to be examined at its forty-eighth and forty-seventh sessions, respectively, considering that reports submitted under this procedure must be examined within the shortest possible period of time after their receipt.

33. For reports due in 2011, the Committee adopted, and transmitted in 2010, lists of issues prior to reporting with regard to 19 States parties: Bahrain, Benin, Denmark, Estonia, Georgia, Guatemala, Italy, Japan, Latvia, Luxembourg, Namibia, Netherlands, Norway, Paraguay, Poland, Portugal, Ukraine, United States of America and Uzbekistan. Out of these 19 States parties, 16 have accepted this new reporting procedure (Benin, Denmark, Estonia, Georgia, Guatemala, Italy, Japan, Latvia, Luxembourg, Netherlands, Norway, Paraguay, Poland, Portugal, Ukraine and United States of America) and one (Uzbekistan) did not accept it. These reports have to be submitted by 15 July 2011; however, one State party (Paraguay) has already submitted its report under this procedure.

34. For reports due in 2012, the Committee adopted and transmitted in 2010, lists of issues prior to reporting with regard to 36 States parties: Afghanistan, Algeria, Argentina, Australia, Belgium, Belize, Bolivia (Plurinational State of), Burundi, Chad, China (including Hong Kong, China and Macao, China), Costa Rica, Croatia, Cyprus, Egypt, Guyana, Iceland, Indonesia, Kazakhstan, Kenya, Lithuania, Malta, Montenegro, Nepal, Panama, Qatar, Republic of Korea, Romania, Senegal, Serbia, Sweden, the former Yugoslav Republic of Macedonia, Togo, Uganda, Uruguay, Venezuela (Bolivarian Republic of) and Zambia. Out of these 36 States parties, 20 have accepted this new reporting procedure (Argentina, Australia, Belgium, Belize, Chad, Costa Rica, Croatia, Cyprus, Iceland, Kenya, Lithuania, Malta, Montenegro, Republic of Korea, Romania, Serbia, Sweden, the former Yugoslav Republic of Macedonia, Uruguay and Zambia). These reports have to be submitted by 1 August 2012. Two States parties (Algeria and China) did not accept the new procedure. Three States parties (Qatar, Senegal and Togo) have already

submitted their report under the standard procedure and one (Plurinational State of Bolivia) had already begun preparing its report under the standard procedure.

35. The Committee welcomes the fact that a high number of States parties have accepted this new procedure aiming at assisting States parties to fulfil their reporting obligations, as it strengthens the cooperation between the Committee and States parties. While the Committee understands that the adoption, since 2007, of lists of issues prior to reporting facilitates States parties' reporting obligations, it nonetheless wants to emphasize that this new procedure of drafting lists of issues prior to reporting has increased the Committee's workload substantially as their preparation requires more work than the traditional lists of issues following the submission of a State party's report. This is particularly significant in a Committee with such a small membership.

### **C. Preliminary evaluation of the optional reporting procedure**

36. At its forty-sixth session, the Committee discussed further its optional reporting procedure. It took note of and expressed appreciation for the Secretariat's informal document containing proposals for the next reporting cycle (2013–2016) and decided, as a preliminary evaluation: (a) to consider the procedure as a positive step, as also indicated by States parties; (b) to continue the procedure for the next reporting cycle; and (c) to seek the prior acceptance of States parties that have not yet agreed to avail themselves of the procedure, for reports due in 2013.

37. In addition, the Committee also decided that: (a) the procedure would need to be evaluated with regard to each of the States parties that have been submitted a list of issues prior to reporting (two members of the Committee considered that the evaluation should be done with an external component); (b) country priorities should also be discussed and established, according to the provisions of the Convention; and (c) procedural aspects, such as deadlines to report, length of documents, number of questions, page limits, reminders, guidelines, etc. should also be considered.

38. The Committee will continue to evaluate the procedure at its forty-seventh session; it requested the secretariat to prepare and submit a report on the status of the optional reporting procedure, also containing information on any new development related to the procedure, including with regard to other treaty bodies that have adopted a similar procedure.

### **D. Reminders for overdue initial reports**

39. Further to its decision to send reminders to all States parties whose initial reports were three or more years overdue taken at its forty-first session, the Committee, at its forty-sixth session, decided to send reminders to the following State parties: Andorra, Antigua and Barbuda, Bangladesh, Botswana, Burkina Faso, Cape Verde, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Holy See, Lebanon, Lesotho, Liberia, Malawi, Maldives, Mali, Mauritania, Mozambique, Niger, Nigeria, Republic of the Congo, Saint Vincent and the Grenadines, San Marino, Seychelles, Sierra Leone, Somalia, Swaziland and Timor-Leste.

40. The Committee drew the attention of these States parties to the fact that delays in reporting seriously hamper the implementation of the Convention in the States parties and the Committee in carrying out its function of monitoring such implementation. The Committee requested information on the progress made by these States parties regarding the fulfilment of their reporting obligations and on any obstacles that they might be facing in that respect. It also informed them that, according to rule 67 of its rules of procedure, the Committee might proceed with a review of the implementation of the Convention in the

State party in the absence of a report, and that such review would be carried out on the basis of information that may be available to the Committee, including sources from outside the United Nations.



### III. Consideration of reports submitted by States parties under article 19 of the Convention

#### A. Examination of reports submitted by States parties

41. At its forty-fifth and forty-sixth sessions, the Committee considered reports submitted by 14 States parties, under article 19, paragraph 1, of the Convention. The following reports were before the Committee at its forty-fifth session and it adopted the respective concluding observations:

<i>State party</i>	<i>Report</i>		<i>Concluding observations</i>
Bosnia and Herzegovina	Second to fifth periodic reports	CAT/C/BIH/2-5	CAT/C/BIH/CO/2-5
Cambodia	Second periodic report	CAT/C/KHM/2 and Corr.1	CAT/C/KHM/CO/2
Ecuador	Fourth to sixth periodic reports	CAT/C/ECU/4-6	CAT/C/ECU/CO/4-6
Ethiopia	Initial report	CAT/C/ETH/1	CAT/C/ETH/CO/1
Mongolia	Initial report	CAT/C/MNG/1	CAT/C/MNG/CO/1
Turkey	Third periodic report	CAT/C/TUR/3	CAT/C/TUR/CO/3

42. The following reports were before the Committee at its forty-sixth session and it adopted the respective concluding observations:

<i>State party</i>	<i>Report</i>		<i>Concluding observations</i>
Finland	Fifth and sixth periodic reports	CAT/C/FIN/5-6	CAT/C/FIN/CO/5-6
Ghana	Initial report	CAT/C/GHA/1	CAT/C/GHA/CO/1
Ireland	Initial report	CAT/C/IRL/1	CAT/C/IRL/CO/1
Kuwait	Second periodic report	CAT/C/KWT/2	CAT/C/KWT/CO/2
Mauritius	Third periodic report	CAT/C/MUS/3	CAT/C/MUS/CO/3
Monaco	Fourth and fifth periodic reports	CAT/C/MCO/4-5	CAT/C/MCO/CO/4-5
Slovenia	Third periodic report	CAT/C/SVN/3	CAT/C/SVN/CO/3
Turkmenistan	Initial report	CAT/C/TKM/1	CAT/C/TKM/CO/1

43. In accordance with rule 68 of the rules of procedure of the Committee, representatives of each reporting State were invited to attend the meetings of the Committee when their report was examined. All of the States parties whose reports were considered sent representatives to participate in the examination of their respective reports. The Committee expressed its appreciation for this in its concluding observations.

44. Country Rapporteurs and alternate Rapporteurs were designated by the Committee for each of the reports considered. The list appears in annex XI to the present report.

45. 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.3);

(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).

46. The Committee has been issuing lists of issues for periodic reports since 2004. This resulted from a request made to the Committee by representatives of the States parties at a meeting with Committee members. While the Committee understands the wish of States parties to have advance notice of the issues likely to be discussed during the dialogue, it nonetheless must point out that the drafting of lists of issues has increased the Committee's workload. This is particularly significant in a Committee with such a small membership.

## **B. Concluding observations on States parties' reports**

47. The text of concluding observations adopted by the Committee with respect to the above-mentioned reports submitted by States parties is reproduced below.

### **48. Bosnia and Herzegovina**

(1) The Committee against Torture considered the combined second to fifth periodic reports of Bosnia and Herzegovina (CAT/C/BIH/2-5) at its 961st and 962nd meetings, held on 4 and 5 November 2010 (CAT/C/SR.961 and 962), and adopted the following concluding observations at its 978th meeting (CAT/C/SR.978).

#### **A. Introduction**

(2) The Committee welcomes the submission of the combined second to fifth periodic reports of Bosnia and Herzegovina. The Committee also welcomes that the report was submitted in accordance with the new optional reporting procedure of the Committee consisting of replies by the State party to a list of issues prepared and transmitted by the Committee. The Committee expresses its appreciation to the State party for its agreement to report under this new procedure, which facilitates the cooperation between the State party and the Committee.

(3) The Committee notes with appreciation that a high-level delegation from the State party met with the Committee during its forty-fifth session, and also notes with appreciation the opportunity to engage in a constructive dialogue covering many areas under the Convention.

(4) The Committee notes that the State party consists of two entities, but recalls that Bosnia and Herzegovina is a single State under international law and has the obligation to implement the Convention in full at the domestic level.

#### **B. Positive aspects**

(5) The Committee welcomes that since the consideration of the initial periodic report, the State party has ratified the following international and regional instruments:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 24 October 2008;

(b) Convention on the Rights of Persons with Disabilities and its Optional Protocol on 12 March 2010;

(c) Council of Europe Convention on Action against Trafficking in Human Beings on 11 January 2008.

(6) The Committee notes the State party's ongoing efforts to revise its legislation in areas of relevance to the Conventions, including:

(a) The adoption of the Law on Movement and Stay of Aliens and Asylum in 2008;

(b) The adoption of the Law on Prevention of Discrimination in 2009;

(c) The adoption of the International Assistance Law in 2009 aimed at strengthening international cooperation, in particular through bilateral agreements with neighbouring countries, to ensure the protection of victims and the prosecution and punishment of alleged perpetrators.

(7) The Committee also welcomes the efforts being made by the State party to amend its policies and procedures in order to ensure greater protection of human rights and give effect to the Convention, including:

(a) The adoption of the Strategy for Dealing with War Crimes Cases in 2008;

(b) The adoption of the revised Strategy for the Implementation of Annex 7 of the Dayton Peace Agreement in 2010 aimed at improving the living standards of the remaining internally displaced persons and returnees in Bosnia and Herzegovina;

(c) The adoption of the third National Action Plan to Combat Human Trafficking and Illegal Migration in Bosnia and Herzegovina for the period 2008–2012;

(d) The adoption of the National Strategy to Combat Violence against Children for the period 2007–2010;

(e) The adoption of the National Strategy for Preventing and Combating Domestic Violence in Bosnia and Herzegovina for the period 2008–2010;

(f) The establishment of a working group to prepare a State strategy for transitional justice aimed at improving the situation and protection of all war victims.

### **C. Principal subjects of concern and recommendations**

#### **Definition and offence of torture**

(8) While noting that the State party envisages amending the Criminal Code and harmonizing the legal definition of torture in the State and entity laws, the Committee remains concerned that the State party has still not incorporated into domestic law the crime of torture as defined in article 1 of the Convention and has not criminalized torture inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (arts. 1 and 4).

**The Committee, in line with its previous recommendations (CAT/C/BIH/CO/1, para. 9), urges the State party to speed up the process of the incorporation of the crime of torture, as defined in the Convention, into the State party laws as well as the harmonization of the legal definition of torture in the Republika Srpska and Brcko District with the Criminal Code of Bosnia and Herzegovina. The State party should also ensure that these offences are punishable by appropriate penalties which take into account their grave nature, as set out in article 4, paragraph 2, of the Convention.**

**War crimes of rape and other forms of sexual violence**

(9) The Committee expresses its serious concern that the definition of war crimes of sexual violence in the Criminal Code is not consistent with the definition in international standards and in jurisprudence of international courts and that, in particular, articles 172 and 173 of the Criminal Code may result in impunity for such crimes. In addition, the Committee remains concerned at the lack of accurate and updated data on the number of victims of war-time rape and other acts of sexual violence (arts. 1 and 4).

**The Committee recommends that the State party amend the Criminal Code to include a definition of sexual violence in accordance with international standards and jurisprudence related to the prosecution of war crimes of sexual violence and remove the condition of “force or threat of immediate attack” from the present definition. Also, the State party should include in its next report the statistical data on the unresolved cases related to war-time rape and other sexual violence.**

**Fundamental legal safeguards**

(10) The Committee notes with concern that, in practice, persons deprived of their liberty are not always afforded all fundamental legal safeguards from the very outset of their detention (art. 2).

**The Committee recommends that the State party take all necessary legal and administrative safeguards to ensure that suspects are guaranteed the right to have access to a lawyer and an independent doctor, preferably of their own choice, to notify a relative, to be informed of their rights at the time of detention, and to be brought promptly before a judge in accordance with international standards irrespective of the nature of their alleged crime.**

**Ombudsman**

(11) The Committee, while noting the recent unification of Ombudsman institutions into a single State office of the Human Rights Ombudsman with the broadened scope of functions, is concerned about reports of the alleged lack of independence and the effectiveness of the Ombudsman as well as the need for the allocation of adequate resources in order to fulfil the mandate of the office. The Committee regrets the lack of a clear explanation on the follow-up measures taken by the competent authorities in response to the Ombudsman’s recommendations on various places of detention (CAT/C/BIH/2-5, para. 227) (art. 2).

**The State party should increase its efforts to restructure and strengthen the Ombudsman by:**

- (a) Adopting a more consultative and open process for the selection and appointment of the Ombudsman in order to guarantee the independence of the Ombudsman in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles, General Assembly resolution 48/134);**
- (b) Providing adequate human, material and financial resources;**
- (c) Developing the Ombudsman’s capacity to monitor all places of deprivation of liberty in Bosnia and Herzegovina, especially in the absence of an independent prisons inspectorate;**
- (d) Ensuring the implementation of the Ombudsman’s recommendations.**

### Impunity

(12) The Committee notes the adoption of the Strategy for Dealing with War Crimes Cases and some progress made in the prosecution of those responsible for acts of torture committed during the 1992–1995 conflict, including war-time rape and other acts of sexual violence. However, the Committee is gravely concerned that, taking into account the number of such war-time crimes, the number of cases prosecuted so far by the Bosnia and Herzegovina judiciary is extremely low and local courts still face serious obstacles in prosecuting war crimes cases. In addition, the Committee expresses its serious concern that a significant number of judgments made by the Constitutional Court are not implemented even several years following their adoption and most of the non-implemented decisions by the Constitutional Court are related to cases of human rights violations, mainly the cases of missing persons (arts. 2, 9 and 12).

**The Committee urges the State party to fight impunity by ensuring prompt and effective investigation into all allegations of war-time crimes and prosecuting and punishing the perpetrators with appropriate penalties commensurate with their grave nature. In that regard, the State party is encouraged to provide mutual judicial assistance in all matters of criminal proceedings and to continue to enhance cooperation with the International Criminal Tribunal for the Former Yugoslavia. Furthermore, it is necessary to fully implement the Constitutional Court's judgments without further delay, in particular with regard to cases on enforced disappearances, and to prosecute failure to comply with such judgments.**

### Violence against women and children, including domestic violence

(13) The Committee, while noting legal and administrative measures undertaken by the State party to combat gender-based violence, including the resolution on the fight against violence against women in the family adopted by the Parliamentary Assembly, expresses its concern about the persistence of violence against women and children, including domestic violence. While appreciating the State party's intention to amend the elements of crimes of rape by abolishing the requirements of both penetration and active resistance by the victim, it is concerned at insufficient information on the entity laws prohibiting and criminalizing such violence and at the low numbers of investigations and prosecutions of cases of domestic violence. The Committee is concerned at reports about the inadequate provision of protection measures and rehabilitation programmes for victims (arts. 1, 2, 4, 11, 12 and 16).

**The Committee recommends that the State party enhance its efforts to prevent, prosecute and punish all forms of violence against women and children, including domestic violence, and ensure effective and full implementation of the existing laws and the national strategies adopted to that end, including the Strategy for Preventing and Combating Domestic Violence and the National Strategy to Combat Violence against Children. The State party should provide support for victims through the establishment of additional shelters, the provision of free counselling services and such other measures as may be necessary for the protection of victims. Furthermore, the State party is encouraged to conduct broader awareness-raising campaigns and training on domestic violence for law enforcement personnel, judges, lawyers and social workers who are in direct contact with the victims as well as for the public at large.**

### Refoulement

(14) Notwithstanding article 91 of the Law on Movement and Stay of Aliens and Asylum with regard to the principle of prohibition of return (CAT/C/BIH/2-5, para. 76), the Committee remains concerned at reports that the competent authorities of Bosnia and Herzegovina have failed to properly assess the risk of refoulement faced by those who

apply for international protection and that persons considered to be a threat to national security are subject to being expelled or returned to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture. It is also concerned at the very low rate of successful asylum applications (art. 3).

**The State party should:**

**(a) Ensure (i) procedural safeguards against refoulement and (ii) effective remedies with respect to refoulement claims in removal proceedings, including review by an independent judicial body concerning rejections;**

**(b) Ensure that a thorough review of each individual case is provided for asylum claims and that persons whose applications for asylum have been rejected can lodge an effective appeal with the effect of suspending the execution of the decision on the expulsion or deportation;**

**(c) Revise its current procedures and practices in the area of expulsion, refoulement and extradition and align its interpretation of key concepts of domestic asylum law fully with international refugee law and human rights standards;**

**(d) Continue to follow up on and keep the Committee informed of the case of the citizen of Bosnia and Herzegovina who remains in detention in Guantanamo Bay military base;**

**(e) Ensure that national security considerations do not undermine the principle of non-refoulement and that the State party fulfil its obligations to respect the principle of absolute prohibition of torture in all circumstances, in accordance with article 3 of the Convention.**

(15) With regard to individuals whose citizenship has been revoked by the State Commission for Revision of Decisions on the Naturalization of Foreign Nationals and who consequently are detained in the deportation centre, the Committee takes note of the State party's report claiming that legal rights to judicial protection had been provided for them. However, noting the concerns expressed by several international bodies, the Committee remains concerned that reported cases on the prolonged detention in inadequate conditions of those individuals and the denial of their right to effectively challenge the decisions to revoke their citizenship, detain and deport them have not been fully clarified (arts. 3 and 16).

**The State party should revise its practice regarding the prolonged detention of those individuals and fully respect their right to effectively challenge the decisions to revoke their citizenship, detain them and deport them. Furthermore, the State party should guarantee key principles related to a fair and efficient asylum procedure, including adequate translation and interpretation services, free legal aid and access of applicants to their case file.**

**Return of refugees and internally displaced persons**

(16) In addition to the problems recognized by the State party, inter alia the security concerns for the minority returnees and the lack of investigation and prosecution of crimes and acts of violence against refugees and internally displaced persons (CAT/C/BIH/2-5, para. 142), the Committee expresses its concern at persistent reports claiming that existing programmes of property restitution have failed to take into account gender and the psychological needs of the victims of sexual violence. The Committee is also concerned at their lack of economic opportunities and the poor living conditions (arts. 3, 7 and 12).

**The Committee recommends that the State party intensify its efforts to facilitate returns of refugees and displaced persons, including by constructing housing and the accompanying infrastructure and addressing the specific situation of those who would**

otherwise have difficulties in benefiting from the reconstruction assistance. The State party should take all necessary measures to effectively tackle the identified obstacles and ensure that all crimes and acts of violence against refugees and internally displaced persons are properly and promptly investigated and prosecuted. In addition, it is necessary to fully implement the recommendations made by the Representative of the Secretary-General on the human rights of internally displaced persons in the report on his mission to Bosnia and Herzegovina (E/CN.4/2006/71/Add.4).

#### **Witness protection and support**

(17) The Committee, while noting some improvement in witness protection in criminal proceedings, remains gravely concerned at the lack of adequate measures of witness protection and witness support before, during and after trials, which has a negative impact on the willingness and ability of witnesses to participate in investigations or to testify in proceedings. The Committee also expresses concern at the reported cases of intimidation against witnesses and of attempts at bribery by perpetrators, and at the insufficient support for witnesses by the competent authorities, such as the State Investigation and Protection Agency (arts. 2, 11, 12, 13 and 15).

**The Committee urges the State party to ensure that victims are effectively protected, that they are not further distressed or pressured to withdraw their testimony and that they are not threatened by alleged perpetrators, in particular by:**

(a) **Strengthening the capacity of the competent organs, in particular the State Investigation and Protection Agency and its Department for Witness Protection (OZS), and ensuring that they respect the right to privacy of the survivors and provide witnesses at serious risk with long-term or permanent protection measures, including changing their identity or relocating them within or outside of Bosnia and Herzegovina;**

(b) **Giving more attention to the psychological needs of witness in order to minimize possible re-traumatization of survivors in court proceedings;**

(c) **Ensuring that witnesses have appropriate means to travel to and from the court and providing escorts for their travel, as necessary.**

#### **Redress, including compensation and rehabilitation**

(18) The Committee notes that the State party has strengthened its efforts to guarantee the victims' rights to redress, including the development of the Strategy for Transitional Justice. However, the Committee expresses concern over the slow process of the adoption of the draft law on the rights of victims of torture, the absence of an adequate definition of the status and rights of civil victims of war in domestic legislation and the insufficient medical or psychosocial support and legal protection available to victims, especially victims of war-time sexual violence (art. 14).

**The Committee recommends that the State party adopt the draft law on the rights of victims of torture and civil victims of war and the strategy for transitional justice without delay in order to fully protect the rights of victims, including the provision of compensation and as full a rehabilitation as possible, with the aim of obtaining physical and psychological recovery and their social reintegration. To that end, the State party is strongly encouraged to reduce the politicization of these efforts, to finalize a plan of action with clearly identified activities and corresponding responsibilities among State and entity authorities and to ensure the allocation of adequate financial resources.**

**Conditions of detention**

(19) While welcoming the measures taken by the State party to improve considerably the conditions of detention, including the construction of new facilities and the renovation of existing ones, the Committee remains particularly concerned about the current material and hygienic conditions, the use of solitary confinement, the problems of overcrowding and ongoing inter-prisoner violence in some places of deprivation of liberty (arts. 11, 12 and 16).

**The State party should intensify its efforts to bring the conditions of detention in places of deprivation of liberty into line with the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolutions 663 C (XXIV) and 2076 (LXII)) and other relevant international and national law standards, in particular by:**

(a) **Coordinating the judicial supervision of conditions of detention between competent organs and ensuring thorough investigations of all allegations of abuse or ill-treatment committed in detention facilities;**

(b) **Drawing up a comprehensive plan to address the issue of inter-prisoner violence and sexual violence in all detention facilities, including Zenica Prison, and ensuring effective investigations into those cases;**

(c) **Reducing prison overcrowding and considering non-custodial forms of detention;**

(d) **Ensuring that solitary confinement is used only as a measure of last resort for as short a time as possible under strict supervision;**

(e) **Strengthening the effort to improve the regime for prisoners, especially vocational and physical activities, and to facilitate their re-integration into society;**

(f) **Ensuring that minors are detained separately from adults through their whole period of detention or confinement and offering them educational and recreational activities;**

(g) **Providing adequate accommodation and psychosocial support care for detainees who require psychiatric supervision and treatment.**

**Psychiatric facilities**

(20) While noting the progress made in psychiatric facilities, including Sokolac Psychiatric Clinic, the Committee remains concerned at issues of institutional accommodation of mentally disabled persons, in particular with regard to overcrowding in institutions and lack of adequate psychosocial support by competent organs (art. 16).

**The Committee recommends that the State party ensure that adequate psychosocial support by multidisciplinary teams is provided for patients in psychiatric institutions, that all places where mental-health patients are held for involuntary treatment are regularly visited by independent monitoring bodies to guarantee the proper implementation of the existing safeguards, and that alternative forms of treatment are developed. Furthermore, the State party should ensure the full and timely implementation of the recommendations made by the Ombudsmen, as contained in their special report on the situation in institutions for accommodation of mentally disabled persons.**

**Individual complaints**

(21) Notwithstanding the information provided in the State party's report on the possibility for prisoners and detainees to present complaints, the Committee is concerned that it continues to receive information on the lack of an independent and effective



complaint mechanism for receiving and conducting impartial and full investigations into allegations of torture and on the failure to provide prisoners and detainees with the existing complaints procedures (arts. 12 and 13).

**The State party should ensure that every individual who alleges that he or she has been subjected to torture or ill-treatment has the right to complain to the competent authorities without any impediment and that such individuals have access to their medical file upon their request. Furthermore, in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, all detainees and prisoners should be provided with information on the possibilities for lodging complaints, including on the right to correspond on a confidential basis with outside judicial and complaints' bodies, and closed complaints boxes should be installed in the prisons (CPT/Inf (2010) 10, para. 36).**

#### **Training**

(22) While welcoming the detailed information provided by the State party on training programmes for law enforcement officials and the judiciary, the Committee remains concerned at the lack of standardized capacity at the State level for training of all public officers and at the insufficient information on monitoring and evaluation of the effectiveness of these programmes in preventing and detecting torture and ill-treatment (arts. 10 and 16).

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

**(a) Ensure that medical personnel and others involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment are provided on a regular and systematic basis with trainings on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and that the Manual is translated into all appropriate languages and applied as widely as possible;**

**(b) Develop and implement a methodology to assess the effectiveness and impact of such educational and training programmes on the reduction of cases of torture and ill-treatment and regularly evaluate the training provided to its law enforcement officials;**

**(c) Strengthen its efforts to implement a gender-sensitive approach for the training of those involved in the custody, interrogation or treatment of women subjected to any form of arrest, detention or imprisonment;**

**(d) Strengthen professional training in social-protection institutions for persons with mental disability and in psychiatric clinics.**

#### **Trafficking in persons**

(23) The Committee takes note of several measures taken by the State party, including the adoption of the State Action Plan to combat human trafficking and illegal migration (2008–2010), the establishment of a central database on identified victims of trafficking and the issuance by the Ministry of Security of regulations on the protection for trafficking victims. However, the Committee remains concerned at the absence of a provision in the Criminal Code in relation to the legal penalties for persons who have committed or been involved in the crime of trafficking, and at the lenient sentences imposed in cases of trafficking. The Committee also expresses concern over the slowness and the complexity of redress procedures for victims of trafficking (arts. 2, 4 and 16).

The State party should strengthen its efforts to combat trafficking in persons, especially in women and children, in particular by:

- (a) Ensuring that trafficking is defined as a crime in all parts of the State party in accordance with international standards, and that these offences are punishable by appropriate penalties which take into account their grave nature;
- (b) Improving the identification of trafficking victims and providing them with appropriate rehabilitation programmes, genuine access to health care and counselling;
- (c) Providing training to law enforcement personnel and other relevant groups, and raising awareness of the problem among the public.

#### **Enforced disappearances**

(24) While acknowledging the State party's statement that the Institute for Missing Persons is fully functional and noting ongoing cooperation with the International Commission on Missing Persons aimed at the identification of missing persons, the Committee is concerned by the inadequate protection for the rights of relatives of missing persons and the delay in establishing a State-level fund to assist them. The Committee also regrets that the lack of the harmonization in the State party laws makes it difficult to prosecute enforced disappearances as crimes against humanity (arts. 1, 4, 14 and 16).

**The Committee recommends that, in line with the preliminary recommendations made by the Working Group on Enforced or Involuntary Disappearances following its fact-finding mission to Bosnia and Herzegovina in June 2010, the State party:**

- (a) Ensure the full independence of the Institute for Missing Persons and provide the Institute with adequate material, financial and human resources, including available technology necessary to detect and exhume graves;
- (b) Ensure that the fund for families of missing persons is established without any further delay and that its financing is entirely secured;
- (c) Complete the Central Record of Missing Persons (CEN) without further delay and make it available to the public;
- (d) Respect the right of families of missing persons, including those who live outside Bosnia and Herzegovina, to know the truth by keeping them informed of the progress made in the processes of exhumation and identification of mortal remains and provide them with psychosocial assistance during the process;
- (e) Fulfil its obligation to investigate all cases of enforced disappearances;
- (f) Consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.

#### **National preventive mechanism**

(25) While noting that the State party is preparing the establishment of a national preventive mechanism in collaboration with the Ombudsman and with the support of the Organization for Security and Cooperation in Europe Mission to Bosnia and Herzegovina, the Committee remains concerned about a reported lack of effective legislative and logistic measures taken by the competent authorities in order to establish an independent national preventive mechanism in line with articles 17 to 23 of the Optional Protocol to the Convention against Torture (arts. 2, 11 and 16).

**The State party should, in line with the recommendations made by the Working Group on the Universal Periodic Review and accepted by the State party (A/HRC/14/16, para. 90 (recommendation 17) and A/HRC/14/16/Add.1, para. 10),**

**expedite the establishment of the national preventive mechanism, in full compliance with the minimum requirements of the Optional Protocol. The national preventive mechanism should be granted sufficient financial, human and material resources with a view to assuming its mandate effectively.**

#### **Data collection**

(26) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel, war-time rape and sexual violence, extrajudicial killings, enforced disappearances, trafficking, domestic and sexual violence and means of redress for victims.

**The State party should compile statistical data, disaggregated by crime, ethnicity, age and sex, relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel, war-time rape and sexual violence, extrajudicial killings, enforced disappearances, trafficking and domestic and sexual violence, and on means of redress, including compensation and rehabilitation, provided to the victims.**

(27) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(28) The Committee requests the State party to provide, within one year, follow-up information in response to the Committee's recommendations contained in paragraphs 9, 12, 18 and 24 of the present document.

(29) The Committee invites the State party to present its next periodic report in accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to submit an updated common core document in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee Meeting of the human rights treaty bodies, and to observe the page limit of 80 pages for the common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

(30) The State party is invited to submit its next periodic report, which will be the sixth report, by 19 November 2014.

#### **49. Cambodia**

(1) The Committee considered the second periodic report of Cambodia (CAT/C/KHM/2) at its 967th and 968th meetings (CAT/C/SR.967 and 968), held on 9 and 10 November 2010, and adopted, at its 979th and 980th meetings (CAT/C/SR.979 and 980), the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the submission of the second periodic report of Cambodia but it regrets that the significant delay in its timely submission has prevented the Committee from conducting an ongoing analysis of the implementation of the Convention in the State party.

(3) The Committee also welcomes that the report was submitted in accordance with the new optional reporting procedure of the Committee consisting of replies by the State party to a list of issues (CAT/C/KHM/Q/2) prepared and transmitted by the Committee. The

Committee expresses its appreciation to the State party for agreeing to report under this new procedure which facilitates the cooperation between the State party and the Committee.

(4) The Committee also appreciates the dialogue with and the additional oral information provided by the delegation of the State party but it regrets that some of its questions have remained unanswered.

**B. Positive aspects**

(5) The Committee welcomes the ratification, in March 2007, of the Optional Protocol to the Convention, and the recent visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Cambodia from 3 to 11 December 2009.

(6) The Committee also welcomes that, in the period since the consideration of the initial report, the State party has ratified or acceded to the following international instruments:

(a) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in October 2010;

(b) United Nations Convention against Transnational Organized Crime, in December 2005, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, in July 2007;

(c) The United Nations Convention against Corruption, in September 2007;

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in July 2004;

(e) The Rome Statute of the International Criminal Court, in April 2002.

(7) The Committee further notes the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular the adoption of:

(a) The Anti-Corruption Law, in 2010;

(b) The new Penal Code, in 2009;

(c) The Law on Suspension of Human Trafficking and Commercial Sexual Exploitation, in 2008;

(d) The new Code of Penal Procedure, in 2007;

(e) The Law on Prevention of Domestic Violence and the Protection of Victims, in 2005, including criminalization of marital rape.

(8) The Committee notes with satisfaction the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC) in cooperation with the United Nations and the international community. It welcomes the fact that the Trial Chamber has delivered judgment in its first case (No. 001) on 26 July 2010 and that it has delivered indictments in its second case (No. 002), and that victims of torture and other cruel, inhuman or degrading treatment or punishment can participate in the proceedings as civil parties. It also urges the State party to continue its efforts to bring further perpetrators of the Khmer Rouge-related atrocities to justice (Cases Nos. 003 and 004).

(9) The Committee also welcomes the establishment, in 2008, of the Refugee Office within the Immigration Department of the Ministry of the Interior, with the objective of protecting refugees, who may include victims of torture or cruel, inhuman or degrading

treatment, as well as the adoption, on 17 December 2009, of the Sub-Decree on the Procedure of Determination of Refugee Status and the Right to Asylum for Aliens in the Kingdom of Cambodia, as the beginning of the development of a legal framework.

### **C. Principal subjects of concern and recommendations**

#### **Incorporation of the Convention into domestic law**

(10) The Committee welcomes the guarantees contained in article 31 of the Constitution as well as the July 2007 decision of the Constitutional Council (Decision No. 092/003/2007) that international treaties are part of the national law and that courts should take treaty norms into account when interpreting laws and deciding cases. However, the Committee regrets the lack of information as to any cases where the Convention has been applied by the domestic courts, and it is therefore concerned that in practice, the provisions of international conventions, including the Convention, are not invoked before or directly enforced by the State party's national courts, tribunals or administrative authorities. In this regard, the Committee notes with concern the lack of effective remedies for violations of human rights, including torture and ill-treatment. This undermines the State party's ability to meet its obligations under the international human rights treaties that it has ratified, including the Convention (arts. 2, 4 and 10).

**The State party should take all appropriate measures to ensure the full applicability of the provisions of the Convention in its domestic legal order. Such measures should include extensive training on the provisions of the international human rights treaties, including the Convention, for its State officials, law enforcement and other relevant officials, as well as judges, prosecutors and lawyers. The Committee also requests the State party to report back on progress made in this respect and on decisions of national courts, tribunals or administrative authorities giving effect to the rights enshrined in the Convention.**

#### **Definition and criminalization of torture**

(11) The Committee notes the statement by the delegation that the State party refers to the term "torture" in a general context as any acts causing injury to individuals and sets forth "torture" as a criminal offence. While noting the information provided by the State party that the new Penal Code imposes punishment for perpetrating the crime of torture, inciting its exercise, or approval or acquiescence thereof by any official acting in an official capacity, the Committee is concerned that the Penal Code does not contain a definition of torture. The Committee regrets that the State party did not provide it with a copy of the relevant provision on criminalization of torture (arts. 1 and 4).

**The State party should incorporate a definition of torture into the Constitution, the Penal Code or other relevant legislation, including all elements of torture as defined by the Convention. Such action would show a real and important recognition of torture as a serious crime and human rights abuse and fight impunity. By naming and defining the offence of torture in accordance with articles 1 and 4 of the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself. The Committee also requests the State party to promptly provide the text of the new Penal Code, as requested during the dialogue.**

#### **Corruption**

(12) The Committee is deeply concerned at reports of widespread and systemic corruption throughout the country. The Committee considers that the rule of law is the cornerstone for the protection of the rights set forth in the Convention and, while

welcoming the new Anti-Corruption Law and other measures taken by the State party, it notes with concern reports of political interference and corruption affecting the judicial bodies and the functioning of some public services, including the police and other law enforcement services. In this respect, the Committee expresses its concern at reports that police officers are promoted for convictions and that police stations are given special incentives for convictions, amounting to a rewards system, as well as reports of police officers benefitting financially from informal arrangements or extrajudicial settlements. The Committee is also concerned that the Anti-Corruption Unit established under the new Anti-Corruption Law has not yet taken any steps against alleged perpetrators of corruption and is not yet fully operational (arts. 2, 10 and 12).

**The State party should take immediate and urgent measures to eradicate corruption throughout the country which is one of the most serious impediments to the rule of law and the implementation of the Convention. Such measures should include effective implementation of the anti-corruption legislation and the expeditious operationalization of the Anti-Corruption Unit, which should consist of independent members. The State party should also increase its capacity to investigate and prosecute cases of corruption. The State party should establish a programme of witness and whistle-blower protection to assist in ensuring confidentiality and to protect those who lodge allegations of corruption, and ensure that sufficient funding be allocated for its effective functioning. Furthermore, the State party should undertake training and capacity-building programmes for the police and other law enforcement officers, prosecutors and judges, on the strict application of anti-corruption legislation as well as on relevant professional codes of ethics, and adopt effective mechanisms to ensure transparency in the conduct of public officials, in law and in practice. The Committee requests the State party to report back on progress achieved, and the difficulties encountered, in combating corruption. The Committee also requests the State party to provide information on the number of officials, including senior officials, who have been prosecuted and punished on account of corruption charges.**

#### **Independence of the judiciary**

(13) The Committee reiterates its grave concern at the lack of independence and effectiveness of the judiciary, including the criminal justice system, which hinders the full enjoyment of human rights, such as the prohibition of torture and other cruel, inhuman and degrading treatment or punishment. The Committee is also concerned that fundamental laws of reform of the judiciary have not yet been enacted. The Committee further expresses its concern at the lack of independence of the Bar Association, the limits on its size and the qualifications for these limits. The Committee regrets the failure of the State party to respond to its questions about provisions of the Anti-Corruption Law that address the independence of the judiciary and to provide examples of cases where those who engaged in exerting and complying with undue pressure on the judiciary were investigated, prosecuted and convicted (art. 2).

**The State party should intensify its efforts to establish and ensure a fully independent and professional judiciary in conformity with international standards and ensure that it is free from political interference. Such efforts should include the immediate enactment of all relevant laws of reform, notably the Organic Law on the Organization and Functioning of the Courts; the Law on the Amendment of the Supreme Council of Magistracy; and the Law on the Status of Judges and Prosecutors. The State party should also ensure that those who engage in exerting and complying with undue pressure on the judiciary are investigated, prosecuted and convicted, and provide examples of such cases. In addition, the State party should take the necessary steps to ensure that the Bar Association is independent, transparent and**

**allows for admission of a sufficient number of lawyers. The Committee further requests that the State party provide information on provisions of the Anti-Corruption Law that address the independence of the judiciary.**

#### **Fundamental legal safeguards**

(14) The Committee expresses its serious concern at the State party's failure in practice to afford all detainees, including juveniles and pretrial detainees, with all fundamental legal safeguards from the very outset of their detention. Such safeguards comprise the right to have prompt access to a lawyer and an independent medical examination, preferably by a doctor of one's own choice, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear expeditiously before a judge. The Committee is particularly concerned that the Penal Procedure Code only includes the right for a detainee to consult a lawyer 24 hours after his or her apprehension, and that access to a doctor is reportedly left to the discretion of the relevant law enforcement or prison official. The Committee also expresses its concern at the very limited number of defence lawyers, including legal aid defence lawyers, in the country, which precludes many defendants from obtaining legal counsel. The Committee is further concerned at reports that persons deprived of their liberty are held for significant periods of time in police custody without being registered and that a significant number of police facilities and prisons are failing to adhere to the regulations governing detainee registration procedures in practice (arts. 2, 11 and 12).

**The State party should promptly implement effective measures to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention. To this end, the State party should amend the Penal Procedure Code so as to guarantee detainees the right to have prompt access to a lawyer from the very outset of their deprivation of liberty and throughout the investigation phase, the whole of the trial and during appeals, as well as access to an independent medical examination, preferably by a doctor of one's own choice, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, and the right to appear expeditiously before a judge. The State party should, as a matter of urgency, expand the number of defence lawyers, including legal aid defence lawyers, in the country and remove unjustified barriers to entry for individuals who wish to be admitted to the Bar Association. The State party should ensure prompt registration of persons deprived of their liberty and ensure that custody records at police and prison facilities are periodically inspected to make sure that they are being maintained in accordance with procedures established by law.**

#### **Impunity for acts of torture and ill-treatment**

(15) The Committee remains deeply concerned by the numerous, ongoing and consistent allegations of torture against and ill-treatment of detainees in detention facilities, in particular in police stations. In this respect, the Committee is further concerned at numerous allegations of cases of sexual violence against women in detention by law enforcement and penitentiary personnel. The Committee is also concerned that such allegations are seldom investigated and prosecuted and that there would appear to be a climate of impunity resulting in the lack of meaningful disciplinary action or criminal prosecution against persons of authority accused of acts specified in the Convention. While noting the information provided by the State party that its national laws, especially the Penal Procedure Code, do not contain any provisions that can be used as a justification or means for an excuse for torture, under any circumstances, the Committee is concerned at the lack of a provision in domestic legislation expressly prohibiting the invocation of exceptional circumstances as a justification for torture (arts. 2, 4, 12 and 16).

**As a matter of urgency, the State party should take immediate and effective measures to prevent acts of torture and ill-treatment, including sexual violence in detention, throughout the country, including through the announcement of a policy that would produce measurable results in the eradication of torture and ill-treatment by State officials, and through monitoring and/or recording of police interrogation sessions.**

**The State party should also ensure that all allegations of torture and ill-treatment, including sexual violence in detention, are investigated promptly, effectively and impartially, and that the perpetrators are prosecuted and convicted in accordance with the gravity of the acts, as required by article 4 of the Convention. The State party should enact a sentencing scheme governing convictions of torture and ill-treatment by government officials to ensure that adequate sentences are given to those who are found guilty of such acts.**

**The State party should ensure that its domestic legislation includes a provision expressly prohibiting the invocation of exceptional circumstances as a justification of torture.**

#### **Complaints and prompt, impartial and effective investigations**

(16) The Committee expresses its concern at reports that torture and ill-treatment by law enforcement and prison officials are widespread, that few investigations are carried out in such cases and that there are very few convictions. The Committee is also concerned at the absence of an independent civilian oversight body with the power to receive and investigate complaints of torture and ill-treatment by police and other law enforcement officials. The Committee regrets the lack of detailed information provided by the State party, including statistics, on the number of complaints of torture and ill-treatment and results of all the proceedings, both at the penal and disciplinary levels, and their outcomes. Furthermore, the Committee is concerned at the lack of effective mechanisms to ensure the protection of victims and witnesses (arts. 1, 2, 4, 12, 13 and 16).

**The State party should strengthen its measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment of convicted prisoners and detainees, including in police stations, and to bring to justice law enforcement and prison officials who carried out, ordered or acquiesced in such practices. The State party should establish an independent law enforcement complaint mechanism and ensure that investigations into complaints of torture and ill-treatment by law enforcement officials are undertaken by an independent civilian oversight body. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should as a rule be subject to suspension or reassignment during the process of investigation, to avoid any risk that he or she might impede the investigation or continue any reported impermissible actions in breach of the Convention.**

**Furthermore, the State party should establish a programme of victim and witness protection to assist in ensuring confidentiality and to protect those who come forward to report or complain about acts of torture, as well as ensure that sufficient funding be allocated for its effective functioning.**

#### **Prolonged pretrial detention**

(17) The Committee notes with concern that the State party's criminal justice system continues to rely on imprisonment as the default option for defendants awaiting trial and it remains concerned about the unwarranted protraction of the pretrial detention period during which detainees are likely to be subjected to torture and other ill-treatment (arts. 2 and 11).

**The State party should adopt effective measures to ensure that its pretrial detention policy meets international standards and that it is only used as an exceptional measure for a limited period of time, in accordance with the requirements under the**



**Constitution and the Code of Penal Procedure. To this end, the State party should reconsider its use of imprisonment as the default option for defendants awaiting trial and consider applying measures alternative to such pretrial detention; that is, supervised release prior to trial. It should also comprehensively apply and further develop legal provisions permitting non-custodial measures.**

#### **Monitoring and inspection of places of detention**

(18) The Committee takes note with interest of the information provided by the State party that a number of responsible bodies have the rights and power to conduct regular inspection of prisons. The Committee also notes the information provided by the State party that “relevant” non-governmental organizations (NGOs) are allowed to visit prisons. However, the Committee is concerned at the lack of information with regard to any effective monitoring and inspection of all places of detention, including police stations, prisons, as well as Social Affairs Centres, Drug Rehabilitation Centres and other places where persons may be deprived of their liberty. In this respect, the Committee is particularly concerned at the State party’s failure to provide information as to whether such visits are unannounced or otherwise controlled, as well as information on any follow-up on the results of these visits (arts. 2, 11 and 16).

**The Committee calls upon the State party to establish a national system to effectively monitor and inspect all places of detention, including police stations, prisons, Social Affairs Centres, Drug Rehabilitation Centres and other places where persons may be deprived of their liberty, and to follow up to ensure effective monitoring. This system should include regular and unannounced visits by independent national and international monitors, including “relevant” NGOs, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.**

#### **Conditions of detention**

(19) The Committee takes note of measures adopted by the State party to improve conditions of detention, including through the Prison Reform Support Programme (PRSP), the issuance of a Sub-decree regulating prisoners’ rations and cell equipment, the development of draft Minimum Design Standards for Prison Construction together with international partners and the construction of new prisons. However, the Committee expresses its concern at the serious overcrowding in places where persons are deprived of their liberty, representing a threat to the safety, physical and psychological integrity and health of detainees. It is further concerned at reports of unhygienic conditions, inadequate food and health care. The Committee notes with concern that the prison population is growing steadily and is concerned at the lack of alternative non-custodial forms of punishment. Furthermore, the Committee notes with serious concern reported cases of deaths in custody and regrets the State party’s failure to provide information on this. The Committee also expresses its serious concern at allegations, to which the State party did not provide information, that the “prisoner self-management committees” are sometimes responsible for violent abuse and ill-treatment of other prisoners in the course of disciplinary actions, frequently ignored or condoned by the General Department of Prisons (GDP). The Committee is further concerned that female and male detainees are at times placed together and that male prison staff continue to guard female detainees, due to the limited number of female prison staff (arts. 1, 2, 4, 11 and 16).

**The State party should intensify its efforts to effectively alleviate the overcrowding in places where persons are deprived of their liberty, including police stations and prisons, and to improve the conditions in such places, including with respect to hygiene and food supply. To this end, the Committee recommends that the State party apply alternative measures to imprisonment and ensure sufficient budgetary allocations to develop and renovate the infrastructure of prisons and other detention**

facilities. Furthermore, the State party should clearly frame and regulate the function and role of the “prisoner self-management committees” and ensure that cases of abuse and ill-treatment by such bodies are investigated and perpetrators punished. In addition, the GDP officials ignoring or condoning such acts should be held accountable, with the alleged suspects being subjected to suspension or reassignment during the process of investigation. The Committee also requests updated information on the circumstances surrounding the deaths of Kong La, Heng Touch and Mao Sok as well as information on investigations, prosecutions and convictions arising from these cases.

The State party should also review current policies and procedures for the custody and treatment of detainees, including in police stations, ensure separation of female detainees from males and that female detainees be guarded by officers of the same gender, monitor and document incidents of sexual violence in detention, and provide the Committee with data thereon, disaggregated by relevant indicators. The Committee also recommends that the State party consider compiling a reliable and accurate profile of the prison population, including details as to the length of the sentence, the commitment of offence and the age of the offender, to help inform criminal justice policy decisions.

#### **Social Affairs Centres**

(20) The Committee notes the information and clarification provided by the delegation in respect of the Social Affairs Centres, including that the State party has agreed with UNICEF and the OHCHR Cambodia Country Office to conduct an assessment of the existing policies, procedures and practices in the referral, placement, management, rehabilitation and reintegration of children, women and vulnerable persons in Social Affairs Centres and Youth Rehabilitation Centres across the country. However, the Committee expresses its serious concern at continuing reports of round-ups by law enforcement officials in the streets and the subsequent holding of people, including sex workers, victims of trafficking, people who use drugs, homeless people, beggars, street children and mentally ill persons, in the Social Affairs Centres, against their will and without any legal basis and judicial warrant. In addition, the Committee notes with particular concern allegations of a consistent pattern of arbitrary detention and abuse in Prey Speu between late 2006 and 2008, including torture, rape, beatings, reported incidences of suicide, and even reported killings committed by social affairs guards against detainees. The Committee is further concerned at the lack of information as to any initiative on the part of the State party to undertake a thorough investigation into such allegations (arts. 2, 11 and 16).

**The Committee urges the State party to put a complete end to any form of arbitrary and unlawful detention of persons, especially in Social Affairs Centres, including Prey Speu. The State party should ensure that all relevant governmental departments respect the right not to be arbitrarily detained on the basis of social status in the view of the Government and without any legal basis and judicial warrant. The State party should also ensure that officials/guards and others involved in arbitrary detention and abuse are immediately investigated and prosecuted for such acts and that redress is provided to victims.**

**The State party should, as a matter of urgency, conduct an independent investigation into the allegations of serious human rights violations, including torture, in Prey Speu between late 2006 and 2008. Furthermore, the Committee encourages the State party, in cooperation with relevant partners, to find sustainable and humane alternatives for disadvantaged and vulnerable groups, including persons living and working in the streets, and to provide such groups with the type of assistance they require.**

### **Sexual violence, including rape**

(21) The Committee expresses its serious concern that, according to the State party's Neary Rattanak III Five Year Strategic Plan 2009–2013, violence against women remains widely prevalent in Cambodia with indications of increasing incidence of at least some forms of gender-based violence, particularly rape. The Committee is also concerned at reports from non-governmental sources about a growing number of rape reports, including against very young girls and gang rapes, that sexual violence and abuse particularly affect the poor, that women and children who are victims of such violence have limited access to justice, and that there is an acute lack of medical services and psychosocial support to such victims (arts. 1, 2, 4, 11, 13 and 16).

**The State party should take effective measures to prevent and combat sexual violence and abuse against women and children, including rape. To this end, the State party should establish and promote an effective mechanism for receiving complaints of sexual violence and investigate such complaints, providing victims with psychological and medical protection as well as access to redress, including compensation and rehabilitation, as appropriate. The Committee requests the State party to provide statistics on the number of complaints of rape as well as information on investigations, prosecutions and convictions in such cases.**

### **Human trafficking**

(22) The Committee welcomes the information provided by the delegation on measures taken to repatriate and protect persons subjected to trafficking, the adoption, in 2008, of anti-trafficking legislation and the Second National Plan on Human Trafficking and Sex Trafficking, 2006–2010, the activities of the Department of Anti-Human Trafficking and Juvenile Protection of the Ministry of Interior as well as other legislative, administrative and police measures to combat trafficking. However, the Committee notes with serious concern reports that a high number of women and children continue to be trafficked from, through and within the country for purposes of sexual exploitation and forced labour. The Committee is also concerned at the lack of statistics provided by the State party, including the number of complaints, investigations, prosecutions and convictions of perpetrators of trafficking, and the lack on information on practical measures adopted to prevent and combat such phenomena, including medical, social and rehabilitative measures (arts. 1, 2, 4, 12 and 16).

**The State party should intensify its efforts to prevent and combat trafficking in human beings, especially women and children, including by implementing the anti-trafficking legislation, providing protection for victims and ensuring their access to medical, social, rehabilitative and legal services, including counselling services, as appropriate. The State party should also create adequate conditions for victims to exercise their right to make complaints, conduct prompt, impartial and effective investigations into all allegations of trafficking and ensure that those who are found guilty of such crimes are punished with penalties appropriate to the nature of their crimes.**

### **Children in detention**

(23) The Committee welcomes the efforts made by the State party to reform its juvenile justice system, including the draft juvenile justice law and the establishment, in 2006, of an inter-ministerial working group on child justice. However, the Committee expresses its concern at reports of a high number of children in detention, and at the lack of alternatives to imprisonment. The Committee is also concerned that children are not always separated from adults in detention facilities (arts. 2, 11 and 16).

The State party should, as a matter of urgency, establish a separate juvenile justice system, adapted to the particular needs of juveniles, their status and special requirements. To this end, the State party should expeditiously enact the draft Law on Juvenile Justice and ensure that this Law is in conformity with international standards, and develop corresponding guidelines and directives for judges, prosecutors and judicial police on the concept of a child-friendly justice system. The State party should further take all necessary measures to develop and implement a comprehensive system of alternative measures to ensure that deprivation of liberty of juveniles is used only as a measure of last resort, for the shortest possible time and in appropriate conditions. In addition, the State party should take the necessary measures to ensure that persons below 18 years of age are not detained with adults.

#### **Refugees, non-refoulement**

(24) While welcoming the State party's adherence to the 1951 Convention relating to the Status of Refugees, the Committee expresses its concern at the lack of information on domestic legislation guaranteeing the rights of refugees and asylum-seeking persons, including unaccompanied children in need of international protection. It is also concerned at the absence of any legal provisions that would explicitly prohibit the expulsion, refoulement or extradition of 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. The Committee is further concerned that numerous individuals have not been afforded the full protection provided for by article 3 of the Convention in cases of expulsion, return or deportation. Such cases include the 674 Montagnard asylum-seekers who are no longer in the State party and the forcible repatriation of 20 Uighur asylum-seekers to China in December 2009, as well as the lack of information on any measures taken by the State party to follow up on their status (arts. 3, 12 and 13).

**The State party should formulate and adopt domestic legislation guaranteeing the rights of refugees and asylum-seeking persons, including unaccompanied children in need of international protection. The State party should also formulate and adopt legal provisions to implement article 3 of the Convention into its domestic law. Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or ill-treatment. The Committee requests the State party to ensure appropriate follow-up with regard to the status of the 674 Montagnard and 20 Uighur asylum-seekers and to provide the Committee with information as to these cases.**

#### **Training**

(25) The Committee takes note of the information included in the State party's report on training and awareness-raising programmes on human rights for law enforcement personnel, including the police and judicial police, judges and prosecutors. However, the Committee regrets the lack of information on targeted and practical training regarding the obligations under the Convention, notably on the prohibition of torture, the prevention of torture or investigation of alleged cases of torture, including on sexual violence, for these groups as well as penitentiary personnel. The Committee also regrets the lack of information on any training for police and other relevant officials in witness interviewing, witness protection, forensic methods and evidence gathering. Furthermore, the Committee is concerned at the lack of information on targeted training for all relevant personnel, such as forensic doctors and medical personnel dealing with detained persons, including methods to document physical and psychological sequelae of torture, as well as methods to ensure health-related and legal responses. The Committee is further concerned at the lack of information as to whether professional codes of ethics form part of such trainings, and if these include prohibition of torture etc (art. 10).

The State party should further develop and strengthen educational programmes, including in cooperation with NGOs, to ensure that all officials, including law enforcement and penitentiary personnel, are fully aware of the provisions of the Convention, that reported breaches, including cases of sexual violence, will not be tolerated and will be investigated, and that offenders will be prosecuted. Furthermore, police and other relevant officials should receive training in witness interviewing, witness protection, forensic methods and evidence gathering and all relevant personnel should receive specific training on how to identify signs of torture and ill-treatment, including those officials who will investigate and document these cases. Such training should include the use of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). In addition, the State party should ensure that related professional codes of ethics and the importance of respecting such codes be made an integral part of training activities. Furthermore, the State party should assess the effectiveness and impact of its training/educational programmes.

#### **Redress, including compensation and rehabilitation**

(26) While noting that article 39 of the Constitution entitles citizens to claim for damage caused by State organs, social organs, and the staff of these concerned organs, the Committee is concerned at the lack of information and data on fair and adequate compensation awarded to victims of torture. The Committee is also concerned at the lack of information on the provision of treatment and social rehabilitation services, including medical and psychosocial rehabilitation, to all victims of torture (art. 14).

**The Committee underlines that it is the responsibility of the State to provide for redress to victims of torture and their families. To this end, the State party should strengthen its efforts to provide these victims with redress, including fair and adequate compensation and as full rehabilitation as possible. The State party should further strengthen its efforts to improve the access to medical and psychological services for victims of torture, especially during and after imprisonment, and assure that they receive effective and prompt rehabilitation services; raise awareness on the consequences of torture and the need for rehabilitation for victims of torture among health and social welfare professionals in order to increase referrals of these victims from the primary health-care system to specialized services; and increase the capacity of national health agencies in providing specialized rehabilitation services, based on recommended international standards, to victims of torture, including their family members, specifically in the field of mental health.**

(27) The Committee notes with concern that the Internal Rules of the ECCC only provide for moral and collective reparation, precluding individual financial compensation. While noting the existence of the Victims Support Section, the Committee is concerned that rehabilitation and psychosocial support to those testifying in the ECCC is largely provided by NGOs, with limited support from the State, and it regrets the very limited information provided on treatment and social rehabilitation services, including medical and psychosocial rehabilitation, provided to victims of torture under the Khmer Rouge Regime (art. 14).

**The State party should strengthen its efforts to provide victims of torture under the Khmer Rouge Regime with redress, including fair and adequate compensation and as full rehabilitation as possible. To this end, the ECCC should amend its Internal Rules to permit reparation to victims consistent with article 14 of the Convention, including, as appropriate, individual financial compensation. Furthermore, the State party should provide information on redress and compensation measures ordered by the ECCC and provided to victims of torture, or their families. This information should**

include the number of requests made, the number granted, and the amounts ordered and actually provided in each case.

#### **Coerced confessions**

(28) The Committee expressed its concern at reports that the use of forced confessions as evidence in courts is widespread in the State party. The Committee is also concerned at the lack of information on any officials who may have been prosecuted and punished for extracting such confessions. (arts. 1, 2, 4, 10 and 15).

**The State party should take the necessary steps to ensure inadmissibility in court of confessions obtained as a result of torture in all cases in line with the provisions of article 15 of the Convention. The Committee requests the State party to firmly prohibit admissibility of evidence obtained as a result of torture in any proceedings, and provide information on whether any officials have been prosecuted and punished for extracting such confessions as well as examples of cases that were set aside because of a confession having been coerced. Furthermore, the State party should ensure the provision of training to law enforcement officials, judges and lawyers with regard to identification and investigation of forced confessions.**

#### **National human rights institution**

(29) The Committee notes with concern the absence in the State party of an independent national human rights institution in conformity with the Paris Principles (General Assembly resolution 48/134 of 20 December 1993) (art. 2).

**The State party should expedite its efforts to establish an independent national human rights institution that conforms to the Paris Principles. The Committee requests the State party to ensure that the envisioned national human rights institution be mandated to protect and promote the human rights provisions of the Convention, and that adequate financial resources be provided for its independent operation. In this regard, the State party may wish to seek technical assistance from the OHCHR Cambodia Country Office.**

#### **National preventive mechanism**

(30) The Committee takes note of the creation by Sub-decree, in August 2009, of an inter-governmental committee as a temporary body towards the establishment of a national preventive mechanism (NPM). However, the Committee notes with concern that the inter-governmental committee, consisting of senior officials and chaired by the Deputy Prime Minister and Minister of Interior, does not comply with the requirements of the Optional Protocol, in particular with regard to its independence and the lack of participation from civil society. The Committee is also concerned at the information provided by the delegation that the current NPM mandate does not provide for unannounced visits (art. 2).

**The State party should take all necessary measures to ensure that its NPM will be established in accordance with the Optional Protocol to the Convention. To this end, the State party should ensure that the NPM will be created by constitutional amendment or organic law and that it will be institutionally and financially independent and professional. The State party should also ensure that the law establishing the NPM will specify that the NPM will have the ability to make unannounced visits to all places where persons are or may be deprived of their liberty and conduct private interviews with such persons, and that this law will provide for a transparent selection procedure aimed at appointing independent members to the body.**

**The Committee encourages the State party to consider the publication of the report of the Subcommittee on Prevention of Torture, following its visit in December 2009.**

### Cooperation with civil society

(31) While noting the State party's emphasis on working in partnership with NGOs, the Committee is concerned at the lack of information provided as to whether the draft law regulating NGOs might in any way hinder the operation and activities of civil society monitoring groups and thus their capacity to function effectively, including NGOs working to prevent and combat torture and ill-treatment (arts. 2, 11, 12 and 13).

**The State party should ensure that civil society organizations, including NGOs, are not restricted with respect to their establishment and operations and that they are able to function independently of the Government. In particular, the Committee urges the State party to provide an enabling environment for the establishment and active involvement of NGOs in promoting the implementation of the Convention.**

### Data collection

(32) Despite the Committee's requests for specific statistical information in the list of issues prior to reporting and the oral dialogue with the State party, the Committee regrets that such information was not provided. The absence of comprehensive or disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel, trafficking, and domestic and sexual violence severely hampers the identification of many abuses requiring attention (arts. 2, 12, 13 and 19).

**The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, disaggregated by gender, age and nationality, as well as information on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking, and domestic and sexual violence, and outcomes of all such complaints and cases. The State party should, without delay, provide the Committee with the above-mentioned detailed information, including on the number of complaints of torture, assault and other ill-treatment that have been submitted since 2003, the date of the consideration of the previous State party's report, as well as the number of investigations, prosecutions and convictions arising from such complaints.**

(33) The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention.

(34) The Committee invites the State party to consider ratifying the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance.

(35) The State party is encouraged to disseminate widely the reports submitted by Cambodia to the Committee and these concluding observations, in appropriate languages, through official websites, the media and NGOs.

(36) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 12, 14, 16, 26 and 27.

(37) The Committee invites the State party to present its next periodic report in accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to submit an updated common core document in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee Meeting of the

human rights treaty bodies, and to observe the page limit of 80 pages for the common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

(38) The State party is invited to submit its third periodic report by 19 November 2014.

**50. Ecuador**

(1) The Committee against Torture considered the combined fourth to sixth reports of Ecuador (CAT/C/ECU/4-6) at its 965th and 966th meetings (CAT/C/SR.965 and 966), held on 8 and 9 November 2010. At its 978th and 979th meetings (CAT/C/SR.978 and 979), held on 18 November 2010, the Committee adopted the following concluding observations.

**A. Introduction**

(2) The Committee welcomes the submission by Ecuador of the combined fourth to sixth periodic reports in reply to the list of issues prior to the submission of reports (CAT/C/ECU/Q/4).

(3) The Committee appreciates the fact that the State party has accepted this new procedure for the presentation of periodic reports, which facilitates cooperation between the State party and the Committee. It also thanks the State party for including information on the various measures adopted in response to the concerns expressed in the previous concluding observations of the Committee (CAT/C/ECU/CO/3), as well as its replies to the letter of 11 May 2009 sent by the Rapporteur on follow-up to concluding observations.

(4) The Committee also appreciates the frank and open discussions it has enjoyed with the State party's delegation and the additional information the latter provided during consideration of the report.

**B. Positive aspects**

(5) The Committee notes with satisfaction that since the consideration of its third periodic report the State party has ratified the following international instruments:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (20 July 2010);

(b) International Convention for the Protection of All Persons from Enforced Disappearance (20 October 2009);

(c) Convention on the Rights of Persons with Disabilities and its Optional Protocol (3 April 2008).

(6) The Committee takes note of the efforts made by the State party to review its legislation in order to meet the recommendations of the Committee and improve its implementation of the conventions, including:

(a) The entry into force, on 20 October 2008, of the new Constitution of the Republic of Ecuador, which establishes the general framework for the protection of human rights, mainly in its Title II (Rights), the observance of which is strengthened by article 11.3 on the direct and immediate applicability of the rights and guarantees established in the Constitution and in international human rights instruments. The Committee welcomes in particular the provisions on:

(i) The prohibition of torture, enforced disappearance and cruel, inhuman and degrading treatment or punishment (art. 66.3 (c));

(ii) The inadmissibility of evidence obtained in violation of fundamental rights (art. 76.4);



(iii) The incorporation of new legal procedures for the protection of human rights, such as protective action (art. 88), habeas corpus (art. 89) and special protection measures (art. 94);

(iv) The trial of members of the armed forces and the national police by the judiciary (art. 160);

(v) The establishment of the Office of the Ombudsman as an independent judicial organ responsible for providing free legal aid to persons who cannot afford the services of a counsel (art. 191).

(b) Ruling No. 0002-2005-TC of the Constitutional Tribunal (now the Constitutional Court), published in Official Gazette No. 382-S of 23 October 2006, declaring the *detención en firme* procedure unconstitutional;

(c) Ruling No. 0042-2007-TC of the Constitutional Tribunal, published in Official Gazette No. 371 of 1 July 2008, declaring articles 145 and 147 of the National Security Act, which allow the trial of civilians by military courts for acts committed during states of emergency, unconstitutional; and the interpretative statement No. 001-08-SI-CC of the new Constitutional Court, published in Official Gazette No. 479 of 2 December 2008, confirming that the former military and police courts ceased to exist when the 2008 Constitution took effect.

(7) The Committee welcomes the efforts made by the State party to alter its policies and procedures in order to ensure greater protection for human rights and apply the Convention, in particular:

(a) The adoption, on 8 May 2008, of Ecuador's Refugee Policy, in which it undertakes to meet the commitments assumed under the 1951 Convention relating to the Status of Refugees, its 1967 Protocol, the 1984 Cartagena Declaration and the 2004 Mexico Declaration and Plan of Action;

(b) The adoption in 2006 of the national plan to combat human trafficking, illegal trafficking of migrants, exploitation for sexual work or other purposes and prostitution of women, children and adolescents, child pornography and the corruption of minors;

(c) The approval of the Criminal Code Reform Act (Act No. 2005-2, Official Gazette No. 45 of 23 June 2005), which defines and punishes the offence of sexual exploitation of minors;

(d) The publication, on 7 June 2010, of the final report of the Truth Commission, giving the results of its investigations into the human rights violations that have occurred in Ecuador, mainly during the period between 1984 and 1988.

(8) The Committee is pleased to note that the State party has admitted tens of thousands of refugees and asylum-seekers, mostly Colombians fleeing from the armed conflict in their country. The State party estimates that there are some 135,000 persons in need of international protection who are present in the country, and had granted refugee status to over 45,000 by 26 November 2009.

(9) The Committee is grateful that the State party maintains an open invitation to all special procedure mandate holders of the Human Rights Council. Since consideration of the State party's previous report, Ecuador has received the visits of seven special rapporteurs and working groups of the Council.

### C. Principal subjects of concern and recommendations

#### Definition and offence of torture

(10) While noting that the 2008 Constitution, in article 66, paragraph 3 (c), prohibits torture and cruel, inhuman and degrading treatment or punishment, the Committee regrets that the offence of torture as defined in article 1 of the Convention (arts. 1 and 4) has not yet been entered in the State party's Criminal Code.

**The Committee reiterates its earlier recommendation (CAT/C/ECU/CO/3, para. 14) that the State party should ensure that torture is considered an offence in its domestic law and should adopt a definition of torture that includes all the elements contained in article 1 of the Convention. The State party should also ensure that such offences are made punishable by appropriate penalties which take into account their grave nature, in accordance with article 4, paragraph 2, of the Convention.**

#### Guarantees of due process

(11) The Committee welcomes the measures adopted by the State party to ensure compliance with due process in accordance with article 77 of the Constitution. The rules adopted include the right for all detainees to obtain immediate access to a counsel and to undergo a medical examination, to contact a family member or any person of their choice, to be informed of their rights at the time of their arrest, and to appear before a judge within the time prescribed by law. In this respect, the Committee is concerned at the State party's statement in its report (para. 85) that "before being taken to a prison facility or police cell, arrested persons are seen by the duty doctor or whoever is standing in for the duty doctor at a health clinic operated by the National Police or Office of the Public Prosecutor". The Committee notes the reference by the State party's delegation to the shortage of independent forensic experts (arts. 2 and 11).

**The State party should guarantee the right of persons held in police custody to have access to an independent medical examination.**

#### Protection of forensic physicians and other human rights defenders

(12) The Committee is appalled at and most vehemently condemns the murder on 6 July 2010 of Dr. Germán Antonio Ramírez Herrera, forensic expert specializing in the investigation of cases of torture and summary executions. According to reports, Dr. Ramírez Herrera received threats after documenting cases of torture and ill-treatment in the Quevedo Social Rehabilitation Centre. The Committee would also request that the State party afford adequate protection to the members of the national network of forensic experts and for all human rights defenders engaged in combating torture and impunity in Ecuador (arts. 2, 12, 13 and 16).

#### The State party should:

(a) **Inform the Committee of the results of the investigations conducted into the murder of Dr. Ramírez Herrera as soon as the proceedings of the case have been made public;**

(b) **Initiate a programme for the protection of professionals who through their investigations are able to throw light on the facts of alleged cases of torture and ill-treatment.**

#### Non-refoulement and access to a fair and expeditious asylum procedure

(13) The Committee welcomes the efforts made by the State party to respond adequately to the considerable number of persons in need of international protection present within the country (see para. 8 above). It appreciates in particular the launch of initiatives such as the Extended Register, which gave rapid access to procedures undertaken for the determination

of refugee status for tens of thousands of Colombians in the most remote border areas. The Committee notes with concern, however, the content of Executive Decree No. 1471 of 3 December 2008, establishing as a requirement for the entry of Colombian citizens to Ecuadorian territory the presentation of a certificate of good conduct or “criminal record”, issued by the Department of National Security (DAS), the intelligence agency which comes under the authority of the executive branch of the Colombian Government. The discriminatory nature of this requirement has been pointed out by the Office of the Ombudsman, as well as by several international organizations, and was partially amended by Executive Decree No. 1522 of 7 January 2009, which excluded from the requirement minors, refugees legally recognized by Ecuador, air crews, governmental or local authorities, diplomats and members of international organizations. The Committee considers that obliging asylum-seekers to meet this requirement would force many persons in need of international protection to place their security at risk (art. 3).

**Considering the considerable increase in the number of asylum-seekers in Ecuador in recent years, the Committee recommends that the State party:**

**(a) Pursue its efforts in conjunction with the Office of the United Nations High Commissioner for Refugees (UNHCR) to identify and protect refugees and asylum-seekers;**

**(b) Examine the conformity of the current legislation on asylum and immigration with the norms and principles of international human rights law, in particular the principle of non-discrimination. The State party should consider withdrawing the requirement for the submission of “criminal records” with asylum applications, which in the opinion of the Committee violates the principles of non-refoulement and confidentiality with respect to the rights of refugees.**

#### **Abuse and refoulement of asylum-seekers and refugees**

(14) The Committee notes with great concern the deterioration in the situation on the northern border with Colombia stemming from the domestic conflict in that neighbouring country and the presence of groups involved in organized crime, as a result of which the State party has stepped up its military presence in the area. While it appreciates the serious difficulties the State party has to deal with in order to preserve public order in provinces on the border, the Committee is deeply concerned about the reports received of continual abuses and acts of violence against the civilian population, and in particular asylum-seekers and refugees of Colombian nationality, committed by illegal armed groups and members of the Ecuadorian and Colombian security forces (arts. 1–3, 10 and 16).

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

**(a) Adopt the necessary measures to guarantee the physical integrity of the civilian population in the provinces on the border with Colombia, including the refugees and asylum-seekers under its jurisdiction;**

**(b) Ensure that investigations are carried out into the murders and abuses committed in this region and that the perpetrators of such acts are brought before the courts;**

**(c) Continue mandatory in-service training programmes on human rights, asylum and migration for members of the State party’s armed and security forces, and give priority to those police and military personnel serving or due to serve in border areas;**

**(d) Conduct a periodic review of the contents of the Guide to Human Rights and Human Mobility for members of the State party’s armed and security forces.**

(15) The Committee notes with deep concern the wealth of documentation received about acts of abuse and sexual assaults on female refugees and asylum-seekers, allegedly committed by members of the State security forces and the Ecuadorian armed forces. The Committee has received information on women and girls, most of whom are of Colombian nationality, who are sexually assaulted or compelled to have sexual relations under threat of expulsion. The Committee draws the attention of the State party to recent cases in which Colombian asylum-seekers were returned in June 2010 and the summary expulsion of another in October 2010 before a decision had been handed down on his appeal (arts. 1–4 and 16).

**The State party should:**

**(a) Ensure that thorough investigations are carried out into abuses committed against refugees and asylum-seekers, and in particular women and girls;**

**(b) Ensure that such acts do not go unpunished and that the appropriate criminal, civil and administrative liabilities are determined;**

**(c) Take the measures necessary to ensure that persons under its jurisdiction are fairly treated at all stages of the asylum procedure, and in particular that they receive an effective, impartial and independent review of the decision to expel, return or deport them;**

**(d) Ensure compliance with and proper application by the police commissioner (the provincial police authority) and provincial migration police chiefs of the protocol applicable to deportation procedures and, failing this, hand down the appropriate penalties;**

**(e) Take the legislative or other measures necessary to facilitate the integration of refugees and asylum-seekers;**

**(f) Strengthen campaigns to raise awareness of the conflict in Colombia and the situation of persons who come to Ecuador in search of refuge, as well as awareness-raising measures that could help eliminate discriminatory or xenophobic attitudes.**

**Impunity for acts of torture and ill-treatment**

(16) The Committee notes with concern that, according to the information provided by the State party in its periodic report (para. 181), the Internal Affairs Unit of the National Police has apparently submitted to the ordinary and police courts only 59 of the 299 complaints of alleged ill-treatment, torture or physical assault brought to its attention between May 2005 and December 2008. In addition, the State party's periodic report indicates (paras. 164–166) that between 2003 and 2008 “only two trials for offences against individual freedom and torture have resulted in convictions”. The Committee is also concerned that, according to the information provided by the State party's delegation, during the current year only five specific complaints have been lodged concerning ill-treatment in the State party's prison system, all of them relating to centres for youth offenders. The Committee considers that these data contrast with the persistent reports and wealth of documentation received from other sources concerning cases of torture and ill-treatment of persons deprived of their liberty. At the same time, the Committee notes with interest Ministerial Decision No. 1435, issued by the Ministry of the Interior on 9 June 2010, instructing the Internal Affairs Unit that “even if the procedural deadline for investigation has expired, all cases involving human rights violations which are found to have been closed or filed without a proper investigation and/or those in which new elements come to light which potentially reveal civil, criminal or administrative liability on the part of members of the police forces shall be reopened and submitted to the appropriate authorities” (arts. 2, 12, 13 and 16).

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

(a) **Take appropriate measures to ensure that a prompt and impartial investigation is made into all complaints of torture or ill-treatment. In particular, such investigations should be the responsibility of an independent body, not under the authority of the police;**

(b) **Review the effectiveness of the internal complaints system available to detainees and consider establishing an independent complaints system for all persons deprived of their liberty;**

(c) **Duly bring to trial the alleged perpetrators of acts of torture or ill-treatment and, if they are found guilty, sentence them to penalties that are consistent with the seriousness of their acts;**

(d) **Provide the victims with proper compensation and focus its efforts on their fullest possible rehabilitation.**

**The Truth Commission**

(17) The Committee takes note with satisfaction of the final report of the Truth Commission (see para. 7 (d) above), and in particular of the conclusions and recommendations reached after investigations into 118 cases of human rights violations committed in Ecuador between 1984 and 2008, several of which were collective in nature, and which concerned a total of 456 recognized victims. The final report confirms that 269 persons were unlawfully deprived of their liberty; 365 were tortured; 86 were sexually assaulted; 17 were victims of enforced disappearance; 68 were summarily executed; and 26 others were victims of “attempts on their life”. On 8 June 2010, the Truth Commission presented, with the support of the Ombudsman and in compliance with article 6 of Executive Decree No. 305 of 3 May 2007, a proposal concerning mechanisms to follow up on its recommendations, set forth in the “bill to provide reparation for victims and ensure the prosecution of serious human rights violations and crimes against humanity committed in Ecuador between 4 October 1983 and 31 December 2008”. The Committee also takes note of the establishment, by the Office of the Public Prosecutor, of a special unit to exercise jurisdiction over the 118 cases investigated by the Truth Commission as a prior step to their trial (arts. 2, 4, 12, 14 and 16).

**The Committee requests the State party to submit full information on:**

(a) **The response to the 115 recommendations made in the final report of the Truth Commission concerning satisfaction, restitution, rehabilitation, compensation and assurances of non-repetition;**

(b) **The outcome of the examination by the National Assembly’s Commission on Justice and Structure of the State and the subsequent proceedings for the adoption of the bill for reparation of victims proposed by the Truth Commission;**

(c) **The outcome of any investigations and criminal trials, including the sentences handed down, that may result from the information submitted by the Truth Commission to the Office of the Public Prosecutor.**

**Violence against children, abuse and sexual violence against minors**

(18) The Committee expresses its deepest concern about the numerous and consistent reports received describing the scale of the problem of abuse and sexual violence against minors in educational establishments in Ecuador. While it takes note of the existence of a plan to eradicate sexual offences in educational establishments, the Committee considers that there has not yet been an adequate institutional response by the State party, and that this is one reason why victims frequently prefer not to report instances of abuse. The

Committee is particularly concerned about the information on cases in which the victims have allegedly identified their aggressor among the teaching staff. In this regard, the Committee is closely following the proceedings of the *Paola Guzmán v. Ecuador* case, which was accepted for consideration by the Inter-American Commission on Human Rights on 17 October 2008 (Report No. 76/18) after an examination of the complaint lodged by the plaintiffs concerning alleged violations of articles 4, 5, 8, 19, 24 and 25 of the American Convention on Human Rights. The Committee is also concerned that corporal punishment is legal within the home (arts. 1, 2, 4 and 16).

**The Committee urges the State party, in view of the seriousness of the acts concerned, to:**

- (a) Step up its efforts to eradicate abuse and sexual violence against minors in schools;**
- (b) Take all measures necessary to investigate, bring to trial and punish the perpetrators of such acts;**
- (c) Make available resources to eliminate the persistent pattern of abuse and sexual violence against minors in educational establishments;**
- (d) Make complaints mechanisms available to victims and their families in educational establishments and other institutions;**
- (e) Strengthen awareness-raising and in-service training programmes on the subject for teaching staff;**
- (f) Guarantee that victims have full access to health services specialized in family planning and the prevention and diagnosis of sexually transmitted diseases. In addition, the State party should redouble its efforts to provide victims with redress, including fair and adequate compensation, and the fullest possible rehabilitation;**
- (g) Establish a consultative mechanism that involves civil society, including parents' associations;**
- (h) Expressly prohibit corporal punishment of children in the home.**

#### **Lynchings and the actions of the peasant defence networks**

(19) While noting that the delegation of the State party has made it plain that the Ecuadorian State does not promote, support or back the activities of the "peasant defence networks", the Committee is concerned at reports that such networks are active in the maintenance of security in rural areas and that some of their members have perpetrated abuses. It condemns the recent lynchings in the provinces of Pichincha, Los Ríos, Guayas, Azuay, Cotopaxi and Chimborazo (arts. 2 and 16).

**The State party should:**

- (a) Take all necessary steps to improve civilian security in rural areas, ensuring that State security forces and bodies have a presence throughout the country;**
- (b) Ensure that incidents are investigated and that those responsible are brought to justice.**

#### **Indigenous justice**

(20) The Committee takes note of the information from the State party on the preparation of a draft bill on cooperation and coordination between the indigenous and ordinary justice systems, setting out, in articles 4 and 19, the principle of reviews for constitutionality. It is nevertheless concerned that neither the periodic report nor the answers given by the

delegation of the State party give sufficient information on how conflicts of jurisdiction between the two systems will be resolved (arts. 2 and 16).

**The State party must take the steps necessary to ensure that conflicts of jurisdiction between the ordinary and indigenous justice systems are resolved through a procedure laid down by law that guarantees respect for fundamental rights and liberties, including the prohibition of torture and cruel, inhuman or degrading treatment or punishment.**

#### **Training**

(21) The Committee takes note of the information in the report of the State party (paras. 82 to 88) on training schemes for members of the national police but regrets that so little information is available on the evaluation of those schemes and their effectiveness in reducing the incidence of torture and ill-treatment. The State party indicates in its report (para. 206) that the Permanent Commission for the Evaluation, Follow-up and Adjustment of Human Rights Operating Plans, in cooperation with international non-governmental organizations, carried out a project between February 2007 and 2008 on the implementation of the Istanbul Protocol. According to information received by the Committee, this is a project of the International Rehabilitation Council for Torture Victims (IRCT) designed and run by the Foundation for the Integral Rehabilitation of Victims of Violence (PRIVA), with European Union funds, which the Permanent Commission has backed (para. 10).

#### **The State party should:**

**(a) Continue to provide training programmes so as to ensure that all public servants, in particular members of the police forces and other security workers, are fully aware of the provisions of the Convention, that [breaches] are not tolerated but investigated, and that the perpetrators are brought to trial;**

**(b) Assess the effectiveness and impact of training schemes and education on the incidence of torture and ill-treatment;**

**(c) Continue to support training on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).**

#### **Conditions in detention**

(22) The Committee takes note of the information provided by the State party on the marked reduction in the numbers of people behind bars and on steps taken to deal with the problem of prison overcrowding, notably the introduction of a new inmate benefit calculation system with the reform of the Sentencing Implementation Code. It notes the reprieves granted in 2008 to 2,228 persons detained for being in possession of small quantities of narcotic or psychotropic drugs, and of 13 detainees in the terminal phases of illness. It also notes that since 2006 additional budgetary allocations have been made for the construction, expansion and outfitting of penitentiaries and remand facilities. The Committee is nevertheless concerned at the high levels of occupancy recorded at most detention facilities, mainly as a result of the slow processing of court cases, and reiterates its concern at persistent reports of poor health and hygiene conditions, a lack of staff, inadequate health-care services and a shortage of drinking water and food (art. 11).

#### **The State party should:**

**(a) Make greater efforts to alleviate overcrowding in prisons, in particular by resorting to alternatives to custodial sentences, in order to reach its stated objective of resolving the problem of prison overcrowding within 18 months;**

(b) Continue to put into effect plans to improve and expand the prison infrastructure;

(c) Take steps to improve staffing levels generally and increase the number of prison officials in particular;

(d) Augment the health-care resources available in penitentiary institutions and ensure that the medical assistance given to detainees is of high quality.

#### **Free legal assistance**

(23) The Committee notes the positive impact of efforts by the Public Defence Service to reduce the numbers of people held in pretrial detention – 501 on 31 August 2010. As stipulated in article 191 of the Constitution, the Public Defence Service “shall have human and material resources and working conditions equivalent to those of the Office of the Public Prosecutor” (arts. 2 and 11).

**The State party should assign to the Public Defence Service the human, financial and material resources it needs to accomplish its objectives in order to extend the scope of its efforts and make the system more efficient.**

#### **Redress, including compensation and rehabilitation**

(24) The Committee takes note of Decree No. 1317 of 9 September 2008 making the Ministry of Justice and Human Rights responsible for “coordinating the execution of sentences, precautionary measures, provisional measures, amicable settlements, recommendations and resolutions originating in the inter-American human rights system and in the universal system of human rights”. It regrets, however, the slowness of the State party in giving full effect to the amicable settlements and decisions reached in the inter-American human rights system and the shortage of information about the redress and compensation, including rehabilitation, awarded to victims of human rights violations.

**The State party should ensure that the appropriate steps are taken to provide the victims of torture and ill-treatment with redress, including fair and adequate compensation, and the fullest possible rehabilitation.**

**In its next periodic report, the State party is asked to provide the Committee with statistics and full details of cases in which victims have obtained full redress, including investigation and punishment of the perpetrators, compensation and rehabilitation.**

#### **Optional Protocol and national preventive mechanism**

(25) The Committee takes note of the legal and constitutional proceedings which will give rise to the establishment or designation of a national mechanism to prevent torture and other cruel, inhuman or degrading treatment or punishment in conformity with the Optional Protocol to the Convention.

**The State party should accelerate the designation of the national preventive mechanism and ensure it has the resources it needs to pursue its mandate independently and effectively throughout the country.**

(26) The Committee also recommends that the State party include in its next periodic report information on compliance with obligations incumbent under the Convention on Ecuadorian armed forces deployed abroad.

(27) The State party is urged to disseminate widely the report it has submitted to the Committee, and the Committee’s concluding observations, through official websites, the media and non-governmental organizations.



(28) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 12, 14, 15, 18 and 22 of the present document.

(29) The Committee invites the State party to present its next periodic report in accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to submit a core document in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee Meeting of human rights treaty bodies, and to observe the page limit of 80 pages for such core documents. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

(30) The State party is invited to submit its seventh periodic report by 19 November 2014 at the latest.

## 51. Ethiopia

(1) The Committee against Torture considered the initial report of Ethiopia (CAT/C/ETH/1) at its 957th and 958th meetings (CAT/C/SR.957 and 958), held on 2 and 3 November 2010, and adopted, at its 974th and 975th meetings (CAT/C/SR.974 and 975), the following concluding observations.

### A. Introduction

(2) The Committee welcomes the submission of the initial report of Ethiopia which generally follows the Committee's guidelines for reporting. However, the Committee regrets that the report lacks statistical and practical information on the implementation of the provisions of the Convention and that it was submitted 14 years late, which prevented the Committee from conducting an analysis of the implementation of the Convention in the State party following its ratification in 1994.

(3) The Committee notes with appreciation that a high-level delegation from the State party met with the Committee during its forty-fifth session, and also notes with appreciation the opportunity to engage in a constructive dialogue covering many areas under the Convention.

### B. Positive aspects

(4) The Committee welcomes the efforts and progress made by the State party since the downfall of the military regime in 1991, including a process of legislative reform designed to combat torture and other cruel, inhuman or degrading treatment or punishment.

(5) The Committee welcomes the fact that, in the period since the entry into force of the Convention for the State party in 1994, the State party has ratified or acceded to the following international and regional instruments:

- (a) The Convention on the Rights of Persons with Disabilities, in 2010;
- (b) The African Charter on Human and Peoples' Rights, in 1998.

(6) The Committee notes the efforts undertaken by the State party to reform its legislation to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

- (a) The adoption in 1994 of a Federal Constitution which prohibits all forms of torture and other cruel, inhuman or degrading treatment or punishment, provides for

humane treatment of persons deprived of their liberty, and bars the application of the statute of limitation to crimes such as torture; and

(b) The adoption in 2004 of the revised Criminal Code which criminalizes all acts of torture and cruel, inhuman or degrading treatment or punishment, sexual violence and harmful traditional practices.

(7) The Committee notes the adoption by the State party of specific directives and regulations guiding the conduct of law enforcement officers, the breach of which entails disciplinary sanctions, dismissal or criminal prosecution:

(a) The Federal Prosecutor Administration Council of Ministers Regulations No. 44/1998;

(b) The Federal Police Commission Administration Regulations No. 86/2003;

(c) The Federal Wardens Administration Council of Ministers Regulations No. 137/2007;

(d) The Treatment of Federal Prisoners Council of Ministers Regulations No. 138/2007; and

(e) The Defence Forces Administration Directive/Regulation.

(8) The Committee notes with appreciation that the State party was able to submit its overdue reports to United Nations human rights treaty bodies under a joint treaty reporting project of the Ministry of Foreign Affairs, the Ethiopian Human Rights Commission and the Office of the United Nations High Commissioner for Human Rights.

### C. Principal subjects of concern and recommendations

#### Definition of torture

(9) The Committee notes that the Federal Constitution of Ethiopia prohibits torture and that article 424 of the revised Criminal Code contains a definition of the “use of improper methods”. However, the Committee is concerned that this definition is more limited in scope than the definition of torture in article 1 of the Convention, as it covers only some of the purposes envisaged in article 1 and applies only to acts committed in the performance of duties by public servants charged with the arrest, custody, supervision, escort or interrogation of a person under suspicion, arrest, detention or summoned to appear before a court or serving a sentence. The Committee notes that acts of torture falling outside the definition in article 424 of the revised Criminal Code are punishable only under the offence of “abuse of power”, although the Convention forms part of the domestic law in Ethiopia (arts. 1 and 4).

**The State party should include torture as an offence in its Criminal Code, which must be punishable by appropriate penalties taking into account its grave nature, and incorporate a definition of torture that covers all of the elements contained in article 1 of the Convention. By naming and defining the crime of torture in accordance with the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention’s overarching aim of preventing torture by, inter alia, alerting everyone, including perpetrators, victims and the public to the special gravity of the crime of torture, and by improving the deterrent effect of the prohibition itself.**

#### Widespread use of torture

(10) The Committee is deeply concerned about numerous, ongoing and consistent allegations concerning the routine use of torture by the police, prison officers and other members of the security forces, as well as the military, in particular against political

dissidents and opposition party members, students, alleged terrorist suspects and alleged supporters of insurgent groups such as the Ogaden National Liberation Front (ONLF) and the Oromo Liberation Front (OLF). It is concerned about credible reports that such acts frequently occur with the participation, at the instigation or with the consent of commanding officers in police stations, detention centres, federal prisons, military bases and in unofficial or secret places of detention. The Committee also takes note of consistent reports that torture is commonly used during interrogation to extract confessions when the suspect is deprived of fundamental legal safeguards, in particular access to legal counsel (art. 1, 2, 4, 11 and 15).

**The Committee urges the State party to take immediate and effective measures to investigate, prosecute and punish all acts of torture and to ensure that torture is not used by law enforcement personnel, including by unambiguously reaffirming the absolute prohibition of torture and publicly condemning practices of torture, especially by the police, prison officers and members of the Ethiopian National Defense Force (ENDF), accompanied by a clear warning that anyone committing such acts or otherwise complicit or participating in torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties.**

#### **Impunity for acts of torture and ill-treatment**

(11) The Committee is deeply concerned at numerous consistent reports about the State party's persistent failure to investigate allegations of torture and prosecute perpetrators, including members of ENDF and military or police commanders. In this regard, it notes the absence of information on cases where soldiers and police or prison officers were prosecuted, sentenced or subjected to disciplinary sanctions for having committed acts of torture or ill-treatment. The Committee is also concerned about the reported exercise of police functions by ENDF in the Somali Regional State and by private militia groups (arts. 2, 4, 12, 13 and 16).

**The State party should ensure that all allegations of torture and ill-treatment are promptly and impartially investigated, and that the perpetrators are prosecuted and convicted in accordance with the gravity of the acts, as required by article 4 of the Convention, without prejudice to appropriate disciplinary actions and sanctions.**

**The State party should ensure that law enforcement functions are exercised by the police rather than ENDF, including in areas of armed conflict where no state of emergency has been declared. The State party should prevent the circumvention by private militia groups of legal safeguards and remedies against torture and cruel, inhuman or degrading treatment or punishment.**

#### **Fundamental legal safeguards**

(12) The Committee is seriously concerned about information on the State party's failure in practice to afford all detainees with all fundamental legal safeguards from the very outset of their detention. Such safeguards comprise the right of detainees: to be informed of the reasons for their arrest, including of any charges against them; to have prompt access to a lawyer and, when needed, legal aid and an independent medical examination, if possible by a doctor of their choice; to notify a relative; to be brought promptly before a judge; and to have the lawfulness of their detention reviewed by a court, in accordance with international standards. In this respect, the Committee is concerned that, under article 19 (3) of the State party's Constitution, the maximum period of 48 hours within which anyone arrested or detained on a criminal charge must be brought before a judge "shall not include a reasonable time taken in the journey to a court of law" and that, under article 59 (3) of the Criminal Procedure Code, remand in custody may be repeatedly prolonged for periods of 14 days each time. The Committee also notes with concern reports about the inadequacy of

legal aid services provided by the Public Defenders Office and about frequent non-compliance by police officers with court orders to release suspects on bail (arts. 2, 12, 13, 15 and 16).

**The State party should take prompt and effective measures to ensure that all detainees are, in practice, afforded all fundamental legal safeguards from the very outset of their detention. These include, in particular, the rights of detainees: to be informed of the reasons for their arrest, including of any charges against them; to have prompt access to a lawyer and, when needed, legal aid and an independent medical examination, if possible by a doctor of their choice; to notify a relative; to be brought promptly before a judge; and to have the lawfulness of their detention reviewed by a court, in accordance with international standards. The State party should also consider amending article 19 (3) of its Constitution and article 59 (3) of its Criminal Procedure Code, with a view to ensuring that anyone arrested or detained on a criminal charge is brought promptly before a judge and preventing prolonged remand in custody, respectively.**

**The Committee recommends that the State party provide mandatory training to police officers on the rights of detainees, ensure that court orders to release suspects on bail are strictly enforced, and strengthen the capacity of the Public Defenders Office to provide legal aid services, as well as the quality of such services.**

#### **Monitoring and inspection of places of deprivation of liberty**

(13) The Committee notes the information provided by the State party that regular inspections and evaluations of detention and prison facilities and other places of deprivation of liberty are conducted by the prison management and Parliamentarians, as well as by the Ethiopian Human Rights Commission and non-governmental organizations (NGOs) such as “Justice For All – Prison Fellowship Ethiopia”. However, the Committee is concerned about the lack of implementation of the recommendations contained in the 2008 Correctional Facilities Monitoring Visit Report of the Ethiopian Human Rights Commission, and notes the lack of information about any unannounced visits to places of deprivation of liberty by independent mechanisms. The Committee is seriously concerned that, contrary to the information provided in the State party’s report (paras. 21 and 56), the International Committee of the Red Cross has no access to ordinary detention centres and prisons and was expelled from the Somali Regional State in 2007 (arts. 2, 11 and 16).

**The Committee calls upon the State party to establish an effective independent national system to monitor and inspect all places of deprivation of liberty and to follow up on the outcome of such systematic monitoring. It should strengthen the mandate and encourage the Ethiopian Human Rights Commission (EHRC) to undertake unannounced visits to prisons, police stations and other places of detention, and implement the recommendations contained in the Commission’s 2008 Correctional Facilities Monitoring Visit Report. The State party should also strengthen its cooperation with and support to NGOs to enable them to independently monitor the conditions in places of deprivation of liberty. In addition, the State party should grant the International Committee of the Red Cross and other independent international mechanisms access to prisons, detention centres and any other places where persons are deprived of their liberty, including in the Somali Regional State.**

**The State party is requested to include in its next periodic report detailed information on the place, time and periodicity of visits, including unannounced visits, to places of deprivation of liberty and on the findings and the follow-up on the outcome of such visits.**

### **Anti-terrorism measures**

(14) The Committee is concerned about provisions of the Anti-terrorism Proclamation No. 652/2009 which unduly restrict legal safeguards against torture and ill-treatment for persons suspected or charged with a terrorist or related crime, in particular:

(a) The broad definitions of incitement to terrorism and of terrorist acts and related crimes (arts. 2 to 7 of the Proclamation);

(b) The broad powers of the police to arrest suspects without a court warrant (art. 19);

(c) The admissibility in court in terrorism cases of hearsay and indirect evidence and confessions of suspects of terrorism in writing or in recorded form (art. 23), the permitted use of anonymous witnesses (art. 32), and other procedural provisions undermining the rights of defence; and

(d) The determination of the status of a prisoner, captured by the Defence Forces during war, as a prisoner of war or other by the Primary Military Court rather than an ordinary court (art. 31) (arts. 2 and 16).

**The State party should ensure respect for fundamental legal safeguards and take all necessary measures to ensure that the provisions of the Anti-terrorism Proclamation No. 652/2009 are compatible with the provisions of the Convention, in particular that no exceptional circumstances whatsoever can be invoked as a justification for torture.**

### **Extrajudicial killings, enforced disappearances and arbitrary arrests and detention**

(15) The Committee is gravely concerned about numerous allegations of extrajudicial killings by security forces and ENDF, particularly in the Somali, Oromiya and Gambella Regional States, of civilians alleged to be members of armed insurgent groups. It is also gravely concerned at reports about high numbers of disappearances, as well as about the widespread practice of arrests without a warrant and arbitrary and prolonged detention without charges and judicial process of suspected members or supporters of insurgent groups and political opposition members. The Committee stresses that arrests without a warrant and the lack of judicial oversight on the legality of detention can facilitate torture and ill-treatment (arts. 2 and 11).

**The State party should take effective steps to investigate promptly and impartially all allegations of involvement of members of security forces and ENDF in extrajudicial killings and other serious human rights violations in different parts of the country, in particular in the Somali, Oromiya and Gambella Regional States.**

**The State party should take all necessary measures to counter enforced disappearances and the practice of mass arrest without a warrant and arbitrary detention without charges and judicial process. The State party should take all appropriate steps to ensure the application of relevant legislation, to reduce further the duration of detention before charges are brought. The State party is requested to provide detailed information on any investigations, and on their outcome, into reported cases of disappearances.**

### **Rape and other forms of sexual violence in the context of armed conflict**

(16) The Committee is concerned about reports of rape and other forms of sexual violence against women and girls allegedly committed by members of the security forces and ENDF in the context of armed conflict, in particular in the Somali Regional State (arts. 2, 12, 13 and 14).

**The Committee calls on the State party to investigate, prosecute and punish members of the security forces and ENDF responsible for rape and other forms of sexual**

**violence in the context of armed conflict. The State party should take immediate steps to adequately compensate and rehabilitate the victims of such violence.**

#### **Investigations**

(17) Notwithstanding the explanations provided by the State party during the dialogue, the Committee continues to be concerned at numerous and consistent reports about:

(a) The lack of a full investigation of the arrest of 3,000 students at Addis Ababa University in April 2001, many of whom were reportedly ill-treated at the Sendafa police camp;

(b) The prosecution and sentencing of only a small number of low-ranking army officials involved in the killings and torture, including rape, of hundreds of Anuak in Gambella town in December 2003 and the State party's failure to investigate the subsequent killings, torture and rape of Anuak in the Gambella Regional State in 2004;

(c) The absence of an independent and impartial investigation of, and the lack of prosecutions and sentences for, the use of lethal force by members of the security forces during the post-election riots in 2005, when 193 civilians and 6 police officers were killed; and

(d) The lack of an independent and impartial investigation into the extrajudicial killings, torture, including rape, other forms of sexual violence, as well as arbitrary arrests by ENDF during its counter-insurgency campaign against ONLF in the Somali Regional State in 2007 (arts. 12 and 14).

**The State party should urgently institute independent and impartial investigations of the above incidents in order to bring the perpetrators of violations of the Convention to justice. The Committee recommends that such investigations be undertaken by independent experts to examine all information thoroughly, reach conclusions as to the facts and measures taken and provide adequate compensation, including the means for as full rehabilitation as possible, to the victims and their families. The State party is requested to provide the Committee with detailed information on the outcome of those investigations in its next periodic report.**

#### **Complaint mechanism**

(18) Notwithstanding the information provided in the State party's report on the possibility for prisoners and detainees to present complaints to the prison administration at various levels, e.g., by using suggestion boxes, as well as to the courts, the federal crime investigation department and the Ethiopian Human Rights Commission, the Committee regrets the lack of a dedicated, independent and effective complaint mechanism for receiving complaints and conducting prompt and impartial investigations into allegations of torture, in particular of prisoners and detainees, and for ensuring that those found guilty are appropriately punished. The Committee also notes the absence of information, including statistics, on the number of complaints, investigations, prosecutions and sanctions imposed on perpetrators of torture and ill-treatment, at both the penal and disciplinary levels (arts. 2, 12, 13 and 16).

**The State party should take urgent and effective measures to establish a specifically dedicated, independent and effective complaint mechanism to receive and ensure prompt and impartial investigations into all allegations of torture and ill-treatment committed by law enforcement, security, military and prison officials, and to initiate the prosecution of perpetrators. In particular, such investigations shall not be undertaken by or under the authority of the police or military, but by an independent body. The State party should ensure in practice that complainants are protected against any ill-treatment or intimidation that could arise as a consequence of their**

complaint or any evidence given. The Committee requests the State party to clarify whether acts of torture and ill-treatment are subject to ex officio investigation and prosecution and to provide information, including statistics, on the number of complaints filed against public officials on torture and ill-treatment, as well as information about the results of the proceedings, at both the penal and disciplinary levels. This information should be disaggregated by sex, age and ethnicity of the individual bringing the complaints and indicate which authority undertook the investigation.

#### **Refugees and asylum-seekers**

(19) While acknowledging the State party's generous policy to admit and grant permission to stay to a significant number of nationals from Eritrea, Somalia and Sudan, the Committee notes with concern that decisions taken by the National Intelligence and Security Service (NISS) denying refugee status or ordering deportation can only be appealed to the Grievance Hearing Committee or the Appeal Hearing Council, respectively, both of which are composed of representatives of various Government departments. The Committee also notes with concern that the State party has not acceded to the Convention relating to the Status of Stateless Persons or to the Convention on the Reduction of Statelessness (arts. 2, 3, 11 and 16).

**The State party should ensure that foreign nationals whose refugee or asylum applications have been rejected by the National Intelligence and Security Service (NISS) can appeal such decisions and deportation orders against them to court. The Committee recommends that the State party consider becoming a party to the Convention relating to the Status of Stateless Persons and to the Convention on the Reduction of Statelessness.**

#### **Abductions**

(20) The Committee is concerned at reports that, under the pretext of fighting terrorism, the State party has allegedly abducted terrorism suspects from other countries, including Somalia, in breach of the Convention (art. 3).

**The State party should refrain from abducting terrorism suspects from other countries where they may enjoy the protection of article 3 of the Convention. The State party should allow for an independent investigation into allegations of such abductions, in particular when followed by secret detention and torture in the State party, and inform the Committee of the outcome of such investigation in its next periodic report.**

#### **Training**

(21) The Committee takes note of the information on training, seminars and courses on human rights for judges, prosecutors, police and prison officers and soldiers included in the State party's report and provided during the oral presentation. At the same time, it notes with concern the information in the report (para. 14) concerning the lack of awareness about the Convention on the part of law enforcement officials, the prevailing view that a certain degree of coercion is a necessary means of interrogation and the lack of forensic expertise and skills and knowledge on adequate investigation techniques in the State party (art. 10).

**The State party should further develop and strengthen educational programmes to ensure that all officials, including judges, law enforcement, security, army, intelligence and prison officials are fully aware of the provisions of the Convention, especially the absolute prohibition of torture, and of the fact that breaches of the Convention will not be tolerated and will be promptly and impartially investigated, and that offenders will be prosecuted. Furthermore, all relevant personnel, including medical personnel,**

should receive specific training on how to identify signs of torture and ill-treatment, including training on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), published by the United Nations in 2004. In addition, the State party should assess the effectiveness and impact of such training/educational programmes.

#### **Judicial proceedings and independence of the judiciary**

(22) While noting that the Constitution provides for an independent judiciary, the Committee expresses concern about reports on frequent interference by the executive branch with the judicial process, in particular in criminal proceedings, and reported cases of harassment, threats, intimidation and dismissal of judges resisting political pressure, refusing to admit confessions extracted by torture or ill-treatment in court proceedings, and acquitting or ordering the release of defendants charged with terrorist or State crimes. The Committee is also concerned at reports about unfair court proceedings in politically sensitive cases, including violations of the right of defendants to have adequate time for the preparation of their defence, access to a lawyer and defence witnesses examined under the same conditions as witnesses of the prosecution, and to appeal their sentence (arts. 2, 12 and 13).

**The State party should take the necessary measures to ensure the full independence and impartiality of the judiciary in the performance of its duties in conformity with international standards, notably the Basic Principles on the Independence of the Judiciary. In this respect, the State party should ensure that the judiciary is free from any interference, in particular from the executive branch, in law and in practice. The State party should promptly and impartially investigate and prosecute cases where judges were harassed, intimidated or unfairly dismissed, take effective measures, including training on the State party's obligations under the Convention, to strengthen the role of judges and prosecutors with regard to the initiation of investigation and prosecution of cases of torture and ill-treatment and the legality of detention, and encourage judges and prosecutors to observe fair trial guarantees, in accordance with relevant international standards, including in political cases.**

(23) The Committee notes with concern that the jurisdiction of Sharia and customary law courts in family law matters, although subject to the consent of both parties, may expose women victims of domestic or sexual violence to undue pressure by their husbands, families and to have their case adjudicated by customary or religious rather than by ordinary courts (arts. 2 and 13).

**The State party should provide for effective procedural safeguards to ensure the free consent of parties, in particular women, to have their case adjudicated by Sharia or customary courts, and ensure that all decisions taken by those courts can be appealed to higher courts (courts of appeal and Supreme Court).**

#### **Imposition of the death penalty**

(24) While noting the information provided by the State party concerning the de facto non-application of the death penalty and the "extreme reluctance" of the courts to impose such penalty and "only in cases of grave crimes and on exceptionally dangerous criminals ... as a punishment for completed crimes and in the absence of extenuating circumstances" (see common core document (HRI/CORE/ETH/2008), paras. 86 and 87), the Committee notes with concern reports about the recent increase in death sentences. In this regard, it refers to the so-called "Ginbot 7" case where the Federal High Court sentenced to death five officials of the former opposition party Coalition for Unity and Democracy, four of them (Andargachew Tsigie, Berhanu Nega, Mesfin Aman and Muluneh Iyoel Fage) in absentia and one (Melaku Teffera Tilahun) in his presence, after allegedly having subjected



him to torture, for “conspiring to undermine the constitution and violently overthrow the government”. The Committee stresses that the conditions of detention of convicted prisoners on death row may amount to cruel, inhuman or degrading treatment, in particular owing to the excessive length of time on death row (arts. 2 and 16).

**The Committee recommends that the State party consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty. The Committee also recommends that the State party consider extending its de facto moratorium on the execution of the death penalty and commuting death sentences for prisoners on death row. The State party should ensure that all persons on death row are afforded the protection provided by the Convention and are treated humanely. The Committee requests the State party to indicate the current number of persons on death row, disaggregated by sex, age, ethnicity and offence.**

#### **National human rights institution**

(25) The Committee notes with interest the information provided by the State party concerning the mandate of the Ethiopian Human Rights Commission (EHRC) to undertake visits to places of deprivation of liberty and to examine complaints about alleged violations of human rights, including those protected by the Convention. The Committee notes the lack of follow-up on the suggestions and recommendations made by EHRC in its Correctional Facilities Monitoring Visit Report and the limited powers of EHRC to initiate prosecutions in cases where torture or ill-treatment is found to have occurred (arts. 2, 12, 13 and 16).

**The State party should strengthen the role and mandate of the Ethiopian Human Rights Commission (EHRC) to undertake regular and unannounced visits to places of deprivation of liberty and to issue independent findings and recommendations on such visits. It should also give due weight to the conclusions of EHRC on individual complaints, including by communicating such conclusions to the public prosecutor’s office in cases where torture or ill-treatment is found to have occurred. The State party is requested to provide information, including statistical data, on the complaints examined by EHRC in relation to alleged torture and other cruel, inhuman or degrading treatment or punishment, and to indicate whether any such cases have been submitted to the competent authorities for prosecution. Furthermore, the State party should intensify its efforts to ensure that EHRC is in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).**

#### **Conditions of detention**

(26) The Committee notes the State party’s efforts to reflect 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 and the Code of Conduct for Law Enforcement Officials in its legislation and administrative regulations for the treatment of prisoners and detainees (see State party report, paras. 54–55). However, the Committee remains seriously concerned about consistent reports of overcrowding, poor hygienic and sanitary conditions, lack of sleeping space, food and water, the absence of adequate health care, including for pregnant women and HIV/AIDS and tuberculosis patients, the absence of specialized facilities for prisoners and detainees with disabilities, co-detention of juveniles with adults, and inadequate protection of juvenile prisoners and children detained with their mothers from violence in prisons and places of detention in the State party (arts. 11 and 16).

**The State party should take urgent measures to bring the conditions of detention in police stations, prisons and other places of detention into line with the Standard**

**Minimum Rules for the Treatment of Prisoners, as well as with other relevant standards, in particular by:**

(a) **Reducing prison overcrowding, including by considering non-custodial forms of punishment and, in the case of juveniles, by ensuring that detention is only used as a measure of last resort;**

(b) **Improving the quality and quantity of food and water as well as the health care provided to detainees and prisoners, including children, pregnant women and HIV/AIDS and tuberculosis patients;**

(c) **Improving the conditions of detention for minors and ensuring that they are detained separately from adults, in accordance with international standards for the administration of juvenile justice, and enabling incarcerated and detained mothers to stay together with their dependent infants, if appropriate beyond the age of 18 months;**

(d) **Ensuring that sufficient adequate facilities are available for prisoners and detainees with disabilities;**

(e) **Strengthening the judicial supervision of conditions of detention.**

#### **Children in detention**

(27) The Committee is concerned that, under articles 52, 53 and 56 of the revised Criminal Code, criminal responsibility starts at the age of 9 years and offenders above the age of 15 years are subject to the ordinary penalties applicable to adults and can be kept in custody with adult criminals (arts. 2, 11 and 16).

**The State party should raise the minimum age of criminal responsibility according to international standards and classify persons above 15 and under 18 years of age as “young persons” who are subject to the lighter penalties in articles 157–168 of the Criminal Code and may not be kept in custody with adult criminals. It should ensure that its juvenile justice system is in conformity with international standards such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).**

#### **Corporal punishment of children**

(28) The Committee notes with concern that, while corporal punishment is prohibited in schools, childcare institutions and as a penal or disciplinary sanction in the penal system, it is not prohibited as a disciplinary measure in the home or alternative care settings for purposes of “proper upbringing”, under article 576 of the revised Criminal Code (2005) and article 258 of the revised Family Code (2000) (arts. 2, 10 and 16).

**The State party should consider amending its revised Criminal Code and Family Code, with a view to prohibiting corporal punishment in child-rearing in the home and alternative care settings and raise public awareness on positive, participatory and non-violent forms of discipline.**

#### **Deaths in custody**

(29) The Committee expresses its concern about the markedly high number of deaths in custody, while taking note of the State party’s explanation that such deaths are caused by the health condition of detainees rather than by the conditions of detention (arts. 12 and 16).

**The State party should promptly, thoroughly and impartially investigate all incidents of death in custody and, in cases of death resulting from torture, ill-treatment or wilful negligence, prosecute those responsible. It should also provide adequate health care to all persons deprived of their liberty. The State party should provide the**

**Committee with information on any such cases, ensure independent forensic examinations and accept their findings as evidence in criminal and civil proceedings.**

#### **Redress, including compensation and rehabilitation**

(30) The Committee notes the information on modalities of compensation for victims of torture and ill-treatment by the State party contained in the State party's report (para. 60) and its common core document (paras. 184–186). It nevertheless regrets the lack of information on civil court decisions awarding compensation to victims of torture and ill-treatment, or their families, and the amounts awarded in such cases. The Committee also regrets the lack of information on treatment and social rehabilitation services and other forms of assistance, including medical and psychosocial rehabilitation, provided to victims (art. 14).

**The State party should strengthen its efforts to provide victims of torture and ill-treatment with redress, including fair and adequate compensation, and as full rehabilitation as possible. Furthermore, the State party should provide information on redress and compensation measures ordered by the courts and provided to victims of torture, or their families. This information should include the number of requests made and of those granted and the amounts ordered and actually provided in each case. In addition, the State party should provide information on any ongoing rehabilitation programmes for victims of torture and ill-treatment and allocate adequate resources to ensure the effective implementation of such programmes.**

#### **Coerced confessions**

(31) While noting that constitutional guarantees and provisions of the Criminal Procedure Code prohibit the admissibility of evidence obtained through torture, the Committee is concerned at reports of cases of confessions obtained through torture and the lack of information on any officials who may have been prosecuted and punished for extracting such confessions (arts. 2 and 15).

**The State party should take the steps necessary to ensure that, in practice, confessions obtained under torture are not admitted in court proceedings, including in cases falling under the Anti-terrorism Proclamation, in line with relevant domestic legislation and the provisions of article 15 of the Convention. The Committee requests the State party to submit information on the application of the provisions prohibiting admissibility of evidence obtained through torture, and to indicate whether any officials have been prosecuted and punished for extracting such confessions.**

#### **Violence against women and harmful traditional practices**

(32) The Committee takes note of the criminalization of harmful traditional practices, such as female genital mutilation, early marriage and abduction of girls for marriage in the revised Criminal Code, and the information given by the State party during the dialogue concerning the establishment of special prosecution teams within the Ministry of Justice and in regional justice departments to investigate cases of rape and other forms of violence against women and children. However, the Committee is concerned about the lack of implementation of criminal law provisions criminalizing violence against women and harmful traditional practices. It is particularly concerned that the revised Criminal Code fails to criminalize spousal rape. It also regrets the lack of information on complaints, prosecutions and the sentences imposed on perpetrators, as well as on victim assistance and compensation (arts. 1, 2, 12, 13 and 16).

**The State party should strengthen its efforts to prevent, combat and punish violence against women and children and harmful traditional practices, in particular in rural areas. The State party should consider amending its revised Criminal Code, with a view to criminalizing spousal rape. It should also provide victims with legal, medical,**

psychological and rehabilitative services, as well as with compensation, and create adequate conditions for them to report incidents of harmful traditional practices and domestic and sexual violence without fear of reprisal or stigmatization. The State party should provide training to judges, prosecutors, police, and community leaders on the strict application of the revised Criminal Code and on the criminal nature of harmful traditional practices and of other forms of violence against women. The Committee also requests the State party to provide in its next periodic report updated statistical data on the number of complaints, investigations and prosecutions and on the sentences imposed on perpetrators, as well as on victim assistance and compensation.

#### **Human trafficking**

(33) The Committee expresses concern about the low prosecution and conviction rates in relation to child abduction and human trafficking, in particular internal trafficking of women and children for forced labour and sexual and other forms of exploitation. It is also concerned at the general lack of information on the extent of trafficking in the State party, including the number of complaints, investigations, prosecutions and convictions of perpetrators of trafficking, and on the practical measures taken to prevent and combat human trafficking (arts. 1, 2, 12 and 16).

**The State party should increase its efforts to prevent and combat, in particular, child abduction and internal trafficking of women and children and provide protection for victims and ensure their access to legal, medical, psychological and rehabilitative services. In this regard, the Committee recommends that the State party adopt a comprehensive strategy to combat trafficking in human beings and its causes. The State party should also investigate all allegations of trafficking, and ensure that perpetrators are prosecuted and punished with penalties appropriate to the nature of their crimes. The State party is requested to provide information on measures taken to provide assistance to victims of trafficking and statistical data on the number of complaints, investigations, prosecutions and sentences in relation to trafficking.**

#### **Restrictions on NGOs working in the field of human rights and the administration of justice**

(34) The Committee expresses serious concern about reliable information on the negative impact of Proclamation No. 621/2009 for the Registration of Charities and Societies, which bars foreign NGOs and those which receive more than 10 per cent of their funds from foreign sources from working on human rights and the administration of justice (Proclamation, art. 14), on the capacity of local human rights NGOs to facilitate prison visits and to provide legal aid and other assistance or rehabilitation to victims of torture and ill-treatment. The Committee notes with concern that local human rights NGOs previously active in those areas, including the Ethiopian Human Rights Council, the Ethiopian Women Lawyers Association, the Ethiopian Bar Association and the Rehabilitation Centre for Victims of Torture in Ethiopia, are no longer fully operational (arts. 2, 11, 13 and 16).

**The Committee calls on the State party to acknowledge the crucial role of NGOs in preventing, documenting and assisting victims of torture and ill-treatment, consider lifting the funding restrictions on local human rights NGOs, unblock any frozen assets of those NGOs and ensure their freedom from harassment and intimidation, with a view to enabling them to play a meaningful role in the implementation of the Convention in the State party, thereby assisting the State party in fulfilling its obligations under the Convention.**

### Data collection

(35) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment by law enforcement, security, military and prison personnel, and extrajudicial killings, enforced disappearances, trafficking and domestic and sexual violence (arts. 12 and 13).

**The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment, extrajudicial killings, enforced disappearances, trafficking and domestic and sexual violence, and on means of redress, including compensation and rehabilitation, provided to the victims. The State party should include such data in its next periodic report.**

### Cooperation with United Nations human rights mechanisms

(36) The Committee recommends that the State party strengthen its cooperation with United Nations human rights mechanisms, including by permitting visits of, inter alia, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Arbitrary Detention, and the Special Rapporteur on the situation of human rights defenders.

(37) Noting the commitment made by the State party in the context of the universal periodic review (A/HRC/13/17/Add.1, para. 3), the Committee recommends that the State party consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible.

(38) The Committee recommends that the State party consider making the declarations envisaged under articles 21 and 22 of the Convention.

(39) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocols to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities.

(40) The Committee recommends that the State party consider ratifying the Rome Statute of the International Criminal Court.

(41) The State party is encouraged to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(42) The Committee requests the State party to provide, within one year, follow-up information in response to the Committee's recommendations contained in paragraphs 12, 16 and 31 of the present document.

(43) The Committee invites the State party to present its next periodic report in accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to regularly update its common core document in accordance with the requirements of the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee Meeting of human rights treaty bodies, and to observe the page limit

of 80 pages for the updated common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

(44) The State party is invited to submit its next periodic report, which will be the second periodic report, by 19 November 2014.

**52. Mongolia**

(1) The Committee considered the initial report of Mongolia (CAT/C/MNG/1) at its 963rd and 964th meetings (CAT/C/SR.963 and 964), held on 5 and 8 November 2010, and adopted at its 976th meeting (CAT/C/SR./976) the following concluding observations.

**A. Introduction**

(2) The Committee welcomes the submission of the initial report of Mongolia, which, while generally following the Committee's guidelines for reporting, lacks statistical and practical information on the implementation of the provisions of the Convention. The Committee regrets that the report was submitted six years late, which has prevented the Committee from monitoring the implementation of the Convention in the State party since it ratified the treaty. It also regrets that no civil society organizations participated in the preparation of the report.

(3) The Committee welcomes the frank and constructive dialogue with the delegation of the State party and the extensive oral responses to the questions posed by the Committee members, which provided the Committee with important additional information.

**B. Positive aspects**

(4) The Committee welcomes that since the accession to the Convention by the State party on 24 January 2002 it has ratified or acceded to the following international instruments:

(a) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in March 2002;

(b) Rome Statute of the International Criminal Court, in April 2002;

(c) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in June 2003;

(d) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in October 2004;

(e) United Nations Convention against Transnational Organized Crime and its Protocols, in May 2008;

(f) Convention on the Rights of Persons with Disabilities, in May 2009;

(g) Optional Protocol to the Convention on the Rights of Persons with Disabilities, in May 2009;

(h) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, in July 2010.

(5) The Committee notes the ongoing efforts of the State party to reform its legislation in order to ensure better protection of human rights, in particular:

(a) The adoption of the Criminal Code in 2002;

(b) The adoption of the Law on Combating Domestic Violence in 2005;

(c) The amendment of the Court Decision Enforcement Law on 3 August 2007;

- (d) The amendment to the Criminal Code enacted on 1 February 2008.
- (6) The Committee notes with appreciation the new measures and policies adopted by the State party in order to ensure better protection of human rights, in particular:
- (a) The adoption in 2003 of the National Human Rights Action Programme of Mongolia, and the establishment in 2005 of the Implementing Committee of the National Programme;
- (b) The standing invitation issued to special procedures mandate holders since 2004;
- (c) The adoption of the National Programme on Fighting against Domestic Violence in 2007;
- (d) The adoption of the 2005–2015 National Programme on Protection from Trafficking in Children and Women with the Purpose of Sexual Exploitation;
- (e) The opening of legal aid centres in all districts of the capital and in all 21 provinces to provide legal advice to vulnerable persons involved in criminal, civil and administrative cases;
- (f) The declaration by the President of Mongolia on 14 January 2010 of a moratorium on the use of the death penalty and his indication that the moratorium should constitute the first step towards its abolition.

### **C. Principal subjects of concern and recommendations**

#### **Definition and criminalization of torture**

(7) While the Committee takes note that certain amendments to the Criminal Code and Criminal Procedural Code have been introduced in 2008 to harmonize domestic legislation in line with the Convention, the Committee is concerned that there is no definition of torture in the State party's legislation in accordance with the definition in article 1 of the Convention, as pointed out also by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in his report on his mission to Mongolia in 2005 (E/CN.4/2006/6/Add.4, para. 39) (arts. 1 and 4).

**The State party should adopt a definition of torture with all the elements of article 1 of the Convention in its national criminal legislation. The State party should include torture as a separate crime in its legislation, in line with article 4 of the Convention, and should ensure that penalties for torture are appropriate for the gravity of this crime.**

#### **Fundamental legal safeguards**

(8) The Committee is concerned at information that arbitrary arrests and detentions occur frequently, with some two thirds of pretrial detentions taking place without court orders. The Committee is also concerned that arrested suspects often do not have prompt access to a judge, a lawyer, a medical doctor and their family as prescribed by law, and that pretrial detention is not used as a last resort (arts. 2, 11 and 12).

**The State party should take prompt and effective measures to ensure that all detainees are afforded all fundamental legal safeguards from the very outset of their detention. These include the rights of detainees to be informed of the reasons of their arrest, to have prompt access to a lawyer and, when necessary, to legal aid. They should also have access to an independent medical examination, preferably by a doctor of their own choice, to notify a relative and to be brought promptly before a judge, and to have the lawfulness of their detention reviewed by a court, in accordance with international standards.**

### **Impunity for acts of torture**

(9) The Committee is concerned at reports that law enforcement officials and interrogators are not always prosecuted and adequately punished for acts of torture and ill-treatment. This was also referred to by the Special Rapporteur on the question of torture, who stated that “impunity is the principal cause of torture and ill treatment”. The Special Rapporteur concluded that torture persists, particularly in police stations and pretrial detention facilities, and that “the absence in the Criminal Code of a definition of torture in line with the Convention and the lack of effective mechanisms to receive and investigate complaints provides shelter to perpetrators” (ibid.) (arts. 1, 2, 4, 12 and 16).

**The State party is urged to bring impunity to an end and ensure that torture and ill-treatment by public officials will not be tolerated and that all alleged perpetrators of acts of torture will be investigated and, if appropriate, prosecuted, convicted and punished with penalties appropriate to the gravity of the crime. The State party should ensure that efficient and independent investigative mechanisms be established against impunity regarding torture and ill-treatment. Article 44.1 of the Criminal Code, which stipulates that “causing harm to the rights and interests protected by this Code in the course of fulfilling mandatory orders or decrees shall not constitute a crime”, should be immediately repealed. The State party legislation should also clearly stipulate that a superior order may not be invoked as a justification for torture.**

### **Ill-treatment and the excessive use of force during the 1 July 2008 events**

(10) The Committee is concerned at reports that during the riots on 1 July 2008 in Sukhbaatar Square and during the state of emergency police resorted to unnecessary and excessive use of force. The Committee is concerned at reports that most cases of unnecessary and excessive use of force by police occurred after the declaration of the state of emergency. It is also concerned about the results of a survey conducted by the National Human Rights Commission showing that of 100 detained people who were interviewed, 88 replied that they were ill-treated by being beaten or assaulted during arrest and interrogation. The Committee is concerned at reports that arrested persons were detained in overcrowded facilities, with lack of access to food, water and toilets for 48 to 72 hours, and without the possibility to contact lawyers and families (arts. 2, 12 and 16).

**The State party should ensure that law enforcement officials receive clear instructions regarding the use of force and are informed of the liabilities they incur if the use of force is unnecessary or excessive. Existing laws, including those informing the public about the imposition of a state of emergency, should be applied. The State party should ensure that law enforcement officials apply the law with regard to persons deprived of their liberty, including fundamental legal safeguards upon arrest, with strict adherence to the Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment (adopted by the General Assembly through resolution 43/173 of 9 December 1988) and that persons deprived of their liberty should have access to a lawyer, a medical doctor and their family. In order to prevent impunity and abuse of authority, law enforcement officials found guilty of such offenses should be sanctioned with appropriate legal and administrative penalties.**

### **Complaints and prompt, impartial and effective investigations**

(11) The Committee is gravely concerned that since 2002, only one person has been sentenced for inhumane and cruel treatment and that only one person was convicted out of 744 torture-related cases since 2007, therefore creating an environment of impunity for perpetrators. This was echoed by the Special Rapporteur on the question of torture, who stated that “while a legal framework for victims to make complaints and have them addressed currently exists, this system does not work in practice” (E/CN.4/2006/6/Add.4,



para. 41) and that “consequently, victims have no effective recourse to justice, compensation and rehabilitation for torture and other forms of ill-treatment” (ibid., p. 2). The Committee is also concerned that in the aftermath of the 1 July 2008 events, all 10 complaints submitted to the National Human Rights Commission (four of which concern torture) and the 11 complaints submitted to the Prosecutor’s Office were dismissed for lack of evidence (arts. 2, 12 and 13).

**The State party should ensure that independent and effective mechanisms to receive complaints and conduct prompt, impartial and effective investigations into allegations of torture and ill-treatment are in place. The State party should address impunity and ensure that those found guilty of committing acts of torture and ill-treatment should be promptly convicted. The State party should take measures to protect complainants, lawyers and witnesses from intimidation and reprisals, in accordance with article 13 of the Convention. The State party should provide information with regard to any investigation carried out into allegations of torture submitted by Mr. Ts. Zandankhuu, who was arrested on 2 July 2008 and taken to the Denjiin Myanga detention centre.**

#### **National Human Rights Commission**

(12) The Committee notes that the National Human Rights Commission enjoys “A” status as a national human rights institution established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and can initiate proposals and transmit orders and recommendations to other entities with respect to human rights issues. However, the Committee is concerned that in relation to the 1 July 2008 events in Sukhbaatar Square, the Commission issued a statement indicating that “human rights were not infringed” during the state of emergency. The Committee is concerned that this statement was subsequently used by the judiciary to dismiss complaints about torture and ill-treatment and to force people to sign self-incriminating confessions on the basis of which they were then sentenced (arts. 1, 2, 4, 13, 15 and 16).

**The State party should ensure that the appointment process of the National Human Rights Commission governing body is transparent and that consultations should be comprehensive and open, including an enhanced engagement with civil society. The State party should strengthen the independence and capacity of the Commission and ensure that it is not restricted in its activities. The Commission should be provided with human, financial and material resources enabling it to fully comply with its mandate. The Commission should have the capacity and powers to systematically visit all places of detention, also on an unannounced basis, should be able to address allegations of torture and should ensure that measures of redress and rehabilitation are taken in appropriate cases. The Commission should be included in trainings on the absolute prohibition of torture for law enforcement personnel and staff of the criminal justice system. The Commission should also be involved in conducting awareness-raising campaigns on human rights issues for the general public.**

#### **Non-refoulement obligations**

(13) The Committee is concerned that from 2000 to 2008, Mongolian authorities implemented deportation decisions for 3,713 citizens from 11 countries. The Committee is also concerned that no deportation order was suspended or not implemented because the person to be deported was under the threat of being tortured in the country of destination. It is concerned further that in October 2009 an asylum-seeker and his family were deported to China against their will before a final decision on the asylum claim was made (art. 3).

**The State party should take all legislative, judicial and administrative measures to comply with its obligations under article 3 of the Convention. When determining its**

**non-refoulement obligation, the State party should assess the merits of each individual case. The State party should introduce amendments in its legislation that deal with forced deportations of foreign citizens. The State party should consider acceding to the 1951 Convention relating to the Status of Refugees (adopted by the General Assembly on 28 July 1951) and its 1967 Protocol. The State party should provide training to all law enforcement and immigration officials in international refugee and human rights law, emphasizing the principle of non-refoulement, and ensure that appeals to courts against deportation orders have a suspensive effect.**

#### **Training of the judiciary**

(14) While noting that international instruments become effective as domestic legislation upon the entry into force of the laws on their ratification or accession, the Committee is concerned by the delegation's statement that judges have limited knowledge of international instruments, including the Convention. This concern is also referred to by the Special Rapporteur on the question of torture, who noted a "basic lack of awareness, primarily on behalf of prosecutors, lawyers and the judiciary, of the international standards relating to the prohibition of torture" (E/CN.4/2006/6/Add.4, para. 40). The Committee is particularly concerned by the information it received that clients of lawyers who referred to international treaties and conventions in their defence were sentenced to longer prison terms (art. 10).

**The State party should ensure that mandatory training for judges, prosecutors, court officials, lawyers, and other related professions includes all the provisions of the Convention, especially the absolute prohibition of torture. The State party may wish to consider international assistance with regard to the training. Public officials and medical personnel dealing with detainees and all professionals involved in the documentation and investigation of torture should receive training on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).**

#### **Training of law enforcement officials**

(15) The Committee is concerned by reports that police are inadequately trained in crowd control and the use of equipment, and that often they do not have instruction on the appropriate use of firearms and on the prohibition to use excessive force (art. 10).

**The State party should ensure that law enforcement officials receive proper training on how to exercise their duties, including on the use of equipment, on the use of force that is appropriate for the type of manifestation and that such force is employed only exceptionally and proportionally. Police should be trained in and comply with the Code of Conduct for Law Enforcement Officials (adopted by the General Assembly through resolution 34/169 of 17 December 1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held 27 August–7 September 1990).**

#### **Conditions of detention**

(16) The Committee is concerned about conditions of detention in some facilities, such as overcrowding, poor ventilation and heating, inadequate toilet facilities and water supply and the spread of infectious diseases. In addition, the Committee is concerned with ill-treatment such as the mixing of convicted prisoners and pretrial detainees, arbitrary room changes, and prison guards encouraging convicted prisoners to be abusive towards certain detainees. The Committee is also concerned by the special isolation regime consisting of solitary confinement for prisoners serving 30-year sentences, some of whom told the Special Rapporteur on the question of torture that they would have preferred the death

penalty to isolation. The Committee is particularly concerned by reports that death row prisoners are detained in isolation, kept handcuffed and shackled throughout their detention and denied adequate food. Such conditions of detention were described by the Special Rapporteur as constituting additional punishments which can only be qualified as torture as defined in article 1 of the Convention (arts. 11 and 16).

**The Committee recommends that the State party abolish the special isolation regime and ensure that all prisoners are treated humanely and in accordance with the Standard Minimum Rules for the Treatment of Prisoners (approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977) and the Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment. The State party should continue improving conditions of detention in all detention facilities to bring them in line with international standards. The State party should ensure that prison guards and other officials abide by the law and adhere strictly to rules and regulations. The State General Prosecutor's Office, the National Human Rights Commission and other authorized independent bodies should be allowed to carry out regular and unannounced visits to places of detention.**

#### **Redress and compensation**

(17) The Committee is concerned that there is no effective and adequate means for victims of torture and ill-treatment to obtain justice, compensation and rehabilitation. The Committee is also concerned that provisions for compensation in Mongolian law do not specify torture as a basis for compensation. This was also noted by the Special Rapporteur on the question of torture after his visit to Mongolia (art. 14).

**The State party should ensure that victims of torture can obtain redress and have an enforceable right to fair and adequate compensation, and should enact comprehensive legislation which includes torture and ill-treatment as a basis for compensation and reparation.**

#### **Statements made under torture**

(18) The Committee is seriously concerned that statements and confessions obtained under torture and ill-treatment continue to be used in courts in Mongolia, which is also referred to by the Special Rapporteur on the question of torture. He stated that the criminal justice system relies heavily on obtaining confessions for instituting prosecutions and that this "makes the risk of torture and ill-treatment very real" (E/CN.4/2006/6/Add.4, para. 36). In this respect, the Committee is also concerned at reports that persons arrested in connection with the 1 July 2008 events were interrogated under torture, and that confessions signed under such circumstances were later used as evidence in court (art. 15).

**The State party should ensure that no statement which is established to have been made as a result of torture shall be invoked as evidence in any proceedings. The State party should introduce systematic video and audio monitoring and recording of all interrogations, in all places where torture and ill-treatment are likely to occur, and provide the necessary financial, material and human resources to that end. The State party should ensure that any statement or confessions made by persons in custody ascertained to have been made as a result of torture or ill-treatment should not be admissible as evidence against the person who made the confession. Such statements and confessions should be invoked only as evidence in proceedings against the person accused of torture or ill-treatment.**

#### **Prisoners on death row and the death penalty**

(19) The Committee is concerned that information on the death penalty is classified as a State secret and that not even the families of executed persons are informed about the date

of execution or given their mortal remains. The Committee is also concerned about the fate and conditions of detention of 44 prisoners remaining on death row (arts. 2, 11 and 16).

**The State party should render public statistics relating to the death penalty, provide the Committee with information on the 44 persons remaining on death row, should consider commuting all death sentences and should provide relevant information to the families of persons who were executed. The State party should declassify information on the death penalty, and is encouraged to continue its efforts towards its abolition, including by ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights. The State party should ensure that death row prisoners are treated in accordance with international standards.**

#### **Violence against women**

(20) While welcoming the efforts of the State party to combat violence against women, the Committee is concerned about reports that the incidence of violence, in particular domestic violence against women, rape and sexual harassment remains high. The Committee is also concerned that domestic violence continues to be seen as a private matter, including by law enforcement personnel, and that the rate of prosecution is very low. In addition, the Committee is concerned at reports that only a small number of rape cases are reported, and that post-rape medical examination in remote areas and the provision of shelters and rehabilitation services by qualified personnel are frequently not available. The Committee regrets that the State party has not as yet criminalized marital rape and sexual harassment (arts. 1, 2, 4, 12 and 16).

**The State party should fully combat violence against women, in particular rape, domestic violence and sexual harassment. It should also criminalize marital rape and sexual harassment. In addition, it should ensure that public officials are fully familiar with applicable relevant legal provisions, and sensitized to all forms of violence against women and adequately respond to them. The State party should also ensure that all women who are victims of violence have access to immediate means of redress and protection, including protecting orders, access to safe shelters, medical examination and rehabilitation assistance in all parts of the country. Perpetrators of violence against women should be duly prosecuted and, if found guilty, convicted and sentenced with appropriate penalties.**

#### **Trafficking in persons**

(21) While welcoming the signature, on 18 October 2010, of the Agreement on Cooperation to Combat Trafficking in Persons with the Macao Special Administrative Region of China, as well as other efforts by the State party to combat trafficking in persons, the Committee is concerned at reports that there is a rise in human trafficking. It is also concerned at reports that the majority of victims are young girls and women, in particular poor and street children, as well as victims of domestic violence, who are trafficked for the purpose of sexual and labour exploitation and fraudulent marriages. In addition, the Committee is concerned that the legal framework to protect victims and witnesses of trafficking remains inadequate. It is also concerned that trafficking is seldom prosecuted under article 113 of the Criminal Code on sales and purchase of humans, which carries higher penalties than those under article 124 on inducing others to engage in prostitution and organizing prostitution. The Committee is also concerned at reports that 85 to 90 per cent of investigated cases are reportedly rejected for lack of evidence or lack of grounds to consider that the victim was deceived, and at reports that law enforcement officials were directly involved in or facilitating trafficking crimes and that there have been no investigations of those reports (arts. 2, 12, 13 and 16).

**The State party should enact comprehensive anti-trafficking laws which address the issues of prevention and the protection of victims and witnesses of human trafficking,**

and ensure to all victims of trafficking the means for compensation and as full a rehabilitation as possible. The State party should conduct appropriate trainings for law enforcement officials, investigators and prosecutors on the laws and practices of trafficking in human beings. Trafficking in persons should be prosecuted under article 113 of the Criminal Code. The State party should establish independent mechanisms with sufficient and appropriate human and financial resources to monitor the implementation of measures to combat trafficking in persons. The State party should also conduct independent, thorough and effective investigations into all allegations of trafficking in persons, including allegations against law enforcement officials. The State party should also continue and increase international, regional and bilateral cooperation on this issue.

#### **Labour exploitation and child labour**

(22) The Committee is concerned at reports that some artisanal (informal) miners, including minors, (also known as “ninja” miners) work in informal mining communities in very precarious conditions which are incompatible with international labour standards. It is also concerned at reports about the exploitation of children, including in hazardous labour conditions. In addition, the Committee is concerned at reports about the situation of street children and the lack of effective measures to improve their situation (art. 16).

**The State party should combat all forms of forced labour and should take all necessary measures to ensure that children do not work in hazardous labour conditions, including artisanal (informal) mines, and ensure also that adults who work in such facilities have improved conditions in accordance with international standards and in particular with the International Labour Organization conventions ratified by the State party. The State party should take measures to monitor and address child labour and combat it, including by criminalizing employers who exploit child labour and bringing them to justice. The State party should conduct campaigns to raise awareness about the negative effects of child labour. The State party should also enhance measures with regard to the situation of street children.**

#### **Corporal punishment of children**

(23) The Committee is concerned at information about the high prevalence of corporal punishment of children in schools, children’s institutions and in the home, in particular in rural areas (art. 16).

**The State party should take urgent measures to explicitly prohibit corporal punishment of children in all settings. The State party should also ensure, through appropriate public education and professional training, positive, participatory and non-violent forms of discipline.**

#### **Juvenile justice**

(24) The Committee is concerned at information provided by the Committee on the Rights of the Child that the juvenile justice system is not in harmony with the principles and provisions of the Convention on the Rights of the Child and that there is no comprehensive policy framework for juvenile justice. The Committee is also concerned that the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, adopted by the General Assembly on 29 November 1985) are not applied and that children in both pretrial and regular detention are not separated from adults (arts. 2 and 16).

**The State party should continue and complete the process of harmonization of its national legislation in line with applicable international standards and should improve the legal framework for juvenile justice, should not resort to pretrial detention except in cases prescribed by law, and should ensure that children are detained separately from adults in all circumstances and that the United Nations Standard Minimum**

**Rules for the Administration of Juvenile Justice (Beijing Rules) are applied. The State party should establish specialized juvenile courts with trained juvenile judges and other judicial staff. If need be, the State party should seek international assistance in this regard.**

#### **Discrimination and violence against vulnerable groups**

(25) The Committee is concerned:

(a) About reports that there is no comprehensive domestic law against discrimination and that hate crimes and speech is not an offence under the law. The Committee is also concerned at reports that vulnerable groups such as lesbian, gay, bisexual and transgender (LGBT) persons are subjected to violence and sexual abuse, both in public and domestic settings, owing to widespread negative social attitudes. The Committee welcomes the official registration of the LGBT Centre and notes with appreciation the indication by the State party of the need for a public awareness-raising campaign regarding LGBT persons;

(b) About reports concerning the discrimination against persons with HIV/AIDS, especially with regard to housing and pre-screening prior to employment;

(c) That, while taking note of the enactment in 2002 of the new Civil Code which stipulates that non-citizens have the same rights as citizens in civil and legal matters, some foreigners may be subjected to organized violence based on ethnic origin (arts. 2 and 16).

**The State party should establish a comprehensive legal framework to combat discrimination, including hate crimes and speech. The State party should take measures to bring perpetrators of such crimes to justice. The State party should ensure the protection of vulnerable groups such as sexual minorities, persons living with HIV/AIDS, and some foreigners. The State party should establish effective policing, enforcement and complaints mechanisms with a view to ensuring prompt, thorough and impartial investigations into allegations of attacks against persons on the basis of their sexual orientation or gender identity in line with the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. The State party should adopt legislation to combat violence caused by organizations which promote and incite racial, ethnic and other forms of discrimination.**

#### **Persons with mental disabilities and psychological problems**

(26) The Committee regrets the lack of information provided by the State delegation with regard to legal safeguards, including monitoring and oversight, in relation to the hospitalization of persons with mental illnesses and intellectual disabilities. The Committee is further concerned at reports of the frequent use of hospitalization and that few alternative treatment options are in place, and at the very low number of professionals specialized in working with persons with mental illnesses and disabilities.

**The State party should, as a matter of urgency, strengthen the legal provisions in relation to the rights of persons with disabilities, including persons with mental illnesses and intellectual disabilities, and should establish monitoring and oversight mechanisms for places of hospitalization. The State party should strengthen alternative methods of treatment and care and should give priority to increasing the number of psychologically/psychiatrically skilled professionals.**

#### **Data collection**

(27) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as on death

row prisoners, ill-treatment of migrant workers, trafficking in humans and domestic and sexual violence.

**The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of persons guilty of torture and ill-treatment, ill-treatment of migrant workers, death row prisoners, trafficking in humans and domestic and sexual violence, disaggregated by age, sex, ethnicity and type of crime, as well as on means for redress, including compensation and rehabilitation, provided to the victims.**

(28) The Committee recommends that the State party consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible.

(29) The Committee recommends that the State party consider making the declarations envisaged under articles 21 and 22 of the Convention.

(30) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

(31) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(32) The Committee requests the State party to provide, within one year, follow-up information in response to the Committee's recommendations contained in paragraphs 9, 11, 16 and 19 of the present document.

(33) The Committee invites the State party to present its next periodic report in accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to submit a common core document in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee Meeting of the human rights treaty bodies, and to observe the page limit of 80 pages for the common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

(34) The State party is invited to submit its next periodic report, which will be the second periodic report, by 19 November 2014.

### 53. **Turkey**

(1) The Committee against Torture considered the third periodic report of Turkey (CAT/C/TUR/3) at its 959th and 960th meetings, held on 3 and 4 November 2010 (CAT/C/SR.959 and 960), and adopted the following concluding observations and recommendations at its 975th meeting (CAT/C/SR.975).

#### **A. Introduction**

(2) The Committee welcomes the submission of the third periodic report of Turkey but regrets that it was submitted four years late, which hinders the Committee from ongoing analysis of the implementation of the Convention.

(3) The Committee also welcomes that the report was submitted in accordance with the new optional reporting procedure of the Committee consisting of replies by the State party to a list of issues prepared and transmitted by the Committee. The Committee expresses its

appreciation to the State party for agreeing to report under this new procedure which facilitates the cooperation between the State party and the Committee. The Committee appreciates that the replies to the list of issues were submitted within the requested deadline. The Committee welcomes the constructive dialogue conducted with the high-level delegation and its efforts to provide explanations during the discussion of the report.

**B. Positive aspects**

(4) The Committee welcomes that, in the period since the consideration of the second periodic report, the State party has ratified or acceded to the following instruments:

- (a) International Covenant on Economic, Social and Cultural Rights, in 2003;
- (b) International Covenant on Civil and Political Rights, in 2003, and its Optional Protocols, in 2006;
- (c) Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, in 2004;
- (d) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2004;
- (e) Convention on the Rights of Persons with Disabilities, in 2009.

(5) The Committee notes with appreciation the State party's comprehensive reforms in the field of human rights and ongoing efforts to revise its legislation in order to ensure stronger protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. The Committee welcomes in particular:

(a) The amendment to article 90 of the Constitution according to which international treaties on human rights and fundamental freedoms prevail over national laws in case of conflict;

(b) The adoption of the new Criminal Procedure Code (Law No. 5271) in 2005 and the new Penal Code (Law No. 5237) in 2004. In particular, the Committee welcomes the provisions regarding:

- (i) Increased penalties for the crime of torture (3–12 years imprisonment) (Penal Code, art. 94);
  - (ii) Criminal liability for any individual who prevents or restricts the right of access to a lawyer (Criminal Procedure Code, art. 194);
  - (iii) The right of the suspect or accused to appoint one or more lawyers at any stage of investigation (Criminal Procedure Code, art. 149);
  - (iv) The obligatory assistance of a lawyer when an order for pretrial detention is made (Criminal Procedure Code, art. 101(3));
- (c) Elements of the constitutional reform package adopted in September 2010 pursuant to a national referendum which provides, inter alia, for:
- (i) The right of petition as a constitutional right which establishes an Ombudsman institution (Constitution, art. 74);
  - (ii) The right to appeal to the Constitutional Court with regard to fundamental rights and freedoms (Constitution, art. 148);
  - (iii) The guarantee that civilians will not be tried before military courts, except in times of war (Constitution, arts. 145 and 156).



(6) The Committee also welcomes efforts being made by the State party to amend its policies in order to ensure greater protection of human rights and give effect to the Convention, including:

(a) The announcement of a “zero tolerance for torture” on 10 December 2003;

(b) The preparation of a Second National Action Plan in the Fight against Trafficking;

(c) The standing invitation extended to United Nations special procedures mechanisms and the State party’s acceptance of visits by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2006), the Working Group on Arbitrary Detention (2006), and the Special Rapporteur on violence against women, its causes and consequences (2008);

(d) The commitment by the State party to ratify the Optional Protocol to the Convention, which it signed in 2005, and to establish a national preventive mechanism in consultation with representatives of civil society, which will be part of a national human rights institution to be established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

### C. Principal subjects of concern and recommendations

#### Torture and impunity

(7) The Committee is gravely concerned about numerous, ongoing and consistent allegations concerning the use of torture, particularly in unofficial places of detention, including in police vehicles, on the street and outside police stations, notwithstanding information provided from the State party that combating torture and ill-treatment has been a “priority item” and while noting the reported decrease in the number of reports on torture and other forms of cruel, inhuman or degrading treatment and punishment in official places of detention in the State party. The Committee is furthermore concerned by the absence of prompt, thorough, independent and effective investigations into allegations of torture committed by security and law enforcement officers which are required by article 12 of the Convention and at the pattern of failure to conduct these. It is also concerned that many law enforcement officers found guilty of ill-treatment receive only suspended sentences, which has contributed to a climate of impunity. In this respect, it is a matter of concern to the Committee that prosecutions into allegations of torture are often conducted under article 256 (“excessive use of force”) or article 86 (“intentional injury”) of the Penal Code, which prescribe lighter sentences and the possibility for suspended sentences, and not under articles 94 (“torture”) or 95 (“aggravated torture due to circumstances”) of the same Code (art. 2).

**The State party should take immediate measures to end impunity for acts of torture. In particular, the State party should ensure that all allegations of torture are investigated promptly, effectively and impartially. In connection with prima facie cases of torture and ill-treatment, the State party should ensure that the alleged suspect is subject to suspension or reassignment during the process of investigation, to avoid any risk that he or she might impede the investigation or continue any impermissible actions in breach of the Convention. The State party should also ensure that guidelines are in place to determine when articles 256 and 86 of the Penal Code will be required to prosecute ill-treatment instead of article 94. Further, the State party should immediately establish effective and impartial mechanisms to conduct effective, prompt and independent investigations into all allegations of torture and ill-treatment, and ensure that perpetrators of torture are prosecuted under article 94 (“torture”) and 95 (“aggravated torture”) so as to ensure that torture is punished by appropriate penalties as required by article 4 of the Convention.**

**Absence of effective, prompt and independent investigations into complaints**

(8) The Committee is concerned at the continuing failure of authorities to conduct effective, prompt and independent investigations into allegations of torture and ill-treatment. In particular, the Committee is concerned at reports that prosecutors face obstacles in effectively investigating complaints against law enforcement officers and that any such investigations pursued are commonly conducted by law enforcement officers themselves, a procedure which lacks independence, impartiality and effectiveness, notwithstanding Circular No. 8 of the Ministry of Justice pursuant to which investigations concerning allegations of torture and ill-treatment shall be conducted by the Public Prosecutor and not by law enforcement officers. In this respect, the Committee is further concerned at the lack of clarity surrounding the current system of administrative investigation into allegations of police abuse, which lacks impartiality and independence, and that prior authorization for investigating the highest level law enforcement officers is still permitted under the Criminal Procedure Code. The Committee is also concerned by reports that independent medical documentation of torture are not entered into evidence in court rooms and that judges and prosecutors only accept reports by the Ministry of Justice's Forensic Medicine Institute. Furthermore, while noting the project launched in 2006 to introduce an "Independent Police Complaints Commission and Complaints System for the Turkish Police and Gendarmerie", the Committee is concerned that no independent police complaints mechanism is yet in place. The Committee is concerned about a pattern of delays, inaction and otherwise unsatisfactorily handling by authorities of the State party of investigations, prosecutions and conviction of police, law enforcement and military personnel for violence, ill-treatment and torture offences against its citizens (arts. 12 and 13).

**The Committee calls on the State party to strengthen ongoing efforts to establish impartial and independent mechanisms to ensure effective, prompt, and independent investigations into all allegations of torture and ill-treatment. As a matter of priority, the State party should:**

(a) **Strengthen the efficiency and independence of public prosecution by increasing the number, authority and training of investigating prosecutors and judicial police;**

(b) **Ensure preservation of evidence until the arrival of the prosecutor and instruct courts to consider the possibility of tampered or missing evidence as central factors in trial proceedings;**

(c) **Ensure that prosecutors and judicial officers read and evaluate all medical reports documenting torture and ill-treatment from medical personnel and forensic doctors, irrespective of institutional affiliation, who are competent and have specialized training on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);**

(d) **Establish an independent police complaint mechanism, as planned for by the Ministry of Interior;**

(e) **Amend article 161, paragraph 5, of the Criminal Procedure Code, as amended by article 24 of Law No. 5353 of 25 May 2005, in order to ensure that special permission is not needed to prosecute high level officials accused of torture or ill-treatment. To the same effect, the State party should repeal article 24 of Law No. 5353.**

**Failure to investigate disappearances**

(9) The Committee is concerned at the lack of information from the State party on progress made in the investigation into cases of disappearances. In particular, the

Committee is concerned at: (a) the number of outstanding cases of disappearances identified by the Working Group on Enforced and Involuntary Disappearances (63 cases as of 2009), and (b) at the lack of information on progress in investigating disappearances cases for which the State party has been found in violation of articles 2, 3 and 5 under the European Convention of Human Rights (*Cyprus v. Turkey* and *Timurtas v. Turkey* of the European Court of Human Rights). The Committee is further concerned at the lack of: (a) information on the effective, independent and transparent investigations into such cases, and, if appropriate, prosecutions and convictions of perpetrators; and (b) due notification of the results of such investigations and prosecutions to family members of individuals who have disappeared. This lack of investigation and follow-up raises serious questions with respect to the State party's failure to meet its obligations under the Convention and, as concluded by the European Court of Human Rights, constitutes a continuing violation with respect to relatives of the victims (arts. 12 and 13).

**The State party should take prompt measures to ensure effective, transparent and independent investigations into all outstanding cases of alleged disappearances, including those cited by the European Court of Human Rights (*Cyprus v. Turkey* and *Timurtas v. Turkey*) and those identified by the Working Group on Enforced and Involuntary Disappearances. As appropriate, the State party should carry out prosecutions. The State party should notify relatives of the victims of the outcomes of such investigations and prosecutions. The Committee furthermore calls upon the State party to consider signing and ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.**

#### **Extrajudicial killings**

(10) The Committee is concerned at the scant information provided by the State party with respect to the implementation of the recommendation by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for the State party to undertake impartial, thorough, transparent and prompt investigations and fair trials in relation to the alleged roles of security forces in incidents of killings in Kiziltepe and Semdinli in 2004 and 2005 respectively (arts. 12 and 13).

**The State party should undertake prompt, thorough and independent investigations into all alleged cases of extrajudicial killings by security and law enforcement officers and ensure that perpetrators are brought to justice and punished with penalties appropriate to the nature of their crimes.**

#### **Restrictions on fundamental legal safeguards**

(11) The Committee is concerned at restrictions in the enjoyment of fundamental legal safeguards against torture and ill-treatment as a result of the introduction of new laws and amendments to the 2005 Code of Criminal Procedure. In particular, the Committee is concerned: (a) at the denial of a suspect's right to contact a lawyer until 24 hours after arrest under the Law on Combating Terrorism (Law No. 3713); (b) at the denial of legal aid for suspects accused of offences carrying a sentence of less than five years of imprisonment (Law No. 5560); (c) at the absence of a statutory right to an independent medical examination; and (d) that the statutory right to immediate access to a medical doctor is restricted to convicted prisoners (art. 94, Law No. 5275). The Committee is concerned at reports of the presence of a public official during the medical examination of a detainee notwithstanding that this is forbidden by law unless the medical personnel so requests for reasons of personal security (art. 2).

**The State party should ensure by law and in practice that all detainees are guaranteed the right to have prompt access to a lawyer, to notify a family member and to an independent medical examination from the very outset of their detention. The State**

**party should ensure that it upholds patient-doctor confidentiality during such medical examinations.**

**Overarching considerations regarding implementation**

(12) The Committee regrets that, despite its request for statistical information in its list of issues prior to reporting and in the oral dialogue with the State party, most of the information requested was not provided. In particular, the absence of comprehensive or disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security and prison personnel, expulsions of immigrants and asylum-seekers, access to detention records, trial duration, rehabilitation and compensation, and trafficking and sexual violence, severely hampers the identification of non-compliance with the Convention requiring attention.

**The State party should compile and provide the Committee with statistical data — disaggregated by gender, age, ethnicity and minority status, geographical location and nationality — relevant to the monitoring of the Convention at the national level and comprehensive information on complaints, investigations, prosecution and convictions of cases of torture and ill-treatment, expulsions, length of trials of alleged perpetrators of torture and ill-treatment, rehabilitation and compensation (including financial indemnification), trafficking and sexual violence, and on the outcomes of all such complaints and cases.**

**Excessive use of force by law enforcement officers and the use of counter-charges to intimidate persons reporting torture and ill-treatment**

(13) While noting the acknowledgement by the representative of the State party of excessive use of force by law enforcement authorities and information on measures taken to eradicate such practice, including by inscribing identification numbers on the helmets of police officers during demonstrations, the Committee remains concerned at reports indicating an increase in the excessive use of force and ill-treatment of demonstrators by police outside official detention places. In particular, the Committee is concerned at reports of fatal shootings by the police and gendarmerie as well as at reports of the arbitrary application of the June 2007 revisions to the Law on Powers and Duties of the Police (Law No. 2559) authorizing the police to stop any person and request to see his/her identification, which, it is alleged, have led to an increase in violent confrontations. Furthermore, the Committee is concerned at reports that police often resort to counter-charges under the Penal Code against individuals and family members of alleged victims complaining of police ill-treatment, in particular under article 265 on “using violence or threats against a public official to prevent them from carrying out their duty”, article 125 on “defaming the police”, article 301 on “insulting Turkishness”, and article 277 on “attempting to influence the judicial process”. The Committee is concerned that such charges are reportedly employed to deter, and even intimidate, alleged victims of abuse and their relatives from filing complaints (arts. 11 and 16).

**The State party should promptly implement effective measures to put an end to excessive use of force and ill-treatment by law enforcement authorities. The State party should, in particular:**

(a) **Ensure that domestic laws, rules of engagement and standard operating procedures relating to public order and crowd control are fully in line with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, in particular the provision that lethal use of firearms may only be made when strictly unavoidable in order to protect life (Principles, para. 9);**

(b) **Introduce a monitoring system on the implementation of the Law on Powers and Duties of the Police (Law No. 2559) and to prevent its arbitrary use by police;**

(c) **Ensure that State officials do not use the threat of counter-charges, such as those under articles 265, 125, 301 and 277 of the Penal Code, as a means to intimidate detained persons, or their relatives, from reporting torture and review convictions during the reporting period under such articles, with a view to identifying any wrongly used for such purposes, and ensure that all valid claims reporting torture were subject to an independent investigation and prosecution, as warranted.**

#### **Reparation and compensation, including rehabilitation**

(14) The Committee is concerned at the lack of comprehensive information and statistical data on reparation and compensation, including rehabilitation, for victims of torture and other cruel, inhuman or degrading treatment or punishment in the State party, as required by article 14 of the Convention (art. 14).

**The State party should strengthen its efforts in respect of reparation, compensation and rehabilitation and provide victims of torture and other cruel, inhuman or degrading treatment or punishment with fair and adequate reparation and compensation, including rehabilitation. The State party should consider developing a specific programme of assistance in respect of victims of torture and ill-treatment.**

#### **Non-refoulement and detention of refugees, asylum-seekers and irregular foreigners**

(15) The Committee welcomes information provided by the representative of the State party that three draft laws relating to asylum, a specialized unit dealing with asylum matters and foreigners are about to be submitted to the Parliament. It also notes the issuance of Circulars Nos. 18/2010 (illegal migration) and 19/2010 (asylum and migration) by the Ministry of Interior in March 2010. The Committee nevertheless is concerned that the draft asylum law retains the geographical limitation to the Convention relating to the Status of Refugees, which excludes non-European asylum-seekers from protection under the Convention. It is furthermore concerned at the system of administrative detention of foreigners apprehended due to their illegal entry or stay, or attempts to depart from the State party illegally, in “foreigners’ guesthouses” and other removal centres with limited access to the national procedure for temporary asylum. The Committee is furthermore concerned at reported cases of deportations and refoulement despite the risk of torture. In this respect, the Committee is concerned at the reported lack of access by asylum-seekers to legal aid, shortcomings in the asylum appeal system, lack of suspensive effect of deportation proceedings during the consideration of asylum requests, and at curtailed access to the Office of the United Nations High Commissioner for Refugees (UNHCR) and lawyers to visit individual asylum-seekers in detention. The Committee is furthermore seriously concerned at reported ill-treatment and serious overcrowding in “foreigners’ guesthouses” and other removal centres (art. 3).

**The State party should take prompt and effective measures to ensure compliance with its obligation under article 3 of the Convention not to return any person facing a risk of torture and ensure that all individuals in need of international protection have fair and equal access to asylum procedures and are treated with dignity. The Committee calls upon the State party to:**

(a) **Ensure access by independent monitoring bodies to “foreigners’ guesthouses” and other places of detention and pursue, without delay, with the construction of new shelters that provide safe and healthy living conditions;**

(b) **Consider lifting the geographical limitation to the Convention relating to the Status of Refugees by withdrawing its reservation to the Convention;**

(c) Ensure that all recognized refugees have access to international protection provided by UNHCR;

(d) Ensure effective access to the asylum procedure for apprehended foreigners kept in detention and introduce suspensive effect of deportation proceedings during consideration of asylum requests;

(e) Ensure access of UNHCR personnel, in line with the Ministry of Interior circular on asylum-seekers and refugees, to persons in detention who wish to apply for asylum, so as to ensure their right to do so;

(f) Ensure access of lawyers to asylum-seekers and refugees in detention so as to ensure their right to challenge decisions concerning their asylum application or other aspect of their legal status before appropriate legal tribunals.

#### **Monitoring and inspections of places of detention**

(16) While noting information provided by the representative of the State party on the role of the Human Rights Inquiry Commission of the Parliament and welcoming that visits by human rights defenders to places of detention are permitted, the Committee regrets the absence of a formal regulation that allows for independent monitoring and visits by representatives of civil society to such places. The Committee also regrets the lack of information on the implementation of main recommendations and findings by the institutions referred to in paragraphs 58–68 in the State party's report that are authorized to inspect places of detention (arts. 2, 11 and 16).

**The State party should provide information on formal regulations allowing independent visits to places where persons are deprived of their liberty by civil society representatives, lawyers, medical personnel, and members of local bar associations. The State party should also provide the Committee with detailed information on follow-up measures and activities pursuant to findings and recommendations by State institutions, including those referred to in paragraphs 58–68 of the State party's report.**

#### **Detention conditions**

(17) The Committee is seriously concerned at reported overcrowding in places of detention in the State party and notes the frank acknowledgment by the representative of the State party that the situation is "unacceptable". In view of information provided by the State party on a total occupancy rate of 120,000 prisoners, half of whom are prisoners on remand, the Committee is concerned at the lack of consideration of alternative measures to deprivation of liberty by judicial authorities and at excessively long pretrial detention, especially of those tried in the new heavy penal courts. The Committee furthermore notes with concern information that certain privileges relating to group activities of prisoners can be restricted for persons accused of, or convicted for, terrorist or organized crime offences and held under solitary confinement in F-type prisons. While welcoming that recording of interrogations can be requested by the judge as evidence in criminal proceedings, the Committee is concerned that at present only 30 per cent of police stations are equipped with video surveillance cameras and that such cameras are alleged to fail in many cases. The reported lack of funding to reduce overcrowding by means of the construction of new penitentiary institutions, the high number of vacancies of prison personnel (approximately 8,000) referred to by representative of the State party, the shortage of medical personnel and reported shortcomings in access to health care of ill prisoners in the State party, are also matters of concern to the Committee. The Committee further notes with concern that information on detention facilities can be subject to restrictions under the Law on the Right to Access Information (Law No. 4982) (arts. 2 and 16).

The State party should take immediate measures to bring an end to the endemic problem of excessive pretrial detention and overcrowding in places of detention. Furthermore, it should continue its efforts to improve the infrastructure of prisons and police stations so as to provide protection against abuses. In particular, the State party should:

- (a) Encourage members of the judiciary to consider and implement alternative means to deprivation of liberty as a penal sanction, including by introducing necessary legislation to this effect;
- (b) Install video surveillance cameras throughout police stations and make the video recording of interrogations of all persons questioned a standard procedure;
- (c) Undertake a legal review of articles 15–28 of the Law on the Right to Access Information (Law No. 4982) with a view to assessing their compatibility with the legal obligations under the Convention;
- (d) Continue efforts to fill the vacancies in penitentiary institutions so as to ensure adequate staffing of prisons;
- (e) Limit restrictions of privileges relating to group activities of prisoners in solitary confinement regimes to exceptional and well-defined situations only;
- (f) Address the shortage of medical personnel and ensure access to health care of ill prisoners, including by deferring sentences if necessary.

#### **Registration of detainees**

(18) The Committee is concerned at reports that suspects are held in police custody without being officially registered and, in this respect, notes with concern the vague provision in law that registration of detainees shall occur “within a reasonable time” upon arrest (art. 2).

**The State party shall ensure prompt registration of persons deprived of their liberty and specify in law the maximum time for when official registration pursuant to apprehension shall take place.**

#### **Violence against women**

(19) The Committee is concerned at numerous and ongoing reports of rape, sexual violence and other forms of gender-based acts of torture and ill-treatment committed by security agencies, detention officials and law enforcement officers. While noting training and awareness-raising programmes undertaken by the State party to address and prevent such acts, the Committee regrets the lack of information on measures taken to ensure accountability of perpetrators, including investigations, prosecutions and convictions of the perpetrators, as well as information on reparation and compensation, including rehabilitation, for victims as required by article 14 of the Convention.

**The State party should take prompt measures to prevent all acts of torture and ill-treatment, including rape and other forms of sexual violence, of women deprived of their liberty and ensure accountability of all perpetrators of such acts by undertaking prompt investigations into complaints, and, as appropriate, prosecutions and convictions with appropriate penalties of perpetrators. The State party should ensure that all victims of gender-based acts of torture and ill-treatment are provided with adequate reparation and compensation, including rehabilitation.**

#### **Domestic violence and honour killings**

(20) While noting the amendments to the Family Protection Law No. 4320 in 2007 and to the Penal Code in 2005 intended to enhance protection of women against violence and the

adoption of a National Action Plan to Combat Domestic Violence Against Women and various training programmes for law enforcement officers, the Committee remains concerned at the reported extent of physical and sexual violence against women. The Committee is concerned at reports that women are rarely inclined to report ill-treatment and violence against them to the police and at the inadequate number of available shelters for women victims of violence, in spite of relevant provisions in the Municipal Law of 2005. In addition, the Committee is concerned at the lack of information on reparation and compensation, including rehabilitation, for victims as required by article 14 of the Convention. The Committee is furthermore concerned at reports of the failure of State authorities to investigate honour killings, and at the lack of comprehensive official statistics on honour killings as well as on domestic violence. Also, the Committee is concerned that under article 287 of the Penal Code judges and prosecutors can order a virginity test in rape cases against the will of the woman (arts. 2 and 16).

**The State party shall continue and strengthen its efforts, including in cooperation with the Council of Europe, the European Union and United Nations human rights mechanisms, to prevent and protect women from all forms of violence. The State party should:**

- (a) Undertake all necessary measures to facilitate and encourage women to exercise their right to lodge complaints on domestic violence to the police, including in the building and staffing of shelters, hotlines and other protective measures;**
- (b) Ensure prompt and effective investigations into all allegations of honour killings and violence against women and ensure that perpetrators are brought to justice and punished with penalties appropriate to the nature of their crimes;**
- (c) Ensure that victims are provided adequate reparation and compensation, including rehabilitation;**
- (d) Introduce a comprehensive system of data collection and statistics on violence against women, including on domestic violence and honour killings, disaggregated by age, ethnicity and minority status, and geographical location.**

#### **Children in detention**

(21) While welcoming the 2010 amendments to the Law on Combating Terrorism which prohibit trial on charges of terrorism of juveniles who attend illegal meetings and demonstrations or distribute propaganda material for outlawed organizations and reduce penalties applied to those accused of terrorism-related offences, the Committee is concerned at reports that children continue to be detained in unrecorded adult pre-charge facilities following arrest during demonstration, including in the Anti-Terrorism Branch of Security Directorate, rather than in the Children's Branch. Further, the Committee is concerned at reports of ill-treatment of children while held in unofficial places of detention and that interrogations have occurred without legal assistance or the presence of an adult or legal guardian. While noting information from the representative of the State party that most sentences do not exceed two years' imprisonment, the Committee is concerned at reports that children allegedly continue to be sentenced to long periods of imprisonment (art. 16).

**The State party should develop and implement a comprehensive system of alternative measures to ensure that deprivation of liberty of children is used only as a measure of last resort, for the shortest period possible and in appropriate conditions. The State party should ensure that detention of children is subject to regular review so as to make certain that no child is subject to any form of ill-treatment during detention and that no child is held in unrecorded places of detention. In addition, the State party should strengthen awareness and application of international human rights standards**



relating to juvenile justice for members of the juvenile courts and increase the number of such courts. Additionally, the Committee urges the State party to consider raising the age of criminal responsibility, currently set at 12 years, to comport with international standards.

#### **Corporal punishment**

(22) The Committee, while noting the amendment to the Civil Code in 2002 which removed parents' right of correction, is concerned at the lack of an explicit prohibition of corporal punishment in the home and in alternative settings in the domestic legislation, and reports that corporal punishment is widely used by parents and is still considered to have educational value in schools (art. 16).

**The Committee should clarify beyond doubt the legal status of corporal punishment in schools and penal institutions and, as a matter of priority, prohibit it in the home, alternative settings and, if appropriate, schools and penal institutions.**

#### **Treatment of persons requiring psychiatric care**

(23) The Committee notes with concern the lack of information provided in the State party's report on conditions in rehabilitation centres with respect to offenders requiring psychiatric care. While noting information by the representative of the State party on five rehabilitation centres for detainees with psychiatric problems currently within penitentiary institutions, the Committee is concerned at the lack of information on the conditions of these facilities, including the full and effective exercise of the fundamental safeguards of such detainees. The Committee is furthermore concerned at the lack of information on general conditions, legal safeguards and protection against ill-treatment of persons in psychiatric facilities and mental hospitals, and notes with concern the high number of electroconvulsive treatment (ECT) administered in mental hospitals and clinics indicated in the State party's report (para. 306). Further, the Committee regrets the lack of information on access to such facilities by independent monitoring mechanisms (art. 16).

**The State party should undertake a serious review of the application of electroconvulsive treatment (ECT), and should end any other treatment which could amount to acts prohibited under the Convention, of persons requiring psychiatric care. The State party should ensure by law and in practice fundamental legal safeguards for all persons requiring psychiatric care, whether in psychiatric facilities, mental hospitals or penitentiary institutions. The State party should furthermore allow access to psychiatric facilities and mental hospitals by independent monitoring mechanisms in order to prevent any form of ill-treatment.**

#### **Statute of limitation**

(24) The Committee notes the increase in the statute of limitation for the crime of torture to 15 years, and to 40 years when acts of torture results in death, in the new Penal Code of 2005. Nevertheless, the Committee is concerned that the State party maintains a statute of limitation for the crime of torture (arts. 2, 12 and 13).

**The State party should amend its Penal Code to ensure that acts of torture are not subject to any statute of limitation.**

#### **Training**

(25) While welcoming information provided by the representative of the State party that training for law enforcement officers and gendarmerie includes training on the Istanbul Protocol, the Committee regrets the lack of information on whether and how public inspectors of prisons and other places of detention receive such training. Furthermore, the Committee regrets the lack of information on any training of members of the Village Guards or immigration officials regarding the absolute prohibition of torture (art. 10).

**The State party should further develop and strengthen ongoing educational programmes to ensure that all officials, including judges and prosecutors, public inspectors of places of detention, law enforcement personnel, security officers, members of the Village Guards and prison and immigration officials, are fully aware of the provisions of the Convention and the absolute prohibition of torture and that they will be held liable for any actions in contravention of the Convention.**

(26) The Committee invites the State party to ratify the Optional Protocol to the Convention and the core United Nations human rights treaties to which it is not yet a party as well as the Rome Statute on the International Criminal Court, the Convention on the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

(27) The State party is requested to disseminate widely the report submitted to the Committee, summary records and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(28) The Committee requests the State party to provide, within one year, follow-up information in response to the Committee's recommendations contained in paragraphs 7, 8, 9 and 11 of the present document.

(29) The Committee invites the State party to present its next periodic report in accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to submit an updated common core document in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), and to observe the page limit of 80 pages for the common core document.

(30) The State party is invited to submit its next periodic report, which will be the fourth report, by 19 November 2014.

#### **54. Finland**

(1) The Committee against Torture considered the fifth and sixth combined periodic reports of Finland (CAT/C/FIN/5-6) at its 996th and 999th meetings, held on 18 and 19 May 2011 (CAT/C/SR.996 and 999), and adopted the following concluding observations at its 1011th and 1012th meetings on 27 and 30 May 2011 (CAT/C/SR.1011 and CAT/C/SR.1012).

##### **A. Introduction**

(2) The Committee welcomes the timely submission of the fifth and sixth combined periodic reports of Finland submitted in accordance with the optional reporting procedure of the Committee consisting of replies by the State party to the list of issues (CAT/C/FIN/Q/5-6) submitted by the Committee. The Committee expresses its appreciation to the State party for agreeing to report under this new procedure which facilitates the cooperation between the State party and the Committee. The Committee appreciates that the replies to the list of issues were submitted within the requested deadline.

(3) The Committee also appreciated the open and constructive dialogue with the State party's high-level multisectoral delegation, as well as the additional information and explanations provided by the delegation to the Committee. The Committee thanks the delegation for its clear, straightforward and detailed answers to the questions raised by Committee members.

## B. Positive aspects

(4) The Committee notes with satisfaction that, since the consideration of the fourth periodic report of the State party, the latter has acceded to the following international instruments:

(a) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol);

(b) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

(5) The Committee welcomes the State party's ongoing efforts to revise its legislation in order to give effect to the Committee's recommendations and to enhance the implementation of the Convention, including:

(a) Amendment of the Criminal Code which entered into force on 1 January 2010 that criminalizes torture and establishes the absolute prohibition of torture in all circumstances, in compliance with the recommendations of the Committee to bring the code into accordance with articles 1 and 4 of the Convention;

(b) Amendment, adopted on 20 May 2011, to the Parliamentary Ombudsman Act (197/2002), which will enter into force on 1 January 2012, establishing the Centre for Human Rights as the national human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles);

(c) Adoption of the Pre-Trial Investigation Act, the Coercive Measures Act and of the Police Act in 2011;

(d) Adoption by Parliament in March 2011 of a legal reform whereby persons identified in the Child Welfare Act are required to report suspicions of sexual abuse to the police;

(e) Amendments to the Finnish Aliens Act (301/2004) which came into force on 1 April 2011;

(f) Entry into force of the New Act on Imprisonment (767/2005), the Act on Remand Imprisonment (768/2005) and of the Act on the treatment of persons held in police custody (841/2006);

(g) Amendments to the Act on the Ombudsman for Minorities and the Discrimination Board which entered into force on 1 January 2009, under which the Ombudsman for Minorities acts as the National Rapporteur for Trafficking in Human Beings;

(h) Amendments to the Criminal Code making petty assaults on minors, persons close to the perpetrator, including marital spouse or registered civil partners, the subject of public prosecution since the beginning of 2011; and

(i) Reduction in the number of prisoners since the introduction in 2006 of the possibility of probationary liberty under supervision under the Act on Imprisonment.

(6) The Committee also welcomes the efforts being made by the State party to amend its policies, programmes and administrative measures in order to ensure greater protection of human rights and give effect to the Convention, including:

(a) The unification at the beginning of 2010 of the Criminal Sanctions Agency, the Prison Service and the Probation Service in a single organization called the Criminal

Sanctions Agency, which is preparing a pilot survey for the end of 2012 of inmates and prison personnel;

(b) The revision of the National Plan of Action against Trafficking in Human Beings and the adoption on 11 June 2010 of the Programme on the Prevention of Violence Against Women comprising 60 measures;

(c) That the State party has continued to contribute regularly to the United Nations Voluntary Fund for Victims of Torture since 1984.

### **C. Principal subjects of concern and recommendations**

#### **Statute of limitations for the crime of torture**

(7) The Committee is concerned that the Criminal Code contains a statute of limitations for the crime of torture (art. 4).

**The Committee recommends that the State party ensure that acts of torture are not subject to any statute of limitations.**

#### **Fundamental legal safeguards**

(8) The Committee is concerned that fundamental legal safeguards were not always ensured for persons deprived of their liberty — in particular for those having committed “minor offences”, including juveniles — from the very outset of their detention, such as meeting with a lawyer, preferably of their choice, notifying their next of kin even in the case of short stays in police custody and being examined by an independent doctor, preferably of their own choice, within the detention premises (arts. 2 and 16).

**The Committee recommends that the State party ensure that all persons deprived of liberty are provided with fundamental legal safeguards from the very outset of detention, such as access to a lawyer, preferably of their choice, notifying their family of their detention and being examined by an independent doctor, preferably of their choice.**

(9) The Committee is concerned that interrogations of persons who have been arrested and detained and the investigations of persons before trial are not systematically subject to audio- or video-recording (arts. 2 and 16).

**The Committee recommends that the State party allocate the funds required to equip places where persons are interrogated and where pretrial investigations occur, and in particular police stations, with the necessary audio- and video-recording equipment.**

#### **Non-refoulement**

(10) The Committee is concerned that available legal safeguards and the time frame prescribed by law are not always guaranteed to all asylum-seekers (especially under the accelerated asylum procedure) and aliens pending deportation; for example, the right to lodge a judicial appeal with suspensive effect to the Helsinki Administrative Court and the Supreme Administrative Court. The Committee has no information on whether deportation operations are monitored by an independent body (art. 3).

**The Committee recommends that the State party guarantee a suspensive in-country right of appeal and respect for all safeguards and interim measures with regard to asylum and deportation procedures pending the outcome of the appeals to the Helsinki Administrative Court and the Supreme Administrative Court. The Committee would like to request information on whether deportation operations are monitored by an independent body.**

### **Involuntary psychiatric hospitalization and treatment**

(11) The Committee is concerned that the provisions of the Mental Health Act governing involuntary psychiatric hospitalization and treatment have not been amended. The Committee is concerned further that an independent psychiatric opinion is not included as part of the procedure for involuntary hospitalization, and that a decision for involuntary hospitalization can be based on a referral from a single doctor, frequently a general practitioner. Furthermore, the Committee notes with concern that a court review of involuntary hospitalizations is often not in place. In addition, the Committee is concerned that patients' consent is not sought with regard to electroconvulsive therapy and that there is no specific register for recording recourse to that therapy (arts. 2, 12, 13 and 16).

**The Committee recommends that the State party amend the Mental Health Act and pass clear and specific legislation rescinding the provisions governing involuntary psychiatric hospitalization and treatment, and enacting clear and specific legislation ensuring basic legal safeguards, such as requiring an independent psychiatric opinion as part of the procedure regarding the initiation and review of involuntary hospitalization and ensuring that a meaningful and expedient court review of the measure of involuntary hospitalization is provided, which includes the possibility for complaints. The State party should ensure that mental health care and services provided to all persons deprived of their liberty, including in prisons, psychiatric hospitals and social institutions, are based on the free and informed consent of the person concerned. The State party should ensure that any administering of electroconvulsive therapy to patients deprived of their liberty is based on free and informed consent. It also recommends the establishment of an independent body to monitor hospitals and places of detention, including with the authority to receive complaints.**

### **Violence against women**

(12) While appreciating the reply from the representatives of the State party regarding acceptance of the principle of due diligence with regard to the application of the Convention, particularly whereby State parties exercise their duty to prevent, investigate, and punish acts of violence against women and take effective action concerning acts of violence against women, whether perpetrated by the State, private persons, or armed groups, the Committee recommends that the State party redouble its efforts to prevent and eradicate all forms of violence against women (arts. 2, 4 and 16).

**The Committee in particular urges the State party to include information about the prohibition against torture under the Convention in the education and training of law enforcement and other personnel involved in combating violence against women including domestic violence and trafficking. It would appreciate receiving information from the State party concerning the sentences given to persons convicted of rape, and whether the punishments are commensurate with the gravity of the offence. It also recommends that the State party adopt legislation with a view to increasing the number of shelters for victims of violence, including trafficked persons, which should be allocated appropriate funding and specialized staff.**

### **Training**

(13) The Committee is concerned that all police training is monitored, evaluated and accepted by the National Police Board. It is also concerned that medical personnel who come into contact with persons deprived of their liberty, asylum-seekers and other aliens are not systematically trained in the provisions of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) (art. 10).

**The Committee recommends that all training of public officials be assessed and evaluated by a qualified independent body such as the envisaged independent evaluation body attached to the Ministry of Education and Culture which will start work in 2011. It also recommends that training on the provisions of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) be introduced into the basic training curriculum for medical personnel.**

#### **Conditions of detention**

(14) The Committee is concerned that occasional overcrowding continues to exist in some prisons and detention centres. While noting that prisoners have access to toilets during all hours of the day, the Committee is concerned at reports by the State party that 222 prison cells in three different prison facilities still lack appropriate sanitary equipment, including toilet facilities, and that the practice of “slopping out” continues to exist, a situation which is scheduled to end only in 2015 (arts. 11 and 16).

**The Committee recommends that the State party remedy the situation of overcrowding, including by way of redistributing prisoners, accelerating the judicial procedures and using the system of probationary liberty under supervision introduced in 2006. The Committee urges the State party to accelerate the renovation of the Mikkeli and Kuopio prisons, as well as Helsinki and Hameenlinna prisons, in addition to installing sanitary equipment in all places of detention as soon as possible.**

(15) The Committee is concerned that while the total number of prisoners has fallen, the number of remand, female and foreign prisoners has increased. It remains concerned about the situation of remand prisoners and preventive detention of aliens held in police and border-guard detention facilities and the length of pretrial detention. In addition, it is concerned that some 10 per cent of Roma prisoners are accommodated in closed wards. The Committee is also concerned at the reported slowness of the State party’s judicial apparatus and whether there are any members of ethnic minorities among the judiciary (arts. 11 and 16).

**The Committee recommends that the State party limit to the extent possible the stay of remand prisoners and aliens in preventive detention, in particular in police and border-guard detention facilities, and comply with the recommendations made in November 2010 by the working group set up by the Ministry of Justice to introduce a legislative amendment allowing for remand prisoners to be moved more quickly from police stations to regular prisons than is the case at present. It recommends that the Parliamentary Ombudsman monitor the conditions of detention of Roma prisoners, including the implementation of ethnic equality, and ensure that prison staff intervene in all incidents of discrimination against Roma brought to their attention. The Committee recommends that legislation be adopted to reduce pretrial detention and to accelerate the pending civil and criminal procedures. The Committee would appreciate receiving statistics on the number of members of ethnic minorities among the judiciary.**

#### **Monitoring of places of deprivation of liberty**

(16) The Committee is concerned that the Deputy Parliamentary Ombudsman dealing with prison matters was unable to carry out frequent and unannounced visits to places of deprivation of liberty owing to their heavy workload and processing of complaints (art. 11).

**The Committee recommends that the State party allocate sufficient human and financial resources to the Parliamentary Ombudsman in order to enable them to carry out frequent and unannounced visits to places of deprivation of liberty under their mandate. In this context, the Committee notes with satisfaction that the State**

party has signed the **Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment** and recommends that the State party complete the process of ratification of the **Optional Protocol** at the earliest appropriate time, so that the **Parliamentary Ombudsman** may act as the national preventive mechanism.

**Detention and ill-treatment of asylum-seekers, irregular immigrants and other aliens**

(17) The Committee is concerned about information regarding the frequent use of administrative detention with regard to asylum-seekers, irregular immigrants, unaccompanied or separated minors, women with children and other vulnerable persons, including those with special needs, as well as with their numbers and the frequency and length of their detention. In addition, the Committee is concerned that the Aliens Act allows for preventive detention not for a crime already committed but if a person is suspected of the possibility of committing a crime (arts. 11 and 16).

**The Committee recommends that the State party consider alternatives to the frequent detention of asylum-seekers and irregular immigrants, including minors and other vulnerable persons, and that it establish a mechanism to examine the frequent detention of such persons. It recommends that the State party consider increasing the use of non-custodial measures, use detention as a last resort and ensure that administrative detention of unaccompanied children is not practised. The Committee requests the State party to ensure that the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment be applied to asylum-seekers in administrative detention. In addition it would appreciate receiving information on the number of asylum-seekers and irregular immigrants in detention, how frequently they are detained and the average length of their detention.**

(18) The Committee is concerned at the conditions and length of detention of asylum-seekers and irregular immigrants at the detention unit for foreigners at Metsälä and the lack of legal safeguards regarding the length of detention. It is also concerned that such persons are detained not only in the Metsälä detention centre, which has a small capacity, but also in police and border-guard detention facilities which are not suitable for holding persons detained under legislation on aliens. The Committee is concerned that men and women are held together in such facilities, that children are held with adults when families with children are placed in migration-related detention and that a total of 54 children were detained in 2010 under the Aliens Act (arts. 2 and 11).

**The Committee recommends that steps be taken to increase the capacity of the Metsälä detention centre or establish a new detention centre for foreigners. It also recommends that the State party review the detention, including length, of asylum-seekers, irregular immigrants and other foreigners in the Metsälä centre as well as in police and border-guard detention facilities, provide them with fundamental legal safeguards and set up a complaints mechanism regarding conditions of detention, and use non-custodial measures.**

(19) The Committee is also concerned at allegations concerning the rise in physical and psychological ill-treatment of asylum-seekers and irregular immigrants, including their harsh treatment by the police and other law enforcement authorities (arts. 10, 11 and 16).

**The Committee recommends that the State party ensure that specialized training and internal guidelines for police, border guards and other law enforcement authorities make them aware of their obligations under human rights and refugee law so that they may treat asylum-seekers in a more humane and culturally sensitive manner and that perpetrators of ill-treatment are investigated, prosecuted and convicted.**

**Redress, including compensation and rehabilitation**

(20) The Committee is concerned that, although persons are entitled to compensation under the Act on Compensation from State Funds for the Arrest or Detention of an Innocent Person and the Parliamentary Ombudsman sometimes provides limited compensation for non-pecuniary damage caused by torture or ill-treatment, according to the legal order of the State party the authorities do not have a general obligation to pay compensation to a person whose rights have been violated (art. 14).

**The Committee recommends that the State party adopt all necessary measures in order to comply with the full scope of article 14 of the Convention according to which the State party shall ensure in its legal system 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, that in the event of the death of the victim as a result of an act of torture his dependants shall be entitled to compensation and that nothing shall affect any right of the victim or other persons to compensation which may exist under national law. In addition, while it welcomes the existence of two rehabilitation units for torture survivors in the State party, the Committee recommends that full rehabilitation be made available to all victims of torture and ill-treatment, in all settings.**

**Non-admissibility of evidence**

(21) While noting that it has not received any information that evidence obtained under torture has been accepted, the Committee is concerned that criminal law in the State party does not contain any specific provisions on the prohibition of use of statements obtained under torture, as set out in article 15 of the Convention. It is also concerned that the prosecution service has not issued any instructions or orders with regard to the prohibition of using a statement obtained under torture as an element of proof (art. 15).

**The Committee recommends that the State party enact legislation specifically prohibiting the use of statements obtained under torture as evidence and elements of proof in conformity with article 15 of the Convention.**

**Ill-treatment**

(22) The Committee is concerned that, according to the Deputy Parliamentary Ombudsman, persons who were arrested for participating in a demonstration were tied by the police to the seats of their bus and to each other and were not allowed to use the toilet while in the bus, in violation of Ministry of the Interior Decision 1836/2/07 of 28 November 2007, summary 2007, pages 41–44 (art. 16).

**While taking note of the measures taken by the State party to remedy the situation and prevent such incidents in the future, as stated during the dialogue with the delegation, the Committee recommends that the State party issue clear guidelines to be followed by the police when arresting and dealing with persons deprived of their liberty, in order to prevent any ill-treatment of those detained, as outlined in the Code of Conduct for Law Enforcement Officials.**

**Information and statistical data**

(23) While taking note of the information about the basis of the compilation of statistics by the Parliamentary Ombudsman, the Committee recommends that the State party provide the Committee with data disaggregated by age, gender and ethnicity on: complaints, investigations of and prosecutions and convictions in cases, if any, of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as persons who are not public servants. It would also appreciate receiving disaggregated data on trafficking in human beings, the forced clandestine prostitution and exploitation of



immigrant women, violence against women, including domestic and sexual violence, and means of redress, including compensation and rehabilitation, provided to the victims

(24) While taking note with satisfaction that the State party committed itself to making the recommendations made under the universal periodic review an integral part of its Government's comprehensive human rights policy, the Committee would appreciate receiving information regarding the measures in force to prevent violence against women, compile information on violence against children, provide the same coverage in national legislation and anti-discrimination training activities on grounds of sexual orientation and disability as for other grounds of discrimination in areas such as the provision of services and health care and to consider using the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity as a guide to assist in the development of its policies.

(25) The Committee would further welcome information concerning the implementation of the Convention in territories where its Armed Forces are deployed, including in United Nations missions.

(26) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and the International Convention for the Protection of All Persons from Enforced Disappearance.

(27) The Committee invites the State party to present its next treaty-specific report within the limit of 40 pages. The Committee also invites the State party to update its common core document (HRI/CORE/1/Add.59/Rev.2) in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee Meeting of the human rights treaty bodies, and to observe the page limit of 80 pages for the common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

(28) The Committee requests the State party to provide, within one year, information on the implementation of the Committee's recommendations contained in paragraphs 8, 15, 17 and 20 above.

(29) The Committee recommends that the State party widely disseminate throughout its territory, in all official languages, the report submitted to the Committee and the Committee's concluding observations through official websites, the media and non-governmental organizations.

(30) The State party is invited to submit its next report, which will be the seventh periodic report, by 3 June 2015.

## 55. **Ghana**

(1) The Committee against Torture considered the initial report of Ghana (CAT/C/GHA/1) at its 992nd and 995th meetings (CAT/C/SR.992 and 995), held on 16 and 17 May 2011, and adopted, at its 1011th meeting (CAT/C/SR.1011), the following concluding observations.

### **A. Introduction**

(2) The Committee welcomes the submission of the initial report of Ghana. However, it regrets that the report does not follow generally the Committee's Guidelines on the form and content of initial reports (CAT/C/4/Rev.3), and that it was submitted nearly eight years late, which prevented the Committee from conducting an analysis of the implementation of the Convention in the State party, following its ratification in 2000. The Committee also

regrets that the report lacks statistical and practical information on the implementation of the provisions of the Convention.

(3) The Committee appreciates the frank and open discussions it enjoyed with the State party's delegation, and the additional information that was provided during the consideration of the report.

#### **B. Positive aspects**

(4) The Committee welcomes the efforts and progress made by the State party since the return to democratic rule in January 1993.

(5) The Committee welcomes the fact that in the period since the entry into force of the Convention for the State party in 2000, Ghana has ratified or acceded to the following international and regional instruments:

(a) The International Covenant on Economic, Social and Cultural Rights, in 2000;

(b) The International Covenant on Civil and Political Rights and its Optional Protocol on individual complaints, in 2000;

(c) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2000;

(d) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2011.

(6) The Committee notes the efforts undertaken by the State party to reform its legislation to ensure better protection of human rights, in particular:

(a) The adoption in 2003 of the Juvenile Justice Act (Act 653);

(b) The adoption in 2005 of the Human Trafficking Act (Act 694), and its 2009 amendment;

(c) The adoption in 2007 of the Domestic Violence Act (Act 732);

(d) The adoption in 2007 of the amended Criminal Code (Act 741), which criminalizes the practice of female genital mutilation.

(7) The Committee welcomes the fact that on 9 February 2011, Ghana made the declaration under article 34, paragraph 6, of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights accepting the competence of the Court to receive and examine cases from individuals and non-governmental organizations, in accordance with article 5, paragraph 3, of the Protocol.

(8) The Committee notes with appreciation that the State party has issued a standing invitation to the special procedures mechanisms of the Human Rights Council and welcomes the recent visit of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

#### **C. Principal subjects of concern and recommendations**

##### **Definition and offence of torture**

(9) While noting that article 15, paragraph (2)(a) of the 1992 Constitution prohibits torture and cruel, inhuman or degrading treatment or punishment, the Committee regrets that the offence of torture as defined in article 1 of the Convention has not yet been included in the State party's Criminal Code. The Committee welcomes the information provided by the State party's delegation that the Attorney General's Office is in the process

of seeking Cabinet approval for the domestication of the Convention, which will then be submitted to Parliament for consideration, in accordance with article 106 of the Constitution (arts. 1 and 4).

**The State party should take the necessary measures to ensure that torture is established as an offence in its domestic law, and should adopt a definition of torture that includes all the elements contained in article 1 of the Convention. The State party should also ensure that such offences are made punishable by appropriate penalties which take into account their grave nature, in accordance with article 4, paragraph 2, of the Convention.**

#### **Fundamental legal safeguards**

(10) The Committee notes the measures adopted by the State party to ensure compliance with due process, including the right for all detainees to obtain immediate access to a counsel, to undergo a medical examination, to be informed immediately of their rights in a language they understand, and to appear before a judge within 48 hours of arrest. It also notes the establishment of pilot interrogation rooms in some police stations where fixed closed-circuit television (CCTV) cameras have been installed. However, the Committee expresses concern about reports that police fail to bring suspects before a judge within 48 hours of arrest, and that some police officers allegedly sign remand warrants themselves and take suspects directly to prison. The Committee also expresses concern at the very limited number of legal aid defence lawyers which precludes many defendants from obtaining legal counsel. Furthermore, it is concerned at the content of sections 10 to 13 of the Police Service Instruction 171, which provides for medical examinations to be conducted under the control of Government Medical Officers, who shall be requested to be present during independent medical examinations (arts. 2, 11 and 12).

**The State party should take effective measures to guarantee that the fundamental legal safeguards for persons detained by the police are respected, including the right to be promptly informed of reasons for arrest and of any charges against him or her, the right to appear before a judge within the time limit prescribed by law and the right to an independent medical examination or a doctor of their own choice.**

The State party should also:

(a) **Ensure that all detained persons are guaranteed the possibility to challenge effectively and expeditiously the lawfulness of their detention through habeas corpus;**

(b) **Make audio and video recording of interrogations of all persons questioned a standard procedure;**

(c) **Expand the number of legal aid defence lawyers;**

(d) **Ensure prompt registration of all persons deprived of their liberty and ensure that custody records at police and prison facilities are periodically inspected to make sure that they are being maintained in accordance with procedures established by law;**

(e) **Guarantee the privacy and confidentiality of medical information: public officials should not be present during medical examinations of persons under custody, save under exceptional and justifiable circumstances.**

#### **Absolute prohibition of torture**

(11) While noting the information provided by the State party on the relevant constitutional precepts governing the declaration and administration of a state of emergency, the Committee is concerned at the absence of clear legal provisions ensuring

that the absolute prohibition against torture is not derogated from under any circumstances (art. 2, para. 2).

**The State party should incorporate in the Constitution and other laws the principle of absolute prohibition of torture, whereby no exceptional circumstances whatsoever may be invoked to justify it.**

#### **Death penalty**

(12) The Committee notes with interest the information provided by the delegation stating that the death penalty has not been applied in the State party since the military regime that ended in 1993.

**The Committee invites the State party to consider the possibility of abolishing the death penalty, or failing that, to formalize the current de facto moratorium on the death penalty. The Committee strongly encourages the State party to consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.**

#### **Coerced confessions**

(13) The Committee values the information and clarification given by the representative of the State party in respect of the 1975 Evidence Decree (NRCD 323), which regulates the taking of evidence in legal proceedings, and which renders inadmissible as evidence statements made in the absence of “an independent witness approved by the person other a police officer or a member of the Armed Forces”. However, the Committee is concerned that the regulation does not refer explicitly to torture. It is also concerned at the lack of information on decisions taken by the Ghanaian courts to refuse confessions obtained under torture as evidence (art. 15).

**The State party should ensure that legislation concerning evidence to be adduced in judicial proceedings is brought in line with the provisions of article 15 of the Convention, so as to explicitly exclude any evidence obtained as a result of torture.**

**The Committee requests the State party to submit information on the application of the 1975 Evidence Decree, and on whether any officials have been prosecuted and punished for extracting a confession under torture.**

#### **National human rights institution**

(14) While noting that during the universal periodic review of Ghana in 2008 the State party accepted to further strengthen the capacities of the Commission on Human Rights and Administrative Justice (CHRAJ) by increasing its funding and resources, the Committee is concerned that, according to the information provided by the delegation of the State party, which included a CHRAJ representative, the Commission does not receive adequate funding for its programmed activities.

**The State party should strengthen the independence of the Commission, including by providing it with an adequate operating budget and intensifying its efforts to ensure that it is in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).**

#### **Torture and cruel, inhuman or degrading treatment of detainees (arts. 2, 4, 11 and 15)**

(15) The Committee is gravely concerned at the State party’s statement that the likelihood that torture occurs in detention centres is high. The Committee has raised questions as to what will be done to stop this practice, including holding prison staff accountable and providing redress for those tortured. The Committee is concerned at the existence of legislation that allows caning or flogging, but takes note of the low frequency of such incidences.

The Committee urges the State party to take immediate and effective measures to investigate, prosecute and punish all acts of torture, and to ensure that torture is not used by law enforcement personnel, including by unambiguously reaffirming the absolute prohibition of torture and publicly condemning practices of torture, especially by the police and prison officers, and issuing a clear warning that anyone committing such acts or otherwise complicit or participating in torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties.

#### **Conditions of detention**

(16) The Committee takes note of the information provided by the State party on steps taken to deal with the problems of overcrowding and prolonged pretrial detention, notably by the construction of a new penitentiary at Ankaful, and the introduction of the Justice for All programme in 2007. The Committee is nevertheless concerned at the high levels of occupancy recorded in most detention centres, which are described in the State party's report as "in very deplorable state" and "not suitable for habitation". It further notes with particular concern persistent reports of the lack of staff, poor health and hygiene conditions, inadequate health-care services, shortage of bedding and food. In this regard, the Committee notes that inmates are fed by the State only once a day because the stipend for their upkeep is below US\$ 1. The Committee also expresses concern at reports about the limited number of remand homes for juvenile offenders, and the poor conditions in such institutions. The Committee takes positive note of the marked decrease in the number of deaths in prison (from 118 in 2008 to 55 in 2010), but regrets the lack of information on the causes of these deaths. It also regrets the lack of information on the conditions of detention for migrants with irregular administrative status (art. 11).

#### **The State party should:**

- (a) **Ensure that conditions of detention in the country's prisons are compatible with the Standard Minimum Rules for the Treatment of Prisoners;**
- (b) **Increase its efforts to remedy prison overcrowding, in particular by instituting alternatives to custodial sentences;**
- (c) **Continue to put into effect plans to improve and expand the prison infrastructure and the remand centres, including those for juvenile offenders;**
- (d) **Take steps to increase the number of prison officials;**
- (e) **Examine the adequacy of health-care resources available in penitentiary institutions, and ensure that the medical assistance given to detainees is of high quality;**
- (f) **Review all legal provisions which authorize the practice of caning or flogging with a view to abolishing them as a matter of priority.**

**The State party should include in its next periodic report statistical data regarding reported deaths in custody, disaggregated by location of detention, sex, age, ethnicity of the deceased and cause of death.**

#### **Psychiatric facilities**

(17) The Committee is concerned at reports about the inadequate treatment of mental health patients and poor living conditions in psychiatric institutions, in particular at Accra Psychiatric Hospital. The Committee notes with concern the reports of severe overcrowding, lack of qualified staff and poor material and hygienic conditions in this psychiatric facility. It is also deeply concerned at the situation of persons admitted by reason of a court order, who have allegedly been abandoned for years. In this regard, the

Committee notes with interest the information provided by the State party's delegation on existing proposals for expanding mental health facilities in the country, and on the draft mental health bill before Parliament, which would include an individual complaint system. The Committee is seriously concerned at reports regarding persons remaining in hospital long after they should have been discharged, for lack of appropriate after-care or alternative and secure settings. It takes note of the explanation given by the delegation that efforts to reintegrate persons declared fit faced a number of obstacles, including social stigma, but points out that this can never be held as a reason for not initiating alternative care facilities after hospitalization (art. 16).

**The State party should:**

- (a) **Improve the living conditions of patients in psychiatric institutions;**
- (b) **Ensure that no psychiatric confinement takes place unless strictly required, that all persons without full legal capacity are placed under guardianship that genuinely represents them and defends their interests, and that an effective judicial review of the lawfulness of the admission and detention of all persons in health institutions takes place in each case;**
- (c) **Ensure that all places where mental-health patients are held for involuntary treatment are visited by independent monitoring bodies to guarantee the proper implementation of the safeguards set out to secure their rights;**
- (d) **Develop alternative forms of treatment, especially community-based treatment, in particular with a view to receiving persons discharged from hospitals.**

**Monitoring and inspection of places of deprivation of liberty**

(18) The Committee takes note of the information provided by the State party that the Auditor General and a number of independent bodies conduct regular inspections of penitentiary institutions. However, and notwithstanding the explanations given by the delegation, the Committee remains concerned at the fact that a visit request made by the non-governmental organization Amnesty International in March 2008 was refused by the Ghanaian government due to "unsafe" circumstances (art. 2).

**The Committee calls upon the State party to establish an effective independent national system to monitor and inspect all places of deprivation of liberty and to follow-up on the outcome of such systematic monitoring.**

**The State party should strengthen its cooperation with, and support to non-governmental organizations that undertake monitoring activities.**

**The Committee recommends that the State party provide detailed information on the place, time and periodicity of visits, including unannounced visits, to places of deprivation of liberty, and on the findings of and action taken on the outcome of such visits.**

**Prompt, thorough and impartial investigations**

(19) The Committee is concerned about reports of impunity in cases of torture and ill-treatment, including cases of police brutality and excessive use of force. While noting the information provided by the State party on a few highly publicized cases, the Committee remains concerned at the fact that law enforcement officials and military personnel responsible for alleged acts of torture are seldom prosecuted. It is further concerned that the State party was unable to provide information about some of the specific incidents to which the Committee drew attention, and at the lack of statistical data on allegations of torture and ill-treatment and on the results of the investigations undertaken in respect of those

allegations. The Committee notes the existence of a proposal to create an independent prosecution service (arts. 12 and 13).

**The State party should take appropriate measures to ensure that:**

(a) **All allegations of torture or ill-treatment are thoroughly and impartially investigated, perpetrators are duly prosecuted and, if found guilty, convicted to penalties taking into account the grave nature of their acts, and that the victims are adequately compensated, including their full rehabilitation;**

(b) **Clear and reliable data are compiled on acts of torture and ill-treatment in police and prison custody and in other places of deprivation of liberty;**

(c) **All law enforcement officials and military personnel are thoroughly trained in international human rights standards, particularly those contained in the Convention.**

#### **Refugees and asylum-seekers**

(20) The Committee notes, based on reports, that due to the post-election crisis in Côte d'Ivoire, over 14,178 Ivorians (including 6,036 children) have sought asylum in the State party since 16 May 2011. Among the new arrivals, are persons who might have been subjected to direct threats and abuse due to their perceived political affiliation. The Committee is particularly concerned about information received concerning the suspected presence of combatants among those fleeing Côte d'Ivoire in refugee hosting areas, which could generate serious security concerns for refugees, asylum-seekers and communities, as well as threaten to undermine the civilian and humanitarian character of asylum. The Committee appreciates the efforts of the State party in responding to this massive influx and encourages it to establish procedures required for the identification and separation of combatants, and to promptly determine the refugee status of Ivorian asylum-seekers. The Committee also notes with concern that 11,000 refugees from Liberia have been living in Ghana for over 20 years and that, according to the information provided by the delegation, the State party is planning to either relocate them or return them to their place of origin (arts. 3 and 16).

**The Committee calls on the State party to take a more active approach in relation to its obligations at the international and regional levels under international refugee law. In this respect, the State party should:**

(a) **Pursue its efforts, in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), to continue to identify refugees and asylum-seekers and ensure their protection in accordance with international law, including, in particular, respect for the principle of non-refoulement;**

(b) **Consider granting refugee status on a prima facie basis to Ivorians fleeing their country, except for those who may be considered combatants, until it is established that they have genuinely and permanently renounced military activities;**

(c) **Take measures to effectively screen arrivals and to separate combatants and non-combatants in order to ensure the civilian nature of refugee camps and/or sites, including through strengthening existing screening mechanisms and enhancing the capacity of the Ghana Refugee Board at the border;**

(d) **Reinforce the capacity of the Ghana Refugee Board to process refugee claims of asylum-seekers in the country other than those who may benefit from recognition on a prima facie basis;**

(e) **Ensure that Liberian refugees in Ghana are not forcibly returned to their country of origin in a manner that would be inconsistent with the non-**

**refoulement obligations under the Convention or other international human rights instruments.**

**Human trafficking**

(21) The Committee takes note of the adoption in 2005 of the Human Trafficking Act, and its 2009 amendment, which brought the definition of trafficking in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. However, the Committee expresses its concern at persistent reports of internal and cross-border trafficking of women and children for the purpose of sexual exploitation or forced labour as, for example, domestic workers or head-load carriers (*kayaye*). The Committee is also concerned at the lack of statistics in the State party's report on, inter alia, the number of prosecutions, convictions and sentences of perpetrators of trafficking, including for child labour, and the absence of practical measures taken to prevent and combat this phenomenon. It also notes with concern that there is no formal referral process to transfer victims in protective custody to other facilities (arts. 2, 12 and 16).

**The State party should:**

(a) **Intensify its efforts to prevent and combat trafficking in human beings, especially women and children, including by implementing the anti-trafficking legislation, providing protection for victims and ensuring their access to medical, social, rehabilitative and legal services, including counselling, as appropriate;**

(b) **Ensure adequate conditions for victims to exercise their rights to make complaints;**

(c) **Conduct prompt, impartial investigations of trafficking and ensure that those who are found guilty for such crimes are punished with penalties appropriate to the nature of their crimes;**

(d) **Conduct nation-wide awareness-raising campaigns and conduct training for law enforcement officials;**

(e) **Provide detailed information on the number of investigations and complaints of human trafficking, as well as prosecutions and convictions in such cases.**

**Violence against women, including domestic violence**

(22) The Committee takes note of the adoption in 2007 of the Domestic Violence Act and the statistics presented by the State party during the dialogue on the domestic violence cases that occurred in 2010. However, the Committee is concerned at reports of widespread violence against women, including domestic violence; the partial implementation of the Domestic Violence Act; and that the Domestic Violence and Victim Support Unit (DOVVSU) of the Police Service is inadequately resourced. The Committee is concerned at the reluctance of the State party to criminalize marital rape, and the lack of information in the State party's report on the number of complaints, investigations, prosecutions, convictions and sentences imposed in cases of violence against women during the period under review (arts. 2, 12, 13 and 16).

**The Committee urges the State party:**

(a) **To investigate, bring to trial and punish the perpetrators of such acts;**

(b) **To take more effective measures to protect and assist the victims;**

(c) **To allocate sufficient financial resources to ensure the effective functioning of DOVVSU;**



(d) To strengthen awareness-raising and educational efforts on violence against women and girls for officials in direct contact with the victims (law enforcement officers, judges, social workers, etc.), as well as for the public at large;

(e) To enact legislation criminalizing marital rape.

The Committee requests the State party to provide in its next periodic report statistics on the number of complaints of violence against women, including rape, as well as information on investigations, prosecutions and convictions in such cases.

#### **Harmful traditional practices**

(23) The Committee takes note of the positive actions of the Government in criminalizing harmful traditional practices, such as female genital mutilation and *trokosi* (ritual or customary slavery). It also notes the 25 per cent decrease in the number of reported cases of female genital mutilation between 1999 and 2010, although there were still a total of 123,000 reported cases during that period. The Committee remains concerned at the clear incompatibility between certain aspects of Ghana's customary law and traditional practices and the respect for fundamental rights and liberties, including the prohibition of torture and cruel, inhuman or degrading treatment or punishment. In this regard, the Committee is concerned at reports that some women have been accused of practicing witchcraft, and subjected to severe violence, including mob violence, burning and lynching, and forced to leave their communities. Many such women have been sent to so-called "witch camps" through a system that lacks minimal due legal process, and from which the possibility of returning to society is uncertain. The Committee also expresses concern about reports of cases of violence against widows who are often deprived of their inheritance and, in some cases, subjected to humiliating and abusive widowhood rites. The Committee regrets the lack of information on prosecutions and sentences imposed on perpetrators of such acts, as well as on assistance and compensation to the victims. It also regrets the lack of information on the steps taken to ensure that customary law in Ghana is not incompatible with the State party's obligations under the Convention (arts. 2 and 16).

#### **The State party should:**

(a) Strengthen its efforts to prevent and combat harmful traditional practices, including female genital mutilation, in particular in rural areas, and ensure that such acts are investigated and that the alleged perpetrators are prosecuted and convicted;

(b) Provide victims with legal, medical, psychological and rehabilitative services, as well as compensation, and create adequate conditions for them to report complaints without fear of reprisal;

(c) Provide training to judges, prosecutors, law enforcement officials and community leaders on the strict application of the relevant legislation criminalizing harmful traditional practices, and other forms of violence against women.

In general, the State party should ensure that its customary law and practices are compatible with its human rights obligations, especially under the Convention. The State party should also provide information on the hierarchy between customary and domestic law, especially with regard to forms of discrimination against women.

The Committee further requests the State party to provide, in its next periodic report, detailed information and updated statistical data on complaints, investigations, prosecutions, convictions and sentences imposed on perpetrators of criminal conduct related to harmful traditional practices, including murder, as well as on assistance and compensation provided to victims.

**Corporal punishment**

(24) While noting that the Juvenile Justice Act (2003) and the Children's Act (1988) explicitly prohibit corporal punishment as a disciplinary measure in prisons, the Committee expresses its concern at the still widespread use of corporal punishment, in particular within the family, schools and alternative care settings (arts. 11 and 16).

**The State party should:**

**(a) Explicitly prohibit corporal punishment of children in all settings, including through the repeal of all legal defences for "reasonable" and "justifiable" corporal punishment;**

**(b) Engage in the promotion of alternative forms of discipline to be administered in a manner consistent with the child's dignity, and in conformity with the Convention;**

**(c) Develop measures to raise awareness on the harmful effects of corporal punishment.**

**Training**

(25) The Committee regrets the scant information provided by the State party on human rights training schemes for medical and law enforcement personnel, judicial officials and other persons involved with custody, interrogation or treatment of persons deprived of their liberty on matters related to the prohibition of torture and ill-treatment. It notes with concern that the human rights training activities for police personnel, organized through the UNDP Access to Justice programme in Ghana, ended in 2010 due to lack of funding.

**The State party should:**

**(a) Continue to provide mandatory training programmes so as to ensure that all public servants, in particular members of the Police and other law enforcement officials are fully aware of the provisions of the Convention, that breaches are not tolerated, but investigated, and that perpetrators are brought to trial;**

**(b) Assess the effectiveness and impact of training schemes and education on the incidence of torture and ill-treatment;**

**(c) Support training on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) for all relevant personnel, including medical personnel.**

**Data collection**

(26) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as on violence against women, trafficking and harmful traditional practices.

**The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as violence against women, trafficking and harmful traditional practices, including compensation and rehabilitation provided to victims. The State party should include such data in its next periodic report.**

(27) While welcoming the signing of the Optional Protocol to the Convention on 6 November 2006, the Committee encourages the State party to accelerate the ratification process, as well as the designation of a national preventive mechanism.

(28) Noting the commitment made by the State party in the context of the universal periodic review (A/HRC/8/36), the Committee recommends that the State party consider ratifying the Convention on the Rights of Persons with Disabilities, as well as the new International Convention for the Protection of All Persons from Enforced Disappearance.

(29) The State party is encouraged to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(30) The Committee invites the State party to present its next periodic report in accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to submit an updated common core document in accordance with the requirements of the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee Meeting of human rights treaty bodies, and to observe the page limit of 80 pages for the updated common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

(31) The Committee requests the State party to provide, within one year, follow-up information in response to the Committee's recommendations contained in paragraphs 10 (c) and (d), 17(d) and 23(a) of the present document.

(32) The State party is invited to submit its next report, which will be the second periodic report, by 3 June 2015.

## 56. Ireland

(1) The Committee against Torture considered the initial report of Ireland (CAT/C/IRL/1), at its 1002nd and 1005th meetings (CAT/C/SR.1002 and 1005), held on 23 and 24 May 2011. At its 1016th meeting (CAT/C/SR.1016), held on 1 June 2011, it adopted the following concluding observations.

### A. Introduction

(2) The Committee welcomes the submission of the initial report by the State party but regrets that it was submitted after a delay of eight years, which has prevented the Committee from monitoring the implementation of the Convention in the State party. The Committee also notes that the State party report generally followed the guidelines but that it lacked specific information on the implementation of the Convention.

(3) The Committee notes with appreciation that a high-level delegation from the State party met with the Committee during its forty-sixth session, and also notes with appreciation the opportunity it had to engage in a constructive dialogue covering many areas under the Convention. The Committee also commends the State party for the detailed written replies that it provided during the consideration of the State party report.

### B. Positive aspects

(4) The Committee welcomes the ratification by the State party of the following international and regional instruments:

- (a) International Covenant on Civil and Political Rights, on 8 December 1989;
- (b) International Convention on the Elimination of All Forms of Racial Discrimination, on 29 December 2000;

- (c) Convention on the Rights of the Child, on 28 September 1992;
  - (d) Convention on the Elimination of All Forms of Discrimination against Women, on 23 December 1985;
  - (e) United Nations Convention against Transnational Organized Crime, on 17 June 2010;
  - (f) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 17 June 2010;
  - (g) Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 18 June 1993;
  - (h) Council of Europe Convention on Action against Trafficking in Human Beings, on 13 July 2010.
- (5) The Committee welcomes the enactment of the following legislation:
- (a) Criminal Law (Human Trafficking) Act of 2008;
  - (b) International Criminal Court Act of 2006.
- (6) The Committee also welcomes the development of the National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland, 2009–2012.
- (7) The Committee further welcomes the development of the National Strategy on Domestic, Sexual and Gender-Based Violence, 2010–2014.

### C. Principal subjects of concern and recommendations

#### Reduction of financial resources for human rights institutions

(8) While welcoming the commitment by the State party to provide resources for human rights institutions, the Committee expresses concern at information received on the disproportionate budget cuts to various human rights institutions mandated to promote and monitor human rights, such as the Irish Human Rights Commission (IHRC), in comparison to other public institutions. Furthermore, while noting the decision to move IHRC from the Department of Community, Equality and Gaeltacht Affairs to the Department of Justice and Equality, the Committee regrets that IHRC does not have direct accountability to Parliament and lacks financial autonomy (art. 2).

**The Committee recommends that the State party should ensure that the current budget cuts to human rights institutions, in particular the Irish Human Rights Commission, do not result in the crippling of its activities and render its mandate ineffective. In this regard, the State party is encouraged to strengthen its efforts in ensuring that human rights institutions continue to effectively discharge their mandates. Furthermore, the Committee recommends that the State party should strengthen the independence of IHRC by, inter alia, ensuring its direct accountability to Parliament and financial autonomy in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).**

#### Rendition flights

(9) The Committee is concerned at the various reports of the State party's alleged cooperation in a rendition programme, where rendition flights use the State party's airports and airspace. The Committee is also concerned at the inadequate response by the State party with regard to investigating these allegations (art. 3).

The State party should provide further information on specific measures taken to investigate allegations of the State party's involvement in rendition programmes and the use of the State party's airports and airspace by flights involved in "extraordinary rendition". The State party should provide clarification on such measures and the outcome of the investigations, and take steps to ensure that such cases are prevented.

#### **Refugees and international protection**

(10) While taking note that asylum applications falling under the Dublin II Regulation are subject to appeal before the Refugee Appeals Tribunal in the State party, the Committee is concerned that the lodging of an appeal does not have suspensive effect on the impugned decisions. The Committee is also concerned that while the draft immigration, residence and protection bill of 2008 contains a prohibition on non-refoulement, the bill does not set out the procedure to be followed. Furthermore, the Committee takes note of reports indicating the considerable drop in positive determinations for refugee status (arts. 3 and 14).

**The Committee recommends that the State party pursue efforts aimed at strengthening the protection of persons in need of international protection. In this regard, the State party should consider amending the draft immigration, residence and protection bill in order to bring it into line with the requirements of the Convention, in particular with regard to the rights of migrants to judicial review over administrative actions as also recommended by the Committee on the Elimination of Racial Discrimination (CERD/C/IRL/CO/3-4, para. 15). The Committee also recommends that the State party consider amending its legislation so that the lodging of an appeal before the Refugee Appeals Tribunal has suspensive effect on the impugned decision. Furthermore, the Committee recommends that the State party investigate the considerable drop in positive determinations for refugee status to ensure that applications are processed following due process.**

#### **Prison conditions**

(11) The Committee notes the State party's efforts to alleviate overcrowding in prisons through, inter alia, the construction of new accommodation in existing prison facilities and the upgrading of some of these facilities, as well as through the adoption of alternative non-custodial measures to reduce the number of individuals who are being sent to prison, such as the adoption of the Fines Act of 2010. The Committee, however, remains deeply concerned at reports that overcrowding remains a serious problem (arts. 11 and 16).

#### **The Committee recommends that the State party:**

(a) **Adopt specific time frames for the construction of new prison facilities which comply with international standards. In this regard, the Committee requests the State party to inform it of any decisions taken with regard to the Thornton Hall prison project;**

(b) **Adopt a policy focusing on the development of alternative, non-custodial sanctions, including the enactment of the bill amending the Criminal Justice (Community Service) Act 1983, which provides that judges will be required to consider community service as an alternative to custody in all cases where a custodial sentence of 12 months or less is appropriate;**

(c) **Expedite the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the establishment of a national preventive mechanism.**

(12) While noting the efforts by the State party to provide all cells with in-cell sanitation, the Committee is deeply concerned at the continuing practice of "slopping out" in some of

the prisons in the State party, which amounts to inhuman and degrading treatment (arts. 11 and 16).

**The Committee recommends that the State party strengthen its efforts to eliminate, without delay, the practice of “slopping out”, starting with instances where prisoners have to share cells. The Committee further recommends that until such a time as all cells possess in-cell sanitation, concerted action should be taken by the State party to ensure that all prisoners are allowed to be released from their cells to use toilet facilities at all times.**

(13) The Committee notes the clarification provided by the State party on the use of special observation cells. The Committee also notes with interest that, following a recommendation by the Inspector of Prisons, the Prison Service is in the process of designating safety observation cells for medical reasons only, which will be covered by an amendment to the prison rules (arts. 11 and 16).

**The Committee recommends that the State party ensure that it follows the guidance given by the Inspector of Prisons in his report dated 7 April 2011 that appropriate use should be made of safety observation cells and close observation cells.**

(14) The Committee is concerned at reports that deficiencies have been identified in the standard of health care provided in a number of prisons in the State party (arts. 11 and 16).

**The Committee recommends that the State party improve health care in all prisons, taking into account the guidance provided by the Inspector of Prisons as stated in his report dated 18 April 2011.**

#### **Inter-prisoner violence**

(15) The Committee notes the measures taken by the State party to address inter-prisoner violence. However, it remains concerned at the continued high rates of incidents in some of the prisons, and at reports of allegations by prisoners from the Traveller community in Cork Prison that they are consistently subjected to acts of intimidation by other prisoners (arts. 11 and 16).

**The Committee recommends that the State party intensify its efforts to tackle inter-prisoner violence by, inter alia:**

(a) **Addressing the factors contributing to inter-prisoner violence, such as the availability of drugs, the existence of feuding gangs, lack of purposeful activities, lack of space and poor material conditions;**

(b) **Providing sufficient members of staff who also receive training on the management of inter-prisoner violence;**

(c) **Addressing the issue of intimidation of the Traveller community and investigating all allegations of such intimidation.**

**The Committee also recommends that the State party provide statistical data so as to enable the Committee to evaluate the effectiveness of the State party’s measures to tackle inter-prisoner violence.**

#### **Separation of remand prisoners**

(16) While welcoming the efforts by the State party to keep sentenced and remand prisoners in separate accommodation areas in so far as possible, the Committee is concerned at the continued lack of separation of such persons (arts. 11 and 16).

**The Committee recommends that the State party take urgent measures to house remand prisoners separately from sentenced prisoners.**

### **Detention of refugees and asylum-seekers**

(17) The Committee is concerned at the placement of persons detained for immigration-related reasons in ordinary prison facilities together with convicted and remand prisoners (arts 11 and 16).

**The Committee recommends that the State party take measures to ensure that all persons detained for immigration-related reasons are held in facilities that are appropriate to their status.**

### **Complaint and investigation mechanisms**

(18) The Committee notes the information provided by the State party with regard to the investigation of complaints by prisoners against prison staff relating to incidents which allegedly occurred in the following prisons: Portlaoise, on 30 June 2009; Mountjoy, on 15 June 2009 and 12 January 2010; Cork, on 16 December 2009; and Midlands, on 7 June 2009. The Committee notes with concern that in all these cases there have been no independent and effective investigations into the allegations of ill-treatment by prison staff. The Inspector of Prisons, in his report of 10 September 2010 entitled "Guidance on best practice for dealing with prisoners' complaints", concluded that there is no independent complaints and investigation body to investigate prisoners' complaints and that present procedures followed do not accord with best practice, and recommended the establishment of an independent mechanism to receive and investigate complaints against prison staff (arts. 2, 12, 13 and 16).

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

(a) **Establish an independent and effective complaint and investigation mechanism to facilitate the submission of complaints by victims of torture and ill-treatment by prison staff and ensure that in practice complainants are protected against any intimidation or reprisals as a consequence of the complaints;**

(b) **Institute prompt, impartial and thorough investigations into all allegations of torture or ill-treatment by prison staff;**

(c) **Ensure that all officials who are allegedly involved in any violation of the Convention are suspended from their duties during the conduct of the investigations;**

(d) **Provide the Committee with information on the number of complaints made concerning allegations of torture and ill-treatment by prison staff, the number of investigations carried out and the number of prosecutions and convictions, as well as on the redress awarded to victims.**

(19) The Committee welcomes the establishment of the Garda Síochána Ombudsman Commission (GSOC) in 2005, the members of which cannot be serving members or former members of the Garda Síochána (Police Force). GSOC is empowered to investigate complaints of torture and ill-treatment against members of the Garda Síochána. However, the Committee regrets that GSOC can also refer complaints to the Garda (Police) Commissioner, who can proceed with the investigations independently or under the supervision of GSOC, except complaints concerning the death of or serious harm to a person in police custody. The Committee is also concerned at the information that GSOC has submitted proposals for the amendment of the Garda Síochána Act of 2005 in a number of areas, including the power to allow GSOC to refer investigations back to the Garda Síochána, thereby allowing the police to investigate itself (arts. 2, 12, 13 and 16).

**The Committee recommends that the State party ensure by law that all allegations of torture and ill-treatment by the police are directly investigated by the Garda Síochána Ombudsman Commission and that sufficient funds are allocated to the Commission so as to enable it to carry out its duties promptly and impartially and to deal with the**

backlog of complaints and investigations which has accumulated. The Committee also requests the State party to provide it with statistical data on (a) the number of complaints of torture and ill-treatment filed against prison officers, the number of investigations instituted, and the number of prosecutions and convictions imposed; and (b) the number of cases that have been referred to the Garda Síochána.

#### **Follow-up to the Ryan Report**

(20) The Committee notes the efforts made by the State party concerning the plan it had adopted in 2009 in order to implement the recommendations of the report of the Commission to Inquire into Child Abuse, known as the Ryan Report. However, the Committee is concerned that, according to a statement made by the Ombudsman for Children in March 2011, significant commitments under the plan have yet to be implemented. The Committee is also gravely concerned that despite the findings of the Ryan Report that “physical and emotional abuse and neglect were features of the institutions” and that “sexual abuse occurred in many of them, particularly boys’ institutions”, there has been no follow-up by the State party. The Committee is also concerned that, despite the extensive evidence gathered by the Commission, the State party has forwarded only 11 cases to prosecution, out of which 8 were rejected (arts. 12, 13, 14 and 16).

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

(a) **Indicate how it proposes to implement all the recommendations of the Commission to Inquire into Child Abuse and indicate the time frame for doing so;**

(b) **Institute prompt, independent and thorough investigations into all cases of abuse as found by the report and, if appropriate, prosecute and punish perpetrators;**

(c) **Ensure that all victims of abuse obtain redress and have an enforceable right to compensation, including the means for as full rehabilitation as possible.**

#### **Magdalene Laundries**

(21) The Committee is gravely concerned at the failure by the State party to protect girls and women who were involuntarily confined between 1922 and 1996 in the Magdalene Laundries, by failing to regulate and inspect their operations, where it is alleged that physical, emotional abuses and other ill-treatment were committed, amounting to breaches of the Convention. The Committee also expresses grave concern at the failure by the State party to institute prompt, independent and thorough investigations into the allegations of ill-treatment perpetrated on girls and women in the Magdalene Laundries (arts. 2, 12, 13, 14 and 16).

**The Committee recommends that the State party institute prompt, independent and thorough investigations into all complaints of torture and other cruel, inhuman or degrading treatment or punishment that were allegedly committed in the Magdalene Laundries and, in appropriate cases, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offences committed, and ensure that all victims obtain redress and have an enforceable right to compensation, including the means for as full rehabilitation as possible.**

#### **Children in detention**

(22) The Committee takes note of the policy of the State party to detain children in Children Detention Schools under the supervision of the Irish Youth Justice Service. However, the Committee is gravely concerned that 16- and 17-year-old males are still detained in St Patrick’s Institution, which is a medium-security prison that is custodial rather than a care facility designed for children. The Committee is also concerned that



despite its commitment to end the detention of young children in St Patrick's Institution, the State party has not yet finalized its decision to proceed with the construction of the new national children detention facilities (arts. 2, 11 and 16).

**The Committee recommends that the State party proceed, without any delay, with the construction of the new national children detention facilities at Oberstown. In the meantime, the Committee recommends that the State party take appropriate measures to end the detention of children in St Patrick's Institution and move them into appropriate facilities.**

(23) The Committee expresses deep concern that the Ombudsman for Children has no mandate to investigate allegations of acts in violation of the Convention at St Patrick's Institution, leaving children at that institution without access to any mechanism for lodging complaints (arts. 12 and 13).

**The Committee recommends that the State party review its legislation on the establishment of the Ombudsman for Children with a view to including in the mandate the power to investigate complaints of torture and ill-treatment of children held at St Patrick's Institution.**

#### **Corporal punishment**

(24) While taking note that corporal punishment is prohibited in schools and in the penal system, the Committee is gravely concerned that such punishment is lawful in the home under the common law right to use "reasonable and moderate chastisement" in disciplining children and also in certain alternative care settings (arts. 2 and 16).

**The Committee recommends that the State party prohibit all corporal punishment of children in all settings, conduct public campaigns to educate parents and the general public about its harmful effects, and promote positive non-violent forms of discipline as an alternative to corporal punishment.**

#### **Prohibition of female genital mutilation**

(25) The Committee notes the intention of the State party to restore to the Seanad (parliament) Order Paper the Criminal Justice (Female Genital Mutilation) Bill which criminalizes female genital mutilation (FGM) and provides for related offences, some of which confer on courts extraterritorial jurisdiction. However, the Committee regrets the lack of legislation prohibiting FGM, even though data based on a 2006 census indicates that about 2,585 women in the State party have undergone FGM (arts. 2 and 16).

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

- (a) Expedite the restoration of the Criminal Justice (Female Genital Mutilation) Bill to the new Seanad Order Paper;**
- (b) Implement targeted programmes with a view to sensitizing all segments of the population about the extremely harmful effects of FGM;**
- (c) Explicitly define under the law that FGM amounts to torture.**

#### **Abortion**

(26) The Committee notes the concern expressed by the European Court of Human Rights about the absence of an effective and accessible domestic procedure in the State party for establishing whether some pregnancies pose a real and substantial medical risk to the life of the mother (case of *A, B and C v. Ireland*), which leads to uncertainty for women and their medical doctors, who are also at risk of criminal investigation or punishment if their advice or treatment is deemed illegal. The Committee expresses concern at the lack of clarity cited by the Court and the absence of a legal framework through which differences

of opinion could be resolved. Noting the risk of criminal prosecution and imprisonment facing both the women concerned and their physicians, the Committee expresses concern that this may raise issues that constitute a breach of the Convention. The Committee appreciates the intention of the State party, as expressed during the dialogue with the Committee, to establish an expert group to address the Court's ruling. The Committee is nonetheless concerned further that, despite the already existing case law allowing for abortion, no legislation is in place and that this leads to serious consequences in individual cases, especially affecting minors, migrant women, and women living in poverty (arts. 2 and 16).

**The Committee urges the State party to clarify the scope of legal abortion through statutory law and provide for adequate procedures to challenge differing medical opinions as well as adequate services for carrying out abortions in the State party, so that its law and practice is in conformity with the Convention.**

#### **Violence against women, including domestic violence**

(27) The Committee welcomes measures taken by the State party to prevent and alleviate gender-based violence, including the adoption of the National Strategy on Domestic, Sexual and Gender-based Violence, 2010–2014. However, the Committee is gravely concerned at reports on the continued high rates of domestic violence against women and at the cuts in funding, in 2009 and 2010, for refuge and support services for victims of violence.

#### **The Committee urges the State party:**

(a) **To strengthen its efforts to prevent violence against women through, inter alia, the effective implementation of the National Strategy on Domestic, Sexual and Gender-based Violence, including the collection of relevant data;**

(b) **To enhance its support and funding of refuge and support services provided for victims of domestic violence;**

(c) **To institute prompt, impartial and thorough investigations into allegations of domestic violence, and where appropriate, prosecutions and convictions;**

(d) **To amend the Domestic Violence Act of 1996 so as to include clear criteria to grant safety and barring orders and extend eligibility for all parties who are or have been in an intimate relationship, regardless of cohabitation, in line with internationally recognized best practice;**

(e) **To ensure that migrant women with dependent immigration status who are experiencing domestic violence be afforded independent status under legislation.**

#### **Treatment of persons with mental disabilities**

(28) The Committee expresses concern at the fact that the definition of a voluntary patient is not sufficiently drawn to protect the right to liberty of a person who might be admitted to an approved mental health centre. The Committee further regrets the lack of clarity on the reclassification of mentally disabled persons from voluntary to involuntary (arts. 2 and 16).

**The Committee recommends that the State party review its Mental Health Act of 2001 in order to ensure that it complies with international standards. The Committee, therefore, recommends that the State party report on the specific measures taken to bring its legislation into line with internationally accepted standards in its second periodic report.**

### **Protection of separated and unaccompanied minors**

(29) While taking note of information provided by the State party regarding the procedure to protect separated and unaccompanied minors under the mandate of the Health Service Executive, the Committee is deeply concerned that between 2000 and 2010, a total of 509 children went missing and only 58 were accounted for. The Committee further regrets the lack of information from the State party on the measures taken to prevent this phenomenon and to protect these minors from other forms of exploitation (arts. 2 and 16).

**The State party should take measures to protect separated and unaccompanied minors. It should also, in this regard, provide data on specific measures taken to protect separated and unaccompanied minors.**

### **Training of law enforcement personnel**

(30) While welcoming the information provided by the State party on the general training programmes for the Garda Síochána, the Committee is concerned at the lack of specific training of both law enforcement personnel, with regard to the prohibition of torture and ill-treatment, and medical officers, on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (arts. 2, 10 and 16).

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

(a) **Ensure that law enforcement personnel are provided, on a regular and systematic basis, with the necessary training on the provisions of the Convention, especially with regard to the prohibition of torture;**

(b) **Ensure that medical personnel and others involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, as well as other professionals involved in the documentation and investigation of torture, are provided, on a regular and systematic basis, with training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and that the Manual is translated into all appropriate languages. The State party should also ensure that such training is also provided for individuals involved in asylum determination procedures;**

(c) **Develop and implement a methodology to assess the effectiveness and impact of such educational and training programmes on the prevention of torture and ill-treatment and regularly evaluate the training provided for its law enforcement officials;**

(d) **Strengthen its efforts to implement a gender-sensitive approach for the training of those involved in the custody, interrogation or treatment of women subjected to any form of arrest, detention or imprisonment;**

(e) **Strengthen its efforts to ensure the training of law enforcement personnel and others on the treatment of vulnerable groups at risk of ill-treatment, such as children, migrants, Travellers, Roma and other vulnerable groups;**

(f) **Strengthen professional training in hospitals, medical and social institutions.**

(31) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities, and the International Convention for the Protection of All Persons from Enforced Disappearance.

(32) The State party is requested to disseminate widely the report submitted to the Committee, summary records and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(33) The Committee requests the State party to provide, within one year, follow-up information in response to the Committee's recommendations contained in paragraphs 8, 20, 21 and 25 of the present document.

(34) The Committee invites the State party to submit its next treaty-specific report within the limit of 40 pages. The Committee also invites the State party to update its common core document (HRI/CORE/1/Add.15/Rev.1) in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee Meeting of the human rights treaty bodies, and to observe the limit of 80 pages. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

(35) The State party is invited to submit its next report, which will be the second periodic report, by 3 June 2015.

#### **57. Kuwait**

(1) The Committee against Torture considered the second periodic report of Kuwait (CAT/C/KWT/2) at its 986th and 989th meeting (CAT/C/SR.986 and 989), held on 11 and 12 May 2011, and adopted, at its 1007th meeting (CAT/C/SR.1007), the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the submission of the second periodic report of Kuwait, which has been submitted in accordance with the new optional procedure of the Committee consisting of replies of the State party to a list of issues prepared and transmitted by the Committee (CAT/C/KWT/Q/2) to allow for a more focused dialogue. However, the Committee regrets the lack of detailed information of the report, including statistical data, as well as that the report was submitted nine years late. This has prevented the Committee from conducting an on-going analysis on the implementation of the Convention in the State party.

(3) The Committee notes with appreciation that a high-level delegation from the State party met with the Committee, and also notes with appreciation the opportunity to engage a constructive dialogue covering various areas of concern under the Convention.

##### **B. Positive aspects**

(4) The Committee welcomes the fact that since the consideration of the initial report, the State party has ratified or acceded to the following international instruments:

(a) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

(5) The Committee welcomes the establishment of the Higher Committee on Human Rights in 2008 which is in charge of reviewing existing laws and regulations and proposing amendments, to integrate fundamental concepts of human rights into school and university curricula.

(6) The Committee notes with satisfaction that on 12 May 2010 the State party has extended invitations to all special procedures mechanisms of the Human Rights Council.

### C. Principal subjects of concern and recommendations

#### Definition and criminalization of torture

(7) The Committee welcomes the commitment of the State party made by its representatives during the dialogue to enact a specific law to adopt a definition of torture in full conformity with article 1 of the Convention as well as to amend its national legislation in order to ensure appropriate penalties for torture and ill-treatment. However, the Committee notes with concern that current legal provisions fail to give a definition of torture and to ensure appropriate penalties applicable to such acts, as they set the maximum penalty of three years and/or a fine of 225 dinars for arrest, imprisonment or detention not prescribed by law and seven years only if such acts are combined with physical torture or threats of death (arts. 1 and 4).

**The Committee reiterates its previous recommendation (A/53/44, para. 230) that a crime of torture, as defined in article 1 of the Convention, be incorporated into the penal domestic law of the State party ensuring that all the elements contained in article 1 of the Convention are included.**

**The State party should revise its national legislation to ensure that acts of torture are offences under criminal law and are punishable by severe penalties which take into account the grave nature of these acts, as required by article 4, paragraph 2, of the Convention.**

#### Fundamental legal safeguards

(8) While noting that the Code of Criminal Procedure (17/60) and the Prison Regulation Act (26/1962) contain provisions providing some legal safeguards to detainees such as the right to have access to a lawyer, to notify a relative, to be informed about the charges laid against them and to appear before a judge within a time limit in accordance with international standards, the Committee notes with concern that these provisions are little respected. In addition, while noting that article 75 of the Code of Criminal Procedure guarantees to an accused person the right to hire a lawyer to defend him or her and attend the interrogation session, the Committee is concerned that the lawyers may only speak with the permission of the investigator (art. 2).

**The State party should promptly take effective measures to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of the detention, including the rights to have prompt access to a lawyer and an independent medical examination, to notify a relative, to be informed of their rights at the time of detention, including about the charges laid against them, and to appear before a judge within a time limit in accordance with international standards.**

#### Monitoring and inspection of places of detention

(9) The Committee takes note of the statement in the replies to the list of issues that, according to the Judiciary Reorganization Act (23/1990), Act No. 26 of 1962 and article 56 of decree-law No. 23 of 1990, the Kuwaiti legislation guarantees several types of control and supervision over prisons. However, the Committee is concerned at the lack of systematic and effective monitoring of all places of detention, including regular and unannounced visits to such places by national and international monitors (art. 2).

**The Committee calls upon the State party to establish a national system to effectively monitor and inspect all places of detention and follow up on the outcome of such systematic monitoring. This system should include regular and unannounced visits in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The State party is encouraged to accept monitoring of places of detention by relevant international mechanisms.**

### **Complaints and prompt, thorough and impartial investigations**

(10) While noting that, according to the information provided to the Committee during the dialogue, the Kuwaiti Ministry of Interior has set up a special department to record public complaints and to follow up on grievances of abuse of authority filed against any officer working at the Ministry of Interior, the Committee regrets the lack of an independent complaint mechanism for receiving and conducting prompt, thorough and impartial investigations of torture reported to the authorities, and for ensuring that those found guilty are appropriately punished (art. 13).

**The State party should establish a fully independent complaint mechanism, ensure prompt, impartial and full investigations into all allegations of torture and prosecute alleged perpetrators and punish those who have been found guilty.**

(11) While noting that for the period of 2001–2011 there were 632 trials on cases of torture, ill-treatment and corporal punishment, and that in 248 cases sentences perpetrators were punished, the Committee however notes that the State party failed to provide information on the exact types of penalties applied to the convicted perpetrators (arts. 4, 12 and 13).

**The Committee requests the State party to provide information, including statistics, on the number of complaints filed against public officials on torture and ill-treatment, as well as about the results of the proceedings, at both the penal and disciplinary levels, with examples of relevant sentences.**

(12) The Committee deeply regrets the death of Mohamed Ghazi Al-Maymuni Al-Matiri, subjected to torture in January 2011 by the law enforcement officials while he was in police custody. The Committee takes note of the indictment of 19 persons who participated in acts of torture related to this case (art. 12).

**The Committee requests the State party to provide detailed information on the judicial developments concerning this case, as well as on measures of compensation to the relatives of the victim.**

(13) The Committee expresses its concern at the case of eight persons released from Guantanamo Bay and returned to Kuwait who were allegedly arrested and tried in Kuwait upon their return.

**The Committee requests the State party to provide information on the exact circumstances of this case, as well as on any new judicial development.**

(14) The Committee notes that in the concluding observations of the Human Rights Committee of 2000 (CCPR/CO/69/KWT, para. 11) reference was made to a list of 62 persons detained in 1991 in the aftermath of the war, who had subsequently disappeared. The Committee notes that the State party acknowledged only one case. The Committee is concerned that the information about disappearance of persons detained following the 1991 war is recurrent and the issue has been raised by a non-governmental organization during the examination of the report of Kuwait by the universal periodic review mechanism in May 2010.

**The State party should provide detailed information to clarify cases of detained and disappeared persons following the 1991 war brought to its attention.**

### **Non-refoulement**

(15) The Committee regrets the lack of information to item 5 (CAT/C/KWT/2, para. 18) of the State party's responses to the Committee's list of issues (CAT/C/KWT/Q/2), on statistical information for the past five years (2005–2010) on asylum applications, in

particular, those submitted by asylum-seekers who had been tortured or might be tortured if returned to their country of origin (art. 3).

**Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or ill-treatment. The Committee requests the State party to provide information, in detail, on the precise number of asylum applications received, the number of successful asylum applications, the number of asylum-seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin and the number of deportations with an indication of (a) the number of deportations relating to asylum-seekers, and (b) the countries to which deportations have been carried out. The data should be disaggregated by age, sex and nationality.**

#### **Refugees**

(16) The Committee notes that despite the existing cooperation with UNHCR, the State party has not yet ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

**The State party is encouraged to consider becoming a party to the 1951 Refugee Convention and its 1967 Protocol.**

#### **Imposition of the death penalty**

(17) While noting the information provided by the delegation that the death penalty has not been applied in the State party since 2006, the Committee is concerned at the lack of information provided on the number of persons executed before 2006. It is also concerned at the wide number of offences for which death penalty is imposed, as well as the lack of information on the number of persons currently on death row. The Committee is further concerned at the provisions of article 49 of the Code of Criminal Procedure which allows for the use of excessive force on death row detainees (arts. 2 and 16).

**The Committee recommends that the State party consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. In the meantime, the State party should review its policy with a view to restricting to the most serious crimes the imposition of the death penalty. The State party should ensure that all persons on death row are afforded the protection provided by the Convention against Torture and treated humanely and that no discriminatory measures and ill-treatment are applied to these persons. The Committee requests the State party to provide information on the precise number of persons executed since the consideration of the previous report in 1998 and for which offences. The State party should also indicate the current number of persons on death row, disaggregated by sex, age, ethnicity and offence.**

#### **Training**

(18) The Committee notes with appreciation that the State party organized several trainings of law enforcement officials on human rights. However, the Committee is concerned at the lack of specific training of law enforcement officials, security personnel, judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, on the provisions of the Convention and on how to detect and document physical and psychological sequelae of torture and other cruel, inhuman or degrading treatment or punishment. The Committee also regrets the lack of information on trainings on human trafficking, domestic violence, migrants, minorities and other vulnerable groups, as well as on monitoring and evaluation of the impact of any of its training programmes in reducing incidents of torture and ill-treatment (art. 10).

The State party should further develop and strengthen educational trainings and programmes to ensure that all officials, including law enforcement, security and prison officials, are fully aware of the provisions of the Convention, that breaches of the Convention will not be tolerated and will be promptly and effectively investigated, and that offenders will be prosecuted. Furthermore, all relevant personnel, including medical personnel, should receive specific training on how to identify signs of torture and ill-treatment. To this effect, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), should be included in the training material. The State party should also develop educational trainings for all officials on human trafficking, domestic violence, migrants, minorities and other vulnerable groups. In addition, the State party should assess the effectiveness and impact of training/educational programmes on the absolute prohibition of torture.

#### **Conditions of detention**

(19) The Committee welcomes that a bill has been submitted to amend article 60 of the Criminal Law Procedure of 1960 in order to reduce the maximum period of police custody without written order from four days to 48 hours maximum. However, the Committee is seriously concerned at the general conditions of detention in all types of detention facilities (arts. 11 and 16).

**The Committee requests the State party to provide detailed information on general conditions of detention, including the rate of occupancy in all types of detention facilities. The State party should take urgent measures to bring the conditions of detention in all detention facilities into line with the Standard Minimum Rules for the Treatment of Prisoners, improving the food and the health care provided to detainees and strengthening the judicial supervision and independent monitoring of conditions of detention.**

#### **Conditions in psychiatric hospitals**

(20) The Committee takes into account the information provided during the dialogue about persons with mental disabilities. The Committee regrets, however, that little information was provided on the conditions and legal safeguards for persons placed in involuntary treatment in psychiatric facilities (art. 16).

**The Committee recommends that the State party take all necessary measures to ensure that persons in involuntary treatment have access to complaint mechanisms. The Committee requests the State party to provide information on conditions for persons in psychiatric hospitals.**

#### **Redress, including compensation and rehabilitation**

(21) While noting that the legislation of the State party contains general provisions that arguably provide possibilities for victims of torture to obtain compensation by the State, including restitution of his or her rights, adequate and equitable financial remedies, medical care and rehabilitation, the Committee is concerned at the lack of a specific programme to implement the rights of victims of torture and ill-treatment to receive adequate reparation and compensation. The Committee is also concerned at the lack of available information regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases, as well as the lack of information on other forms of assistance, including medical or psychosocial rehabilitation, provided to these victims (arts. 12 and 14).

**The State party should ensure that the victims of torture and ill-treatment obtain the enforceable right to redress, including fair and adequate compensation and as full rehabilitation as possible. Furthermore, the State party should provide information on**



redress and compensation measures ordered by the courts and provided to victims of torture. This information should include the number of requests made, the number granted, and the amounts ordered and actually provided in each case. In addition, the State party should provide information on any on-going reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes.

#### **Migrant domestic workers**

(22) The Committee expresses its concern at reports referring to widespread abuse of migrant domestic workers, and in particular, women. It appears that this fragile group is constantly exposed to ill-treatment in complete impunity and without legal protection. The Committee also regrets the lack of statistics regarding the number and type of complaints filed with authorities that assume supervision of domestic labour, and on how these complaints are resolved. The Committee takes note of the State party's commitment made by its representatives during the consideration of its report at the eighth session of the universal periodic review in May 2010, to make efforts to create legislation against human trafficking and the smuggling of migrants in line with the United Nations Convention against Transnational Organized Crime and the Protocol thereto (arts. 1, 2 and 16).

**The State party should adopt, as a matter of urgency, labour legislation covering domestic work and providing legal protection to migrant domestic workers, in particular, women, in its territory against exploitation, ill-treatment and abuse. The State party should also provide the Committee with statistics, including on the number and type of complaints filed with authorities, as well as the action taken to solve cases that caused these complaints.**

#### **Violence against women**

(23) The Committee notes with concern numerous allegations of violence against women and domestic violence, on which the State party has not provided information. The Committee is concerned at the absence of a specific law on domestic violence, as well as the lack of statistical information on the overall complaints of domestic violence reported and the number of investigations, convictions and punishments meted out (arts. 2 and 16).

#### **The Committee:**

(a) **Calls upon the State party to enact, as a matter of urgency, legislation to prevent, combat and criminalize violence against women, including domestic violence;**

(b) **Recommends that the State party carry out research and data collection on the extent of domestic violence, and provide the Committee with statistical data on complaints, prosecutions and sentences;**

(c) **Encourages the State party to organize the participation of its public officials in rehabilitation and legal assistance programmes and to conduct broad awareness campaigns for officials such as judges, law officers, law enforcement agents and welfare workers, who are in direct contact with victims. The population at large should be made aware of those programmes.**

#### **Human trafficking**

(24) The Committee is concerned at the lack of specific legislation to prevent, combat and criminalize human trafficking. The Committee is further concerned at the lack of information on trafficking in persons, including the existing legislations and statistics, particularly the number of complaints, investigations, prosecutions and convictions of perpetrators of trafficking, and the lack of information on practical measures adopted to

prevent and combat such phenomena, including medical, social and rehabilitative measures (arts. 2, 4 and 16).

**The State party should combat trafficking in human beings through the adoption and implementation of specific anti-trafficking legislation ensuring that trafficking is defined as a crime in the State party in accordance with international standards. These offences should be punishable by appropriate penalties. The State party should provide protection for victims and ensure their access to medical, social, rehabilitative, counselling and legal services.**

#### **Discrimination and violence against vulnerable groups**

(25) The Committee is concerned at reports that vulnerable groups such as lesbian, gay, bisexual and transgender (LGBT) persons are subjected to discrimination and ill-treatment, including sexual violence, both in public and domestic settings (arts. 2 and 16).

**The State party should investigate crimes related to discrimination directed towards all vulnerable groups and pursue ways in which hate crimes can be prevented and punished. The State party should also promptly, thoroughly and impartially investigate all cases of discrimination and ill-treatment of these vulnerable groups, and punish those responsible for these acts. The State party should conduct awareness-raising campaigns for all officials who are in direct contact with victims of such violence, as well for the population at large.**

#### **Situation of “Bidun” persons**

(26) The Committee expresses its concern at the situation of at least 100,000 people, who are not legally recognized by the State, known as the “Bidun” (without nationality) and who are allegedly victims of various types of discrimination and ill-treatment (art. 16).

**The State party should enact specific legislation in order to protect “Bidun” people and recognize their legal status. The State party should adopt all adequate legal and practical measures to simplify and facilitate the regularization and integration of these persons and their children. It should ensure that these persons enjoy all human rights without discrimination of any kind. The State party should also adopt the necessary measures to guarantee that these persons are informed of their rights in a language they understand and have access to the fundamental legal safeguards from the moment they are deprived of their liberty, without any discrimination.**

#### **National human rights institution**

(27) The Committee notes with concern that the State party has not yet established a national human rights institution to promote and protect human rights in the State party, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex) (art. 2).

**The State party should establish an independent national human rights institution, in accordance with the Paris Principles.**

#### **Data collection**

(28) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security, intelligence and prison personnel, as well as on trafficking, ill-treatment of migrant workers, and domestic and sexual violence.

**The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment,**

**trafficking, ill-treatment of migrant workers and domestic and sexual violence as well as on compensation and rehabilitation provided to the victims.**

(29) The Committee recommends that the State party consider ratifying the Optional Protocol to the Convention.

(30) The Committee welcomes the commitment of the State party made during the dialogue to withdraw its reservation to article 20 of the Convention.

(31) The Committee recommends that the State party consider making the declarations envisaged under articles 21 and 22 of the Convention.

(32) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely, the Convention on the Rights of Persons with Disabilities, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention for the Protection of All Persons from Enforced Disappearance.

(33) The Committee invites the State party to ratify the Rome Statute on the International Criminal Court, the Convention on the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

(34) The Committee invites the State party to present its next periodic report accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to update its common core document in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee meeting of the human rights treaty bodies, and to observe the page limit of 80 pages for the common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

(35) The State party is encouraged to disseminate widely the reports submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(36) The Committee requests the State party to provide, within one year, follow-up information in response to the Committee's recommendations contained in paragraphs 10, 11 and 17 and to provide information on the follow-up to its commitment referred to in paragraph 6 of the present concluding observations.

(37) The State party is invited to submit its next periodic report, which will be the third report, by 3 June 2015.

**58. Mauritius**

(1) The Committee against Torture considered the third periodic report of Mauritius (CAT/C/MUS/3), submitted in accordance with the new optional reporting procedure, at its 998th and 1001st meetings, held on 19 May and 20 May 2011 (CAT/C/SR.998 and 1001), and adopted, at its 1015th meeting, held on 31 May (CAT/C/SR 1015), the following concluding observations.

**A. Introduction**

(2) The Committee welcomes the submission of the third periodic report of Mauritius in accordance with the new optional reporting procedure of the Committee consisting of replies by the State party to a list of issues prepared and transmitted by the Committee. The Committee expresses its appreciation to the State party for agreeing to report under this new procedure which facilitates the dialogue between the State party and the Committee.

However, the Committee regrets that the report was submitted eight years late, which hinders the Committee from ongoing analysis of the implementation of the Convention.

(3) The Committee appreciates that the replies to the list of issues were submitted within the requested deadline. It also appreciates the open and constructive dialogue with the State party's high-level delegation, as well as the additional information and explanations provided by the delegation to the Committee.

**B. Positive aspects**

(4) The Committee welcomes the ratification of the following international instruments:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 21 June 2005;

(b) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 12 February 2009;

(c) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 24 September 2003;

(d) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, on 24 September 2003;

(e) Rome Statute of the International Criminal Court, on 5 March 2002;

(f) United Nations Convention against Transnational Organized Crime, on 21 April 2003.

(5) The Committee notes with satisfaction the efforts being made by the State party to amend its legislation in order to ensure greater protection of human rights and welcomes the adoption of:

(a) The Criminal Code (Amendment) Act (article 78), in 2003, which incorporates in national law the definition of torture set out in article 1 of the Convention against torture;

(b) The Amendments, in 2004, to the Protection from Domestic Violence Act of 1997;

(c) The Amendments, in 2005 and 2008, to the Child Protection Act 1994;

(d) The Combating of Trafficking Act on 21 April 2009;

(e) The Criminal Procedure (Amendment) Act 2007 (section 5(1)) to abolish mandatory sentences in relation to offences under the Criminal Code and the Dangerous Drugs Act and to restore the sentencing discretion of the Court in 2007;

(f) The Imprisonment for Civil Debt (Abolition) Act 2006;

(g) The Sex Discrimination Act 2002 which creates a Sex Discrimination Division within the National Human Rights Commission;

(h) The Transfer of Prisoners Act passed in 2001.

(6) The Committee welcomes the efforts made by the State party to operationalize the National Human Rights Commission in April 2001 and to establish an Office of Ombudsperson for children.

### C. Principal subjects of concern and recommendations

#### **Incorporation of international law**

(7) While noting that the State party has a dualist system of reception of international treaties, the Committee is concerned that the State party has not yet fully incorporated the Convention in its domestic law (art. 2).

**The State party should, in the context of the forthcoming constitutional review announced by the delegation, consider fully incorporating the provisions of the Convention in its domestic legislation in order to allow the application by domestic courts of obligations set out in the Convention.**

#### **Appropriate penalties for acts of torture**

(8) While noting that penalties foreseen in Section 78, as revised, of the amended Criminal Code (2008), provide for a maximum fine of 150,000 rupees and for an imprisonment for a term not exceeding 10 years for the offence of torture, the Committee is remains concerned that some aggravating circumstances, such as the permanent disability of the victim, are not taken specifically into account. It also notes with concern that penalties for other crimes, such as drug trafficking, are higher than those for torture (arts. 1 and 4).

**The State party should revise its Criminal Code to make acts of torture offences punishable by appropriate penalties that take into account their grave nature, in accordance with article 4 of the Convention.**

#### **Absolute prohibition of torture**

(9) While noting that “courts in Mauritius are unlikely to find that exceptional circumstances can justify torture” (CAT/C/MUS/3, para. 15), the Committee is concerned about the absence in the legislation of the State party of a provision to guarantee that no exceptional circumstances whatsoever may be invoked as a justification of torture, as prevented by article 2, paragraph 2, of the Convention.

**The State party should incorporate in its legislation a provision on the absolute prohibition of torture and that no justification may be invoked in any circumstances.**

#### **Fundamental legal safeguards**

(10) While noting the information provided by the State party, the Committee is concerned at the lack of clarification as to whether arrested and detained persons in police custody have access to a doctor, if possible, of their choice, at the outset of their detention and preserving the right to privacy. The Committee is also concerned at the lack of clear information as to whether detained persons are promptly informed on their right to contact their family or a person of their choice. The Committee is further concerned about the appropriate registration of persons between their arrest and the moment they are brought before a judge (art. 2).

**The State party should take measures to ensure that:**

- (a) Persons arrested and detained in police stations have access at the outset their detention, to a doctor, if possible, of their choice;**
- (b) Visits by a doctor are conducted in a confidential manner;**
- (c) They can inform their family or a person of their choice about their detention.**

**The State party should also set clear and appropriate rules and procedures on the registration of persons from the outset of their detention and on ensuring that they are brought before a judge within a short period of time.**

#### **Complaint mechanisms**

(11) While noting that different mechanisms are charged to receive and inquire on complaints against police officers for excessive use of force, such as the National Human Rights Commission and the Complaints Investigations Bureau, the Committee is concerned about the independence of the Complaints Investigation Bureau, as it remains under the administrative control of the Commissioner of Police. The Committee regrets the lack of information on the implementation of recommendations made by the National Human Rights Commission in its report of 2007 regarding the police (arts. 2, 12 and 13).

**The State party should take concrete measures to ensure that complaints lodged against the police are addressed promptly, thoroughly and impartially by independent complaint mechanisms and that those responsible can be prosecuted, convicted and punished. In this regard, the State party should rapidly adopt and implement the draft Police Complaints Bill under preparation and establish the Independent Police Complaints Bureau; adopt a new Police Act and a Police Procedures and Criminal Evidence Act, as well as Codes of Practice to regulate the conduct of persons entrusted to investigate offences. The State party should also ensure the implementation of recommendations made by the National Human Rights Commission in 2007 regarding the conduct of the police and inform the Committee on its concrete results.**

#### **Non-refoulement**

(12) The Committee is concerned that the legislation of the State does not clearly and fully guarantee the principle of non-refoulement set out in article 3 of the Convention, as requested by the Committee in its concluding observations (A/54/44, para. 123 (c)). It is also concerned about the lack of sufficient information regarding the process followed in cases of requests for extradition as well as the procedural guarantees the person extradited enjoys, including the right to appeal against the extradition, with suspensive effect (art. 3).

**The State party should revise its legislation guaranteeing the principle of non-refoulement. The State party should review its Extradition Act to make it in full compliance with article 3 of the Convention, in particular, it should clarify the process under which extradition is requested and decided, the guarantees offered, including the possibility to challenge the decision with suspensive effect in order to ensure that persons expelled, returned or extradited are not in danger of being subject to torture. The State party should also provide detailed statistical data on the number of requests received, the requesting States and the number of persons extradited or not.**

#### **Human rights education and training**

(13) While noting efforts undertaken by the State party to provide human rights education and training to police officers and other personnel, including on the prevention of torture, the Committee regrets the lack of information about the concrete results of such training programmes. The Committee is also concerned about the fact that training programmes for medical personnel do not include the Manual on the Effective Investigation and Documentation on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (art. 10).

**The State party should reinforce its training programmes to law enforcement and medical personnel, and to those involved in documenting and investigating acts of torture, on the provisions of the Convention, as well as on other instruments, such as the Manual on the Effective Investigation and Documentation on Torture and Other**

**Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).** The State party should also set out a methodology to assess the concrete impact of such training programmes and inform the Committee on their results. In this regard, the State party is encouraged to seek technical assistance from international bodies and organizations.

#### **Conditions of detention**

(14) The Committee takes note of the information provided by the State party regarding its efforts to improve conditions of detention, including the construction on a new Prison for 750 detainees at Melrose. However, the Committee is concerned about the overcrowding in some prisons of the State party (in particular in the Beau Bassin, Petit Verger and GRNW prisons), and that prison conditions are inadequate, that separation between remand and convicted detainees is not always guaranteed, as well as about a high rate of inter-prisoner violence. The Committee is also concerned about the high rate of remand detainees (arts. 11 and 16).

**The State party should take additional appropriate measures to reduce overcrowding and improve conditions in all prisons. The Committee also urges the State party to make use of alternative and non-custodial measures and to reduce pretrial detention periods. The State party should also take measures to ensure the separation of remand detainees and adopt a plan to reduce inter-prisoner violence.**

#### **Complaints, investigations and prosecutions**

(15) The Committee is concerned that only few complaints for torture, excessive use of force or ill-treatment by law enforcement or prison officers or cases of death occurred in police custody are investigated and prosecuted and do not usually lead to compensation (arts. 12, 13 and 14).

**The State party should systematically conduct impartial, thorough and effective inquiries into all allegations of violence committed by the police or prison officers, and prosecute and punish the perpetrators in proportion to the seriousness of their acts. It should also ensure that victims or their families obtain redress and fair and adequate compensation, including means for as full rehabilitation as possible. The State party should inform the Committee of the outcome of current proceedings and on the results of the appeal lodged by the Director of Public Prosecutions against the case dismissing four police officers accused.**

#### **Violence against women, including domestic violence**

(16) The Committee notes efforts undertaken by the State party to combat domestic violence, in particular violence against women and children, such as the amendment brought in 2004 to the Protection from Domestic Violence Act and a number of plans and strategies adopted and implemented as well as mechanisms established. However, the Committee is concerned that domestic violence, in particular violence against women and children, including sexual violence persists in the State party and that marital rape is not criminalized (arts. 2 and 16).

**The State party should continue to effectively address domestic violence, including violence against women and children. In this regard, the State party should ensure the entry into force of the amendments brought to the Protection from Domestic Violence Act in 2007; continue to conduct awareness-raising campaigns and training of its officials on domestic violence, including sexual violence. The State party should also take measures to facilitate complaints by victims and inform them about recourse available. It should investigate, prosecute and punish those responsible. Moreover, the State party should specifically criminalize marital rape in its Criminal Code and adopt, as soon as possible, the Sexual Offences Bill which is under preparation.**

**Corporal punishment and child abuse**

(17) While taking note of the information supplied by the State party, according to which section 13 of the Child Protection Act makes it an offence to expose any child to harm, the Committee is concerned that corporal punishment is not fully prohibited in the legislation of the State party, including in penal institutions and in alternative care settings. The Committee is also concerned at information provided by the State party that some cases of “molestation”, including sexual abuses, are reported every year to the appropriate authorities. These cases are referred to the police, who take disciplinary measures against the culprits, but no information is provided about the penal consequences of such abuses (art. 16).

**The State party should adopt legislation to prohibit corporal punishment, in particular in social institutions and in alternative care settings. To that end, the State party should incorporate this issue in its Children’s Bill under preparation. The State party should also pursue awareness campaigns on the negative effects of corporal punishment. Finally, it should strengthen its efforts to combat child abuse, including by investigating, prosecuting and punishing those responsible. The State party should provide the Committee with statistical data regarding cases of child abuse, the investigations, prosecutions, sentences imposed and redress or rehabilitation offered to victims.**

**Adoption of draft human rights bills**

(18) While noting the explanation provided by the delegation of the State party on the difficulties faced in finalizing and adopting draft bills, the Committee is concerned that a number of draft human rights bills aiming at preventing torture, such the draft Independent Police Complaints Commission Bill, the Victims Right Act and the Victims Charter, the new Police Act and a Police Procedures and Criminal Evidence Act, have been under preparation or consideration before the Parliament for long periods of time, in some cases for many years, not to be adopted (arts. 2 and 4).

**The State party should take the necessary steps to speed up the process of adoption of draft bills on human rights, especially those aiming at preventing torture and other cruel, inhuman and degrading treatment, and implement them as soon as adopted.**

**National Preventive Mechanism**

(19) While noting that the National Human Rights Commission has been entrusted to act as the National Preventive Mechanism to implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee is concerned at the fact the draft National Preventive Mechanism Bill is still in the process of finalization and that the National Preventive Mechanism has not yet been established despite the ratification of the Optional Protocol by the State party in 2005 (art. 2).

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

(a) **Finalize the draft National Preventive Mechanism Bill, and adopt and establish the mechanism, as soon as possible. The National Preventive Mechanism should be provided with necessary human and financial resources, in compliance with the requirements of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as with the principles relating to status of national human rights institutions for promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex).**

(b) **Make public the report of the Sub-Committee following its visit in 2007.**



### **National Plan of Action for Human Rights**

(20) While noting the information provided by the State party and its delegation that a Plan Action on Human Rights will be shortly finalized, the Committee regrets that this Plan aimed at providing a general framework for the promotion and the protection of human rights in the State party, including prevention and protection against torture, has not yet been adopted (art. 2).

**The State party should speed up the adoption of the Plan of Action on Human Rights and implement it in order to afford effective protection of human rights, including against torture. The State party should take into account the recommendations made by the Committee and consult the civil society when drafting and implementing such plan.**

#### **Data collection**

(21) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as on death row prisoners, ill-treatment of migrant workers, trafficking in humans and domestic and sexual violence.

**The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of persons guilty of torture and ill-treatment, ill-treatment of migrant workers, death row prisoners, trafficking in humans and domestic and sexual violence, disaggregated by age, sex, ethnicity and type of crime, as well as on means for redress, including compensation and rehabilitation, provided to the victims.**

(22) The Committee invites the State party to consider ratifying the core United Nations human rights treaties to which it is not yet party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

(23) The Committee recommends that the State party adopt the Criminal Court Bill aiming at incorporating the provisions of the Rome Statute on the International Criminal Court in domestic law.

(24) The Committee invites the State party to consider making the declaration required under article 22 of the Convention relating to individual complaints.

(25) The Committee invites the State party to present its next periodic report in accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to update its common core document in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee meeting of the human rights treaty bodies, and to observe the page limit of 80 pages for the common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

(26) The State party is urged to ensure wide circulation, in all its official languages, of the report submitted to the Committee and of the Committee's concluding observations through official websites, the media and non-governmental organizations.

(27) The Committee requests the State party to report, within one year, on its follow-up to the Committee's recommendations contained in paragraphs 11, 14, 19 (a) and 19 (b) of the present document.

(28) The Committee invites the State party to submit its next periodic report, which will be the fourth report, by 3 June 2015.

#### 59. Monaco

(1) The Committee against Torture considered the fourth and fifth periodic reports of Monaco (CERD/C/MCO/4-5) at its 1000th and 1003rd meetings (CAT/C/SR.1000 and 1003), held on 20 and 23 May 2011, and adopted the following concluding observations at its 1015th meeting (CAT/C/SR.1015).

##### A. Introduction

(2) The Committee welcomes the fourth and fifth periodic reports of Monaco and the fact that they were submitted in accordance with the new optional reporting procedure, under which the State party replies to a list of issues sent to it by the Committee (CAT/C/MCO/Q/4). The Committee thanks the State party for agreeing to submit its report under this new optional procedure, which facilitates cooperation between the State party and the Committee.

(3) The Committee welcomes the frank and constructive dialogue with the State party's high-level delegation, which it thanks for its clear, specific and detailed answers during the dialogue, and also for the additional written replies provided.

##### B. Positive aspects

(4) The Committee notes with satisfaction that the State party has ratified the following international human rights instruments during the reporting period:

(a) Convention on the Elimination of All Forms of Discrimination against Women, in 2005;

(b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2008.

(5) The Committee takes note with satisfaction of:

(a) The entry into force of Act No. 1,343 of 26 December 2007 on justice and liberty, amending certain provisions of the Code of Criminal Procedure, which guarantees the rights of persons held in police custody or pretrial detention. The Act also establishes a system of compensation for unjustified pretrial detention;

(b) The entry into force of Act No. 1,344 of 26 December 2007, on increased penalties for crimes against children;

(c) The entry into force of Act No. 1,312 of 29 June 2006 on the obligation to justify administrative decisions, including refoulement decisions, failing which they will be deemed null and void;

(d) Sovereign Ordinance No. 605 of 1 August 2006, giving effect to the United Nations Convention against Transnational Organized Crime and its two additional protocols.

(6) The Committee also takes note with satisfaction of the organization of various training and awareness-raising activities in the field of human rights, inter alia for judges and police officers.

### C. Principal subjects of concern and recommendations

#### Definition and criminalization of torture

(7) The Committee notes that article 8 of the Code of Criminal Procedure, which establishes the jurisdiction of the courts for acts of torture committed abroad, refers to article 1 of the Convention. However, it remains concerned that the Criminal Code, despite having recently been revised, does not include a definition of torture that fully accords with article 1 of the Convention. The Committee is also concerned at the lack of any specific provision making torture an offence (arts. 1 and 4).

**The State party should incorporate in its criminal law a definition of torture that is fully consistent with article 1 of the Convention. The Committee considers that States parties, by naming and defining the offence of torture in accordance with articles 1 and 4 of the Convention and by making it distinct from other crimes, will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims and the public, to the particular gravity of the crime of torture and by increasing the deterrent effect of the prohibition of torture.**

#### Absolute prohibition of torture

(8) While noting that articles 127 to 130 of the Criminal Code, on abuse of authority, severely punish unlawful orders issued by public authorities, the Committee is concerned that the recent revisions of the State party's Criminal Code do not include provisions expressly prohibiting the invocation of exceptional circumstances or an order from a superior officer or public authority as a justification of torture (art. 2).

**The State party should adopt specific provisions prohibiting the invocation of exceptional circumstances or an order from a superior officer as a justification of torture, as recommended by the Committee in its previous concluding observations. The State party should take effective legislative, administrative, judicial and other measures to prevent acts of torture, including by strengthening safeguards for any officer who refuses to carry out an illegal order given by a superior officer.**

#### Non-refoulement

(9) The Committee regrets that an appeal to the Supreme Court against a return (refoulement) or expulsion order has suspensive effect only if combined with a motion to stay execution. Moreover, given that the granting of refugee status in Monaco is subject to approval by the French Office for the Protection of Refugees and Stateless Persons (OFPRA), the Committee regrets the lack of follow-up by the State party to asylum applications dealt with by the French authorities, and also notes the practical difficulties facing asylum-seekers in Monaco who wish to appeal against a rejection of their application (art. 3).

**The State party should establish a mechanism for following up on the cases of asylum-seekers dealt with by the French Office for the Protection of Refugees and Stateless Persons. It should also ensure that appeals against return (refoulement) or expulsion orders automatically have suspensive effect, in order to uphold the principle of non-refoulement. Moreover, although foreigners are expelled or returned only to France, which is also a party to the Convention, the Committee is particularly concerned at the lack of follow-up in cases of expulsion concerning, inter alia, non-European**

**nationals who could subsequently be expelled to a State where they might be in danger of being subjected to torture or ill-treatment.**

#### **Monitoring detention conditions**

(10) The Committee notes that the State party has entered into negotiations with the French authorities on an agreement that will set out the details of a “right to visit” for prisoners convicted by the Monegasque courts and serving their sentence in a French penal institution. However, the Committee is concerned at the lack of monitoring in the case of prisoners held in France, and regrets that the practice of obtaining the express consent of a person convicted in Monaco to his/her transfer to France is not formally enshrined in law (art. 11).

**The State party should establish a body that reports directly to the Monegasque authorities to facilitate monitoring of the treatment of such prisoners and the conditions in which they are held. The State party is encouraged to incorporate in the agreement with France a clause requiring the express consent of convicted prisoners to their transfer.**

#### **Domestic violence**

(11) The Committee notes that Bill No. 869, on efforts to combat and prevent specific forms of violence against women, children and persons with disabilities, was submitted to the National Council in October 2009. It remains concerned, however, at the delay in the process of adopting this important legislation (arts. 2, 13, 14 and 16).

**The State party should ensure that Bill No. 869 is adopted quickly in order to prevent and combat all forms of violence against women, children and persons with disabilities. It should also ensure that corporal punishment for children is explicitly prohibited in all areas of life and that domestic violence is punished. The Committee further recommends that the State party should organize training or awareness-raising campaigns aimed specifically at informing victims of domestic violence about their rights.**

#### **Redress for victims of torture**

(12) Despite the fact that there were no allegations of torture during the reporting period, the Committee is concerned about the absence of specific provisions on redress and compensation for victims of torture or ill-treatment (art. 14).

**The Committee recommends that the State party should include in its bill on specific forms of violence explicit provisions on compensation for victims of torture or ill-treatment, in accordance with article 14 of the Convention, which also stipulates that, in the event of the death of the victim as a result of an act of torture, his or her dependants shall be entitled to compensation.**

#### **Training**

(13) The Committee takes note of the information the State party has provided on the various training programmes for judges and police officers. Nevertheless, it regrets that the training provided was not entirely as specified in the Convention (art. 10).

**The Committee encourages the State party to continue to organize training sessions on human rights and recommends that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) should be incorporated in training programmes for medical personnel and other professionals. The State party should also assess the effectiveness and impact of these programmes.**

### Measures to combat terrorism

(14) Although no cases of terrorism were recorded during the reporting period, the Committee reiterates the concerns expressed by the Human Rights Committee (see CCPR/C/MCO/CO/2) about the broad, ill-defined definition of terrorist acts contained in the Criminal Code, including the lack of clarity in the definition of “environmental” terrorism (arts. 2 and 16).

**The State party should adopt a more precise definition of terrorist acts while ensuring that all measures taken to combat terrorism comply with all its obligations under international law, including article 2 of the Convention.**

### National human rights institution

(15) While noting the work done by the Human Rights Unit and the Mediator, and the bill currently under consideration to strengthen the mandate of the latter, the Committee regrets the State party’s reluctance to establish a national human rights institution (arts. 2, 12, 13 and 16).

**The Committee encourages the State party to establish an independent national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles, in the annex to General Assembly resolution 48/134) and to provide that institution with the human and financial resources needed for it to effectively fulfil its role, including the investigation of allegations of torture.**

(16) The Committee invites the State party to consider ratifying the core human rights instruments to which it is not yet a party, namely, the Optional Protocol to the Convention against Torture, the Convention on the Rights of Persons with Disabilities, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Rome Statute of the International Criminal Court.

(17) The State party is encouraged to disseminate widely the reports it has submitted to the Committee and the latter’s concluding observations through official websites, the media and non-governmental organizations.

(18) The Committee invites the State party to submit its next periodic report, observing the 40-page limit. It further invites the State party to update, if necessary, its core document of 27 May 2008 (HRI/CORE/MCO/2008), in accordance with the instructions relating to the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6), as approved by the Inter-Committee Meeting of the human rights treaty bodies, and to observe the 80-page limit for the common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

(19) The Committee requests the State party to provide it, within one year, with information on the follow-up to the recommendations formulated in paragraphs 9, 10 and 11 above.

(20) The Committee requests the State party to submit its next (sixth) periodic report by 3 June 2015.

### 60. Slovenia

(1) The Committee against Torture considered the third periodic report of Slovenia (CAT/C/SVN/3) at its 984th and 987th meetings, held on 10 and 11 May 2011 (CAT/C/SR.984 and 987), and adopted the following concluding observations at its 1006th meeting (CAT/C/SR.1006).

**A. Introduction**

(2) The Committee welcomes the submission of the third periodic report of Slovenia, which was submitted in accordance with its reporting guidelines, but regrets that it was submitted three years late.

(3) The Committee notes with appreciation that a high-level delegation from the State party met with the Committee, and also notes with appreciation the opportunity to engage in a constructive dialogue covering many areas under the Convention.

**B. Positive aspects**

(4) The Committee welcomes that since the consideration of the second periodic report, the State party has ratified the following international instruments:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 23 January 2007;

(b) Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 24 April 2008;

(c) Optional Protocols to the Convention on the Rights of the Child, on 23 September 2004;

(d) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 23 September 2004;

(e) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 21 May 2004.

(5) The Committee notes the State party's ongoing efforts to revise its legislation in areas of relevance to the Convention, including:

(a) Introduction of article 265 defining and criminalizing torture and the amendments increasing the maximum punishment for trafficking in human beings in the Penal Code, in 2008;

(b) Amendments to the Police Act providing detainees with access to a doctor, in 2005;

(c) Amendments in the Criminal Procedure Act and Prosecutor's Act, in 2007, establishing Specialized Departments of the Group of State Prosecutors for prosecution of crimes committed by the police, military police or persons seconded to a military or similar mission abroad;

(d) Adoption of the Patients' Rights Act, in 2008, which regulates the complaint procedure in case of violations of rights of patients, including those in mental health institutions;

(e) Adoption of the Mental Health Act, in 2008, which stipulates counselling and protection of rights in the area of mental health, including procedures for detention of people with mental health problems;

(f) Adoption of the Domestic Violence Prevention Act, in 2008;

(g) Adoption of the Act amending the Act regulating the Legal Status of Citizens of Former Socialist Federal Republic of Yugoslavia living in Slovenia, in 2010;

(h) Adoption of the Act on the Protection of Right to Trial without Undue Delay, in 2006 and amendments thereto in 2009.

(6) The Committee also welcomes the efforts being made by the State party to improve its policies and procedures in order to ensure greater protection of human rights and give effect to the Convention, including:

(a) Introduction of an alternative form of penal sanction referred to as “weekend prison”;

(b) Publication of a brochure on the “Notice of Rights to the Person Who Has Been Arrested” in 2009;

(c) Adoption of a resolution on the prevention of domestic violence for the period of 2009–2014.

### C. Principal subjects of concern and recommendations

#### Definition and offence of torture

(7) While welcoming the introduction of a new provision defining and criminalizing torture which contains all the elements specified in article 1 of the Convention, the Committee remains concerned that the crime of torture is subject to a statute of limitation (arts. 1 and 4).

**The Committee urges the State party to amend article 90 of its Penal Code with a view to abolishing the statute of limitation for the crime of torture. The State party should also ensure that such offence is punishable by appropriate penalty which takes into account its grave nature, as set out in article 4, paragraph 2, of the Convention.**

#### Fundamental legal safeguards

(8) While noting that under article 148 of the Criminal Procedure Act there is a possibility for audio and video-recording of interrogations, the Committee is concerned that the audio- and video-recording generally does not take place as there is no requirement therefore in law<sup>3</sup> (art. 2).

**The Committee recommends that the State party establishes the legal requirement for the audio and video recording of all interrogations of detainees throughout the country as a further means to prevent torture and ill-treatment.**

(9) While noting that the State party introduced a computerized system for registration of all information related to detention by the police, the Committee is concerned that not all information is entered in the system, as certain information — such as the time of arrival at the police station and the time of placement in a cell — is missing<sup>4</sup> (art. 2).

**The Committee recommends that the computerized system for registration of detainees be expanded in order to include all relevant information on the custody of the detained person in order to establish a precise monitoring system of the whole detention period.**

#### Pretrial detention and court backlog

(10) The Committee welcomes the “Lukenda” project and other measures taken by the State party aimed at reducing the court backlog, but remains concerned about the high proportion of remand prisoners awaiting for trials which, according to the statistics provided by the State party, has not decreased in the last five years (art. 2).

<sup>3</sup> See report to the Slovenian Government on the visit to Slovenia carried out by the European Committee for the Prevention of Torture and Inhuman Degrading Treatment CPT/Inf (2008) 7, para. 24.

<sup>4</sup> See CPT/Inf (2008) 7, para. 25.

**The Committee recommends that the State party continue its efforts in reducing the backlog of court cases and take all necessary measures to that effect, including non-custodial measures.**

#### **Ombudsman**

(11) The Committee notes the new role of the Human Rights Ombudsman as a national preventive mechanism under the Optional Protocol, but is concerned about the inadequate funding of the Ombudsman's office and about information on the scope of its mandate to carry out its own investigation into allegations of torture and ill-treatment (art. 2).

**The State party should further strengthen the structure of the office of the Ombudsman and broaden its mandate to carry out its own investigation into allegations of torture and ill-treatment and provide it with adequate human, material and financial resources in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).**

#### **Complaints, investigation and prosecution of the acts of torture**

(12) The Committee notes the data provided by the State party on cases of investigations of ill-treatment under various sections of the Penal Code, such as abuse of power, falsification of documents, threats, negligence and others, and is concerned by the lack of information on cases investigated or complaints submitted under article 265 of the Penal Code on torture (arts. 12 and 13).

**The Committee urges the State party to ensure prompt, impartial and effective investigation into all allegations of torture and ill-treatment and to prosecute perpetrators of such acts. It requests the State party to provide the Committee with data disaggregated by sex, age, ethnicity or origin of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences imposed under article 265 of the Penal Code.**

#### **Conditions of detention**

(13) While welcoming the measures taken by the State party to improve considerably the conditions of detention, including the construction of new facilities and the renovation of existing ones, the Committee remains concerned about the problems of overcrowding especially in major prisons such as the Dob, Ljubljana, Maribor, Koper and Novy Mesto prisons. The Committee is further concerned about insufficient mechanisms to prevent suicide in prisons (arts. 11 and 16).

**The State party should intensify its efforts to bring the conditions of detention in places of deprivation of liberty into line with the Standard Minimum Rules for the Treatment of Prisoners, as well as other relevant international standards, in particular by reducing prison overcrowding, expanding non-custodial forms of detention and providing adequate accommodation and psychosocial support care for detainees who require psychiatric supervision and treatment. The Committee also recommends that the State party take all necessary measures to investigate and prevent suicide in places of detention.**

#### **Psychiatric facilities**

(14) The Committee appreciates the information provided during the dialogue by the representatives of the State party, but regrets the lack of information on cases of involuntary placement in psychiatric institutions when only some and not all criteria established in the Mental Health Act are met and the lack of information on the number of complaints and appeals against involuntary placement in psychiatric hospitals. Despite the information provided during the dialogue, the Committee regrets the lack of information on use of



measures such as electroconvulsive therapy and psychotropic drugs, and on complaints against such special measures (art. 16).

**The Committee recommends that the State party establish close supervision and monitoring by the judicial organs of any placements in psychiatric institutions and ensure that all places where mental-health patients are held for involuntary treatment are regularly visited by independent monitoring bodies to guarantee the proper implementation of the existing safeguards. Furthermore, the State party should ensure the full and timely implementation of the recommendations made by the Ombudsman and other monitoring bodies in this regard. The Committee also recommends that the State party undertake a serious review of the application of electroconvulsive treatment (ECT), and any other treatment which could be in violation of the Convention.**

#### **Violence against women and children, including domestic violence**

(15) While noting the legal and administrative measures undertaken by the State party to combat gender-based violence and violence against children, the Committee remains concerned about the prevalence of violence against women and girls (see concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/SVN/CO/4, para. 23). The Committee is also concerned that corporal punishment of children remains lawful at home (arts. 2, 12 and 16).

**The Committee recommends that the State party enhance its efforts to prevent, prosecute and punish all forms of violence against women and children, including domestic violence, and ensure effective and full implementation of the existing laws and the national strategies adopted to that end, including the National Programme of Family Violence Prevention for the period 2009–2014. The Committee also recommends that the State party accelerate the adoption of the draft Marriage and Family Act, which prohibits corporal punishment of children in the home (see concluding observations of the Committee on the Rights of the Child, CRC/C/15/Add.230, para. 40). Furthermore, the State party is encouraged to conduct broader awareness-raising campaigns and training on domestic violence for law enforcement agencies, judges, lawyers and social workers who are in direct contact with the victims and for the public at large.**

#### **Trafficking in persons**

(16) The Committee welcomes the amendments of the Penal Code introducing human trafficking as a crime and increasing the punishment for such acts as well as the policies aiming at raising awareness, protecting victims and prosecuting perpetrators. However, the Committee remains concerned that trafficking of women for prostitution continues to be a problem in Slovenia and that measures to protect and assist victims are project-based and not institutionalized and regrets the lack of information on the number of cases where the victims received redress, including compensation (arts. 2, 4 and 16).

**The State party should strengthen its efforts to combat trafficking in persons, especially in women and children, in particular by:**

- (a) Continuing its efforts to raise awareness for all law enforcement personnel, judges and prosecutors on trafficking in persons;**
- (b) Prosecuting perpetrators under the relevant provision of the Penal Code and ensuring that all victims of trafficking obtain effective redress, including compensation and rehabilitation; and**

(c) **Improving the identification of victims of trafficking and providing them with appropriate rehabilitation programmes, genuine access to health care and counselling, and institutionalizing such services.**

#### **Asylum and non-refoulement**

(17) Notwithstanding article 51 of the Aliens Act on non-refoulement, the Committee remains concerned that the new Law on International Protection which regulates asylum and asylum-related matters, does not contain a clause on non-refoulement, where there are substantial grounds for believing that, if expelled, returned or extradited to another State, a person would be in danger of being subjected to torture. It is also concerned about the length and uncertainties related to the refugee status determination process (art. 3).

#### **The State party should:**

(a) **Ensure that the principle of non-refoulement is established in all legislative acts that regulate asylum or asylum-related matters, including the procedures for subsidiary protection concerning vulnerable groups, in particular victims of trafficking;**

(b) **Ensure procedural safeguards against refoulement and effective remedies with respect to refoulement claims in removal proceedings, including review by an independent judicial body concerning rejections;**

(c) **Ensure that persons whose applications for asylum have been rejected have the right to lodge an effective appeal with the effect of suspending the execution of the decision on the expulsion or deportation; and**

(d) **Amend the Law on International Protection so that it reflects the principles and criteria established in international refugee law and human rights standards, especially the 1951 Convention relating to the Status of Refugees and its Protocol of 1967.**

(18) While noting the legislative measures taken to amend the Act Regulating the Legal Status of Citizens of Former Socialist Federal Republic of Yugoslavia Living in the Republic of Slovenia in order to remedy the provisions that were found to be unconstitutional, the Committee remains concerned that the State party failed to enforce the Act and to restore the residency rights of persons, known as the “erased”, originating from other Yugoslav republics whose permanent residence in Slovenia was unlawfully revoked in 1992 and already returned to other republics of Former Socialist Republic of Yugoslavia. The Committee is concerned that the discrimination against the so-called “erased” persons, including against those who belong to Roma community, is persistent (arts. 3 and 16).

**In light of its general comment No. 2 (2008) on implementation of article 2 by States parties, the Committee recalls the special protection of certain minorities or marginalized individuals or groups especially at risk is part of the State party’s obligations under the Convention. In this respect, the Committee recommends that the State party takes measures to restore the permanent resident status of the so-called “erased” persons who were returned to other States in Former Socialist Federal Republic of Yugoslavia. The Committee also encourages the State party to facilitate the full integration of the “erased” persons, including of those who belong to Roma communities and guarantee them with fair procedures for application for citizenship.**

#### **Redress, including compensation and rehabilitation**

(19) The Committee regrets that no information has been provided on any redress provided to victims of an act of torture and ill-treatment by the State party (arts. 14 and 16).

The State party should ensure that all victims of torture and ill-treatment obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. It should further collect data on the number of victims who have received compensation and rehabilitation including the amount provided.

#### **Training**

(20) While welcoming the positive measures taken by the State party by developing training programmes on police ethics and human rights for police officers and introducing a feedback system, the Committee remains concerned about insufficient monitoring and evaluation of the effectiveness of these programmes in preventing and detecting torture and ill-treatment (art. 10).

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

(a) **Ensure that training on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) is provided to medical personnel and other officials involved in the investigation and documentation of cases of torture, on a regular and systematic basis;**

(b) **Develop and implement a methodology to assess the effectiveness and impact of all educational and training programmes on the reduction of cases of torture and ill-treatment and regularly evaluate the training provided to its law enforcement officials;**

(c) **Strengthen its efforts to implement a gender-sensitive approach for the training of those involved in the custody, interrogation or treatment of women subjected to any form of arrest, detention or imprisonment; and**

(d) **Develop training modules with the aim of sensitizing the law enforcement officials against discrimination based on ethnicity.**

#### **Roma minority**

(21) While noting the State party's explanation that collection of data on ethnicity contradicts the right to privacy, the Committee remains concerned that no other alternative modalities have been developed by the State party in order to study the extent of ethnically motivated crimes and to prevent and monitor occurrences of such acts, while ensuring protection of individual privacy. It is further concerned about discrimination against the non-national Roma minority (see concluding observations of the Committee on Economic, Social and Cultural Rights, E/C.12/SVN/CO/1) (arts. 2, 10 and 16).

**In light of its general comment No. 2, the Committee recalls that the special protection of certain minorities or marginalized individuals or groups especially at risk is part of the State party's obligations under the Convention. The Committee notes that the purpose of gathering statistical data is to make possible for the State parties to identify and obtain a better understanding of the ethnic groups in its territory and the kind of discrimination they are or may be subject to, to find appropriate responses and solutions to the forms of discrimination identified, and to measure progress made. The Committee therefore recommends that the State party study and report the extent of crimes that are ethnically motivated, investigate root causes whilst ensuring the right to privacy and take all necessary measures to prevent such crimes in the future. In this respect, the State party should strengthen its efforts to combat any types of discrimination against Roma minorities.**

### **Data collection**

(22) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel, as well as on domestic, sexual violence and violence against women and violence against children and other vulnerable groups. It also repeats the absence of information on redress available to victims of torture and ill-treatment.

**The State party should compile statistical data, disaggregated by crime, ethnicity, age and sex, relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel, domestic and sexual violence and violence against children and other vulnerable groups, as well as on means of redress, including compensation and rehabilitation, provided to the victims.**

(23) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

(24) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(25) The Committee requests the State party to provide, within one year, follow-up information in response to the Committee's recommendations contained in paragraphs 9, 12, 17 and 21 of the present document.

(26) The Committee invites the State party to present its next periodic report in accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to submit an updated common core document in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee Meeting of the human rights treaty bodies, and to observe the page limit of 80 pages for the common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

(27) The State party is invited to submit its next report, which will be the fourth periodic report, by 3 June 2015.

### **61. Turkmenistan**

(1) The Committee against Torture considered the initial report of Turkmenistan (CAT/C/TKM/1) at its 994th and 997th meetings, held on 17 and 18 May 2011 (CAT/C/SR.994 and 997), and adopted, at its 1015th meeting (CAT/C/SR.1015), the following concluding observations.

#### **A. Introduction**

(2) The Committee welcomes the submission of the initial report of Turkmenistan, which generally follows the Committee's guidelines for reporting. However, the Committee regrets that the report lacks statistical and practical information on the implementation of the provisions of the Convention and that it was submitted 10 years late, which prevented the Committee from conducting an analysis of the implementation of the Convention in the State party following its ratification in 1999.

(3) The Committee notes with appreciation that a high-level delegation from the State party met with the Committee during its forty-sixth session, and also notes with appreciation the opportunity to engage in a constructive dialogue covering many areas under the Convention.

#### **B. Positive aspects**

(4) The Committee welcomes the fact that the State party has ratified or acceded to the following international instruments:

(a) International Convention on the Elimination of All Forms of Racial Discrimination (on 29 September 1994);

(b) Convention on the Rights of the Child (on 20 September 1993) and its two Optional Protocols (on 29 April and 28 March 2005);

(c) International Covenant on Civil and Political Rights (on 1 May 1997) and its two Optional Protocols (on 1 May 1997 and 11 January 2000);

(d) Convention on the Elimination of All Forms of Discrimination against Women (on 1 May 1997) and its Optional Protocol (on 20 May 2009);

(e) International Covenant on Economic, Social and Cultural Rights (on 1 May 1997);

(f) Convention on the Rights of Persons with Disabilities (on 4 September 2008) and its Optional Protocol (on 10 November 2010).

(5) The Committee notes the ongoing efforts by the State party to reform its legislation, policies and procedures in areas of relevance to the Convention, including:

(a) Adoption of the new Constitution, on 26 September 2008;

(b) Adoption of the new Criminal Enforcement Code, on 26 March 2011;

(c) Adoption of the new Criminal Code, on 10 May 2010;

(d) Adoption of the new Code of Criminal Procedure, on 18 April 2009;

(e) Adoption of the Courts of Law Act, on 15 August 2009;

(f) Adoption of the Law on Combating Trafficking in Persons, on 14 December 2007;

(g) Establishment of the State Commission to Review Citizens' Complaints on the Activities of Law Enforcement Agencies, through Presidential Decree, on 19 February 2007;

(h) Abolition of the death penalty, through Presidential Decree, on 28 December 1999.

#### **C. Principal subjects of concern and recommendations**

##### **Torture and ill-treatment**

(6) The Committee is deeply concerned over the numerous and consistent allegations about the widespread practice of torture and ill-treatment of detainees in the State party. According to reliable information presented to the Committee, persons deprived of their liberty are tortured, ill-treated and threatened by public officers, especially at the moment of apprehension and during pretrial detention, to extract confessions and as an additional punishment after the confession. This information confirms the concerns expressed by a number of international bodies, inter alia, those expressed in the report of the Secretary-General (A/61/489, paras. 38–40) and in the decisions of the European Court of Human

Rights in the cases of *Kolesnik v. Russia*, *Soldatenko v. Ukraine*, *Ryabkin v. Russia* and *Garabayev v. Russia*. While noting the existence of laws which prohibit, inter alia, abuse of power and the use of violence by officials against individuals in their custody for the purpose of obtaining evidence, the Committee is concerned about the substantial gap between the legislative framework and its practical implementation (arts. 2, 4, 12 and 16).

**As a matter of urgency, the State party should take immediate and effective measures to prevent acts of torture and ill-treatment throughout the country, including by implementing policies that would produce measurable results in the eradication of torture and ill-treatment by State officials. Furthermore, the State party should take vigorous steps to eliminate impunity for alleged perpetrators of acts of torture and ill-treatment, carry out prompt, impartial and exhaustive investigations, try the perpetrators of such acts and, where they are convicted, impose appropriate sentences, and properly compensate the victims.**

#### **Status of the Convention in the domestic legal order**

(7) While noting article 6 of the Turkmen Constitution, which recognizes the primacy of the universally recognized norms of international law, the Committee notes with concern that the Convention has never been directly invoked in domestic courts. The Committee takes note of the oral assurance by representatives of the State that the direct application of the Convention by courts is envisaged shortly.

**The Committee recommends that the State party take the measures necessary to ensure the full applicability of the provisions of the Convention in its domestic legal order and the practical implementation of article 6 of the Constitution by, inter alia, providing extensive training to the judiciary and law-enforcement personnel in order to make them fully aware of the provisions of the Convention and its direct applicability. Furthermore, the State party should report back on progress made in this respect and on decisions of national courts or administrative authorities giving effect to the rights enshrined in the Convention.**

#### **Definition, absolute prohibition and criminalization of torture**

(8) While noting article 23 of the Constitution, which prohibits acts of torture or cruel, inhuman or degrading treatment or punishment, the Committee remains concerned that the State party has still not incorporated into domestic law the crime of torture as defined in article 1 of the Convention, and that the Criminal Code does not contain provisions specifically providing for liability for torture, but rather criminalizes “the causing of physical and moral suffering through systematic beatings or other violent acts” under article 113, “abuse of power” by an official under article 358, and the use of force by officials against individuals in their custody for the purpose of obtaining information under article 197. The Committee notes with concern article 47 of the Constitution, under which the implementation of the rights and freedoms of citizens may be suspended in a state of emergency or martial law in accordance with domestic laws. Furthermore, the Committee regrets the lack of information about rules and provisions on the statute of limitations (arts.1, 2 and 4).

**The Committee urges the State party to adopt a definition of torture that covers all the elements contained in article 1 of the Convention. The definition of torture should set out clearly the purpose of the offence, provide for aggravating circumstances, include the attempt to commit torture as well as acts intended to intimidate or coerce the victim or a third person, and should refer to the motive or reasons for inflicting torture identified in article 1 of the Convention. The State party should also ensure that acts of torture are not defined in terms of a less serious offence, such as the causing of physical and moral suffering, and that these offences are punishable by appropriate penalties which take into account their grave nature, as set out in article**

**4, paragraph 2, of the Convention. Furthermore, the State party should ensure that the absolute prohibition against torture is non-derogable and that acts amounting to torture are not subject to any statute of limitations.**

#### **Fundamental legal safeguards**

(9) While noting article 26 of the Code of Criminal Procedure on legal assistance, the Committee expresses its serious concern at the State party's failure in practice to afford all persons deprived of their liberty, including detainees held in temporary holding facilities (IVS), with all fundamental legal safeguards, as referred to in paragraphs 13 and 14 of the Committee's general comment No. 2 (2008) on the implementation of article 2 by States parties, from the very outset of detention. The Committee is concerned that the Criminal Code allows police officers to detain a person without the authorization of the prosecutor general for 72 hours and without presentation to a judge for up to one year. It is reported that detainees are frequently denied access to a lawyer and that violence is inflicted by police officers to extract confessions during that period of time. The Committee notes with concern reports that torture and ill-treatment of minors is widespread at the moment of apprehension and during pretrial detention (CRC/C/TKM/CO/1, para. 36) (arts. 2, 11 and 12).

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

**(a) Ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention, including the rights to prompt access to a lawyer and a medical examination by an independent doctor, to contact family members, to be informed of their rights at the time of detention, including about the charges laid against them, and to appear before a judge promptly;**

**(b) Ensure that minors have a lawyer and their parents or legal guardians present at every phase of a proceeding, including during questioning by a police officer;**

**(c) Ensure that all detainees, including minors, are included in a central register of persons deprived of liberty and that the register can be accessed by lawyers and family members of those detained and others as appropriate;**

**(d) Take measures to ensure the audio- or videotaping of all interrogations in police stations and detention facilities as a further means to prevent torture and ill-treatment.**

#### **Independence of the judiciary**

(10) The Committee is deeply concerned at the ineffective functioning of justice system, apparently caused in part by the lack of independence of the procuracy and judiciary, as was noted by the Secretary-General in 2006 (A/61/489, para. 46). The Committee regrets that responsibility for the appointment and promotion of judges rests with the President, which jeopardizes the independence of the judiciary. The Committee express its concern about the case of Ilmurad Nurliev, a Protestant pastor who was convicted of swindling following a trial that allegedly violated numerous fair trial and due process standards (arts. 2 and 13).

**The State party should take measures to establish and ensure the independence and impartiality of the judiciary in the performance of duties in conformity with international standards, notably the Basic Principles on the Independence of the Judiciary. The State party should also permit an impartial and independent review of Mr. Nurliev's conviction.**

### Complaint mechanisms and investigations; impunity

(11) The Committee is deeply concerned that allegations of torture and ill-treatment by State officers are seldom investigated and prosecuted, and that there appears to be a climate of impunity resulting in the lack of meaningful disciplinary action or criminal prosecution against persons of authority accused of acts specified in the Convention (arts. 2, 11, 12, 13 and 16). In particular, the Committee is concerned about:

(a) The lack of an independent and effective complaint mechanism for receiving and conducting impartial and full investigations into allegations of torture, in particular of convicted prisoners and pretrial detainees;

(b) Information suggesting that serious conflicts of interest prevent the existing complaints mechanisms from undertaking effective, impartial investigations into complaints received;

(c) Reports indicating that no official has been prosecuted for having committed torture and that, over the last 10 years, only four law enforcement officers have been charged with the less serious offence of “exceeding the limits of authorities” under article 182, paragraph 2, of the Criminal Code;

(d) The lack of detailed information, including statistics, on the number of complaints of torture and ill-treatment made to all existing complaints mechanisms, including the National Institute for Democracy and Human Rights and the State Commission to Review Citizens’ Complaints on the Activities of Law Enforcement Agencies, and the results of those investigations, whether proceedings were initiated at the penal and/or disciplinary levels, and their outcomes. In this regard, the Committee expresses particular concern regarding the case of Bazargeldy and Aydyemal Berdyev, in which the State party has denied the authenticity of a response that the Berdyevs allege to have received from the National Institute in 2009 regarding a claim of torture they had previously submitted.

#### The Committee urges the State party:

**(a) To establish an independent and effective mechanism:**

**(i) To facilitate the submission of complaints by victims of torture and ill-treatment to public authorities, including by obtaining medical evidence in support of their allegations, and to ensure in practice that complainants are protected against any ill-treatment or intimidation as a consequence of their complaint or any evidence given;**

**(ii) To undertake prompt, thorough and impartial investigations into allegations of torture or ill-treatment by police and other public officials who carried out, ordered or acquiesced in such practices and to punish offenders;**

**(b) To ensure that such investigations not be undertaken by or under the authority of the police, but by an independent body, and that all officials alleged to be responsible for violations of the Convention be suspended from their duties during those investigations;**

**(c) To provide information on the number of complaints filed against public officials on torture and ill-treatment, as well as information on the results of those investigations and any proceedings undertaken, at both the penal and disciplinary levels. Statistical information, disaggregated by sex, age and ethnicity of the individual bringing the complaints, should be provided and should describe each relevant allegation and indicate the authority that undertook the subsequent investigation. This information should include specific information regarding the claim of torture in detention submitted to the National Institute by Bazargeldy and Aydyemal Berdyev,**



**including any steps taken to investigate their claims, the body that undertook the investigation, and the outcome of that investigation.**

#### **National human rights institution**

(12) While noting the State party's response to the recommendation to establish an independent national human rights institute made in the course of the universal periodic review (A/HRC/10/79), the Committee is concerned that no such institute has been established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The Committee regrets that the existing national protection mechanisms within the Office of the President, including the National Institute for Democracy and Human Rights and the State Commission to Review Citizens' Complaints on the Activities of Law Enforcement Agencies do not comply with the Paris Principles, especially in respect of their composition of membership and lack of independence (arts. 2, 11 and 13).

**The State party should proceed with the establishment of an independent national human rights institution, in accordance with the Paris Principles, which is vested with the competence to hear and consider complaints and petitions concerning individual situations, to monitor detention facilities, and to make the results of its investigations public, and should ensure the implementation of the institution's recommendations with respect to awards of redress to victims and the prosecution of perpetrators, as well as the provision of adequate resources for its operation. The Committee recommends that the State party establish a national preventive mechanism as a part of a national human rights institution. It also invites the State party to consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

#### **Human rights defenders**

(13) The Committee notes with concern numerous and consistent allegations of serious acts of intimidation, reprisals and threats against human rights defenders, journalists and their relatives, as well as the lack of information provided on any investigations into such allegations. The Committee also expressed its serious concerns about reports that human rights defenders have faced arrest on criminal charges, apparently in retaliation for their work, and trials in which numerous due process violations have been reported. The Committee expresses its grave concern that on 30 September 2010, President Berdymukhamedov instructed the Ministry of National Security to lead an "uncompromising fight against those who slander our democratic... secular state" following a satellite television station's broadcast of an interview with Farid Tukhbatullin, an exiled Turkmen human rights defender, which had aired the previous day. While remaining concerned about reported threats against Mr. Tukhbatullin and attacks against the website he operates, the Committee appreciates the oral assurance given by the State party's representative that he will not be intimidated or threatened by the Government of Turkmenistan or its agents. The Committee regrets the State party's failure to implement the decision of the Working Group on Arbitrary Detention (Opinion No. 15/2010) and to reply to the urgent appeals sent by the Special Rapporteur on the situation of human rights defenders (A/HRC/4/37/Add.1, paras. 700–704) on behalf of Annakurban Amanklychev, a member of the Turkmenistan Helsinki Foundation, and Sapardurdy Khajiev, a relative of Foundation's director (arts. 2, 12 and 16).

**The State party should take all necessary steps:**

**(a) To ensure that human rights defenders and journalists, in Turkmenistan and abroad, are protected from any intimidation or violence as a result of their activities;**

**(b) To ensure the prompt, impartial and thorough investigation of such acts and to prosecute and punish perpetrators with penalties appropriate to the nature of those acts;**

**(c) To provide updates on the outcome of investigations of alleged threats against and ill-treatment of human rights defenders, including those mentioned above;**

**(d) To implement the decision of the Working Group on Arbitrary Detention (Opinion No. 15/2010) regarding Mr. Amanklychev and Mr. Khajiev, which concludes that their imprisonment is arbitrary and calls for their immediate release and the provision of compensation for damages.**

#### **Monitoring and inspection of places of detention**

(14) While noting the detention monitoring activities by the Office of the Procurator-General, the Committee is deeply concerned that there is no access for international monitoring bodies, either governmental or non-governmental, to detention facilities in Turkmenistan. The Committee notes that the State party cooperates with the International Committee of the Red Cross (ICRC), which provides assistance with humanitarian law and in other ways. However, the Committee notes with concern that the State party has not granted ICRC access to detention facilities, despite a number of recommendations made by international bodies, including the General Assembly in its resolutions 59/206 and 60/172, and as noted by the Secretary-General (A/61/489, para. 21). The Committee also expresses regret at the long outstanding requests for a country visit by the nine special procedures mandate holders of the Human Rights Council, in particular those of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Arbitrary Detention (arts. 2, 11 and 16).

#### **The Committee urges the State party:**

**(a) To establish a national system that independently, effectively and regularly monitors and inspects all places of detention without prior notice;**

**(b) To grant, as a matter of great urgency, access to independent governmental and non-government organizations, in particular ICRC, to all detention facilities in the country;**

**(c) To strengthen further the cooperation with United Nations human rights mechanisms, in particular by permitting visits from the Special Rapporteur on the question of torture and the Working Group on Arbitrary Detention, in conformity with the terms of reference for fact-finding missions by special rapporteurs and special representatives (E/CN.4/1998/45), as soon as possible.**

#### **Enforced disappearances and incommunicado detention**

(15) The Committee is concerned about a number of persons who have been arrested and sentenced at closed trials without proper defence and imprisoned incommunicado, and the lack of information from the State party on progress made in ascertaining their fate and whereabouts. These persons include Gulgeldy Annaniazov, Ovezgeldy Ataev, Boris Shikhmuradov, Batyr Berdyev, and those imprisoned in connection with the assassination attempt on the former President in 2002, raised, inter alia, by the Special Rapporteur on the question of torture (A/HRC/13/42, paras. 203–204; E/CN.4/2006/6/Add.1, para. 514). In particular, the Committee is concerned about the lack of: (a) effective, independent and transparent investigations into allegations of such practices, and prosecutions and convictions of perpetrators, where appropriate; and (b) due notification of the results of such investigations to the relatives of individuals who have disappeared, including confirmation of their place of detention and whether they are alive. This lack of

investigation and follow-up raises serious questions with respect to the State party's willingness to fulfil its obligations under the Convention and constitutes a continuing violation of the Convention with respect to the relatives of the victims (arts. 12 and 13).

**The Committee urges the State party:**

**(a) To take all appropriate measures to abolish incommunicado detention and ensure that all persons held incommunicado are released, or charged and tried under due process;**

**(b) As a matter of priority, to inform the relatives of those who have been detained incommunicado of their fate and whereabouts, and facilitate family visits;**

**(c) To take prompt measures to ensure prompt, impartial and thorough investigations into all outstanding cases of alleged disappearances, to provide remedy as appropriate and to notify relatives of the victims of the outcomes of such investigations and prosecutions;**

**(d) To inform the Committee of the outcomes of the investigations into the aforementioned cases of Mr. Annaniazov, Mr. Ataev, Mr. Shikmuradov, Mr. Berdyev and those imprisoned in connection with the 2002 assassination attempt on the former President.**

**Deaths in custody**

(16) The Committee is deeply concerned about numerous and consistent reports on a number of deaths in custody and on the alleged restrictions on independent forensic examination into the cases of such deaths, including the case of Ogulsapar Muradova, who was held incommunicado throughout her detention and died in custody under suspicious circumstances. This case, including signs of torture, has been well documented, and was taken up by the Secretary-General (A/61/489, para. 39) and several Special Rapporteurs (A/HRC/WG.6/3/TKM/2, para. 38) (arts. 2, 11, 12 and 16).

**The Committee urges the State party:**

**(a) To promptly, thoroughly and impartially investigate all incidents of death in custody; to make the results of those investigations available to the public; and to prosecute those responsible for committing violations of the Convention leading to such deaths;**

**(b) To ensure independent forensic examinations in all cases of death in custody; to permit family members of the deceased to commission independent autopsies of the deceased; and to ensure that the State party's courts accept the results of independent autopsies as evidence in criminal and civil cases;**

**(c) To provide the Committee with data regarding all deaths in custody, disaggregated by the facility in which the deceased was detained, the sex of the victim, and the outcome of the inquiry into the deaths in custody; and, in particular, to inform the Committee of the details of any investigation undertaken into deaths alleged to be the result of torture, ill-treatment or wilful negligence, including the death in custody in September 2006 of Ms. Muradova.**

**Misuse of psychiatric institutions**

(17) The Committee is deeply concerned about numerous and consistent credible reports of misuse of psychiatric hospitals to detain persons for reasons other than medical, in particular for the non-violent expression of his/her political views. The Committee regrets that the State party has failed to reply to at least two urgent appeals sent jointly by the Special Rapporteur on torture, the Special Rapporteur on the right to freedom of opinion and expression and the Working Group on Arbitrary Detention on behalf of Gurbandurdy

Durdykuliev, a political dissenter (E/CN.4/2005/62/Add.1, para. 1817), and Sazak Durdymuradov, a journalist (A/HRC/10/44/Add.4, para. 239) (arts. 2, 11 and 16), in 2004 and 2008, respectively.

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

**(a) Release those forcibly placed in psychiatric hospitals for reasons other than medical and take appropriate measures to remedy this situation;**

**(b) Take measures to ensure that no one is involuntarily placed in psychiatric institutions for reasons other than medical by, inter alia, allowing access to psychiatric facilities and mental hospitals by independent monitors and monitoring mechanisms, and ensuring that hospitalization for medical reasons is decided only upon the advice of independent psychiatric experts and that such decisions can be appealed;**

**(c) Inform the Committee of the outcomes of the investigations of the allegations of forced confinement in psychiatric hospitals, in particular with regard to the cases of Mr. Durdykuliev and Mr. Durdymuradov.**

**Violence in prison, including rape and sexual violence**

(18) The Committee expresses its concern at ongoing physical abuse and psychological pressures by prison staff, including collective punishment, ill-treatment as a “preventive” measure, the use of solitary confinement, and sexual violence and rape by prison officers or inmates, which have reportedly motivated the suicides of several detainees. In relation to the incident of beatings of a female inmate in February 2009 in the women’s prison colony in Dashoguz, the Committee notes with concern that, while the head of the colony was dismissed on bribery charges, no criminal sanctions were imposed on the officials responsible for this violence (arts. 2, 11, 12 and 16).

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

**(a) Draw up a comprehensive plan to address the issue of violence, including sexual violence and rape, by inmates and prison staff in all detention facilities, including the women’s prison colony in Dashoguz, and ensure effective investigations into those cases. The State party should provide the Committee with information on the investigation of cases of violence and rape of women detainees by public officials in Ashgabat in 2007 and in Dashoguz in 2009, and the outcomes of such trials, including information on the punishments meted out and the redress and compensation offered to victims;**

**(b) Coordinate the judicial supervision of conditions of detention between competent organs and ensure thorough investigations of all allegations of torture or ill-treatment committed in detention facilities;**

**(c) Ensure that solitary confinement remains an exceptional measure of limited duration.**

**Conditions of detention**

(19) While noting the Government’s plan for the construction of new detention facilities, the Committee remains deeply concerned about the current material and hygienic conditions in places of deprivation of liberty, such as inadequate food and health care, severe overcrowding, and unnecessary restrictions on family visits (arts. 11 and 16).

**The State party should intensify its efforts to bring the conditions of detention in places of deprivation of liberty into line with the Standard Minimum Rules for the Treatment of Prisoners and other relevant international and national law standards, in particular by:**

- (a) Reducing prison overcrowding and considering the establishment of non-custodial forms of detention;
- (b) Ensuring all detainees' access to and receipt of the necessary food and health care;
- (c) Ensuring that all minors are detained separately from adults through their whole period of detention or confinement and offering them educational and recreational activities.

#### **Coerced confessions**

(20) The Committee notes the existence of national legislation guaranteeing the principle of non-admissibility of coerced evidence in courts, such as article 45 of the Constitution and article 25, paragraph 1, of the Code of Criminal Procedure. The Committee notes, however, with grave concern numerous, consistent and credible reports that the use of forced confessions as evidence in courts is widespread in the State party and that such practices persist owing to the impunity of guilty parties. The Committee expresses concern about the lack of information provided by the State party regarding any officials who may have been prosecuted and punished for extracting confessions (art. 15).

**The Committee urges the State party to ensure that, in practice, evidence obtained by torture may not be invoked as evidence in any proceedings, in line with article 15 of the Convention, and to review cases of convictions based solely on confessions, recognizing that many of these may have been based upon evidence obtained through torture or ill-treatment, and, as appropriate, provide prompt and impartial investigations and take appropriate remedial measures. The State party should provide information on whether any officials have been prosecuted and punished for extracting such confessions.**

#### **Redress, including compensation and rehabilitation**

(21) While noting with appreciation that the right to compensation for victims of "illegal actions" or "harm caused" by State bodies is guaranteed pursuant to article 44 of the Constitution and article 23 of the Code of Criminal Procedure, the Committee remains concerned at the reported lack of implementation of the rights of victims of torture and ill-treatment to redress and compensation, including rehabilitation, and the lack of examples of cases in which individuals have received such compensation. Furthermore, the Committee, while noting the information provided by State representatives, expresses its serious concern about the State party's failure to implement the Human Rights Committee's Views on the case of *Komarovski v. Turkmenistan* (communication No. 1450/2006, Views adopted on 24 July 2008), in which that Committee decided, following a reply of the Government of Turkmenistan, that Turkmenistan must provide Mr. Komarovski with an effective remedy and take appropriate steps to prosecute and punish the persons responsible for the violations (art. 14).

**The Committee recommends that the State party strengthen its efforts to provide victims of torture and ill-treatment with redress in practice, including fair and adequate compensation and as full rehabilitation as possible, and to protect them from stigma and re-victimization. The State party should provide information on redress, compensation and other measures, including rehabilitation, ordered by the courts and provided for victims of torture, or their families, during the reporting period. This information should include the number of requests made, the number granted, and the amounts ordered and actually provided in each case. In addition, the State party should provide information on its implementation of the Human Rights Committee's Views concerning the case of *Komarovski v. Turkmenistan*.**

**Hazing in the armed forces**

(22) The Committee is seriously concerned at numerous and consistent reports of hazing in the armed forces, conducted by or with the consent, acquiescence or approval of officers or other personnel. Such practice of hazing has a devastating effect on victims and reportedly leads to their suicide and death in some cases. While noting the information provided by State representatives, the Committee remains concerned about reports that investigations are inadequate or absent (arts. 2 and 16).

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

**(a) Reinforce the measures to prohibit and eradicate hazing in the armed forces;**

**(b) Ensure prompt, impartial and thorough investigation and, as appropriate, prosecution of all incidents, including cases of suicides and death allegedly caused by ill-treatment and mental pressure, and report publicly on the outcomes of such prosecutions;**

**(c) Take measures to provide the rehabilitation of victims, including through appropriate medical and psychological assistance.**

**Refugees and asylum-seekers**

(23) The Committee welcomes the State party's decision to grant citizenship and permanent residency to thousands of Tajik refugees in 2005. The Committee is concerned that asylum-seekers' access to independent, qualified and free legal advice and representation is limited in Turkmenistan and that persons whose asylum claims are rejected in the first instance may not be able to lodge well-reasoned appeals. It is further concerned by the delay in adopting the amended Refugee Law and the lack of information on asylum applications and refugees, as well as the number of expulsions. The Committee also regrets the lack of information about safeguards to ensure that persons are not returned to countries where they face real risk of torture and about any use of "diplomatic assurances" as a way to circumvent the absolute prohibition of non-refoulement established in article 3 of the Convention (art. 3).

**The State party should take the necessary measures:**

**(a) To expedite the adoption of the amended Refugee Law and revise its current procedures and practices to bring them into line with international standards, in particular article 3 of the Convention;**

**(b) To ensure that no person is expelled, returned or extradited to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture, and to consider transferring the power to decide the matter from the President to the judiciary;**

**(c) To guarantee asylum-seekers, including those who may face detention, access to independent, qualified and free legal advice and representation, in order to ensure that the protection needs of refugees and other persons in need of international protection are duly recognized and refoulement is prevented;**

**(d) To establish and ensure the implementation of a standardized and accessible asylum and referral procedure at border points, including at international airport and transit zones;**

**(e) To establish a system for collecting and sharing statistical and other information on asylum-seekers, including those in detention, whose applications are pending with the authorities, as well as on persons extradited, expelled or returned by**

the State party and the countries to which they have been sent; and to provide the Committee with the relevant data.

#### **Training**

(24) While noting the information included in the State party's report on training programmes and publication of human rights handbooks, the Committee regrets the lack of information on targeted training for medical and law enforcement personnel, security and prison officials, judicial officials and other persons involved with the 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 (art. 10).

#### **The Committee recommends that the State party:**

(a) **Provide all persons charged with the various functions enumerated in article 10 of the Convention with regular training concerning the provisions of the Convention and the absolute prohibition of torture, as well as on rules, instructions and methods of interrogation, especially in cooperation with civil society organizations;**

(b) **Provide all relevant personnel, especially medical personnel, with specific training on how to identify signs of torture and ill-treatment and how to use the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);**

(c) **Implement a gender-sensitive approach for the training of those involved in the custody, interrogation or treatment of women subjected to any form of arrest, detention or imprisonment;**

(d) **Include the prohibition of ill-treatment of and discrimination against persons belonging to ethnic, religious and other minorities in the training of law enforcement officials and other relevant professional groups;**

(e) **Assess the effectiveness and impact of such training and educational programmes on the reduction of cases of torture and ill-treatment.**

#### **Lack of data**

(25) Despite the publication of the Committee's guidelines on the form and content of initial reports (CAT/C/4/Rev.3), and despite its requests that the State party provide the Committee with statistical information, the Committee regrets that it received only very limited information other than about legal provisions. The absence of comprehensive or disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment by law enforcement personnel, comprehensive prison occupancy rates, and deaths in custody, as well as data on individual cases of alleged torture and enforced disappearance, including the whereabouts of such persons, raised by the Committee severely hampers the identification of possible patterns of abuse requiring attention (arts. 2, 12, 13 and 19).

**The State party should compile and provide the Committee with statistical data relevant to the monitoring of the implementation of the Convention at the national level, the type of bodies engaged in such monitoring and their reporting mechanisms, disaggregated by, inter alia, sex, ethnicity, age, crime and geographical location, including information on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, incommunicado detention, deaths in custody, trafficking, domestic and sexual violence, and the outcomes of all such complaints and cases, including compensation and rehabilitation provided to victims.**

(26) The Committee recommends that the State party consider making the declarations envisaged under articles 21 and 22 of the Convention.

(27) The Committee invites the State party to ratify United Nations human rights treaties to which it is not yet a party, particularly the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The State party is also encouraged to ratify the Rome Statute of the International Criminal Court.

(28) The State party is requested to disseminate widely the report submitted to the Committee, the present concluding observations and the summary records, in appropriate languages, through official websites, the media and non-governmental organizations, and to report to the Committee on the results of such dissemination.

(29) The Committee requests the State party to provide, within one year, follow-up information in response to the Committee's recommendations contained in paragraphs 9, 14, and 15 (b) and (c) of the present document and to provide the information requested in the dialogue with State's representatives.

(30) The Committee invites the State party to submit its next treaty-specific report within the limit of 40 pages. The Committee also invites the State party to update its common core document (HRI/CORE/TKM/2009) in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee Meeting of the human rights treaty bodies, and to observe the limit of 80 pages. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

(31) The State party is invited to submit its next report, which will be the second periodic report, by 3 June 2015.



#### IV. Follow-up to concluding observations on States parties' reports

62. In this chapter, the Committee updates its findings and activities that constitute follow-up to concluding observations adopted under article 19 of the Convention. Information regarding the follow-up responses by States parties, and the activities of the Rapporteur for follow-up to concluding observations under article 19 of the Convention, including the Rapporteur's views on the results of this procedure, are presented below. This information is updated through 3 June 2011, the end of the Committee's forty-sixth session.

63. In chapter IV of its annual report for 2005–2006<sup>5</sup> the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. In that report and each year thereafter, the Committee has presented information on its experience in receiving information on follow-up measures taken by States parties since the initiation of the procedure in May 2003.

64. In accordance with its rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. At the forty-fifth and forty-sixth sessions (November 2010 and May–June 2011, respectively) the Rapporteur presented progress reports to the Committee on the results of the procedure.

65. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific measures to prevent acts of torture and ill-treatment. Thereby, the Committee assists States parties in identifying effective legislative, judicial, administrative and other measures to bring their laws and practice into full compliance with the obligations set forth in the Convention.

66. In accordance with the procedure established for its follow-up procedure, the Committee has identified a number of its recommendations to each State party as requiring additional information within one year. Such follow-up recommendations are identified because they are serious, protective and are considered able to be accomplished within one year. The States parties are asked to provide information within one year on the measures taken to give effect to the follow-up recommendations. In the concluding observations on each State party report, the recommendations requiring follow-up within one year are specifically identified in a paragraph at the end of each set of concluding observations.

67. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-sixth session in June 2011, the Committee has reviewed 109 reports from States parties for which it has identified follow-up recommendations. Of the 95 States party follow-up reports that were due by May 2011, at the time of the adoption of the present report, 67 had been received by the Committee. As of 3 June 2011, 27 States had not yet supplied follow-up information that had fallen due: Austria, Benin, Bulgaria, Burundi, Cambodia, Cameroon, Chad, Chile, Costa Rica, Democratic Republic of the Congo, El Salvador, France, Honduras, Indonesia, Jordan, Luxembourg, Nicaragua, Peru, Republic of Moldova (initial report, thirtieth session), Switzerland, South Africa, Syrian Arab Republic, Tajikistan, Togo, Uganda, Yemen and Zambia. As can be seen, the 28 States parties that did not submit any information under the follow-up procedure as of 3 June 2011 came from all world regions.

---

<sup>5</sup> *Official Records of the General Assembly, Sixty-first Session, Supplement No. 44 (A/61/44).*

68. The Rapporteur sends reminders requesting the outstanding information to each of the States for which follow-up information is due, but not yet submitted. The status of the follow-up to concluding observations may be found in a chart maintained on the web pages of the Committee. As of 2010, the Committee established a separate web page for follow-up: <http://www2.ohchr.org/english/bodies/cat/follow-procedure.htm>. State party responses are posted on this web page, as are follow-up submissions from NGOs, and the letters from the Rapporteur to the State party (see para. 70, below).

69. The Rapporteur expresses appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. To date, 22 State parties have provided additional clarifications in response to these requests. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

70. In May 2007, the Committee decided to make public all of the Rapporteur's letters to the States parties. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website.

71. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

72. The Rapporteur's activities in the past year have included attending two Inter-Committee Meetings in Geneva where follow-up procedures were discussed with members from other human rights treaty bodies, the first from 28 to 30 June 2010 and the second, an Inter-Committee Meeting Working Group on Follow-up, in January 2011. Also at the June meeting, the Rapporteur addressed a session of the meeting of special procedures mandate holders about the Committee's follow-up procedure. In the absence of field visits by the treaty body expert members, the reports of the special procedures mandate holders can provide documentation and analysis to assist the Committee and its Rapporteur in the assessment of the follow-up responses received from States parties. After the Rapporteur has assessed responses from States parties, and other relevant materials, she prepares follow-up letters to countries as warranted, in consultation with the Committee's own designated country rapporteurs.

73. The Rapporteur is undertaking a study of the Committee's follow-up procedure; she began with an examination of the number and nature of topics identified by the Committee in its requests to States parties for follow-up information. She reported to the Committee on some of her findings at the forty-fifth and forty sixth sessions. Globally, the most frequently addressed follow-up topics have been: (a) conduct prompt, impartial, and effective investigations; (b) prosecute and sanction perpetrators of torture or ill-treatment; (c) ensure or strengthen legal safeguards for persons detained; (d) ensure the right to complain and have cases examined; (e) conduct training and awareness-raising; (f) bring interrogation techniques in line with the Convention and, specifically, abolish incommunicado detention;

(g) ensure redress and rehabilitation; (h) prevent gender-based violence and ensure the protection of women; (i) monitor detention facilities and places of confinement and facilitate unannounced visits by an independent body; (j) improve data collection on torture; and (k) improve conditions of detention, i.e. overcrowding.

74. The Rapporteur also presented charts that demonstrated the importance of including follow-up items in lists of issues that the Committee prepares prior to the review of periodic reports from State parties. She found that, in the lists of issues prior to reporting that it adopted, the Committee had become more attentive to incorporating outstanding issues related to items previously designated for follow-up, although greater efforts can still be made in this regard.

75. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies and her concerns have been included in prior annual reports. To summarize them, she finds there is considerable value in having more precise information being provided, e.g. lists of prisoners, details on deaths in detention and forensic investigations.

76. Thus, as a result of numerous exchanges with States parties, the Rapporteur has observed that there is need for more vigorous fact-finding and monitoring in many States parties. In addition, there is often inadequate gathering and analysing of police and criminal justice statistics. When the Committee requests such information, States parties frequently do not provide it. The Rapporteur further considers that conducting prompt, thorough and impartial investigations into allegations of abuse is of great protective value. This is often best undertaken through unannounced inspections by independent bodies. The Committee has received documents, information and complaints about the absence of such monitoring bodies, as well as about the failure of such bodies to exercise independence in carrying out their work or to implement recommendations for improvement.

77. The Rapporteur has also pointed to the importance of States parties providing clear-cut instructions on the absolute prohibition of torture as part of the training of law-enforcement and other relevant personnel. States parties need to provide information on the results of medical examinations and autopsies, and to document signs of torture, especially including sexual violence. States parties also need to instruct personnel on the need to secure and preserve evidence. The Rapporteur has found many lacunae in national statistics, including on penal and disciplinary action against law-enforcement personnel. Accurate record keeping, covering the registration of all procedural steps of detained persons, is essential and requires greater attention. All such measures contribute to safeguard the individual against torture or other forms of ill-treatment, as set forth in the Convention.

78. The chart below details, as at 3 June 2011, the end of the Committee's forty-sixth session, the replies with respect to follow-up. This chart also includes references to the dates of submission of States parties' comments to concluding observations, if any.

## Follow-up procedure to conclusions and recommendations from May 2003 to June 2011

### Thirtieth session (May 2003)

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Azerbaijan	May 2004	7 July 2004 CAT/C/CR/30/RESP/1	Request for further clarification (21 April 2006)
Republic of Moldova	May 2004	-	Reminder (7 March 2006)

### Thirty-first session (November 2003)

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Cambodia	November 2004	-	Reminder (28 April 2006)
Cameroon	November 2004	-	Reminder (17 February 2006)
Colombia	November 2004	24 March 2006 CAT/C/COL/CO/3/Add.1	Reminder (17 February 2006)
		16 October 2007 CAT/C/COL/CO/3/Add.2	Request for further clarification (2 May 2007)
		Comments: 17 December 2009 CAT/C/COL/CO/3/Add.3	Request for further clarification (30 October 2009)
Latvia	November 2004	3 November 2004 CAT/C/CR/31/RESP/1	Request for further clarification (21 April 2006)
		14 May 2007 CAT/C/LVA/CO/1/Add.1	Information under review
Lithuania	November 2004	7 December 2004 CAT/C/CR/31/5/RESP/1	Request for further clarification (21 April 2006)
		25 October 2006 CAT/C/LTU/CO/1/Add.2	Request for further clarification (27 October 2008)
Morocco	November 2004	22 November 2004 CAT/C/CR/31/2/Add.1	Request for further clarification (17 March 2011)
		2 August 2006 CAT/C/MAR/CO/3/Add.2	Request for further clarification (10 May 2006)
		30 October 2006 CAT/C/MAR/CO/3/Add.3	
Yemen	November 2004	22 August 2005 CAT/C/CR/31/4/Add.1	Request for further clarification (21 April 2006)

**Thirty-second session (May 2004)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Bulgaria	May 2005	-	Reminder (17 February 2006)
Chile	May 2005	22 January 2007 CAT/C/38/CRP.4	Reminder (17 February 2006)  Request for further clarification (15 May 2008)
Croatia	May 2005	12 July 2006 CAT/C/HRV/CO/3/Add.1  16 February 2009 CAT/C/HRV/CO/3/Add.2	Reminder (17 February 2006)  Request for further clarification (13 May 2008)  Information under review
Czech Republic	May 2005	25 April 2005 CAT/C/CZE/CO/3/Add.1  14 January 2008 CAT/C/CZE/CO/3/Add.2	Request for further clarification (16 May 2006)  Request for further clarification (6 May 2011)
Germany	May 2005	4 August 2005 CAT/C/CR/32/7/RESP/1  25 September 2007 CAT/C/DEU/CO/3/Add.1	Request for further clarification (30 October 2006)  Request for further clarification (3 May 2011)
Monaco	May 2005	30 March 2006 CAT/C/MCO/CO/4/Add.1	Reminder (17 February 2006)  Request for further clarification (15 May 2008)
New Zealand	May 2005	9 June 2005 CAT/C/CR/32/4/RESP/1  Comments: 19 December 2006 CAT/C/NZL/CO/3/Add.2	Request for further clarification (14 May 2007)

**Thirty-third session (November 2004)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Argentina	November 2005	2 February 2006 CAT/C/ARG/CO/4/Add.1	Request for further clarification (11 May 2007)
Greece	November 2005	14 March 2006 CAT/C/GRC/CO/4/Add.1  9 October 2008 CAT/C/GRC/CO/4/Add.2	Reminder (17 February 2006)  Request for further clarification (15 May 2008)

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
United Kingdom of Great Britain and Northern Ireland	November 2005	14 March 2006 CAT/C/GBR/CO/4/Add.1	Reminder (17 February 2006)
		Received 25 August 2009 CAT/C/GBR/CO/4/Add.2	Request for further clarification (29 April 2009)
			Information under review

### **Thirty-fourth session (May 2005)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Albania	May 2006	15 August 2006 CAT/C/ALB/CO/1/Add.1	Request for further clarification (15 November 2008)
Bahrain	May 2006	21 November 2006 CAT/C/BHR/CO/1/Add.1	Request for further clarification (17 November 2008)
		13 February 2009 CAT/C/BHR/CO/1/Add.2	Request for further clarification (25 May 2011)
Canada	May 2006	2 June 2006 CAT/C/CAN/CO/4/Add.1	Request for further clarification (29 April 2009)
Finland	May 2006	19 May 2006 CAT/C/FIN/CO/4/Add.1	Request for further clarification (13 May 2008)
		2 December 2008 CAT/C/FIN/CO/4/Add.2	Information under review
Switzerland	May 2006	16 June 2005 CAT/C/CHE/CO/4/Add.1	Reminder (5 April 2007)
		15 May 2007 CAT/C/CHE/CO/4/Add.2	Request for further information (11 Nov 2009)
		7 December 2009 CAT/C/CHE/CO/4/Add.3	Information under review
Uganda	May 2006	-	Reminder (5 April 2007)

**Thirty-fifth session (November 2005)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Austria	November 2006	24 November 2006 CAT/C/AUT/CO/3/Add.1	Request for further clarification (15 November 2008)
Bosnia and Herzegovina	November 2006	Comments: 1 February 2006 CAT/C/BIH/CO/1/Add.1  6 May 2007 CAT/C/BIH/CO/1/Add.2	Reminder (5 April 2007)  Request for further clarification (12 February 2008)
Democratic Republic of the Congo	November 2006	-	Reminder (5 April 2007)
Ecuador	November 2006	20 November 2006 CAT/C/ECU/CO/3/Add.1	Request for further clarification (11 May 2009)
France	November 2006	13 February 2007 CAT/C/FRA/CO/3/Add.1	Information under review
Nepal	November 2006	1 June 2007 CAT/C/NPL/CO/2/Add.1	Reminder (13 April 2007) Request for further clarification (15 May 2008)
Sri Lanka	November 2006	22 November 2006 CAT/C/LKA/CO/2/Add.1	Request for further clarification (21 November 2007)

**Thirty-sixth session (May 2006)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Georgia	May 2007	31 May 2007 CAT/C/GEO/CO/3/Add.1	Request for further clarification (13 November 2009)
Guatemala	May 2007	15 November 2007 CAT/C/GTM/CO/4/Add.1  9 June 2009 CAT/C/GTM/CO/4/Add.2	Reminder (4 September 2007) Request for further information (17 November 2008) Information under review
Peru	May 2007	-	Reminder (4 September 2007)
Qatar	May 2007	12 December 2006 CAT/C/QAT/CO/1/Add.1	Request for further clarifications (7 May 2010)

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Republic of Korea	May 2007	27 June 2007 CAT/C/KOR/CO/2/Add.1	Request for further clarification (15 November 2008)
		10 July 2009 CAT/C/KOR/CO/2/Add.2	Request for further clarifications (14 May 2010)
Togo	May 2007	-	Reminder (4 September 2007)
United States of America	May 2007	25 July 2007 CAT/C/USA/CO/2/Add.1	Requests for further clarification (8 August 2008 and 14 May 2009)

### **Thirty-seventh session (November 2006)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Burundi	November 2007	-	Reminder (25 April 2008)
Guyana	November 2007	5 December 2008 CAT/C/GUY/CO/1/Add.1	Reminder (25 April 2008) Request for further clarifications (14 May 2010)
Hungary	November 2007	15 November 2007 CAT/C/HUN/CO/4/Add.1	Request for further clarification (15 November 2008)
Mexico	November 2007	14 August 2008 CAT/C/MEX/CO/4/Add.1	Request for further clarification (6 May 2009)
		7 January 2010 CAT/C/MEX/CO/4/Add.2	Information under review
Russian Federation	November 2007	23 August 2007 CAT/C/RUS/CO/4/Add.1	Request for further clarification (15 May 2009)
South Africa	November 2007	-	Reminder (25 April 2008)
Tajikistan	November 2007	-	Reminder (25 April 2008)

### **Thirty-eighth session (May 2007)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Denmark	May 2008	18 July 2008 CAT/C/DNK/CO/5/Add.1	Request for further clarifications (12 May 2010)
Italy	May 2008	9 May 2008 CAT/C/ITA/CO/4/Add.1	Request for further clarification (17 November 2009)
Japan	May 2008	29 May 2008 CAT/C/JPN/CO/1/Add.1	Request for further clarification (11 May 2009)
Luxembourg	May 2008	-	Reminder (17 November 2008)



<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
The Netherlands	May 2008	17 June 2008 CAT/C/NET/CO/4/Add.1	Request for further clarifications (19 November 2010)
Poland	May 2008	12 June 2008 CAT/C/POL/CO/4/Add.1	Information under review
Ukraine	May 2008	21 April 2009 CAT/UKR/CO/5/Add.1	Reminder (17 November 2008) Information under review

### **Thirty-ninth session (November 2007)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Benin	November 2008	-	Reminder (6 May 2009)
Estonia	November 2008	19 January 2009 CAT/C/EST/CO/4/Add.1	Reminder (29 April 2009) Information under review
Latvia	November 2008	10 February 2010 CAT/C/LVA/CO/2/Add.1	Reminder (29 April 2009) Request for further clarifications (25 May 2011) Information under review
Norway	November 2008	9 July 2009 CAT/C/NOR/CO/5/Add.1 (Appendix 1 outstanding)  26 November 2010 CAT/C/NOR/CO/5/Add.2  4 March 2011 CAT/C/NOR/CO/5/Add.3	Reminder (29 April 2009) Request for further clarifications (12 May 2010) Information under review
Portugal	November 2008	23 November 2007 CAT/C/PRT/CO/4/Add.1 (including comments)	Request for further clarifications (12 May 2010)
Uzbekistan	November 2008	13 February 2008 CAT/C/UZB/CO/3/Add.1 (including comments)  7 January 2010 CAT/C/UZB/CO/3/Add.2	Reminder and request for further clarification (16 November 2009) Information under review

### **Fortieth session (May 2008)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Algeria	May 2009	20 May 2008 CAT/C/DZA/CO/3/Add.1 (including comments)	Reminder and request for further clarification (20 November 2009)

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Australia	May 2009	29 May 2009 CAT/C/AUS/CO/3/Add.1	Request for further clarifications (6 May 2010)
		12 November 2010 CAT/C/AUS/CO/3/Add.2	Information under review
Costa Rica	May 2009	-	Reminder (12 November 2009)
Iceland	May 2009	22 December 2009 CAT/C/ISL/CO/3/Add.1	Reminder (12 November 2009)
			Request for further clarifications (19 November 2010)
Indonesia	May 2009	-	Reminder (12 November 2009)
Sweden	May 2009	11 June 2009 CAT/C/SWE/CO/5/Add.1	Request for further clarification (25 May 2011)
The former Yugoslav Republic of Macedonia	May 2009	15 September 2009 CAT/C/MKD/CO/2/Add.1	Request for further clarifications (19 November 2010)
		3 May 2011 CAT/C/MKD/CO/2/Add.2	Information under review
Zambia	May 2009	-	Reminder (12 November 2009)

#### **Forty-first session (November 2008)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Belgium	November 2009	17 March 2010 CAT/C/BEL/CO/2/Add.1	Information under review
China	November 2009	Comments: 17 December 2008 CAT/C/CHN/CO/4/Add.1	Request for further clarification (29 October 2010, China)
		26 November 2009 CAT/C/CHN/CO/4/Add.2	
Hong Kong		7 January 2010 CAT/C/HKG/CO/4/Add.1 (Hong Kong)	Request for further clarification (29 October 2010, Hong Kong)
Macao		8 March 2010 CAT/C/MAC/CO/4/Add.1 (Macao)	Request for further clarification (29 October 2010, Macao)
Kazakhstan	November 2009	25 February 2010 CAT/C/KAZ/CO/2/Add.1	Request for further clarifications (13 September 2010)
		18 February 2011 CAT/C/KAZ/CO/2/Add.2	Information under review

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Kenya	November 2009	30 November 2009 CAT/C/KEN/CO/1/Add.1	Request for further clarifications (4 May 2010)
Lithuania	November 2009	29 March 2011 CAT/C/LTU/CO/2/Add.1	Reminder (28 March 2011)
Montenegro	November 2009	6 April 2009 CAT/C/MNE/CO/1/Add.1	Request for further clarification (19 November 2010)
Serbia	November 2009	5 February 2010 CAT/C/SRB/CO/1/Add.1	Request for further clarification (23 May 2011)

#### **Forty-second session (May 2009)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Chad	May 2010	-	Reminder (28 March 2011)
Chile	May 2010	-	Reminder (28 March 2011)
Honduras	May 2010	-	Reminder (28 March 2011)
Israel	May 2010	3 August 2010 CAT/C/ISR/CO/4/Add.1	Information under review
New Zealand	May 2010	19 May 2010 CAT/C/NZL/CO/5/Add.1	Information under review
Nicaragua	May 2010	-	Reminder (28 March 2011)
Philippines	May 2010	5 November 2010 CAT/C/PHL/CO/2/Add.1	Information under review

#### **Forty-third session (November 2009)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Azerbaijan	November 2010	18 November 2010 CAT/AZE/CO/3/Add.1	Information under review
Colombia	November 2010	14 April 2011 CAT/C/COL/4/Add.1	Reminder (28 March 2011)
El Salvador	November 2010	-	Reminder (28 March 2011)
Republic of Moldova	November 2010	14 February 2011 CAT/C/MDA/CO/2/Add.1	Information under review
Slovakia	November 2010	16 November 2010 CAT/C/SVK/CO/2/Add.1	Information under review
Spain	November 2010	19 January 2011 CAT/C/ESP/CO/5/Add.1	Information under review

**Forty-fourth session (May 2010)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Austria	May 2011	-	-
Cameroon	May 2011	-	-
France	May 2011	-	-
Jordan	May 2011	-	-
Liechtenstein	May 2011	22 December 2009 CAT/C/LIE/CO/3/Add.1 (Comments)  18 May 2011 CAT/C/LIE/CO/3/Add.2	-
Switzerland	May 2011	-	-
Syrian Arab Republic	May 2011	-	-
Yemen	May 2011	-	-

**Forty-fifth session (November 2010)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Bosnia and Herzegovina	November 2011	-	-
Cambodia	November 2011	-	-
Ecuador	November 2011	-	-
Ethiopia	November 2011	-	-
Mongolia	November 2011	-	-
Turkey	November 2011	-	-

**Forty-sixth session (May–June 2011)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Finland	June 2012	-	-
Ghana	June 2012	-	-
Ireland	June 2012	-	-
Kuwait	June 2012	-	-
Mauritius	June 2012	-	-
Monaco	June 2012	-	-
Slovenia	June 2012	-	-
Turkmenistan	June 2012	-	-

## V. Activities of the Committee under article 20 of the Convention

79. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to it 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.

80. In accordance with rule 75 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.

81. 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.

82. 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 78 and 79 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.

83. In the framework of its follow-up activities, the Rapporteurs on article 20 continued to carry out activities aimed 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.

## **VI. Consideration of complaints under article 22 of the Convention**

### **A. Introduction**

84. 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. Sixty-four 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.

85. In accordance with rule 104, paragraph 1, of its rules of procedure, the Committee established the post of the Rapporteur on new complaints and interim measures that is currently held by Mr. Fernando Mariño.

86. Consideration of complaints under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents relating to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential. Rules 113 and 115 of the Committee's rules of procedure set out the modalities of the complaints procedure.

87. 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 (art. 22, para. 7, of the Convention and rule 118 of the rules of procedure) and are made available to the 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.

88. Pursuant to rule 121, 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.

### **B. Interim measures of protection**

89. Complainants frequently request preventive protection, particularly in cases concerning imminent expulsion or extradition, where they allege a violation of article 3 of the Convention. Pursuant to rule 114, paragraph 1, at any time after the receipt of a complaint, the Committee, through its Rapporteur on 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. During the reporting period, requests for interim measures of protection were received in 37 complaints, of which 24 were granted by the Rapporteur on new complaints and interim measures, who regularly monitors compliance with the Committee's requests for interim measures.

90. The decision to grant interim measures may be adopted on the basis of information contained in the complainant's submission. Pursuant to rule 114, paragraph 3, this decision

may be reviewed by the Rapporteur on new complaints and interim measures, at the initiative of the State party, in the light of timely information received from that State party to the effect that the need for interim measures is not justified and the complainant does not face any prospect of irreparable harm, as well as subsequent comments, if any, from the complainant. The Rapporteur has taken the position that such requests need only be addressed if based on new and pertinent information which was not available to him or her when he or she took his or her initial decision on interim measures.

91. The Committee has conceptualized the formal and substantive criteria applied by the Rapporteur on new complaints and interim measures in granting or rejecting requests for interim measures of protection. Apart from timely submission of a complainant's request for interim measures of protection under rule 114, 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 need not be fulfilled if the only remedies available to the complainant are without suspensive effect, i.e. remedies that, for instance, do not automatically stay the execution of an expulsion order to a State where the complainant might be subjected to torture, 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 reasonable 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.

92. In cases concerning imminent expulsion or extradition where a complaint failed to establish a *prima facie* case with a reasonable likelihood of success on the merits that would allow the Rapporteur on new complaints and interim measures to conclude that the alleged victim would suffer irreparable harm in the event of his or her deportation, the complainant is requested in writing to confirm his or her interest in having his or her communication considered by the Committee, despite the rejection, by the Rapporteur, of the respective request for interim measures.

93. The Committee is aware that a number of States parties have expressed concern that interim measures of protection have been requested in too large a number of cases alleging violations of article 3 of the Convention, especially where the complainant's deportation is alleged to be imminent, and that there are insufficient factual elements to warrant a request for interim measures. The Committee takes such expressions of concern seriously and is prepared to discuss them with the States parties concerned. In this regard it wishes to point out that in some cases, requests for interim measures are lifted by the Rapporteur, pursuant to rule 114, paragraph 3, and on the basis of pertinent State party information received that obviates the need for interim measures.

### **C. Progress of work**

94. At the time of adoption of the present report the Committee had registered, since 1989, 462 complaints concerning 29 States parties.<sup>6</sup> Of those, 123 complaints had been discontinued and 62 had been declared inadmissible. The Committee had adopted final decisions on the merits on 181 complaints and found violations of the Convention in 60 of

---

<sup>6</sup> The complaints examined by the Committee in relation to the Federal Republic of Yugoslavia, as well as to Serbia and Montenegro, are attributed to Serbia for statistical purposes.

them. Ninety-three complaints were pending for consideration and two were suspended, pending exhaustion of domestic remedies.

95. At its forty-fifth session, the Committee adopted decisions on the merits in respect of complaints No. 333/2007 (*T.I. v. Canada*), No. 339/2008 (*Amini v. Denmark*), No. 344/2008 (*A.M.A. v. Switzerland*), No. 349/2008 (*Güclü v. Sweden*) and No. 373/2009 (*Aytulun and Güclü v. Sweden*). The text of these decisions is also reproduced in annex XII, section A, to the present report.

96. Complaint No. 333/2007 (*T.I. v. Canada*) concerned a national of Uzbekistan of a Tatar ethnicity, who claimed that his deportation to Uzbekistan would constitute a violation by Canada of articles 1 and 3 of the Convention, as he would be at risk of being subjected to torture on account of his ethnic origin. While acknowledging that the human rights situation in Uzbekistan was indeed poor, the Committee noted, however, that the complainant had not provided sufficient information to support his claim that Tatars, and therefore he himself, were discriminated against to an extent that would place him at a particular risk of torture in Uzbekistan. The Committee further noted that despite several inquiries about medical or any other documentary evidence in support of his account of events in Uzbekistan prior to his departure, which would corroborate his claims or demonstrate possible effects of the ill-treatment to which he had allegedly been subjected, the complainant did not provide any such evidence. Neither did he provide any report of a medical examination after his arrival in Canada. The Committee, therefore, concluded on the merits that the complainant failed to establish his claim that he would personally be exposed to a substantial risk of being subjected upon his return to Uzbekistan, and that his removal to that country would not constitute a breach of article 3 of the Convention.

97. In complaint No. 339/2008 (*Amini v. Denmark*), the complainant claimed that his deportation to the Islamic Republic of Iran would constitute a breach of article 3 of the Convention by Denmark, because of the risk of being tortured or subjected to inhuman or degrading treatment by the Iranian authorities, given his active involvement in a monarchist group called “Refrondom Komite” (the Committee for Reformation on the Wall), a subgroup of the Royalist Party. This fear was based on the fact that he had been tortured in the past as a result of his political activities, that there remained an open case against him before the Iranian authorities and that he had recommenced such political activities from Denmark. The Committee found that it was probable, based on the medical reports provided by the complainant which indicated that his injuries were consistent with his allegations, that he had been detained and tortured as alleged. It also noted that the State party did not dispute this claim of past torture but argued that he was unlikely to have been subjected to torture on the basis of involvement with the monarchists, given their low level of activity in the Islamic Republic of Iran. As to the general human rights situation in the Islamic Republic of Iran, the Committee expressed its concern about the deteriorating situation since the elections of June 2009, including with respect to a report of six independent United Nations experts in July 2009 who questioned the legal basis for the arrests of journalists, human rights defenders, opposition supporters and scores of demonstrators, giving rise to concern for the arbitrary detention of individuals legitimately exercising their right to freedom of expression, opinion and assembly. In particular, the Committee was concerned about reports that monarchists had been recently targeted in the Islamic Republic of Iran. In the light of these considerations, including the complainant’s corroborated claims of past torture, the Committee was of the view that there were sufficient arguments to conclude that the complainant would face a personal risk of torture if returned to the Islamic Republic of Iran and that his forcible return to that country would constitute a breach by Denmark of his rights under article 3 of the Convention.

98. In complaint No. 344/2008 (*A.M.A. v. Switzerland*), the complainant claimed that he would be in danger in his country of origin, Togo, as a witness to the throwing of dead



bodies into the lagoon by men in military uniform shortly after the suppression by law enforcement personnel of a demonstration. The attempt to dispose of dead bodies was also witnessed by the complainant's father, who was allegedly captured by men in military uniform and whose mutilated body was found sometime later. He also claimed that the emergency assistance procedure consisting of minimum assistance coupled with surveillance by the Swiss administration police pending removal violated article 22 of the Convention. With regard to the allegations under article 22 of the Convention, the Committee noted the State party's argument that the emergency assistance, which is granted only on request, was designed to meet an individual's basic needs, and that the obligation under article 3 was one of non-refoulement, not one of ensuring a high standard of living in the host country. The Committee consequently considered that the complainant did not sufficiently substantiate his allegations under article 22 of the Convention and found this part of the communication inadmissible. The Committee, after examining the claims and evidence submitted by the complainant as well as the arguments from the State party concluded, on the merits, that the complainant failed to provide sufficient evidence to demonstrate that he would face a foreseeable, real and personal risk of being subjected to torture if deported to Togo. Therefore, no breach of article 3 of the Convention was found in this complaint.

99. Complaint No. 349/2008 (*Güclü v. Sweden*) related to a claim by a woman of a violation of article 3 of the Convention in the event of her forcible deportation from Sweden to Turkey. Initially an active and long-standing member of the Kurdish Workers' Party (the PKK) and a guerrilla soldier, the complainant later started to have doubts about the ideology of the PKK and left its ranks. She claimed that upon her return to Turkey she would be arrested and tortured by the Turkish authorities and/or by the PKK. The complainant further stated that she would not get a fair trial and would be sent to prison, where she would not be protected from the PKK. As to the complainant's allegation that if returned to Turkey she would be killed by the PKK in retaliation for leaving the organization without permission, the Committee considered that the issue of whether the State party had 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, fell outside the scope of article 3 of the Convention. Thus, the Committee found that this claim was inadmissible. The Committee noted that the State party did not dispute the complainant's involvement with the PKK, but rather argued that her involvement was at a low level. It also noted that while the State party denied that she would be of much interest to the Turkish authorities at the moment, it admitted that if she was pursued by the Turkish authorities, there was a risk that she would be arrested, detained pending trial and sentenced to a long term of imprisonment. The Committee further noted that the complainant provided information on a criminal case initiated against her in Turkey, which was uncontested by the State party. The Committee then observed that, according to various sources, including the reports provided by the complainant, the Turkish security and police forces continued to use torture, in particular during questioning and in detention centres, including against suspected terrorists. In conclusion, the Committee noted that the complainant was a member of the PKK for 15 years; that even though she was operating at a low level, she did on occasion work for its leader Öcalan and other high profile PKK leaders; that she is wanted in Turkey, to be tried under anti-terrorist laws and thus was likely to be arrested upon arrival. In the light of the foregoing, the Committee considered that the complainant provided sufficient evidence to show that she personally ran a real and foreseeable risk of being subjected to torture upon her return to Turkey. Accordingly, the Committee concluded that the complainant's removal to that country would constitute a breach of article 3 of the Convention.

100. In complaint No. 373/2009 (*Aytulun and Güclü v. Sweden*), the complainants, the husband and daughter of the complainant who submitted a similar communication to the

Committee registered as case No. 349/2008, claimed that the first-named complainant's deportation to Turkey would constitute a violation by Sweden of article 3 of the Convention. The first-named complainant was a member of the PKK who was arrested by the PKK for one month for having a relationship with a fellow soldier, his future wife. The first-named complainant "deserted" the PKK shortly before he left for Sweden. As in the communication of the first-named complainant's wife, the Committee considered that the issue of whether the State party had 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, fell outside the scope of article 3 of the Convention. Thus, the Committee found that this claim was inadmissible. For the reasons advanced by the Committee in its decision on communication No. 349/2008, *Güclü v. Sweden*, it considered that the first-named complainant provided sufficient evidence to show that he personally ran a real and foreseeable risk of being subjected to torture upon his return to Turkey. As the case of the second-named complainant was dependent upon the case of the first, the Committee did not find it necessary to consider the case of the former, a minor child of the first-named complainant, separately. The Committee concluded that the State party's decision to return the complainants to Turkey would constitute a breach of article 3 of the Convention.

101. At its forty-sixth session, the Committee adopted decisions on the merits in respect of complaints No. 310/2007 (*Chahin v. Sweden*), No. 319/2007 (*Singh v. Canada*), No. 336/2008 (*Singh Khalsa et al. v. Switzerland*), No. 338/2008 (*Mondal v. Sweden*), No. 341/2008 (*Hanafi v. Algeria*), No. 350/2008 (*R.T-N. v. Switzerland*), No. 352/2008 (*S.G. et al. v. Switzerland*), No. 357/2008 (*Jahani v. Switzerland*), No. 369/2008 (*E.C.B. v. Switzerland*), No. 375/2009 (*T.D v. Switzerland*), No. 379/2009 (*Bakatu-Bia v. Sweden*) and No. 419/2010 (*Ktiti v. Morocco*). The text of these decisions is also reproduced in annex XII, section A, to the present report.

102. Complaint No. 310/2007 (*Chahin v. Sweden*) concerned a Syrian national claiming that his deportation to the Syrian Arab Republic in 1997 in execution of a judgment convicting him of manslaughter violated article 3 of the Convention because he was subsequently tortured. He also claimed that if the State party were again to deport him to the Syrian Arab Republic, from where he had returned to Sweden in 2003, such deportation would constitute another breach of article 3. With regard to the 1997 deportation, the Committee observed that the complainant's contradictory statements about his nationality, his personal circumstances and his travel to Sweden had made it more difficult for the State party's authorities to assess his risk of being subjected to torture upon return to the Syrian Arab Republic. It concluded that the complainant had failed to substantiate, for purposes of admissibility, that such risk was foreseeable for the State party at the time of his deportation, and declared this part of the complaint inadmissible. As regards the complainant's current risk of torture in the Syrian Arab Republic, the Committee took note of a 1997 judgment of the Syrian Supreme State Security Council sentencing him to three years' imprisonment for membership in a terrorist organization during the Lebanese civil war, as well as of two medical reports confirming that it was likely that he had been tortured in the past. In the light of the deterioration of the human rights situation in the Syrian Arab Republic in connection with the Government's crackdown on protests for political reforms earlier in 2011, the Committee found that the complainant's deportation to the Syrian Arab Republic would expose him to a risk of being subjected to torture and would therefore amount to a breach of article 3 of the Convention.

103. In complaint No. 319/2007 (*Singh v. Canada*) the complainant, an Indian Sikh, claimed that his forcible return to India would amount to a violation of his rights under article 3 of the Convention. The complainant also alleged that he did not have an effective remedy to challenge the deportation decision. The Committee observed that reports submitted both by the complainant and the State party, confirm, inter alia, that numerous

incidents of torture in police custody continue to take place, and that there is widespread impunity for perpetrators in India. The Committee noted the complainant's description of the treatment to which he had been subjected while in detention, because of his activities as a Sikh priest, his political involvement with the Akali Dal party and his leadership role in the local structures of the party. The Committee also noted that in the instant case, the judicial review of the Immigration Board decision did not entail review on the merits of the complainant's claim that he would be tortured if returned to India and recalled its jurisprudence that the State party should provide for such a review. For these reasons, the Committee concluded that the State party's decision to return the complainant to India, if implemented, would constitute a breach of article 3 of the Convention and that in the instant case the lack of an effective remedy against the deportation decision constituted a breach of article 22 of the Convention.

104. Complaint No. 336/2008 (*Singh Khalsa et al. v. Switzerland*) concerned four Indian Sikhs who took part in the hijacking of the airplanes of the Indian Airlines en route to Pakistan in 1981 and 1984. All complainants served their prison sentences in Pakistan, were released from prison at the end of 1994 and were ordered to leave the country. They left Pakistan and went to Switzerland where they applied for asylum immediately upon arrival in 1995. The complainants claimed that their deportation to India would constitute a violation by Switzerland of article 3 of the Convention. Subsequently to the registration of the complaint, one of the complainants was granted a humanitarian permit in Switzerland and has withdrawn his claim. The Committee observed that according to the recent reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on extrajudicial, summary or arbitrary executions, ill-treatment and torture of individuals held in detention, as well as deaths in custody or following detention continued to be a problem in India. It further observed that the complainants had submitted information regarding cases, similar to theirs, where individuals who had participated in hijackings had been arrested, detained in inhuman conditions, tortured and/or killed. The Committee noted that the complainants were clearly known to the authorities as Sikh militants and that the Indian police continued to look for them and to question their families about their whereabouts long after they had fled to Switzerland. For these reasons, the Committee concluded that the removal of the three remaining complainants to India would constitute a violation of article 3 of the Convention.

105. In complaint No. 338/2008 (*Mondal v. Sweden*) the complainant claimed that he would be imprisoned and tortured if returned to Bangladesh, in violation of articles 3 and 16 of the Convention, because of his personal profile and his past political activities. The Committee, after examining the claims and evidence submitted by the complainant as well as the arguments of the State party, concluded that the information provided, and in particular the findings of the medical report, the complainant's political activities in the past and the risk of persecution on the basis of his homosexuality, combined with the fact that he belongs to a minority Hindu group, constituted sufficient evidence to show that he personally ran a real and foreseeable risk of being subjected to torture if returned to his country of origin. Accordingly, the Committee concluded that the expulsion of the complainant to Bangladesh would constitute a violation of the State party's obligations under article 3 of the Convention. The Committee found that his arguments under article 16 of the Convention had not been sufficiently substantiated for the purposes of admissibility.

106. In complaint 341/2008 (*Hanafi v. Algeria*) the complainant, an Algerian citizen, alleged that, in violation of article 1, or at least article 16, of the Convention, her husband had been tortured in detention, which had led to his death shortly after his release. The complainant furthermore alleged that she and her family had been impeded from complaining about these violations and that the State party never carried out an investigation into the death of her husband nor did the authorities provide compensation to the victim's family in violation of articles 11, 12, 13 and 14. In the light of the information

submitted by the complainant and in the absence of any satisfactory information from the State party, the Committee concluded that the treatment inflicted on the victim constituted torture under article 1 of the Convention. It also established that the lack of diligence and the impediments to the investigation process, as well as the lack of compensation for the treatment inflicted on the victim, constituted a violation of article 2, paragraph 1, read in conjunction with article 1, and a violation of articles 11, 12, 13 and 14 of the Convention. The Committee stressed that the interference by the State party into the procedure before the Committee by pressuring witnesses to withdraw their testimonies in support of the complainant's communication constituted an unacceptable interference with the procedure under article 22 of the Convention.

107. Complaint No. 350/2008 (*R.T-N. v. Switzerland*) concerned a Congolese citizen claiming that his deportation to the Democratic Republic of the Congo would constitute a violation of article 3 of the Convention. He claimed that as an active member of a political group, he gave three talks about the elections in the Democratic Republic of the Congo, during which he drew attention to the fact that Joseph Kabila was not of Congolese origin. He claimed that following these meetings he was arrested, tortured and imprisoned for two weeks before managing to escape from prison and to flee the country. Upon arrival in Switzerland, the complainant appeared on a television show explaining the situation of asylum-seekers in Switzerland. He feared that the television broadcast of this programme in the Democratic Republic of the Congo might alert the Congolese authorities of the complainant's presence in Switzerland and would trigger his persecution upon return to the Democratic Republic of the Congo. After examining the claims submitted by the complainant as well as the arguments of the State party, which provided an opinion from both UNHCR and the Swiss Refugee Council considering that, given the personal situation of the complainant, he would not be at risk upon return to the Democratic Republic of the Congo, the Committee concluded that such return would not constitute a violation of article 3 of the Convention.

108. Complaint No. 352/2008 (*S.G. et al. v. Switzerland*) related to a Turkish national of Kurdish origin, who claimed that his forcible removal to Turkey would amount to a breach of article 3 of the Convention by the State party. The complainant claimed that he had been perceived as a PKK supporter by the Turkish authorities and was being searched for by the police in Turkey. Having taken into account the information available on file, reports concerning the present human rights situation in Turkey and the State party's objections concerning the credibility of the complainant and the existing inconsistencies in much of the documentary evidence submitted by the complainant in support of his allegations, the Committee concluded that the facts, as a whole, did not permit to conclude that the removal of the complainant to Turkey would amount to a breach, by the State party, of its obligations under article 3 of the Convention.

109. In complaint No. 357/2008 (*Jahani v. Switzerland*) the complainant claimed that he would be at risk of torture if returned to the Islamic Republic of Iran, in violation of article 3 of the Convention, as he had belonged to the Kurdish minority in the Islamic Republic of Iran and had been arrested there in the past. In addition, he was a regional representative of an Iranian opposition movement acting in Switzerland, participated in radio broadcasts and wrote newspapers articles, activities which could possibly have attracted the attention of the Iranian authorities. The Committee, after examining the claims and evidence submitted by the complainant and the information provided by the State party, and after having taken into account reports on the human rights situation in the Islamic Republic of Iran at present, concluded that there were substantial grounds to believe that the State party would breach its obligations under article 3, of the Convention, if it proceeded with the forcible removal of the complainant.

110. Complaint No. 369/2008 (*E.C.B. v. Switzerland*) was submitted by a national of the Congo, who claimed that his deportation to his country or origin or to Côte d'Ivoire would constitute a breach of article 3 of the Convention, considering that he was an opponent to the regime of Denis Sassou-Nguesso and that, as a refugee in Côte d'Ivoire, he became a target for the forces of Laurent Gbagbo due to his political activities. Having considered the arguments submitted by both parties, the Committee concluded that the complainant had not provided evidence of a real, present and foreseeable risk of torture. He did not sufficiently substantiate that his active role in a political party or his political activities in the Congo, Côte d'Ivoire or Switzerland would place him in danger of persecution. The Committee considered that the complainant's deportation to the Congo or to Côte d'Ivoire would not constitute a breach of article 3 of the Convention.

111. Complaint No. 375/2009 (*T.D. v. Switzerland*) concerned an Ethiopian citizen claiming that his deportation to Ethiopia would constitute a violation of article 3 of the Convention. He claimed that his political activities since he arrived in the State party, particularly his political activities in Kinijit/Coalition for Unity and Democracy (CUDP), for which he was a representative of the canton of Zurich, put him at risk in case he were to be deported to Ethiopia. After examining the claims submitted by the complainant, as well as the arguments of the State party, the Committee considered that simply holding this political position within the Zurich branch of CUDP did not mean that he would be considered a threat to the Government of Ethiopia. Furthermore, since the complainant did not provide any elements supporting the allegation that the events preceding his departure from Ethiopia would put him at risk of being tortured upon return, the Committee concluded that to return him to the country of origin would not constitute a violation of article 3 of the Convention.

112. In complaint No. 379/2009 (*Bakatu-Bia v. Sweden*), the complainant claimed that she would be imprisoned and tortured if returned to the Democratic Republic of the Congo, in violation of article 3 of the Convention, since she had been arrested and, while in detention, had been subjected to torture, beatings and multiple rape due to her religious and political activities within a parish with a politically active pastor who was a strong opponent of the regime. The Committee noted the claims and evidence submitted by the complainant and the arguments of the State party, as well as the recent reports by seven United Nations experts and by the United Nations High Commissioner for Human Rights on the human rights situation in the Democratic Republic of the Congo and, in the light of the information before it, considered that it was impossible to identify particular areas of the country which could be considered safe for the complainant. The Committee, after having taken into account all the factors relevant for its assessment under article 3 of the Convention, and considering that the complainant's account of events was consistent with the Committee's knowledge about the present human rights situation in the Democratic Republic of the Congo, concluded that substantial grounds existed for believing that the complainant was at risk of being subjected to torture if returned to the Democratic Republic of the Congo. Therefore, the Committee found a violation of article 3 of the Convention in this complaint.

113. In complaint No. 419/2010 (*Ktiti v. Morocco*), the complainant, a French national, alleged that if extradited to Algeria, he would be detained and tortured, in violation of article 3 of the Convention. The Committee took note of the complainant's allegations that both the international arrest warrant for him issued by the Algerian judiciary, and his sentencing in absentia to life imprisonment, were based on the statements of a man who was caught at the crime scene in the same case and who depicted the complainant as the leader of the drug-trafficking ring dismantled by the Algerian police. The Committee also took note of the complainant's allegation that the man's confessions were obtained under torture, the visible signs of which were confirmed by that man's brother himself. The Committee noted that the State party did not contest those facts. In the light of the

information provided by the complainant and the State party, the Committee therefore concluded that article 3 of the Convention would be violated, should the complainant be extradited to Algeria. The Committee also found a violation of article 15 of the Convention since the State party used a testimony made under duress in the extradition procedure.

114. Also at its forty-sixth session, the Committee decided to declare inadmissible complaints No. 395/2009 (*H.E-M. v. Canada*) and No. 399/2009 (*F.M-M. v. Switzerland*). The text of these decisions is reproduced in annex XII, section B, to the present report.

115. Complaint No. 395/2009 (*H.E-M. v. Canada*) concerned a Lebanese national, claiming that his deportation to Lebanon would lead to a violation of article 3 of the Convention. After examining the claims submitted by the complainant, as well as the arguments of the State party, the Committee concluded that the complainant had failed to exhaust domestic remedies, since his privately hired lawyer had not appealed the decisions of the State party's authorities within the limits prescribed by the law. The complainant's failure to use available remedies could therefore not be imputable to the State party. The Committee therefore declared the communication was inadmissible under article 22, paragraph 5 (b), of the Convention.

116. Complaint No. 399/2009 (*F.M-M. v. Switzerland*) concerned a national of the Congo, claiming that his expulsion to the Congo would expose him to the risk of torture, in violation of article 3 of the Convention. After examining the claims submitted by the complainant and the arguments of the State party, the Committee concluded that the complaint should be declared inadmissible under article 22, paragraph 5 (b), of the Convention, since the complainant had failed to exhaust domestic remedies in relation to the new facts and evidence presented by him to the Committee.

#### **D. Follow-up activities**

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

118. During its thirty-fourth session, the Committee, through its Rapporteur for follow-up to decisions on complaints, decided that in cases in which it had found violations of the Convention, including decisions made by the Committee prior to the establishment of the follow-up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the decisions. To date, the following countries have not yet responded to these requests: Bulgaria (with respect to *Keremedchiev*, No.257/2004); Canada (with respect to *Tahir*

*Hussain Khan*, No. 15/1994); Serbia<sup>7</sup> and Montenegro (with respect to *Dimitrov*, No. 171/2000;<sup>8</sup> *Dimitrijevic*, No. 172/2000; *Nikolić, Slobodan and Ljiljana*, No. 174/2000; *Dimitrijevic*, No. 207/2002; and *Osmani v. Republic of Serbia*, No. 261/2005); and Tunisia (with respect to *Ben Salem*, No. 269/2005).

119. Action taken by the States parties in the following cases complied fully with the Committee's decisions and no further action will be taken under the follow-up procedure: *Halimi-Nedzibi v. Austria* (No. 8/1991), see A/65/44; *M.A.K. v. Germany* (No. 214/2002), see A/65/44;<sup>9</sup> *Dzemajl et al. v. Serbia and Montenegro* (No. 161/2000), see A/65/44; *A. v. the Netherlands* (No. 91/1997), see A/65/44; *Mutombo v. Switzerland* (No. 13/1993), see A/65/44; *Alan v. Switzerland* (No. 21/1995), see A/65/44; *Aemei v. Switzerland* (No. 34/1995), see A/65/44; *V.L. v. Switzerland* (No. 262/2005), see A/65/44; *El Rgeig v. Switzerland* (No. 280/2005), see A/65/44; *Tapia Páez v. Sweden* (No. 39/1996), see A/65/44; *Kisoki v. Sweden* (No. 41/1996), see A/65/44; *Tala v. Sweden* (No. 43/1996), see A/65/44; *Korban v. Sweden* (No. 88/1997), see A/65/44; *Ali Falakaflaki v. Sweden* (No. 89/1997), see A/65/44; *Ayas v. Sweden* (No. 97/1997), see A/65/44; *Haydin v. Sweden* (No. 101/1997), see A/65/44; *A.S. v. Sweden* (No. 149/1999), see A/65/44; *Karoui v. Sweden* (No. 185/2001), see A/65/44; *Dar v. Norway*<sup>10</sup> (No. 249/2004), see A/65/44; *T.A. v. Sweden* (No. 226/2003), see A/65/44; *C.T. and K.M. v. Sweden* (No. 279/2005), see A/65/44; and *Iya v. Switzerland* (No. 299/2006), see A/65/44.

120. In the following cases, the Committee will consider whether to close the dialogue with the State party under the follow-up procedure at its next session, on the basis of the latest submissions by the State parties: *Amini v. Denmark* (No. 339/2008), see below; and *Njamba and Balikosa v. Sweden* (No. 322/2007), see below.

121. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure: *Elmi v. Australia* (No. 120/1998), see A/65/44; *Arana v. France* (No. 63/1997), see A/65/44; and *Ltaief v. Tunisia* (No. 189/2001), see A/65/44. In one case, given the author's voluntary return to his country of origin, the Committee decided not to consider the case any further under the follow-up procedure: *Falcon Ríos v. Canada* (No. 133/1999), see A/65/44.

122. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing: *Pelit v. Azerbaijan* (No. 281/2005); *Dadar v. Canada* (No. 258/2004); *Singh Sogi v. Canada* (No. 297/2006); *Brada v. France* (No. 195/2002); *Tebourski v. France* (No. 300/2006); *Guengueng et al. v. Senegal* (No. 181/2001); *Ristic v. Serbia and Montenegro* (No. 113/1998); *Osmani v. Republic of Serbia* (No. 261/2005); *Blanco Abad v. Spain* (No. 59/1996); *Urra Guridi v. Spain* (No. 212/2002); *Agiza v. Sweden* (No. 233/2003); *Aytulun and Güclü v. Sweden* (No. 373/2009); *Thabti v. Tunisia* (No. 187/2001); *Abdelli v. Tunisia* (No. 188/2001); *M'Barek v. Tunisia* (No. 60/1996); *Ali v. Tunisia* (No. 291/2006); *Núñez Chipana v. Venezuela* (No. 110/1998).

<sup>7</sup> On 11 June 2008, following requests by the Committee to Serbia and Montenegro to confirm which State would be following up on decisions adopted by the Committee and registered against the State party "Serbia and Montenegro", the Secretariat received a response from Montenegro only which stated that all the cases were within the remit of Serbia.

<sup>8</sup> In December 2009, the Secretariat learned verbally from the State party that this case had been subsequently reopened but nothing has been received in writing to this effect.

<sup>9</sup> Although no violation was found in this case, the Committee welcomed the State party's readiness to monitor the complainant's situation and subsequently provide satisfactory information in this regard.

<sup>10</sup> The State had already remedied the breach prior to consideration of the case.

123. Represented below is a comprehensive report of replies received with regard to all cases in which the Committee has found violations of the Convention to date and for which, as at the close of the forty-sixth session, the follow-up dialogue was considered ongoing. It contains updated information on submissions received in connection to all individual cases under the follow-up procedure where State party's replies were overdue, and, where pertinent, information on submissions received since May 2010.

### **Complaints in which the Committee has found violations of the Convention up to the forty-sixth session and for which the follow-up dialogue is ongoing**

<b>State party</b>	<b>Azerbaijan</b>
<b>Case</b>	<i>Pelit, 281/2005</i>
<b>Nationality and country of removal if applicable</b>	Turkish to Turkey
<b>Views adopted on</b>	30 April 2007
<b>Issues and violations found</b>	Removal – articles 3 and 22
<b>Interim measures granted and State party response</b>	Granted but not accepted by the State party (assurances had been granted).
<b>Remedy recommended</b>	To remedy the violation of article 3 and to consult with the Turkish authorities on the whereabouts and state of well-being of the complainant.
<b>Due date for State party response</b>	29 August 2007
<b>Date of reply</b>	4 September 2007
<b>State party's response</b>	The Azerbaijani authorities obtained diplomatic assurances that the complainant would not be ill-treated or tortured after her return. Several mechanisms were put in place for a post extradition monitoring. Thus, she was visited in prison by the First Secretary of the Azerbaijani Embassy and the visit took place in private. During the meeting she stated that she had not been subjected to torture or ill-treatment and was examined by a doctor who did not reveal any health problems. She was given the opportunity to meet with her lawyer and close relatives and to make phone calls. She was also allowed to receive parcels, newspapers and other literature. On 12 April 1997, she was released by decision of the Istanbul Court on Serious Crimes.
<b>Complainant's comments</b>	On 13 November 2007, counsel informed the Committee that Ms. Pelit had been sentenced to six years imprisonment on 1 November 2007. Her Istanbul lawyer had appealed the judgement.
<b>Committee's decision</b>	The Committee considers that the dialogue is ongoing, and that the State party should continue monitoring the situation of the author in Turkey and keep the Committee informed.



<b>State party</b>	<b>Bulgaria</b>
<b>Case</b>	<i>Keremedchiev, 257/2004</i>
<b>Nationality and country of removal if applicable</b>	N/A
<b>Views adopted on</b>	11 November 2008
<b>Issues and violations found</b>	Cruel, inhuman or degrading treatment or punishment, prompt and impartial investigation – articles 12 and 16, paragraph 1
<b>Interim measures granted and State party response</b>	N/A
<b>Remedy recommended</b>	An effective remedy to the complainant, including fair and adequate compensation for the suffering inflicted, in line with the Committee’s general comment No. 2 (2007), as well as medical rehabilitation.
<b>Due date for State party response</b>	17 February 2009
<b>Date of reply</b>	None
<b>State party’s response</b>	None
<b>Complainant’s comments</b>	N/A
<b>Committee’s decision</b>	Follow-up dialogue ongoing. A reminder for observations was sent to the State party in April 2011.
<b>State party</b>	<b>Canada</b>
<b>Case</b>	<i>Tahir Hussain Khan, 15/1994</i>
<b>Nationality and country of removal if applicable</b>	Pakistani to Pakistan
<b>Views adopted on</b>	15 November 1994
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Requested and accepted by the State party.
<b>Remedy recommended</b>	The State party has an obligation to refrain from forcibly returning Tahir Hussain Khan to Pakistan.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	None
<b>State party’s response</b>	No information provided to the Rapporteur for follow-up to decisions on complaints, however during the discussion of the State party report to the Committee against Torture in May 2005, the State party stated that the complainant had not been deported.
<b>Complainant’s comments</b>	None

<b>Committee's decision</b>	The Committee considers that the follow-up dialogue is ongoing. The State party was invited to provide updated information on the complainant's situation in April 2011.
<b>State party</b>	<b>Canada</b>
<b>Case</b>	<i>Dadar, 258/2004</i>
<b>Nationality and country of removal if applicable</b>	Iranian to the Islamic Republic of Iran
<b>Views adopted on</b>	3 November 2005
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and accepted.
<b>Remedy recommended</b>	The Committee urged the State party, in accordance with rule 112, paragraph 5, of its rules of procedure (CAT/C/3/Rev.4), to inform it, within 90 days of the date of the transmittal of the decision, of the steps taken in response to the decision expressed above.
<b>Due date for State party response</b>	26 February 2006
<b>Date of reply</b>	Latest reply 10 October 2007 (had previously responded on 22 March 2006 and 24 April 2006 (see <i>Official Records of the General Assembly, Sixty-first Session, Supplement No. 44 (A/61/44)</i> ) and 9 August 2006 and 5 April 2007 (see <i>ibid.</i> , <i>Sixty-second Session, Supplement No. 44 (A/62/44)</i> ).
<b>State party's response</b>	The State party removed the complainant to Iran on 26 March 2006 despite a finding of a violation of the Convention. In its response of 24 April 2006, it stated that since his return a Canadian representative had spoken with the complainant's nephew who said that Mr. Dadar had arrived in Tehran without incident, and was staying with his family. The State party had no direct contact with him since he was returned to Iran. In the light of this information, as well as Canada's determination that he did not face a substantial risk of torture upon return to Iran, the State party submits that it was not necessary for it to consider the issue of monitoring mechanisms in this case. (For a full account of the State party's response, see A/61/44.)
<b>Complainant's comments</b>	On 29 June 2006, counsel informed the Committee that subsequent to his initial detention, the complainant resided under house arrest, living with his aged mother. On several occasions the Iranian authorities asked him to re-attend for further questioning. The questioning pertained, inter alia, to the complainant's political activities while in Canada. The complainant had expressed dissatisfaction with his apparent status in Iran as a persona non grata and said that he lacked status to obtain employment or travel. He was also unable to obtain the medication he received in Canada to treat his medical condition. Moreover, the Iranian authorities had

delivered a copy of the Committee's decision to his home and requested his attendance for questioning.

**State party's response**

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

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

**Complainant's comments**

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

**State party's response**

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

<b>Complainant's comments</b>	The complainant's counsel has contested the State party's decision to deport the complainant despite the Committee's findings. He has not to date provided information he may have on the author's situation since arriving in Iran. The complainant's counsel states that on 24 June 2006, he heard from the complainant who informed him that the Iranian authorities had delivered a copy of the Committee's decision to his home and had requested his attendance for questioning. He was very worried over the telephone and counsel has not heard from him since. In addition, he states that Mr. Dadar is persona non grata in Iran. He cannot work or travel and is unable to obtain the medical treatment he had received in Canada to treat his condition.
<b>Action taken</b>	See the Committee's annual report (A/61/44) for an account of the contents of notes verbales sent from the Rapporteur for follow-up to decisions on complaints to the State party.
<b>Committee's decision</b>	During the consideration of the follow-up at its thirty-sixth session, the Committee deplored the State party's failure to abide by its obligations under article 3, and found that the State party violated its obligations under article 3 not to, "expel, return ( <i>refouler</i> ) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". The Committee considers that the dialogue is ongoing. A reminder for observations was sent to the State party in April 2011.
<b>State party</b>	<b>Canada</b>
<b>Case</b>	<b><i>Singh Sogi, 297/2006</i></b>
<b>Nationality and country of removal if applicable</b>	Indian to India
<b>Views adopted on</b>	16 November 2007
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Requested but rejected by the State party.
<b>Remedy recommended</b>	To make reparation for the breach of article 3 of the Convention, and to determine, in consultation with the country to which he was deported, the complainant's current whereabouts and the state of his well-being.
<b>Due date for State party response</b>	28 February 2008
<b>Date of reply</b>	Latest reply on 31 August 2009 (the State party had previously responded on 29 February 2008, 21 October 2008 and 7 April 2009).
<b>State party's response</b>	On 29 February 2008, the State party regretted that it was not in a position to implement the Committee's Views. It did not consider either a request for interim measures of protection or the Committee's Views themselves to be

legally binding and is of the view that it has fulfilled all of its international obligations. Its failure to comply with the Committee's Views should not be interpreted as disrespect for the Committee's work. It submitted that the Government of India is better placed to advise the Committee on the complainant's whereabouts and well-being and reminds the Committee that India is a party to the Convention as well as the International Covenant on Civil and Political Rights. However, it has written to the Ministry of Foreign Affairs of India informing it of the Committee's Views, in particular, its request for updated information on the complainant.

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

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

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

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

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

#### **Complainant’s comments**

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

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

The complainant also described his treatment upon arrival in India. Upon return to India, he was handed over to the

Indian authorities and was interrogated at the airport for about five hours during which he was accused, inter alia, of being a terrorist. He was threatened with death if he did not answer the questions posed. He was then driven to a police station in Guraspur, which took five hours and during which he was brutally beaten, with fists and feet and sat upon after being made to lay on the floor of the vehicle. In addition, his hair and beard were pulled which is against his religion. Upon arrival at the police station, he was interrogated and tortured in what he believes to have been an unused toilet. He was given electric shocks on his fingers, temples and penis, a heavy machine was rolled over him, causing him severe pain and he was beaten with sticks and fists. He was poorly fed during these six days in detention and neither his family nor lawyer knew of his whereabouts. In or around the sixth day, the complainant was transferred to another police station where he suffered similar treatment and remained for three further days. On the ninth day he was brought before a judge for the first time and saw his family. After being accused of having supplied explosives to persons accused of terrorism and plotting to murder leaders of the country, he was transferred to another detention centre in Nabha where he was detained for a further seven months without seeing any member of his family or his lawyer. On 29 January 2007, he appealed the decision which had ordered his preliminary detention and on 3 February 2007, was released subject to certain conditions.

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

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

**State party's response**

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

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

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



**Complainant's comments**

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

**State party's response**

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

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

**Committee's decision**

During the fortieth session, the Committee decided to write to the State party informing it of its obligations under articles 3 and 22 of the Convention and requesting the State

party *inter alia* to determine, in consultation with the Indian authorities, the current situation, whereabouts and well-being of the complainant in India.

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

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

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

During the forty-third session, the Committee decided that it should again remind the State party of its earlier requests under the follow-up procedure in the context of fulfilling its obligations under article 3 of the Convention. It regretted the

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

The Committee considers that the follow-up dialogue is ongoing.

<b>State party</b>	<b>Denmark</b>
<b>Case</b>	<i>Amini, 339/2008</i>
<b>Nationality and country of removal if applicable</b>	Iranian to the Islamic Republic of Iran
<b>Views adopted on</b>	15 November 2010
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Requested.
<b>Remedy recommended</b>	The Committee invites 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 accordance with the above observations.
<b>Due date for State party response</b>	16 February 2011
<b>Date of reply</b>	10 January 2011
<b>State party's response</b>	On 10 January 2011, the State party informed the Committee that on 15 December 2010, the Refugee Appeals Board decided to grant the complainant a Danish residence permit under section 7, paragraph 2, of the Danish Aliens Act.
<b>Complainant's comments</b>	The State party's submission was transmitted to the complainant's counsel, for comments, on 10 January 2011. On 1 February 2011, counsel informed that he has no comments to make to the State party's observations.
<b>Committee's decision</b>	The Committee will consider whether to close the dialogue with the State party under the follow-up procedure at its next session.

<b>State party</b>	<b>France</b>
<b>Case</b>	<i>Brada, 195/2003</i>
<b>Nationality and country of removal if applicable</b>	Algerian to Algeria
<b>Views adopted on</b>	17 May 2005
<b>Issues and violations found</b>	Removal – articles 3 and 22
<b>Interim measures granted and State party response</b>	Granted but not accepted by the State party.

<b>Remedy recommended</b>	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.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	21 September 2005
<b>State party's response</b>	Pursuant to the Committee's request of 7 June 2005 on follow-up measures taken, the State party informed the Committee that the complainant will be permitted to return to French territory if he so wishes and provided with a special residence permit under article L.523-3 of the Code on the entry and stay of foreigners. This is made possible by a judgement of the Bordeaux Court of Appeal, of 18 November 2003, which quashed the decision of the Administrative Tribunal of Limoges, of 8 November 2001. This latter decision had confirmed Algeria as the country to which the complainant should be returned. In addition, the State party informs the Committee that it is in the process of contacting the Algerian authorities through diplomatic channels to find out the whereabouts and state of well-being of the complainant.
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	The Committee considers that the follow-up dialogue is ongoing. A reminder for the submission of observations was sent to the State party in April 2011.
<b>State party</b>	<b>France</b>
<b>Case</b>	<i>Tebourski, 300/2006</i>
<b>Nationality and country of removal if applicable</b>	Tunisian to Tunisia
<b>Views adopted on</b>	1 May 2007
<b>Issues and violations found</b>	Removal – articles 3 and 22
<b>Interim measures granted and State party response</b>	Granted but not accepted by the State party.
<b>Remedy recommended</b>	To remedy the violation of article 3 and to consult with the Tunisian authorities on the whereabouts and state of well-being of the complainant.
<b>Due date for State party response</b>	13 August 2007
<b>Date of reply</b>	15 August 2007
<b>State party response</b>	Following several requests for information made by the State party, the Tunisian authorities indicated that the complainant had not been disturbed since his arrival in Tunisia on 7 August 2006 and that no legal action had been initiated against him. He lives with his family in Testour,

	Beja Governorate. The State party monitors the situation of the complainant and is trying to verify the information provided by the Tunisian authorities.
<b>Complainant's comments</b>	Not yet received
<b>Committee's decision</b>	The Committee considers the dialogue ongoing. A reminder for observations was sent to the State party in April 2011.
<b>State party</b>	<b>Senegal</b>
<b>Case</b>	<i>Guengueng et al., 181/2001</i>
<b>Nationality and country of removal if applicable</b>	N/A
<b>Views adopted on</b>	17 May 2006
<b>Issues and violations found</b>	Failure to prosecute – articles 5, paragraph 2, and 7
<b>Interim measures granted and State party response</b>	N/A
<b>Remedy recommended</b>	In pursuance of rule 112, paragraph 5, of its rules of procedure (CAT/C/3/Rev.4), the Committee requested the State party to inform it, within 90 days of the date of the transmittal of this decision, of the steps it had taken in response to the views expressed above.
<b>Due date for State party response</b>	16 August 2006
<b>Date of reply</b>	Latest reply on 28 April 2010 (had previously responded on 18 August, 28 September 2006, 7 March 2007, 31 July 2007 and 17 June 2008).
<b>State party's response</b>	<p>On 18 August 2006, the State party denied that it had violated the Convention, and reiterated its arguments on the merits, including its argument on article 5 that under the Convention a State party is not obliged to meet its obligations within a particular time. The extradition request was dealt with under national law applicable between the State party and States with which it does not have an extradition treaty. It stated that any other way of handling this case would have violated national law. The integration of article 5 into domestic law is in its final stage and the relevant text would be examined by the Legislative Authority. To avoid possible impunity, the State party submitted that it had deferred the case to the African Union for consideration, thus avoiding a violation of article 7. As the African Union had not yet considered the case at that point, it would be impossible to provide the complainants with compensation.</p> <p>On 28 September 2006, the State party informed the Committee that the Committee of Eminent Jurists of the African Union had taken the decision to entrust Senegal with the task of trying Mr. Hissène Habré of the charges against him. It stated that its judicial authorities were looking into</p>

the judicial feasibility and the necessary elements of a contract to be signed between the State party and the African Union on logistics and finance.

On 7 March 2007, the State party provided the following update. It submitted that on 9 November 2006, the Council of Ministers had adopted two new laws relating to the recognition of genocide, war crimes, and crimes against humanity as well as universal jurisdiction and judicial cooperation. The adoption of these laws fills the legal gap which had prevented the State party from recognizing the Habré case. On 23 November 2006, a working group was set up to consider the necessary measures to be taken to try Mr. Habré in a fair manner. This working group has considered the following: texts of the National Assembly on legal changes to remove obstacles highlighted during the consideration of the request for extradition on 20 September 2005; a framework for the infrastructural, legislative and administrative changes necessary to conform with the African Union's request for a fair trial; measures to be taken in the diplomatic sphere to ensure cooperation between all of the countries concerned as well as other States and the African Union; security issues; and financial support. These elements were included in a report to the African Union during its eighth session which was held between 29 and 30 January 2007.

The report underlined the necessity to mobilize financial resources from the international community.

#### **Complainant's comments**

On 9 October 2006, the complainants commented on the State party's submission of 18 August 2006. They stated that the State party had provided no information on what action it intends to take to implement the Committee's decision. Even three months after the African Union's decision that Senegal should try Mr. Habré, the State party had still failed to clarify how it intends to implement the decision.

On 24 April 2007, the complainants responded to the State party's submission of 7 March 2007. They thanked the Committee for its decision and for the follow-up procedure which they are convinced play an important role in the State party's efforts to implement the decision. They greeted the judicial amendments referred to by the State party, which had prevented it from recognizing the Habré affair.

While recognizing the efforts made to date by the State party, the complainants highlighted the fact that the decision has not yet been fully implemented and that this case has not yet been submitted to the competent authorities. They also highlighted the following points:

(a) The new legislation does not include the crime of torture but only of genocide, crimes against humanity and war crimes;

(b) Given that the State party has an obligation to proceed with the trial or extradite Mr. Habré, the same should not be conditional upon the receipt by the State party of financial assistance. The complainants assume that this request is made to ensure that a trial is carried out in the best possible conditions;

(c) Irrespective of what the African Union has decided with respect to this affair, it can have no implications as to the State party's obligation to recognize this affair and to submit it to the competent jurisdiction.

#### **State party's response**

On 31 July 2007, the State party informed the Committee that, contrary to the statement of counsel, the crime of torture is defined in article 295-1 of Law No. 96-15 and its scope has been strengthened by article 431-6 of Law 2007-02. It also emphasizes that the conduct of proceedings against Mr. Habré require considerable financial resources. For this reason, the African Union invited its member States and the international community to assist Senegal in that respect. Furthermore, the proposals made by the working group referred to above regarding the trial of Mr. Habré were submitted to the 8th Conference of Heads of State and Government of the African Union and approved. The Senegalese authorities are evaluating the cost of the proceedings and a decision in that respect will be adopted soon. In any case, they intend to fill the mandate given to them by the African Union and to meet Senegal's treaty obligations.

#### **Complainant's comments**

On 19 October 2007, counsel expressed concern at the fact that 17 months after the Committee had taken its decision, no criminal proceedings had yet been initiated in the State party and no decision regarding extradition had been taken. He emphasized that time was very important for the victims and that one of the complainants had died as a result of the ill-treatment suffered during Mr. Habré's regime. Counsel requested the Committee to continue engaging the State party under the follow-up procedure.

On 7 April 2008, counsel reiterated his concern that despite the passage of 21 months since the Committee's decision, Mr. Habré has still neither been brought to trial nor extradited. He recalls that the Ambassador, in his meeting with the Rapporteur for follow-up to decisions on complaints during the November session of the Committee in 2007, indicated that the authorities were waiting for financial support from the international community. Apparently, this request for aid was made in July 2007 and responses were received from, among others, the European Union, France, Switzerland, Belgium and the Netherlands. These countries indicated that they would be prepared to

assist financially as well as technically. The Senegalese authorities assured the victims last November that proceedings would not be held up but to date no date has been fixed for criminal action.

**State party's response**

On 17 June 2008, the State party confirmed the information provided by the State party's representative to the Rapporteur during its meeting on 15 May 2008. It submits that the passing of a law which will amend its Constitution will shortly be confirmed by Parliament. This law will add a new paragraph to article 9 of the Constitution which will circumvent the current prohibition on the retroactivity of criminal law and allow individuals to be judged for crimes including genocide, crimes against humanity and war crimes, which were considered crimes under international law at the time in which they were committed. On the issue of the budget, the State party submits that the figure of 18 million CFA francs (equivalent to around US\$ 43,000) was the initial figure anticipated, that a counter-proposal has been examined by the cabinet and that once this report is final a meeting will be organized in Dakar with the potential donors. To express its commitment to the process, the State itself has contributed 1 million CFA francs (equivalent to US\$ 2,400) to commence the process. The State party has also taken account of the European Union experts' recommendation, and named Mr. Ibrahima Gueye, Judge and President of the Court of Cassation, as the "Coordinator" of the process. It is also expected that the human resources of the Tribunal in Dakar which will try Mr. Habré will be reinforced, and that the necessary judges will be designated.

**Complainant's comments**

On 22 October 2008, counsel expressed his concern at an interview published in a Senegalese newspaper, in which the President of the Republic is reported as having said that, "*il n'est pas obligé de juger*" Mr. Habré and that due to the lack of financial assistance he is not going to, "*garder indéfiniment Habré au Sénégal*" but "*fera qu'il abandonne le Sénégal*". Counsel reiterated the measures taken to date for the purposes of trying Mr. Habré, including the fact that financial assistance has been offered by a number of countries but that the State party has not managed for two years to present a reasonable budget for his trial. The complainants are concerned at what counsel refers to as the "threat" from the President to expel Mr. Habré from Senegal, reminds the Committee that there is an extradition request from Belgium which remains pending, and requests the Committee to ask Senegal not to expel him and to take the necessary measures to prevent him from leaving Senegal other than through an extradition procedure, as the Committee did in 2001.

**State party's response**

On 28 April 2010, the State party provided an update on implementation of this case. It referred to the cooperation it provided to the Committee against Torture mission to



Senegal in August 2009 and reiterated the financial impediment to commencing the trial. It submitted that on 23 June 2009, Belgium contacted the Senegalese authorities due to concern that the trial had not begun. It offered to send a copy of the file it had already put together on the case to the Senegalese authorities and invited Senegalese judges to Belgium to meet with their counterparts there to share experience.

On 4 June 2009, a mission to Senegal headed by Maitre Robert Dossou at the request of the President of the African Union took place. In addition, in December 2009, two experts from the European Union worked with the African Union on finalizing the budget. The presence of experts from both the African Union and the European Union coincided with the holding of a meeting on the terms of reference of a trial, during which they took part, including the regional representative of OHCHR. The presence of these experts occasioned a visit to the old Palais de Justice, where the trial will take place after its renovation. The State party is currently waiting for the conclusion of this European Union mission which has considerable consequences for the determination of the budget. During the 12th and 13th summits of the African Union, numerous appeals were made to African States requesting financial support to Senegal for the trial and in February 2010 the African Union adopted a decision to invite Senegal to organize a round table of donors in 2010 to include other African States with the purpose of raising funds. By letter of 30 March 2010, Chad confirmed its commitment to contribute to the trial and requested information on the number of the account to which such financial assistance should be forwarded.

The State party also referred to Mr. Habré's case before the Economic Community of West African States Court of Justice, where he claimed that Senegal violated the principles of non-retroactivity and equality, in applying new legislation retroactively. In January 2010, this case was adjourned until 16 April 2010. A case lodged before the African Court of Human and Peoples' Rights against Senegal challenging the universal jurisdiction prosecution of Mr. Habré was dismissed for want of jurisdiction on 15 December 2009.

#### **Consultations with State party**

During the thirty-ninth session, the Rapporteur for follow-up to decisions on complaints met with a representative of the Permanent Mission of Senegal who expressed the interest of the State party in continuing cooperation with the Committee on this case. He indicated that a cost assessment to carry out the trial had been made and a donors meeting at which European countries would participate would be held soon.

On 15 May 2008, the Rapporteur met again with a State party representative. A copy of the letter from the

complainants counsel, dated 7 April 2008, was given to the representative of the Mission for information. As to an update on the implementation of the Committee's decision, the representative stated that an expert working group had submitted its report to the Government on the modalities and budget of initiating proceedings and that this report had been sent to those countries which had expressed their willingness to assist Senegal. The European Union countries concerned returned the report with a counter-proposal, which the President is currently reviewing. In addition, the President, recognizing the importance of the affair, has put aside a certain sum of money (amount not provided) to commence proceedings. Legislative reform is also under way. The representative stated that a fuller explanation would be provided in writing from the State party and the Rapporteur gave the State party one month from the date of the meeting itself for the purposes of including it in this annual report.

#### **Summary of a confidential mission to Senegal under article 22**

During the forty-first session of the Committee, which took place between 3 and 21 November 2008, in the context of follow-up to the Committee's decisions under article 22 of the Convention, the Committee decided to request Senegal to accept an official confidential mission to follow up on the case of *Guengueng et al. v. Senegal* (case No. 181/2001, decision adopted on 17 May 2006). On 7 May 2009, the Government of Senegal accepted the request for the visit.

The mission to Dakar took place between 4 and 7 August 2009 and was made up of two members of the Committee against Torture, Mr. Claudio Grossman, the Chair of the Committee and Mr. Fernando Mariño, the Committee's Rapporteur for follow-up to decisions on complaints, as well as two members of the Secretariat.

The mission met with representatives from several government departments, civil society and the European Union. It found that the State party was well prepared for the visit and that all interlocutors were fully versed on the facts and status of the case. In its summation, the mission noted and appreciated the fact that Senegal had made all the necessary legislative and constitutional amendments, as well as the necessary administrative arrangements to try Mr. Habré. All interlocutors highlighted the absence of any such obstacles to his trial and stressed the considerable efforts the State party has made in this regard.

The mission noted that one of the remaining obstacles to be addressed by the State party was the development of a prosecution strategy. Despite the view of some representatives, that substantial funding would be needed for the purposes of accommodating a, possibly unlimited, number of witnesses, the mission welcomed the opinion of the judiciary that a restrictive approach would be the more reasonable option. The judiciary highlighted that the examining magistrate (*juge d'instruction*) would be the one

to decide, inter alia, upon the number of witnesses necessary, which in any event could not be unlimited and could not be used to obstruct the trial.

The mission noted that the strategy chosen would undoubtedly determine the financial needs of the trial. Notwithstanding the lack of clarity on the amount required, the mission noted that these financial questions were in the process of being finalized, and observed, that at least from the judiciary's point of view, this issue could be resolved as the procedure advanced.

The mission also learned that a further obstacle to the commencement of a trial indicated by several interlocutors was a need for training. It informed all interlocutors that any request for technical assistance could be accommodated within a short delay upon receipt of a well-formulated request.

The mission found that at least from the judiciary's point of view there was no remaining impediment to pursuing a trial and it was confident that the financial issues could be clarified as and when the trial evolved. However, the executive branch of Government was strongly of the opinion that the financial issue would have to be resolved prior to giving any instructions to issue an indictment against Mr. Habré.

During its forty-third session, which took place from 2 to 20 November 2009, the Committee examined a confidential report from the mission. On 23 November 2009, following the session, it sent a note verbale to the State party, in which it thanked it for its cooperation during the mission, pointed out its main impressions from the State party officials interviewed, reminded the State party of its obligations under the Convention (referring to para. 10 of its decision No. 181/2001, *Guengueng et al. v. Senegal*, adopted on 17 May 2006), and requested an update on the implementation of this case from the State party within three months, i.e. prior to 23 February 2010. To date, no response has been received from the State party.

**Additional information:**

On 16 December 2010, the International Committee, which is monitoring the trial of Mr. Habré, sent to the attention of the Committee a copy of its letter sent to the President of Senegal. In the letter, the International Committee (composed of several NGOs, including Human Rights Watch, International Federation for Human Rights, etc.), expressed its disappointment at recent statements made by the President of Senegal in connection with the case of Mr. Habré. The Committee, acting through its Rapporteur for follow-up to decisions on complaints, decided to transmit this letter to the State party, with a request to provide comments. The Rapporteur also reminded the State party that it had postponed the beginning of the criminal prosecution of Mr. Habré for lack of financial resources;

these resources, however, were currently available. Therefore, the State party was reminded that it should either start the proceedings, or extradite Mr. Habré to Belgium, in order to have him tried there.

The Permanent Mission of Senegal to the United Nations Office at Geneva reported, on 9 February 2011, that it had transmitted the letter of 16 December 2010 together with the letter of the Committee's Rapporteur for follow-up to decisions on complaints to the State party's authorities, and that it would inform the Committee of the developments in the case.

**Additional information from the complainant:**

On 10 March 2011, the complainant's counsel explained that the complainants had noted with concern the recent statement of the President of Senegal, who had affirmed that he intended to "get rid" of this matter. The complainants invited the Committee to reiterate the State party's obligation to either have Mr. Habré judged in Senegal or transfer him to Belgium. With reference to the State party's contention that the trial would take place once the necessary funds were collected by the international community, the complainants explained that following a round table on 24 November 2010 in Dakar, several States and organizations, inter alia, the African Union, the European Union, Belgium, Germany and the Netherlands, committed to contribute up to US\$ 11,700,000 for the trial of Mr. Habré. The final document of the round table focused on the need to start the trial immediately. The complainants also recalled that the African Union, at its 31 January 2011 Summit, renewed the mandate of Senegal to conduct the trial of Mr. Habré.

On 18 November 2010, the Court of Justice of the Economic Community of West African States invited the State party to organize an ad hoc tribunal for the trial of Mr. Habré. This decision has been criticized by several stakeholders as politically motivated and, in a subsequent visit in the State party, a delegation of the African Union proposed that the State party's President create special units within the existing jurisdictions in order to have Mr. Habré tried there. As a result, the President stated that he had had enough and that Mr. Habré was currently at the disposition of the African Union.

The complainants invite the Committee (a) to remind the State party of its obligation to exercise a penal action against Mr. Habré or to extradite him to Belgium; (b) to express concerns at the remarks made by the State party's President; and (c) to ask the State party not to authorize Mr. Habré to leave Senegal.<sup>11</sup>

---

<sup>11</sup> The complainants' counsel also requested the Committee to meet it during its forty-sixth session.

<b>Committee's decision</b>	The Committee considers the follow-up dialogue ongoing. A reminder for observations was sent to the State party in April 2011.
<b>State party</b>	<b>Serbia and Montenegro</b>
<b>Case</b>	<b><i>Ristic, 113/1998</i></b>
<b>Nationality and country of removal if applicable</b>	Yugoslav
<b>Views adopted on</b>	11 May 2001
<b>Issues and violations found</b>	Failure to investigate allegations of torture by police – articles 12 and 13
<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	Urges the State party to carry out such investigations without delay. An appropriate remedy.
<b>Due date for State party response</b>	6 January 1999
<b>Date of reply</b>	Latest note verbale 28 July 2006 (had replied on 5 August 2005 – see the annual report of the Committee, A/61/44).
<b>State party's response</b>	The Committee will recall that by note verbale of 5 August 2005, the State party confirmed that the First Municipal Court in Belgrade by decision of 30 December 2004 found that the complainant's parents should be paid compensation. However, as this case is being appealed to the Belgrade District Court, this decision was neither effective nor enforceable at that stage. The State party also informed the Committee that the Municipal Court had found inadmissible the request to conduct a thorough and impartial investigation into the allegations of police brutality as a possible cause of Mr. Ristic's death.
<b>Complainant's comments</b>	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 1,000,000 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.
<b>State party's response</b>	On 28 July 2006, the State party informed the Committee that the District Court of Belgrade had dismissed the complaint filed by the Republic of Serbia and the State Union of Serbia and Montenegro in May 2005. On 8 February 2006, the Supreme Court of Serbia dismissed as unfounded the revised statement of the State Union of Serbia and Montenegro, ruling that it is bound to meet its obligations under the Convention. It was also held responsible for the failure to launch a prompt, impartial and

	full investigation into the death of Milan Ristic.
<b>Committee's decision</b>	The Committee considers that the follow-up dialogue is ongoing. A reminder for observations was sent to the State party in April 2011.
<b>State party</b>	<b>Serbia and Montenegro</b>
<b>Case</b>	<i>Dimitrov, 171/2000</i>
<b>Nationality and country of removal if applicable</b>	Yugoslav
<b>Views adopted on</b>	3 May 2005
<b>Issues and violations found</b>	Torture and failure to investigate – article 2, paragraph 1, in connection with articles 1, 12, 13 and 14
<b>Interim measures granted and State party response</b>	N/A
<b>Date of reply</b>	None
<b>State party response</b>	None
<b>Complainant's comments</b>	N/A
<b>Committee's decision</b>	The Committee considers that the follow-up dialogue is ongoing. A reminder for observations was sent to the State party in April 2011.
<b>State party</b>	<b>Serbia</b>
<b>Case</b>	<i>Dimitrijevic, 172/2000</i>
<b>Nationality and country of removal if applicable</b>	Serbian
<b>Views adopted on</b>	16 November 2005
<b>Issues and violations found</b>	Torture and failure to investigate – articles 1, 2, paragraphs 1, 12, 13, and 14
<b>Interim measures granted and State party response</b>	N/A
<b>Remedy recommended</b>	The Committee urges the State party to prosecute those responsible for the violations found and to provide compensation to the complainant, and, in accordance with rule 112, paragraph 5, of its rules of procedure (CAT/C/3/Rev.4), 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.
<b>Due date for State party response</b>	26 February 2006
<b>Date of reply</b>	None
<b>State party response</b>	None
<b>Complainant's comments</b>	N/A

<b>Committee's decision</b>	The Committee considers that the follow-up dialogue is ongoing. A reminder for observations was sent to the State party in April 2011.
<b>State party</b>	<b>Serbia</b>
<b>Case</b>	<i>Nikolic et al., 174/2000</i>
<b>Nationality and country of removal if applicable</b>	N/A
<b>Views adopted on</b>	24 November 2005
<b>Issues and violations found</b>	Failure to investigate – articles 12 and 13
<b>Interim measures granted and State party response</b>	N/A
<b>Remedy recommended</b>	Information on the measures taken to give effect to the Committee's Views, in particular on the initiation and the results of an impartial investigation of the circumstances of the death of the complainant's son.
<b>Due date for State party response</b>	27 February 2006
<b>Date of reply</b>	None
<b>State party's response</b>	None
<b>Complainant's comments</b>	On 27 April 2009, the complainant indicated that on 2 March 2006, the Minister of Justice sent a letter to the Office of the District Public Prosecutor (ODPP) pointing to the binding nature of the Committee's decisions and requesting the initiation of an "appropriate procedure in order to establish the circumstances under which Nikola Nikolić lost his life". On 12 April 2006, the ODPP requested the Belgrade District Court Investigative Judge to procure a new forensic report to determine the complainant's cause of death. On 11 May 2006, the trial chamber of the District Court rendered a decision dismissing the request on the grounds that the cause of his death had been sufficiently clarified in the report to the Belgrade Medical School Expert Commission of 27 November 1996 and in its subsequent report. On 27 December 2007, the ODPP made an extraordinary request to the Serbian Supreme Court for "protection of legality", against the District Court decision. On 14 November 2008, the Supreme Court dismissed this request as unfounded. Thus, the complainant claims that the State party has failed to implement the Committee's decision and is responsible for repeating the violation of article 13.
<b>Committee's decision</b>	The Committee considers that the follow-up dialogue is ongoing. A reminder for observations was sent to the State party in April 2011.

<b>State party</b>	<b>Serbia</b>
<b>Case</b>	<i>Dimitrijevic, 207/2002</i>
<b>Nationality and country of removal if applicable</b>	Serbian
<b>Views adopted on</b>	24 November 2004
<b>Issues and violations found</b>	Torture and failure to investigate – article 2, paragraph 1, in connection with articles 1, 12, 13, and 14
<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	To conduct a proper investigation into the facts alleged by the complainant.
<b>Due date for State party response</b>	February 2005
<b>Date of reply</b>	None
<b>State party's response</b>	None
<b>Complainant's comments</b>	On 1 September 2005, the complainant's representative informed the Committee that having made recent enquiries, it could find no indication that the State party had started any investigation into the facts alleged by the complainant.
<b>Committee's decision</b>	The Committee considers that the follow-up dialogue is ongoing. A reminder for observations was sent to the State party in April 2011.
<b>State party</b>	<b>Serbia</b>
<b>Case</b>	<i>Osmani, 261/2005</i>
<b>Nationality and country of removal if applicable</b>	N/A
<b>Views adopted on</b>	8 May 2009
<b>Issues and violations found</b>	Cruel, inhuman or degrading treatment or punishment, failure to investigate promptly and impartially, failure to provide compensation – articles 16, paragraph 1; 12; and 13
<b>Interim measures granted and State party response</b>	N/A
<b>Remedy recommended</b>	The Committee urges the State party to conduct a proper investigation into the facts that occurred on 8 June 2000, prosecute and punish the persons responsible for those acts and provide the complainant with redress, including fair and adequate compensation.
<b>Due date for State party response</b>	12 August 2009
<b>Date of reply</b>	None
<b>State party response</b>	None
<b>Complainant's comments</b>	N/A



<b>Committee's decision</b>	The Committee considers that the follow-up dialogue is ongoing. A reminder for observations was sent to the State party in April 2011.
<b>State party</b>	<b>Spain</b>
<b>Case</b>	<i>Blanco Abad, 59/1996</i>
<b>Nationality and country of removal if applicable</b>	Spanish
<b>Views adopted on</b>	14 May 1998
<b>Issues and violations found</b>	Failure to investigate – articles 12 and 13
<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	Relevant measures
<b>Due date for State party response</b>	None
<b>Date of reply</b>	Latest reply on 25 May 2009 (had previously responded on 23 January 2008).
<b>State party's response</b>	<p>On 23 January 2008, the State party indicated that it had already forwarded information in relation to the follow-up to this case in September 1998.</p> <p>On 25 May 2009, the State party stated that following the Committee's decision the prison administration must always send information relating to the medical condition of detainees immediately to court, so that judges may immediately act upon it. This was to satisfy the Committee's concern in paragraph 8.4 of the decision that the judge waited too long in this case to act upon medical evidence that the complainant had been ill-treated. The decision was sent to all judges for information, as well as the office of the prosecutor which drafted guidelines for all prosecutors to the effect that all claims of torture should merit a reply by the judiciary. The guidelines themselves were not included.</p>
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	The Committee considers that the follow-up dialogue is ongoing. A reminder for comments was sent to the complainant in April 2011.
<b>State party</b>	<b>Spain</b>
<b>Case</b>	<i>Urra Guridi, 212/2002</i>
<b>Nationality and country of removal if applicable</b>	Spanish
<b>Views adopted on</b>	17 May 2005
<b>Issues and violations found</b>	Failure to prevent and punish torture, and provide a remedy – articles 2, 4 and 14

<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	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.
<b>Due date for State party response</b>	18 August 2005
<b>Date of reply</b>	23 January 2008
<b>State party's response</b>	According to the State party, this case relates to a case in which officers of the Spanish security forces were condemned for the crime of torture, and later partially pardoned by the Government. The judgement is non-appealable. Civil liability was determined and the complainant was awarded compensation according to the damage suffered. As part of the measures to implement the decision, the State party disseminated it to different authorities, including the President of the Supreme Court, President of the Judiciary Council and President of the Constitutional Court.
<b>Complainant's comments</b>	On 4 June 2009, the complainant reiterates the argument made in the complaint that the pardoning of torturers leads to impunity and favours the repetition of torture. He provides general information on the continual failure of the State party to investigate claims of torture and the fact that torturers are rarely prosecuted. In fact, in the complainant's view such individuals are often rewarded in their careers and some are promoted to working on the struggle against terrorism, including one of those convicted of having tortured the complainant. Manuel Sánchez Corbi (one of the individuals convicted of having tortured the complainant) received the grade of commandant and became responsible for the coordination of anti-terrorism with France. José María de las Cuevas was integrated into the work of the Civil Guard and named representative of the judicial police. He has represented the government in many international forums, including receiving the delegation from the European Committee on the Prevention of Torture of the Council of Europe in 2001, despite the fact that he had been convicted himself of having tortured the complainant.
<b>Committee's decision</b>	The Committee considers that the follow-up dialogue is ongoing. A reminder for observations was sent to the State party in April 2011.
<b>State party</b>	<b>Sweden</b>
<b>Case</b>	<i>Agiza, 233/2003</i>
<b>Nationality and country of removal if applicable</b>	Egyptian to Egypt

<b>Views adopted on</b>	20 May 2005
<b>Issues and violations found</b>	Removal – articles 3 (substantive and procedural violations) on two counts and 22 on two counts.
<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	In pursuance of rule 112, paragraph 5, of its rules of procedure (CAT/C/3/Rev.4), the Committee requested 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.
<b>Due date for State party response</b>	20 August 2005
<b>Date of reply</b>	Latest information on 7 December 2009 (it also provided information on 18 August 2005, (see annual report of the Committee, A/61/44), 1 September 2006 (see annual report of the Committee, A/62/44), 25 May and 5 October 2007, and 16 December 2008).
<b>State party's response</b>	<p>The Committee will recall the State party's submission on follow-up in which it referred inter alia to the enactment of a new Aliens Act and the continual monitoring of the complainant by staff from the Swedish Embassy in Cairo. See the annual report of the Committee (A/61/44) for a full account of its submission.</p> <p>On 1 September 2006, the State party provided an update on its monitoring of the complainant. It stated that embassy staff had made seven further visits to Mr. Agiza. Mr. Agiza had been in consistently good spirits and received regular visits in prison from his mother and brother. His health was said to be stable and he visited Manial Hospital once a week for physiotherapeutic treatment. The Embassy's staff has visited him now on 39 occasions and will continue the visits.</p>
<b>Complainant's comments</b>	On 31 October 2006, the complainant's counsel responded that he had a meeting with the Ambassador of the Swedish Embassy on 24 January 2006. During this meeting, counsel emphasized that it was essential that the embassy continue their visits as regularly as it has been doing. Counsel requested the State party to consider having a retrial in Sweden or to allow him to complete his imprisonment there, but the State party responded that no such steps were possible. In addition, requests for compensation ex gratia had been refused and it was suggested that a formal claim should be lodged under the Compensation Act. This has been done. According to counsel, although the monitoring aspect of the State party's efforts is satisfactory its efforts as a whole were said to be inadequate with respect to the request for contact with his family in Sweden, a retrial etc.
<b>State party's response</b>	On 25 May 2007, the State party reported that 5 additional visits to the complainant had been conducted, which made a

total of 44 visits. His well-being and health remained unchanged. He had on one occasion obtained permission to telephone his wife and children and he received visits from his mother. His father died in December 2006, but he did not receive permission to attend the funeral. Early in 2007, Mr. Agiza lodged a request to be granted a permanent residence permit in Sweden as well as compensation. The Government instructed the Office of the Chancellor of Justice to attempt to reach an agreement with Mr. Agiza on the issue of compensation. The request for a residence permit is being dealt with by the Migration Board.

**Complainant's comments**

On 20 July 2007, counsel reported that the meetings between Mr. Agiza and staff from the Swedish Embassy took place under the presence of prison officials and were video recorded. The officials had ordered Mr. Agiza not to express any criticism against the prison conditions and he was under the threat of being transferred to a far remote prison. Furthermore, the medical treatment he received was insufficient and he suffered, inter alia, from neurological problems which caused him difficulties to control his hands and legs, as well as from urination difficulties and a problem with a knee joint. The State party has repealed the expulsion decision of 18 December 2001. However, no decision has been taken yet by the Migration Board and the Chancellor of Justice.

**State party's response**

On 5 October 2007, the State party informed the Committee of two further visits to Mr. Agiza, conducted on 17 July and 19 September 2007, respectively. He kept repeating that he was feeling well, although in summer he complained about not receiving sufficiently frequent medical treatment. That situation seems to have again improved. The Embassy's representatives visited Mr. Agiza in the prison on 46 occasions. These visits will continue. Furthermore, it is not possible at this moment to predict when the Migration Board and the Chancellor of Justice will be able to conclude Mr. Agiza's cases.

The State party provided follow-up information during the examination of its third periodic report to the Committee, which took place during the Committee's fortieth session, between 28 April and 16 May 2008. It indicated to the Committee that the office of the Chancellor of Justice was considering a request from the complainant for compensation for the violation of his rights under the Convention.

On 16 December 2008, the State party informed the Committee that representatives of the Swedish Embassy in Cairo continued to visit the complainant regularly in prison and conducted their 53rd visit in November 2008. His family was due to visit him in December and he availed of the possibility on several occasions of contacting his family on a cell phone provided by the Embassy.

It informed the Committee that compensation of SEK 3,097,920 (US\$ 379,485.20) was paid to the complainant's lawyer on 27 October 2008 following a settlement made by the Chancellor of Justice and the complainant. This compensation was paid in full and final settlement with the exception of non-pecuniary damage suffered as a result of a violation of article 8 of the European Convention on Human Rights, any damage suffered as a result of a violation of article 6 of that Convention and any loss of income. The Chancellor decided that as the liability for the events were partly attributed to the Swedish Security police they should pay a portion of the award (SEK 250,000).

As to the complainant's application for a residence permit, this was turned down by the Migration Board on 9 October 2007, and subsequently by the Supreme Court of Migration on 25 February 2008. Both bodies were of the view that the preconditions for granting a residence permit were lacking, since he was still serving his prison sentence in Egypt, i.e. that he does not only intend to but also has a real possibility of coming and staying in the country. It remained with the Government to examine the appeal which is still pending.

#### **Complainant's comments**

On 20 January 2009, the complainant's counsel confirmed that the State party had provided the compensation awarded. On the issue of a residence permit, he states that even if Mr. Agiza were unable to avail immediately of a residence permit the grant of same would be a great psychological relief to both him and his family. Thus, an important part of the reparation of the harm caused to him.

#### **State party's response**

On 7 December 2009, the State party submitted that following the decisions of the Migration Board on 9 October 2007, and the Supreme Court of Migration of 25 February 2008, the Government made a decision on the complainant's renewed request for a residence permit on 19 November 2009. His application was made under the new 2005 Aliens Act. The Government found that chapter 5, section 4 of the Act, was applicable with regard to his application which reads, "If an international body that is competent to examine complaints from individuals had found that a refusal-of-entry or expulsion order in a particular case is contrary to a Swedish commitment under a convention, a residence permit shall be granted to the person covered by the order, unless there are exceptional grounds against granting a residence permit." After comprehensive consultations with the Swedish Security Police, the Government concluded that there were *exceptional grounds* against granting Mr. Agiza a residence permit owing to reasons relating to national security. The Government considered inter alia that, "the activities in which the complainant was involved were of such a serious nature that it feared that if he were granted a residence permit he could engage in similar activities threatening national security in Sweden".

Frequent visits continued to be conducted by the Swedish embassy to monitor the complainant's situation in prison. At the time of the State party's submission, 58 visits had been undertaken – the latest on 18 October 2009. The complainant has repeatedly stated that he is feeling well. His health-care appears to be functioning satisfactorily again and he is receiving necessary medication. He has complained about his treatment during transport to hospital, which he describes as uncomfortable and tiring. He has also claimed that a security guard threatened him with being shot if he tried to escape during his transport to hospital. He stated also that his lawyer intended to make a new petition for his release from prison for health reasons. The State party submits that there are substantial discrepancies in the description of his treatment and his health given to the Embassy representatives by the complainant and by his mother. The security service informally denied this claim that he was threatened and his mother's claim that he was ill-treated.

Given the State party's efforts to date to implement the decision in this case, the State party submits that it will take no further action in this case and considers the matter closed under the follow-up procedure.

**Further action taken/or required**

Following the forty-second session, the Committee considered that the State party should be reminded of its obligation to make reparation for the violation of article 3. Serious consideration should be made of the complainant's appeal for a residence permit.

**Committee's decision**

The Committee considers the dialogue ongoing. A request for updated information on the complainant's case was sent to the State party in April 2011.

**State party**

**Sweden**

**Case**

*Njamba and Balikosa, 322/2007*

**Nationality and country of removal if applicable**

Congolese to the Democratic Republic of the Congo

**Views adopted on**

14 May 2010

**Issues and violations found**

Violation of article 3; substantial grounds exist for believing that the complainants are in danger of being subjected to torture in the Democratic Republic of the Congo, on the basis of evidence on sexual violence

**Remedy recommended**

The Committee urged the State party, in accordance with rule 112, paragraph 5, of its rules of procedure (CAT/C/3/Rev.4), to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

**Due date for State party response**

25 November 2010

<b>Date of reply</b>	27 July 2010
<b>State party's response</b>	On 27 July 2010, the State party informed the Committee that the Migration Board decided on 9 June 2010 to grant the complainants permanent residence in Sweden and enclosed the copies of the decisions. The State party submits that it will take no further action in this case and considers the matter closed under the follow-up procedure.
<b>Committee's decision</b>	The Committee will consider whether to close the dialogue with the State party under the follow-up procedure at its next session.
<b>State party</b>	<b>Sweden</b>
<b>Case</b>	<i>Aytulun and Güclü, 373/2009</i>
<b>Nationality and country of removal if applicable</b>	Turkish to Turkey
<b>Views adopted on</b>	19 November 2010
<b>Issues and violations found</b>	Risk of forcible removal – article 3
<b>Interim measures granted and State party response</b>	Granted.
<b>Remedy recommended</b>	In conformity with rule 112, paragraph 5, of its rules of procedure (CAT/C/3/Rev.4), the Committee wishes to be informed, within 90 days, on the steps taken by the State party to respond to these Views.
<b>Due date for State party response</b>	1 April 2011
<b>Date of reply</b>	22 February 2011.
<b>State party's response</b>	The State party informed the Committee that on 21 February 2011 the Swedish Migration Board granted the complainants temporary residence permits, valid until 1 November 2011, with the possibility of extension. No forcible return of the complainants to Turkey may take place if their residence permits remain valid or during the examination of the issue of the permits renewal. The Migration Board excluded Mr. Aytulun from being considered a refugee and from being considered eligible for subsidiary protection due to his activities prior to his arrival in the State party.  The State party considers that thus, it has provided the information required under the follow-up procedure. It therefore invites the Committee to close the examination of the case under the follow-up procedure.
<b>Committee's decision</b>	The State party's submission was transmitted to the complainant on 22 February 2011. The Committee considers that the follow-up dialogue is ongoing.

<b>State party</b>	<b>Tunisia</b>
<b>Case</b>	<b><i>M'Barek, 60/1996</i></b>
<b>Nationality and country of removal if applicable</b>	Tunisian
<b>Views adopted on</b>	10 November 2004
<b>Issues and violations found</b>	Failure to investigate – articles 12 and 13
<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	The Committee requests the State party to inform it within 90 days of the steps taken in response to the Committee's observations.
<b>Due date for State party response</b>	22 February 2000
<b>Date of reply</b>	Latest reply on 27 August 2009 (had also responded on 15 April 2002, 23 February 2009 and 24 and 27 August 2009)
<b>State party's response</b>	See first follow-up report. <sup>12</sup> The State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Rapporteur for follow-up to decisions on complaints should arrange to meet with a representative of the State party.
<b>Complainant's comments</b>	On 27 November 2008, the complainant informed the Committee <i>inter alia</i> that an official request to exhume the deceased's body had been lodged with the judicial authorities but that since May 2008, he had not received any indication as to the status of his request. He encouraged the Rapporteur for follow-up to decisions on complaints to pursue the question of implementation of this decision with the State party.
<b>State party's response</b>	On 23 February 2009, the State party responded to the information contained in the complainant's letter of 27 November 2008. It informed the Committee that it could not pursue the complainant's request to exhume the body as this matter has already been considered by the authorities and no new information has come to light to justify such a reopening. On the criminal front, the State party reiterated its arguments submitted prior to the Committee's decision that proceedings were opened on three occasions, the last time pursuant to the registration of the communication before the Committee, and each time, as there was insufficient proof, the case was discontinued. On the civil front, the State party reiterated its view that the deceased's father pursued a civil action and received compensation for the death of his son following a traffic accident. The reopening of an investigation in which a death by

<sup>12</sup> See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 44 (A/59/44)*, chap. V, para. 270.



involuntary homicide was declared following a road traffic accident upon which a civil claim had been brought would go against the principle of “*l’autorité de la chose jugée*”.

**Complainant’s comments**

On 3 May 2009, the complainant commented on the State party’s submission of 23 November 2009. He states that he was unaware until he read the submission that their request for an exhumation of the body had been rejected. He submits that the State party takes no account of the Committee’s decision and the recommendation therein. It is not surprising that the Minister of Justice would arrive at such a conclusion given that he was directly implicated by the Committee in its decision. The complainant submits that the Committee’s recommendation in its decision is clear and that an exhumation of the body, followed by a new autopsy in the presence of four international doctors would be a fair response to it. He requests the Committee to declare that the State party has deliberately and illegitimately refused to find out the true cause of death of the deceased and implement the decision, in the same way as it violated articles 12 and 14. He requests fair compensation to the family of the victim (mother and brothers; the father has since died) for the psychological and moral abuse suffered by them as a result.

**State party’s response**

On 24 August 2009, the State party reiterated its previous argument that the question of exhuming the body of the deceased could not be reopened within the terms of article 121 of the Penal Code. However, to get over this legal difficulty, it submits that the Minister for Justice and Human Rights has applied article 23 and 24 of the same Code, and requested the prosecutor of the Court of appeal of Nabeul to take up the proceedings and to take what measures are necessary to find out the cause of the deceased’s death, including the request for an exhumation of the body and the demand for a new medico-legal report.

On 27 August 2009, the State party updated the Committee with information that the proceedings in question have been entrusted to the judge of the court of first instance in Grombalia and registered under number 27227/1.

**Complainant’s comments**

On 7 September 2009, the complainant welcomed the initiative taken by the State party to establish the cause of death of the deceased and considered the new actions taken by the State party as a turning point in the investigation of this matter. However, he also raises a concern over the vague nature of the State party’s intentions concerning the details of the judicial exhumation. The complainant reminds the State party that any exhumation should be conducted from the beginning in the presence of all or some of the four international doctors who already pronounced on this case before the Committee, which according to the complainant was part of the Committee’s Decision. Any unilateral action by the State party to interfere with the remains of the deceased will be regarded as suspicious. The complainant

requests the Committee to remind the State party of its obligations without which an exhumation would have no credibility. Finally, the complainant thanks the Committee for its invaluable assistance and the part it has played in the promising turn of events.

**Consultations with the State party**

On 13 May 2009, the Rapporteur for follow-up to decisions on complaints met with the Ambassador of the Permanent Mission to discuss follow-up to the Committee's decisions. The Rapporteur reminded the Ambassador that the State party has contested the Committee's findings in four out of the five cases against it and has failed to respond to requests for follow-up information in the fifth case, case No. 269/2005, *Ben Salem*.

As to case No. 291/2006, in which the State party has recently requested re-examination, the Rapporteur explained that there is no procedure either in the Convention or the rules of procedure for the re-examination of cases. With respect to case No. 60/1996, the Rapporteur informed the State party that the Committee decided during its forty-second session that it would request the State party to exhume the body of the complainant in that case. The Rapporteur reminded the Ambassador that the State party had still not provided a satisfactory response to the Committee's decisions in cases No. 188/2001 and No. 189/2001.

On each case, the Ambassador reiterated detailed arguments (most of which have been provided by the State party) on why the State disputed the Committee's decisions. In particular, in most cases, such arguments related to the question of admissibility for non-exhaustion of domestic remedies. The Rapporteur indicated that a note verbale would be sent to the State party reiterating *inter alia* the Committee's position on this admissibility requirement.

**Additional information:**

On 25 October 2010, the Coalition of International Non-governmental Organisations Against Torture (CINAT) submitted a letter regarding case 60/1996. CINAT noted that as a result of the efforts of the Committee against Torture, the State party agreed in 2009 to reopen the Baraket case and to exhume the remains so that medical evidence could be re-evaluated. CINAT added, however, that it had been more than a year since the State party had made this promise and that no further progress had been achieved. The Coalition proposed that the Committee undertake a follow-up visit to Tunisia to check on the progress of this and other cases against Tunisia. They fear that in the absence of direct action by the Committee, including the imposition of a deadline, the State party will continue to "obfuscate and dissemble" as it has done for the past two decades.

**Additional information from the State party**

On 26 December 2010, the State party pointed out that CINAT was not and had not been a party to the Baraket case, and was not a party to the present communication and was not authorized by the complainant to act as one. Therefore, the CINAT letter should be considered inadmissible.

The State party further provided information on the advancement of the inquiry on the Baraket case. It reported that on 9 October 2009, the judge of the court of first instance in Grombalia had convoked the three medical experts who had drafted the report on the causes of the death of Mr. Baraket in 1993. None of the medical specialists appeared, however. The judge issued new convocations, but none of the medical specialist appeared to the meeting scheduled for 18 March 2010. It appeared that two of the medical doctors had passed away, and that it was impossible to deliver the convocation to the third one personally. On 20 May 2010, the judge convoked the third doctor for a meeting to take place on 21 July 2010, which the expert attended. The expert insisted that the experts' report on the autopsy of Mr. Baraket, established in October 1991, did not contain any reference to injuries which could show that the victim had been raped. The expert contended also that an exhumation would be of no use in clarifying that issue, due to the time elapsed. The judge therefore decided not to order an exhumation.

On 15 December 2010, the Prosecutor General appealed against the refusal of the judge to order an exhumation with the Appeal Court of Nabeul (appeal No. 8021). The Court decided to examine the case on 3 February 2011.

All this, according to the State party, shows the determination of the Tunisian authorities to give effect to the Committee's decision.

**Additional information from the complainant**

On 21 February 2011, the complainant agreed with the State party's objection concerning the involvement of CINAT.

He added that in the light of the recent developments in the State party, he intended to travel to Tunis and to seek redress there and to request the Ministry of Justice to intervene.

**Further action taken**

During the forty-second session, the Committee decided to request the State party to have the complainant's body exhumed.

During the forty-third session, the Committee decided to write to the State party, thanking it for the positive information provided in its submissions of 24 and 27 August 2009 on the follow-up to this case, in particular for its willingness to order an exhumation of the deceased's remains. It requested clarification from the State party on whether such an exhumation had already been ordered and if so the modalities for same. It also reminded the State party

	that its obligations under articles 12 and 13 of the Convention to proceed to an impartial investigation includes ensuring that any exhumation would be conducted in an impartial manner in the presence of independent experts.
<b>Committee's decision</b>	The Committee considers that the follow-up dialogue is ongoing. A request for updated information on the complainant's case was sent to the State party in April 2011.
<b>State party</b>	<b>Tunisia</b>
<b>Cases</b>	<i>Thabti, 187/2001 and Abdelli, 188/2001</i>
<b>Nationality and country of removal if applicable</b>	Tunisian
<b>Views adopted on</b>	20 November 2003
<b>Issues and violations found</b>	Failure to investigate – articles 12 and 13
<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	To conduct an investigation into the complainants' 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 the views expressed above.
<b>Due date for State party response</b>	23 February 2004
<b>Date of reply</b>	16 March 2004 and 26 April 2006
<b>State party's response</b>	See first follow-up report. <sup>13</sup> On 16 March 2004, the State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Rapporteur should arrange to meet with a representative of the State party. This meeting was arranged, a summary of which is set out below. On 26 April 2006, the State party sent a further response. It called into question the real motives of the complainants of all three complaints (187/2001 and 188/2001, as well as 189/2001, which has since been withdrawn). It reiterated its previous arguments and submitted that the withdrawal of complaint No. 189/2001 corroborated the State's arguments that the complaint was an abuse of process, that the complainants failed to exhaust domestic remedies, and that the motives of the NGO representing the complainants were not bona fide.
<b>Complainant's comments</b>	On 8 August 2006, the letter, dated 31 May 2005, in which the author of communication No. 189/2001 withdraws his complaint, was sent to the complainants for comments. On 12 December 2006, both complainants responded expressing

<sup>13</sup> See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 44 (A/59/44)*, chap. V, paras. 271–272.

their surprise that the complainant had “withdrawn” his complaint without providing any reasons for doing so. They did not exclude pressure from the Tunisian authorities as a reason for doing so. They insisted that their own complaints were legitimate and encouraged the Committee to pursue their cases under the follow-up procedure.

On 12 December 2006, and having received a copy of the complainant’s letter of “withdrawal” from the other complainants, the complainant’s representative responded to the complainant’s letter of 31 May 2005. The complainant’s representative expressed its astonishment at the alleged withdrawal which it puts down to pressure on the complainant and his family and threats from the State party’s authorities. This is clear from the manner in which the complaint is withdrawn. This withdrawal does not detract from the facts of the case nor does it free those who tortured the complainant from liability. It regrets the withdrawal and encourages the Committee to continue to consider this case under follow-up.

#### **Consultations with State party**

On 25 November 2005, the Rapporteur for follow-up to decisions on complaints met with the Tunisian Ambassador in connection with cases No. 187/2001, No. 188/2001 and No. 189/2001 (dismissed as per the complainant’s request, see *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 44 (A/65/44)*, chap. VI, pp. 216–218). The Rapporteur explained the follow-up procedure. The Rapporteur explained that each case would have to be implemented separately and that the Committee had requested that investigations be carried out. The Ambassador asked why the Committee had thought it appropriate to consider the merits when the State party was of the view that domestic remedies had not been exhausted. The Rapporteur explained that the Committee had thought the measures referred to by the State party were ineffective, underlined by the fact that there had been no investigations in any of these cases in over 10 years since the allegations.

The Ambassador confirmed that he would convey the Committee’s concerns and request for investigations, in cases No. 187/2001 and No. 188/2001, to the State party and update the Committee on any subsequent follow-up action taken.

#### **Committee’s decision**

With respect to cases No. 187/2001 and No. 188/2001, the Committee considers the dialogue ongoing. A request for updated information on the complainants’ cases was sent to the State party in April 2011.

<b>State party</b>	<b>Tunisia</b>
<b>Case</b>	<i>Ali Ben Salem, 269/2005</i>
<b>Nationality and country of removal if applicable</b>	N/A
<b>Views adopted on</b>	7 November 2007
<b>Issues and violations found</b>	Failure to prevent and punish acts of torture, prompt and impartial investigation, right to complain, right to fair and adequate compensation – articles 1, 12, 13 and 14
<b>Remedy recommended</b>	The Committee urged the State party to conclude the investigation into the incidents in question, with a view to bringing those responsible for the complainant's treatment to justice, and to inform it, within 90 days of this decision being transmitted, of any measures taken in conformity with the Committee's decision, including the grant of compensation to the complainant.
<b>Due date for State party response</b>	26 February 2008
<b>Date of reply</b>	None
<b>State party response</b>	None
<b>Complainant's comments</b>	<p>On 3 March 2008, the complainant submitted that since the Committee's decision, he has been subjected again to ill-treatment and harassment by the State party's authorities. On 20 December 2007, he was thrown to the ground and kicked by police, who are in permanent watch outside his home, when he went to greet friends and colleagues who had come to visit him. His injuries were such that he had to be taken to hospital. The next day, several NGOs including the World Organization Against Torture (OMCT) (the complainant's representative), condemned the incident. The complainant now remains under surveillance 24 hours a day, thereby depriving him of his freedom of movement and contact with other people. His telephone line is regularly cut and his e-mail addresses are surveyed and systematically destroyed.</p> <p>Except for an appearance before a judge of the instance court on 8 January 2008, during which the complainant was heard on his complaint (filed in 2000) no action has been taken to follow up on the investigation of this case. In addition, the complainant does not see how the proceedings on 8 January relate to the implementation of the Committee's decision. He submits that he is currently in very poor health, that he does not have sufficient money to pay for his medical bills and recalls that the medical expenses for the re-education of victims of torture are considered reparation obligations.</p>
<b>Consultations with State party</b>	The consultations were held during the forty-second session with the permanent representative and the Rapporteur for follow-up to decisions on complaints.

<b>Committee's decision</b>	The Committee considers the follow-up dialogue ongoing. A request for updated information on the complainant's case was sent to the State party in April 2011.
<b>State party</b>	<b>Tunisia</b>
<b>Case</b>	<i>Saadia Ali, 291/2006</i>
<b>Nationality and country of removal if applicable</b>	N/A
<b>Views adopted on</b>	21 November 2008
<b>Issues and violations found</b>	Torture, prompt and impartial investigation, right to complaint, failure to redress complaint – articles 1, 12, 13 and 14
<b>Interim measures granted and State party response</b>	N/A
<b>Remedy recommended</b>	The Committee urged the State party to conclude the investigation into the incidents in question, with a view to bringing those responsible for the acts inflicted on the complainant to justice, and to inform it, within 90 days of this decision being transmitted, of any measures taken in conformity with the Committee's decision, including the grant of compensation to the complainant.
<b>Due date for State party response</b>	24 February 2009
<b>Date of reply</b>	26 February 2009
<b>State party's response</b>	<p>The State party expressed its astonishment at the Committee's decision given that in the State party's view domestic remedies had not been exhausted. It reiterated the arguments set forth in its submission on admissibility. As to the Committee's view that what were described by the State party as "records" of the preliminary hearing were simply incomplete summaries, the State party acknowledged that the transcripts were disordered and incomplete and provided a full set of transcripts in Arabic for the Committee's consideration.</p> <p>In addition, the State party informed the Committee that on 6 February 2009, the judge "<i>d'instruction</i>" dismissed the complainant's complaint for the following reasons:</p> <ol style="list-style-type: none"> <li>1. All of the police allegedly involved denied assaulting the complainant.</li> <li>2. The complainant could not identify any of her alleged aggressors, except the policeman who is alleged to have pulled her with force prior to her arrest and this would not in any case constitute ill-treatment.</li> <li>3. All of the witnesses stated that she had not suffered ill-treatment.</li> </ol>

4. One of the witnesses stated that she had attempted to bribe him in return for a false statement against the police.
5. Her own brother denied having had any knowledge of the alleged attack and that she displayed no signs of having been assaulted upon her return from the prison.
6. A witness statement from the court clerk confirmed that her bag was returned intact.
7. Contradictions in the complainant's testimony about her medical report – she said the incident had taken place on 22 July 2004 but the certificate stated 23 July 2004.
8. Contradictions in the complainant's testimony to the extent that she stated in her interview with the judge that she had not made a complaint before the Tunisian legal authorities and her subsequent insistence that she made it through her lawyer, who she did not in fact recognize during the hearing.

The State party provided the law upon which this case was dismissed, makes reference to another complaint recently made by the complainant through the OMCT against hospital civil servants, and requests the Committee to *re-examine* this case.

#### **Complainant's comments**

On 2 June 2009, the complainant reiterated in detail the arguments made in her initial and subsequent submissions to the Committee prior to consideration of this case. She submits that her lawyer did make an attempt to lodge a complaint on her behalf on 30 July 2004 but that the authorities refused to accept it. She finds it surprising that the State party was unable to identify and locate the suspects involved in the incident given that they are agents of the State and affirms that the authorities knew she was living in France at the time. She submits that she cooperated with the State authorities and denies that the case is huge and complicated as suggested by the State party.

As to the records of the preliminary hearing produced by the State party, the complainant states that paragraphs of the records remain missing, without explanation, that the minutes of the hearing of several witnesses are not included, and that certain witness statements are exactly the same (word for word) as others. Thus, the authenticity of these records is called into question. In addition, the records are only provided in Arabic.

The complainant also states that at least five witnesses were not heard, that she did formally recognize her aggressors, that her brother was not aware of the incident as she had not told him due to the shame, and that the contradiction relating to the date of the incident was a simple error recognized at the initial stages. She denies that she attempted to bribe any witness.



	<p>Finally, the complainant requests the Committee not to re-examine the case, to request the State party to provide full reparation for all the damage suffered as well as to reopen the investigation and prosecute the individuals responsible.</p>
<b>Consultations with State party</b>	<p>The Rapporteur for follow-up to decisions on complaints met with a representative of the State party on 13 May 2009, during which he indicated to the State party that there is no provision for the re-examination of complaints considered on the merits. The only possibility of a re-consideration under the article 22 procedure relates to admissibility – in cases where the committee finds the case inadmissible for non-exhaustion and then the complainant subsequently exhausts such remedies. (See rule 116, para. 2 of the Committee’s rules of procedure (CAT/C/3/Rev.5).</p> <p>During the forty-third session, the Committee decided to remind the State party (as indicated in a note verbale to the State party on 8 June 2009 following the meeting with the Rapporteur) that there is no procedure either in the Convention itself or in the rules of procedure for review of a case on the merits. It also reminded the State party of its obligation under the Convention to grant the complainant a remedy in line with the Committee’s decision.</p>
<b>Committee’s decision</b>	<p>The Committee considers that the dialogue is ongoing. A request for updated information on the complainant’s case was sent to the State party in April 2011.</p>
<b>State party</b>	<b>Venezuela (Bolivarian Republic of)</b>
<b>Case</b>	<i>Chipana, 110/1998</i>
<b>Nationality and country of removal if applicable</b>	Peruvian to Peru
<b>Views adopted on</b>	10 November 1998
<b>Issues and violations found</b>	Complainant’s extradition to Peru constituted a violation of article 3.
<b>Interim measures granted and State party response</b>	Granted but not accepted by the State party.
<b>Remedy recommended</b>	None
<b>Due date for State party response</b>	7 March 1999
<b>Date of reply</b>	9 October 2007 (had previously responded on 13 June 2001 and 9 December 2005)
<b>State party’s response</b>	On 13 June 2001, the State party had reported on the conditions of detention of the complainant. On 23 November 2000, the Ambassador of the Bolivarian Republic of Venezuela in Peru together with some representatives of the Peruvian administration visited the complainant in prison and found her to be in good health. She had been transferred in September 2000 from the top security pavilion

to the “medium special security” pavilion, where she had other privileges. On 18 October 2001, the State party had referred to a visit to the complainant on 14 June 2001, during which she stated that her conditions of detention had improved, that she could see her family more often and that she intended to appeal her sentence. She had been transferred from the medium special security pavilion to the “medium security” pavilion where she had more privileges. Her health was good, except that she was suffering from depression. She had not been subjected to any physical or psychological mistreatment, she had weekly visits of her family and she was involved in professional and educational activities in the prison.

On 9 December 2005, the State party had informed the Committee that, on 23 November 2005, the Venezuelan Ambassador in Peru had contacted Mrs. Nuñez Chipana. The complainant regretted that the Peruvian authorities had denied her brother access, who had come from Venezuela to visit her. She mentioned that she was receiving medical treatment, that she could receive visits from her son, and that she was placed under a penitentiary regime which imposed minimum restrictions on detainees. She also mentioned that she would request the judgement against her to be quashed and that she was currently making a new application under which she hoped to be acquitted. The State party considered that it had complied with the recommendation that similar violations should be avoided in the future, through the adoption of the law on Refugees in 2001, according to which the newly established National Commission for Refugees now processes all the applications of potential refugees as well as examining cases of deportation. It requested the Committee to declare that it had complied with its recommendations, and to release it from the duty to supervise the complainant’s situation in Peru.

On 9 October 2007, the State party responded to the Committee’s request for information on the new procedure initiated by the complainant. The State party informed the Committee that Peru has not requested a modification of the terms of the extradition agreement, which would allow it to prosecute the complainant for crimes other than those for which the extradition was granted (offence of disturbing public order and being a member of the subversive movement Sendero Luminoso). It did not respond on the status of the new procedure initiated by the complainant.

**Complainant’s comments**

None

**Committee’s decision**

The Committee considers that the follow-up dialogue is ongoing. A request for updated information on the complainant’s case was sent to the State party in April 2011.

## VII. Future meetings of the Committee

124. 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 next session for 2011 and on the dates of its regular sessions for 2012. Those dates are:

Forty-seventh	31 October – 25 November 2011
Forty-eighth	7 May – 1 June 2012
Forty-ninth	29 October – 23 November 2012

### **Additional meeting time for 2011 and 2012**

125. The Committee welcomed General Assembly resolution 65/204, in which the Assembly authorized the Committee to meet for an additional week per session as a temporary measure, with effect from May 2011 until the end of November 2012, further to its request to the General Assembly for appropriate financial support to this effect.<sup>14</sup> The additional week is reflected in the dates of its future meetings indicated above.

---

<sup>14</sup> See *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 44 (A/65/44)*, annex IX.

## **VIII. Adoption of the annual report of the Committee on its activities**

126. 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 November, which coincides with the regular sessions of the General Assembly, it adopts its annual report at the end of its spring session, for transmission to the General Assembly during the same calendar year. Accordingly, at its 1017th meeting, held on 1 June 2011, the Committee considered and unanimously adopted the report on its activities at the forty-fifth and forty-sixth sessions.

## Annexes

## 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 3 June 2011**

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994 <sup>a</sup>
Algeria	26 November 1985	12 September 1989
Andorra	5 August 2002	22 September 2006
Antigua and Barbuda		19 July 1993 <sup>a</sup>
Argentina	4 February 1985	24 September 1986
Armenia		13 September 1993 <sup>a</sup>
Australia	10 December 1985	8 August 1989
Austria	14 March 1985	29 July 1987
Azerbaijan		16 August 1996 <sup>a</sup>
Bahamas	16 December 2008	
Bahrain		6 March 1998 <sup>a</sup>
Bangladesh		5 October 1998 <sup>a</sup>
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	25 June 1999
Belize		17 March 1986 <sup>a</sup>
Benin		12 March 1992 <sup>a</sup>
Bolivia (Plurinational State of)	4 February 1985	12 April 1999
Bosnia and Herzegovina		1 September 1993 <sup>b</sup>
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 <sup>a</sup>
Burundi		18 February 1993 <sup>a</sup>

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Cambodia		15 October 1992 <sup>a</sup>
Cameroon		19 December 1986 <sup>a</sup>
Canada	23 August 1985	24 June 1987
Cape Verde		4 June 1992 <sup>a</sup>
Chad		9 June 1995 <sup>a</sup>
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987
Comoros	22 September 2000	
Congo		30 July 2003 <sup>a</sup>
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995 <sup>a</sup>
Croatia		12 October 1992 <sup>b</sup>
Cuba	27 January 1986	17 May 1995
Cyprus	9 October 1985	18 July 1991
Czech Republic		22 February 1993 <sup>b</sup>
Democratic Republic of the Congo		18 March 1996 <sup>a</sup>
Denmark	4 February 1985	27 May 1987
Djibouti		5 November 2002 <sup>a</sup>
Dominican Republic	4 February 1985	
Ecuador	4 February 1985	30 March 1988
Egypt		25 June 1986 <sup>a</sup>
El Salvador		17 June 1996 <sup>a</sup>
Equatorial Guinea		8 October 2002 <sup>a</sup>
Estonia		21 October 1991 <sup>a</sup>
Ethiopia		14 March 1994 <sup>a</sup>
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 <sup>a</sup>
Germany	13 October 1986	1 October 1990

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Ghana	7 September 2000	7 September 2000
Greece	4 February 1985	6 October 1988
Guatemala		5 January 1990 <sup>a</sup>
Guinea	30 May 1986	10 October 1989
Guinea-Bissau	12 September 2000	
Guyana	25 January 1988	19 May 1988
Holy See		26 June 2002 <sup>a</sup>
Honduras		5 December 1996 <sup>a</sup>
Hungary	28 November 1986	15 April 1987
Iceland	4 February 1985	23 October 1996
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 <sup>a</sup>
Jordan		13 November 1991 <sup>a</sup>
Kazakhstan		26 August 1998 <sup>a</sup>
Kenya		21 February 1997 <sup>a</sup>
Kuwait		8 March 1996 <sup>a</sup>
Kyrgyzstan		5 September 1997 <sup>a</sup>
Latvia		14 April 1992 <sup>a</sup>
Lao People's Democratic Republic	21 September 2010	
Lebanon		5 October 2000 <sup>a</sup>
Lesotho		12 November 2001 <sup>a</sup>
Liberia		22 September 2004 <sup>a</sup>
Libyan Arab Jamahiriya		16 May 1989 <sup>a</sup>
Liechtenstein	27 June 1985	2 November 1990
Lithuania		1 February 1996 <sup>a</sup>
Luxembourg	22 February 1985	29 September 1987
Madagascar	1 October 2001	13 December 2005
Malawi		11 June 1996 <sup>a</sup>

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Maldives		20 April 2004 <sup>a</sup>
Mali		26 February 1999 <sup>a</sup>
Malta		13 September 1990 <sup>a</sup>
Mauritania		17 November 2004 <sup>a</sup>
Mauritius		9 December 1992 <sup>a</sup>
Mexico	18 March 1985	23 January 1986
Monaco		6 December 1991 <sup>a</sup>
Mongolia		24 January 2002 <sup>a</sup>
Montenegro		23 October 2006 <sup>b</sup>
Morocco	8 January 1986	21 June 1993
Mozambique		14 September 1999 <sup>a</sup>
Namibia		28 November 1994 <sup>a</sup>
Nauru	12 November 2001	
Nepal		14 May 1991 <sup>a</sup>
Netherlands	4 February 1985	21 December 1988
New Zealand	14 January 1986	10 December 1989
Nicaragua	15 April 1985	5 July 2005
Niger		5 October 1998 <sup>a</sup>
Nigeria	28 July 1988	28 June 2001
Norway	4 February 1985	9 July 1986
Pakistan	17 April 2008	23 June 2010
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 <sup>a</sup>
Poland	13 January 1986	26 July 1989
Portugal	4 February 1985	9 February 1989
Qatar		11 January 2000 <sup>a</sup>
Republic of Korea		9 January 1995 <sup>a</sup>
Republic of Moldova		28 November 1995 <sup>a</sup>
Romania		18 December 1990 <sup>a</sup>
Russian Federation	10 December 1985	3 March 1987



<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Rwanda		15 December 2008 <sup>a</sup>
Saint Vincent and the Grenadines		1 August 2001 <sup>a</sup>
San Marino	18 September 2002	27 November 2006
Sao Tome and Principe	6 September 2000	
Saudi Arabia		23 September 1997 <sup>a</sup>
Senegal	4 February 1985	21 August 1986
Serbia		12 March 2001 <sup>b</sup>
Seychelles		5 May 1992 <sup>a</sup>
Sierra Leone	18 March 1985	25 April 2001
Slovakia		28 May 1993 <sup>b</sup>
Slovenia		16 July 1993 <sup>a</sup>
Somalia		24 January 1990 <sup>a</sup>
South Africa	29 January 1993	10 December 1998
Spain	4 February 1985	21 October 1987
Sri Lanka		3 January 1994 <sup>a</sup>
Sudan	4 June 1986	
Swaziland		26 March 2004 <sup>a</sup>
Sweden	4 February 1985	8 January 1986
Switzerland	4 February 1985	2 December 1986
Syrian Arab Republic		19 August 2004 <sup>a</sup>
Tajikistan		11 January 1995 <sup>a</sup>
Thailand		2 October 2007 <sup>a</sup>
The former Yugoslav Republic of Macedonia		12 December 1994 <sup>b</sup>
Timor-Leste		16 April 2003 <sup>a</sup>
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 <sup>a</sup>
Uganda		3 November 1986 <sup>a</sup>
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland	15 March 1985	8 December 1988

---

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
United States of America	18 April 1988	21 October 1994
Uruguay	4 February 1985	24 October 1986
Uzbekistan		28 September 1995 <sup>a</sup>
Venezuela (Bolivarian Republic of)	15 February 1985	29 July 1991
Yemen		5 November 1991 <sup>a</sup>
Zambia		7 October 1998 <sup>a</sup>

---

*Notes:*<sup>a</sup> Accession (73 States).<sup>b</sup> Succession (7 States).

## 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 3 June 2011**

Afghanistan

China

Equatorial Guinea

Israel

Kuwait

Mauritania

Pakistan

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 3 June 2011<sup>a, b</sup>

<i>State party</i>	<i>Date of entry into force</i>
Algeria	12 October 1989
Andorra	22 November 2006
Argentina	26 June 1987
Australia	29 January 1993
Austria	28 August 1987
Belgium	25 July 1999
Bolivia (Plurinational State of)	14 February 2006
Bulgaria	12 June 1993
Cameroon	11 November 2000
Canada	13 November 1989
Chile	15 March 2004
Costa Rica	27 February 2002
Croatia	8 October 1991 <sup>c</sup>
Cyprus	8 April 1993
Czech Republic	3 September 1996 <sup>c</sup>
Denmark	26 June 1987
Ecuador	29 April 1988
Finland	29 September 1989
France	26 June 1987
Georgia	30 June 2005
Germany	19 October 2001
Ghana	7 October 2000
Greece	5 November 1988
Hungary	13 September 1989
Iceland	22 November 1996
Ireland	11 May 2002
Italy	10 October 1989

---

<i>State party</i>	<i>Date of entry into force</i>
Kazakhstan	21 February 2008
Liechtenstein	2 December 1990
Luxembourg	29 October 1987
Malta	13 October 1990
Monaco	6 January 1992
Montenegro	23 October 2006 <sup>c</sup>
Netherlands	20 January 1989
New Zealand	9 January 1990
Norway	26 June 1987
Paraguay	29 May 2002
Peru	28 October 2002
Poland	12 May 1993
Portugal	11 March 1989
Republic of Korea	9 November 2007
Russian Federation	1 October 1991
Senegal	16 October 1996
Serbia	12 March 2001 <sup>c</sup>
Slovakia	17 March 1995 <sup>c</sup>
Slovenia	15 August 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
Ukraine	12 September 2003
Uruguay	26 June 1987
Venezuela (Bolivarian Republic of)	26 April 1994

---

---

**States parties that have only made the declaration provided for in article 21 of the Convention, as at 3 June 2011<sup>a</sup>**

<i>State party</i>	<i>Date of entry into force</i>
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 3 June 2011<sup>b</sup>**

Azerbaijan	4 February 2002
Bosnia and Herzegovina	4 June 2003
Brazil	26 June 2006
Burundi	10 June 2003
Guatemala	25 September 2003
Mexico	15 March 2002
Morocco	19 October 2006
Seychelles	6 August 2001

*Notes:*

<sup>a</sup> A total of 60 States parties have made the declaration under article 21.

<sup>b</sup> A total of 64 States parties have made the declaration under article 22.

<sup>c</sup> States parties that have made the declaration under articles 21 and 22 by succession.

## Annex IV

### Membership of the Committee against Torture in 2011

<i>Name of member</i>	<i>Country of nationality</i>	<i>Term expires on 31 December</i>
Ms. Essadia <b>Belmir</b> (Vice-Chairperson)	Morocco	2013
Mr. Alessio <b>Bruni</b>	Italy	2013
Ms. Felice <b>Gaer</b> (Vice-Chairperson)	United States of America	2011
Mr. Luis <b>Gallegos Chiriboga</b>	Ecuador	2011
Mr. Abdoulaye <b>Gaye</b>	Senegal	2011
Mr. Claudio <b>Grossman</b> (Chairperson)	Chile	2011
Ms. Myrna <b>Kleopas</b>	Cyprus	2011
Mr. Fernando <b>Mariño Menendez</b>	Spain	2013
Ms. Nora <b>Sveaass</b> (Rapporteur)	Norway	2013
Mr. Xuexian <b>Wang</b> (Vice-Chairperson)	China	2013

## Annex V

**States parties that have signed, ratified or acceded to the  
Optional Protocol to the Convention against Torture and  
Other Cruel, Inhuman or Degrading Treatment or  
Punishment as of 3 June 2011**

<i>Participant</i>	<i>Signature, succession to signature<sup>b</sup></i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Albania		1 October 2003 <sup>a</sup>
Argentina	30 April 2003	15 November 2004
Armenia		14 September 2006 <sup>a</sup>
Australia	19 May 2009	
Austria	25 September 2003	
Azerbaijan	15 September 2005	28 January 2009
Belgium	24 October 2005	
Benin	24 February 2005	20 September 2006
Bolivia (Plurinational State of)	22 May 2006	23 May 2006
Bosnia and Herzegovina	7 December 2007	24 October 2008
Brazil	13 October 2003	12 January 2007
Bulgaria	22 September 2010	1 June 2011
Burkina Faso	21 September 2005	7 July 2010
Cambodia	14 September 2005	30 March 2007
Cameroon	15 December 2009	
Chile	6 June 2005	12 December 2008
Congo	29 September 2008	
Costa Rica	4 February 2003	1 December 2005
Croatia	23 September 2003	25 April 2005
Cyprus	26 July 2004	29 April 2009
Czech Republic	13 September 2004	10 July 2006
Democratic Republic of the Congo		23 September 2010 <sup>a</sup>
Denmark	26 June 2003	25 June 2004
Ecuador	24 May 2007	20 July 2010
Estonia	21 September 2004	18 December 2006



<i>Participant</i>	<i>Signature, succession to signature<sup>b</sup></i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Finland	23 September 2003	
France	16 September 2005	11 November 2008
Gabon	15 December 2004	22 September 2010
Georgia		9 August 2005 <sup>a</sup>
Germany	20 September 2006	4 December 2008
Ghana	6 November 2006	
Greece	3 March 2011	
Guatemala	25 September 2003	9 June 2008
Guinea	16 September 2005	
Honduras	8 December 2004	23 May 2006
Iceland	24 September 2003	
Ireland	2 October 2007	
Italy	20 August 2003	
Kazakhstan	25 September 2007	22 October 2008
Kyrgyzstan		29 December 2008 <sup>a</sup>
Lebanon		22 December 2008 <sup>a</sup>
Liberia		22 September 2004 <sup>a</sup>
Liechtenstein	24 June 2005	3 November 2006
Luxembourg	13 January 2005	19 May 2010
Madagascar	24 September 2003	
Maldives	14 September 2005	15 February 2006
Mali	19 January 2004	12 May 2005
Malta	24 September 2003	24 September 2003
Mauritius		21 June 2005 <sup>a</sup>
Mexico	23 September 2003	11 April 2005
Montenegro	23 October 2006b	6 March 2009
Netherlands	3 June 2005	28 September 2010
New Zealand	23 September 2003	14 March 2007
Nicaragua	14 March 2007	25 February 2009
Nigeria		27 July 2009 <sup>a</sup>
Norway	24 September 2003	

<i>Participant</i>	<i>Signature, succession to signature<sup>b</sup></i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Panama	22 September 2010	2 June 2011
Paraguay	22 September 2004	2 December 2005
Peru		14 September 2006 <sup>a</sup>
Poland	5 April 2004	14 September 2005
Portugal	15 February 2006	
Republic of Moldova	16 September 2005	24 July 2006
Romania	24 September 2003	2 July 2009
Senegal	4 February 2003	18 October 2006
Serbia	25 September 2003	26 September 2006
Sierra Leone	26 September 2003	
Slovenia		23 January 2007 <sup>a</sup>
South Africa	20 September 2006	
Spain	13 April 2005	4 April 2006
Sweden	26 June 2003	14 September 2005
Switzerland	25 June 2004	24 September 2009
The former Yugoslav Republic of Macedonia	1 September 2006	13 February 2009
Timor-Leste	16 September 2005	
Togo	15 September 2005	20 July 2010
Turkey	14 September 2005	
Ukraine	23 September 2005	19 September 2006
United Kingdom of Great Britain and Northern Ireland	26 June 2003	10 December 2003
Uruguay	12 January 2004	8 December 2005
Zambia	27 September 2010	

## Annex VI

### Membership of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2011

<i>Name of member</i>	<i>Country of nationality</i>	<i>Term expires on 31 December</i>
Ms. Mari <b>Amos</b>	Estonia	2014
Mr. Mario Luis <b>Coriolano</b> (Vice-Chairperson)	Argentina	2012
Mr. Arman <b>Danielyan</b>	Armenia	2014
Ms. Marija <b>Definis Gojanović</b>	Croatia	2012
Mr. Malcolm <b>Evans</b> (Chairperson)	United Kingdom of Great Britain and Northern Ireland	2012
Mr. Emilio Ginés <b>Santidrián</b>	Spain	2014
Ms. Lowell Patria <b>Goddard</b>	New Zealand	2012
Mr. Zdeněk <b>Hájek</b> (Vice-Chairperson)	Czech Republic	2012
Ms. Suzanne <b>Jabbour</b> (Vice-Chairperson)	Lebanon	2012
Mr. Goran <b>Klemenčič</b>	Slovenia	2012
Mr. Paul <b>Lam Shang Leen</b>	Mauritius	2012
Mr. Zbigniew <b>Lasocik</b>	Poland	2012
Mr. Petros <b>Michaelides</b>	Cyprus	2014
Ms. Aisha Shujune <b>Muhammad</b> (Vice-Chairperson)	Maldives	2014
Mr. Olivier <b>Obrecht</b>	France	2014
Mr. Hans Draminsky <b>Petersen</b>	Denmark	2014
Ms. Maria Margarida E. <b>Pressburger</b>	Brazil	2012
Mr. Christian <b>Pross</b>	Germany	2012
Mr. Victor Manuel <b>Rodríguez-Rescia</b>	Costa Rica	2012
Ms. Judith Salgado <b>Álvarez</b>	Ecuador	2014
Mr. Miguel Sarre <b>Iguíniz</b>	Mexico	2014
Ms. Aneta <b>Stanchevska</b>	The former Yugoslav Republic of Macedonia	2014

---

<i>Name of member</i>	<i>Country of nationality</i>	<i>Term expires on 31 December</i>
Mr. Wilder Tayler <b>Souto</b>	Uruguay	2014
Mr. Felipe Villavicencio <b>Terreros</b>	Peru	2014
Mr. Fortuné Gaétan <b>Zongo</b>	Burkina Faso	2014

---

## Annex VII

### Fourth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (April–December 2010)\*

#### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–5	223
II. The year in review .....	6–32	224
A. Participation in the Optional Protocol system .....	6–8	224
B. Organizational and membership issues .....	9–12	225
C. Visits conducted during the reporting period .....	13–17	226
D. Follow-up activities, including publication of the Subcommittee’s reports by States parties.....	18–19	226
E. Developments concerning the establishment of national preventive mechanisms .....	20–28	227
F. Contributions to the Special Fund under article 26 of the Optional Protocol.....	29–32	229
III. Engagement with other bodies in the field of torture prevention.....	33–39	229
A. International cooperation.....	33–37	229
B. Regional cooperation.....	38	230
C. Civil society.....	39	231
IV. Issues of note arising from the work of the Subcommittee during the period under review.....	40–62	231
A. Article 24 of the Optional Protocol .....	40	231
B. The development of the Subcommittee’s working practices.....	41–45	231
C. Reflections on the role of confidentiality in the work of the Subcommittee ..	46–48	232
D. Issues arising from visits .....	49–57	233
E. Publication of Subcommittee visit reports and dialogue with States parties ..	58	235
F. The Subcommittee’s website.....	59	235
G. The obligation to establish national preventive mechanisms.....	60–61	235
H. The forms that national preventive mechanisms may take .....	62	236

\* The report, complete with the annexes, has been issued separately under symbol CAT/C/46/2. All annexes have been reproduced as appendices to the present annex, except annex I and section C of annex III, which correspond to annexes I and VI of the present report.

V.	Substantive issues .....	63–107	236
	A. Guidelines on national preventive mechanisms.....	63–102	236
	B. The approach of the Subcommittee to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol.....	103–107	239
VI.	Looking forward .....	108–115	242
	A. The enlargement of the Subcommittee’s membership.....	108–109	242
	B. Plan of work for 2011 .....	110–112	243
	C. Building working relations with other bodies.....	113–115	243
Appendices			
I.	Summary of the mandate of the Subcommittee on Prevention of Torture.....		245
II.	Members of the Subcommittee on Prevention of Torture.....		247
III.	Information on country visit reports, publication status and follow-up as of 31 December 2010 .....		248

## I. Introduction

1. The fourth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is rather different from its predecessors.<sup>1</sup> The Subcommittee has received much useful feedback on its previous annual reports, in the light of which the Subcommittee has decided to use the present, and future, reports not only to record its activities, but also to reflect thereon. It is hoped that these reflections will prove a useful source of guidance for those interested in the work of the Subcommittee and will contribute to furthering knowledge of the approaches taken by the Subcommittee to the fulfilment of its mandate.

2. Following the introduction (chapter I), to that end, the report is divided into six sections. Chapter II provides a factual summary of key developments and activities concerning the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment during the reporting period. It should be read in conjunction with the appendices, which provide further and fuller factual information, and the Subcommittee's website ([www2.ohchr.org/english/bodies/cat/opcat/](http://www2.ohchr.org/english/bodies/cat/opcat/)), where the most recent developments are recorded. Chapter III complements the first by providing a factual record of the Subcommittee's engagement with other bodies in the field of torture prevention.

3. Chapter IV breaks new ground by referring to a number of substantive developments and issues that have arisen during the reporting year. Some of these relate to practical and organizational matters, others to common concerns arising from its country visits and engagements with national preventive mechanisms (NPMs), seminars and other forms of discussions in which the Subcommittee has been involved. This section is not intended to provide an exhaustive coverage of issues of interest or concern, nor is it intended to address the issues raised in a comprehensive fashion. Rather, it is intended to draw attention to issues which the Subcommittee has encountered and upon which it is reflecting.

4. This is followed by chapter V, another new section, entitled "Substantive issues". Whereas the previous section flagged issues which were of interest or concern to the Subcommittee, this section sets out its thinking on selected topics and may be taken to reflect the current approach of the Subcommittee to the issues that it addresses. Chapter VI, the final section of the report, is forward-looking: It sets out the Subcommittee's proposed plan of work for the coming year and highlights any particular plans that it has or challenges that it faces.

5. Lastly, it should be noted that it has been decided that the period which the annual report covers will be changed. This report covers the period from April to December 2010 and future annual reports will cover the calendar year to which they relate. Not only does this change have the merit of simplicity, but it also means that the reporting cycle will reflect the enlargement of the Subcommittee, which comes into being on 1 January 2011.

---

<sup>1</sup> Established following the entry into force in June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. For the text of the Optional Protocol, see [www2.ohchr.org/english/law/cat-one.htm](http://www2.ohchr.org/english/law/cat-one.htm). In accordance with the Optional Protocol (art. 16, para. 3), the Subcommittee presents its public annual reports to the Committee against Torture.

## II. The year in review

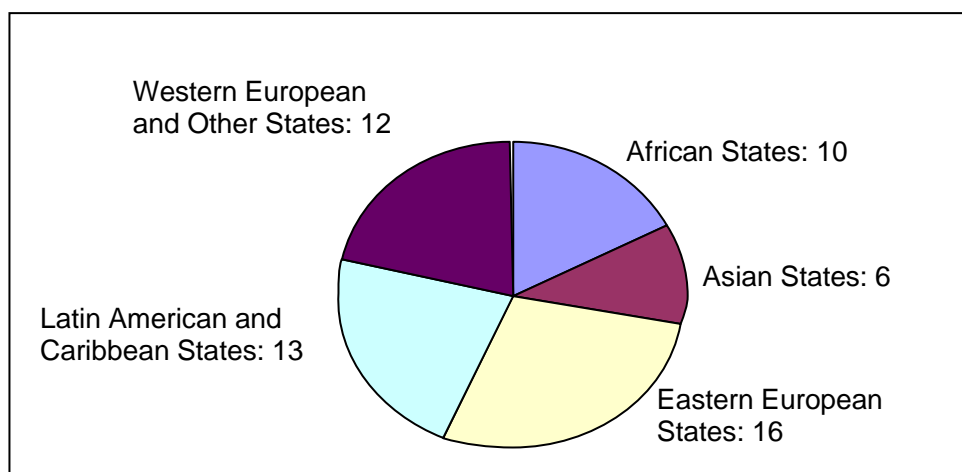
### A. Participation in the Optional Protocol system

6. As of 31 December 2010, 57 States are party to the Optional Protocol.<sup>2</sup> Since April 2010, seven States have ratified or acceded to the Optional Protocol: Luxembourg (19 May 2010); Burkina Faso (7 July 2010); Ecuador and Togo (20 July 2010); Gabon (22 September 2010); Democratic Republic of the Congo (23 September 2010); and Netherlands (28 September 2010). In addition, three States have signed the Optional Protocol during the reporting period, these being: Bulgaria and Panama (22 September 2010) and Zambia (27 September 2010).

7. As a result of increase in the number of States parties, the pattern of regional participation has changed somewhat, there now being the following number of parties in each of the regions:

#### States parties by region

Africa	10
Asia	6
Eastern Europe	16
Group of Latin American and Caribbean States (GRULAC)	13
Group of Western European and Other States (WEOG)	12



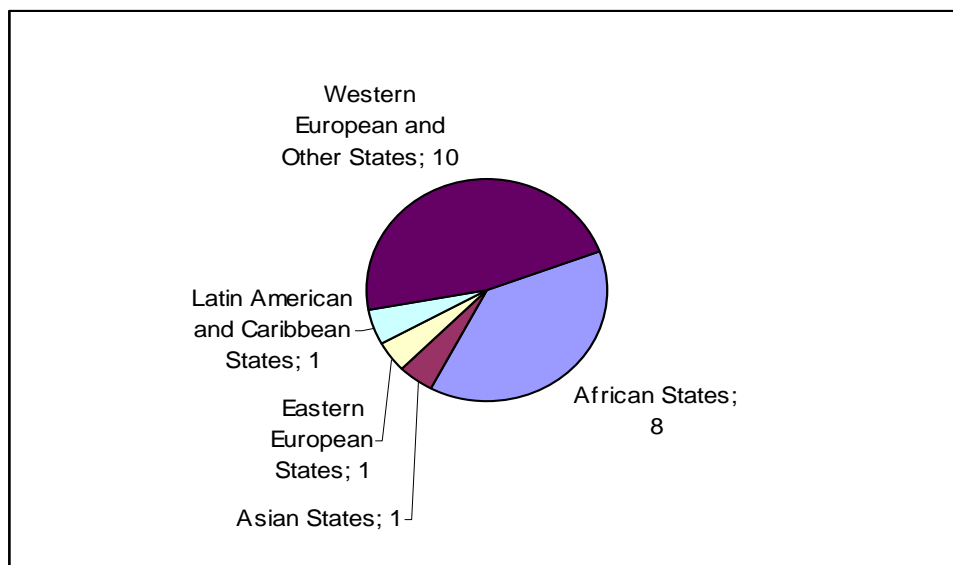
8. The regional breakdown of signatory States which are yet to ratify the Optional Protocol is now as follows:

#### States that have signed but not ratified the Optional Protocol, by region (total 21)

Africa	8
Asia	1
Eastern Europe	1
Group of Latin American and Caribbean States (GRULAC)	1
Group of Western European and Other States (WEOG)	10

<sup>2</sup> For a list of the States parties to the Optional Protocol, see annex V of the present report.





## B. Organizational and membership issues

9. During the reporting period (1 April 2010 – 31 December 2010), the Subcommittee held two one-week sessions at the United Nations Office in Geneva, from 21 to 25 June and from 15 to 19 November 2010.

10. The Subcommittee membership did not change during 2010.<sup>3</sup> However, on 28 October 2010, at the third Meeting of States Parties to the Optional Protocol, five Subcommittee members were elected to fill the vacancies of members of the Subcommittee whose terms of office would expire on 31 December 2010. Furthermore, in conformity with article 5, paragraph 1, of the Optional Protocol, 15 members were elected in order to expand membership of the Subcommittee to 25 members, following the fiftieth ratification in September 2009. In order to ensure an orderly handover of membership and in accordance with established practice, the term of office of 7 of the additional 15 members has been reduced to two years by ballot. The term of office of all the newly elected members will start on 1 January 2011 and, in conformity with the Subcommittee's rules of procedure, they will make a solemn declaration at the opening of the February 2011 session before assuming their duties.

11. The Subcommittee's rules of procedure currently provide for the election of a bureau, comprising the Chairperson and two Vice-chairpersons, the members of which serve for a period of two years. The Bureau, which was elected in February 2009 and continues in office until February 2011, comprises Víctor Manuel Rodríguez Rescia as Chairperson and Mario Luis Coriolano and Hans Draminsky Petersen as Vice-Chairpersons. In view of its forthcoming expansion, the Subcommittee decided at the twelfth session to expand the Bureau to five members at its thirteenth session.

12. During the reporting period, the Subcommittee revised its allocations of internal responsibilities, largely to reflect, support and encourage its growing engagement with national and regional partners. Mr. Coriolano and Emilio Ginés continued to serve in the role of Subcommittee focal points on NPMs during 2010. A new system of regional focal points was also decided upon. The role of these focal points is to undertake liaison and

<sup>3</sup> See appendix II, sect. A.

facilitate coordination of Subcommittee's engagement within the regions they serve. Focal points for Africa, Asia, Europe and Latin America will be appointed by the enlarged Subcommittee at its thirteenth session.

### **C. Visits conducted during the reporting period**

13. The Subcommittee carried out four visits in 2010, all of which fell within the reporting period. From 24 May to 3 June 2010, the Subcommittee visited Lebanon, the third country in Asia visited by the Subcommittee (following the visit to Maldives in December 2007 and Cambodia in December 2009), and the first country to be visited by the Subcommittee in the Arab region (Lebanon being the first and currently the only Arab country which has ratified the Optional Protocol).

14. From 30 August to 8 September 2010, the Subcommittee visited the Plurinational State of Bolivia, the fourth country visited by the Subcommittee in Latin America (following the visit to Mexico in August – September 2008, to Paraguay in March 2009 and Honduras in September 2009).

15. From 6 to 13 December 2010, the Subcommittee visited Liberia, the third country visited by the Subcommittee in Africa (following the visit to Mauritius in October 2007 and Benin in May 2008).

16. In addition to these three visits, which were announced at the start of 2010, for the first time, the Subcommittee undertook a follow-up visit, to Paraguay from 13 to 15 September 2010.

17. Further summary information on all these visits is given in appendix III and further details, including lists of places visited, are available in the press releases issued in relation to each visit, which may be accessed via the Subcommittee's website ([www2.ohchr.org/english/bodies/cat/opcat/index.htm](http://www2.ohchr.org/english/bodies/cat/opcat/index.htm)).

### **D. Follow-up activities, including publication of the Subcommittee's reports by States parties**

18. Five Subcommittee visit reports have been made public following a request from the State party (Honduras, Maldives, Mexico, Paraguay and Sweden), as provided for under article 16, paragraph 2, of the Optional Protocol, including two in the reporting period: Mexico and Paraguay (in May 2010). Two follow-up replies (Sweden and Paraguay) have also been made public at the request of the State party, including Paraguay during the reporting period (in June 2010). Also during the reporting period, three visit reports and one follow-up submission have been published, adding considerably to the momentum behind the practice of authorizing the publication of reports, which the Subcommittee considers to be a positive development.

19. In conformity with past practice, the Subcommittee established a follow-up procedure to its visit reports. State parties are requested to provide within a six-month deadline a response giving a full account of actions taken to implement the recommendations contained in the visit report. At the time of the submission of the present report, 3 out of 11 States parties visited by the Subcommittee had provided follow-up replies: Mauritius in December 2008; Sweden in January 2009; and Paraguay in March 2010. Replies from Mauritius remain confidential, while the follow-up submissions from Sweden and Paraguay have been made public at the request of those States parties. The Subcommittee has provided its own follow-up observations and recommendations to the submissions of Mauritius and Sweden, while a follow-up visit was undertaken to Paraguay,

with a follow-up visit report transmitted to the State party. Reminders were also sent to States parties that have not yet provided follow-up replies to the Subcommittee visit reports. It should be noted that the six-month deadline for submission of follow-up replies had not expired for Lebanon, Bolivia and Liberia during the reporting period. The substantive aspects of the follow-up process are governed by the rule of confidentiality, excepting that the State party may authorize the publication of its follow-up reply.

## **E. Developments concerning the establishment of national preventive mechanisms**

20. Out of 57 States parties, 27 have officially notified the Subcommittee of the designation of their NPMs. Information concerning those NPMs that have been designated by States parties are listed on the Subcommittee's website (<http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm>).

21. Six official notifications of designation were transmitted to the Subcommittee in 2010: Denmark (in connection with the Ombudsperson for Greenland), Germany (in connection with the Joint Commission of the *Laender*), Mali, Mauritius, Spain and Switzerland. It should be noted that, in the cases of Chile and Uruguay, NPMs that had been officially designated had not yet commenced their functioning as an NPM.

22. Thus, 30 States parties have not yet notified the designation of NPMs to the Subcommittee. The one-year deadline for the establishment of an NPM as provided for under article 17 of the Optional Protocol has not yet expired for seven States parties (Burkina Faso, Democratic Republic of the Congo, Ecuador, Gabon, Luxembourg, Netherlands and Togo). Furthermore, three States parties (Kazakhstan, Montenegro and Romania) have made a declaration under article 24 of the Optional Protocol permitting them to delay designation for up to an additional two years.

23. Twenty States parties have therefore not complied with their obligation under article 17, which is a matter of major concern to the Subcommittee. It should, however, be noted that the Subcommittee believes that three States parties (Armenia, the former Yugoslav Republic of Macedonia and Nigeria) have designated NPMs, but has not yet been officially notified thereof.

24. The Subcommittee has continued its dialogue with all States parties which had not yet designated their NPM, encouraging them to communicate with the Subcommittee regarding their progress. Such States parties were requested to provide detailed information concerning their proposed NPM (such as legal mandate, composition, size, expertise, financial and human resources at their disposal, and frequency of visits). Seven States parties have provided written material on all or some of these matters.<sup>4</sup>

25. The Subcommittee has also established and maintained contacts with NPMs themselves, in fulfilment of its mandate under article 11 (b) of the Optional Protocol. At its eleventh session, the Subcommittee held a meeting with the Albanian NPM in order to exchange information and experiences and discuss areas for future cooperation. At its twelfth session, the Subcommittee held similar meetings with the German, Swiss and Mexican NPMs. The Subcommittee is also pleased that 10 NPMs have transmitted their annual reports during 2010, and these have been posted on its website.

26. During the course of the reporting period, Subcommittee members accepted invitations to be involved in a number of meetings at the national, regional and international

---

<sup>4</sup> For information thereon, see the Subcommittee's website.

levels, concerning the designation, establishment and development of NPMs. Those activities were organized with the support of civil society organizations (in particular the Association for the Prevention of Torture (APT), the Rehabilitation and Research Centre for Torture Victims and the OPCAT Contact Group), NPMs, regional bodies such as the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Council of Europe, the European Union and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (ODHIR-OSCE), as well as international organizations such as the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Development Programme and the International Coordination Committee of National Human Rights Institutions. These events included:

- (a) April 2010: Regional seminar held in Dakar, Senegal on the Optional Protocol in Africa organized by APT and Amnesty International in collaboration with the African Commission on Human and Peoples' Rights;
- (b) May 2010: Presentation of the Spanish NPM organized by the Spanish Ombudsman;
- (c) May 2010: Conference on Strengthening the Ombudsperson Institution as the NPM in Azerbaijan organized by ODHIR-OSCE;
- (d) May 2010: A series of activities aimed at promoting the implementation of the Optional Protocol in Brazil organized by APT;
- (e) June 2010: Seminar on the NPM in Uruguay organized by APT, the Inter-American Commission on Human Rights and OHCHR;
- (f) September 2010: Workshops on NPMs in Honduras and Guatemala organized by the Rehabilitation and Research Centre for Torture Victims;
- (g) October 2010: Workshop on NPM establishment in Liberia organized by the RCT;
- (h) October 2010: Regional round table on NPMs under the Optional Protocol – implementation challenges and the role of national human rights institutions, organized in Croatia by the United Nations Development Programme;
- (i) October 2010: Seminar on the Role of national human rights institutions and the Prevention of Torture in East Africa, organized in Kenya by the University of Bristol;
- (j) November 2010: Workshop on Local Preventive Mechanisms, organized in Argentina by the APT.

27. In the framework of the European NPM Project of the Council of Europe/European Union, with APT as implementing partner, the Subcommittee has participated in three thematic workshops: (a) on the role of NPMs in preventing torture and other forms of ill-treatment in psychiatric institutions and social care homes in Italy in March 2010; (b) on rights related to prevention of torture in Albania in June 2010; and (c) on the preparation of visits in Armenia in October 2010; and three on-site visits and exchange of experiences: (a) with the Polish NPM in May 2010; (b) the Georgian NPM in June–July 2010 and the Spanish NPM in November 2010.

28. The Subcommittee would like to take this opportunity to thank the organizers of these events for the invitations to participate which were extended to them.

## F. Contributions to the Special Fund under article 26 of the Optional Protocol

29. As at 31 December 2010, the following contributions to the Special Fund established by the Optional Protocol had been received: US\$ 20,271.52 from the Czech Republic; US\$ 5,000 from the Maldives, and US\$ 82,266.30 from Spain. The table below shows the contributions currently available.

### Contributions received from 2008–2010

<i>Donors</i>	<i>Amount (in United States dollars)</i>	<i>Date of receipt</i>
Czech Republic	10 000.00	16 November 2009
Czech Republic	10 271.52	30 December 2010
Maldives	5 000.00	27 May 2008
Spain	25 906.74	16 December 2008
Spain	29 585.80	10 November 2009
Spain	26 773.76	29 December 2010

30. At the end of the current reporting period, the United Kingdom of Great Britain and Northern Ireland pledged to support the Special Fund established by the Optional Protocol.

31. The Subcommittee wishes to express its gratitude to these States for their generous contributions.

32. In accordance with article 26, paragraph 1, of the Optional Protocol, the purpose of the Special Fund is to help finance the implementation of Subcommittee recommendations, as well as educational programmes of the national preventive mechanisms. The Subcommittee is convinced that the Special Fund has the potential to be a valuable tool in furthering prevention and it is therefore pleased that a scheme to operationalize the fund has been agreed upon and action will be taken thereon within the forthcoming reporting period. This will be an interim scheme administered by OHCHR and will consider applications relating to recommendations contained in published Subcommittee visit reports concerning particular thematic issues, these to be determined by the Subcommittee in plenary. When finalized, full details of the scheme will be publicized and brought to the particular attention of those States able to benefit therefrom. The Subcommittee very much hopes that the initiation of this scheme will encourage further donations to the Special Fund, in order to allow it to help States implement the Subcommittee's recommendations on prevention.

## III. Engagement with other bodies in the field of torture prevention

### A. International cooperation

#### 1. Cooperation with other United Nations bodies

33. As provided for under the Optional Protocol, the Subcommittee Chairperson presented the third Subcommittee annual report to the Committee against Torture during a plenary meeting held on 11 May 2010. In addition, the Subcommittee and the Committee took advantage of their simultaneous sessions in November 2010 to meet in camera to discuss a range of issues of mutual concern, and also to meet with the newly appointed

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez.

34. In conformity with General Assembly resolution 64/153 of 18 December 2009, in October 2010, the Subcommittee Chairperson presented the third Subcommittee annual report to the General Assembly at its sixty-fifth session in New York. This event also provided an opportunity for an exchange of information with the Chairperson of the Committee against Torture who also addressed the General Assembly at that session.

35. The Subcommittee has continued to be actively involved in the Inter-Committee Meetings (eleventh Inter-Committee Meeting from 28 to 30 June 2010 in Geneva) and Chairpersons Meetings of United Nations human rights treaty bodies (from 1 to 2 July 2010 in Brussels). Within that framework, the Subcommittee also contributed to the joint meeting with special procedure mandate holders. In response to the High Commissioner's call to strengthen the treaty body system and as a follow-up to previous expert meetings dedicated to the work of treaty bodies, the Subcommittee participated in an expert seminar held in Poznan, Poland, in September 2010 (organized by the University of Adam Mickiewicz and the Polish Ministry of Foreign Affairs). It also attended several OHCHR activities, such as the international workshop on "Enhancing cooperation between regional and international mechanisms for the promotion and protection of human rights" and the twenty-third session of the International Coordination Committee of National Human Rights Institutions respectively held in March and May 2010 in Geneva.

36. The Subcommittee continued its cooperation with the United Nations High Commissioner for Refugees and the World Health Organization and initiated cooperation with the United Nations Office on Drugs and Crime (UNODC), inter alia through the Subcommittee's participation to a workshop on "Strategies and best practices against overcrowding in correctional facilities" within the framework of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice held in Brazil in April 2010.

## **2. Cooperation with other relevant international organizations**

37. Based on the experience of previous visits, the Subcommittee refined the modalities of its cooperation and coordination with the International Committee of the Red Cross (ICRC). In 2010, the Subcommittee held a series of meetings with representatives of ICRC in Geneva within the context of preparations of and follow-up to Subcommittee visits and as a process designed to identify lessons learned, with a view to maximizing its cooperation and coordination. As the Optional Protocol provides, ICRC and the Subcommittee are key partners in the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

## **B. Regional cooperation**

38. Through the designation of Subcommittee focal points for the liaison and coordination with regional bodies, the Subcommittee formalized and strengthened its cooperation with other relevant partners in the field of torture prevention, such the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Council of Europe, the European Union and the ODHIR-OSCE. In addition to ongoing activities with those regional bodies in 2010 (see chap. II, sect. E.), during its June 2010 session the Subcommittee held a meeting with the ODHIR-OSCE in order to further exchange information and experiences and discuss potential areas of cooperation.

### **C. Civil society**

39. The Subcommittee has continued to benefit from the essential support provided by civil society actors, both the OPCAT Contact Group (present during the Subcommittee's November session) and academic institutions (in particular the Universities of Bristol and Padua, and the Arizona State University, the latter through its Centre for Law and Global Affairs at the Sandra Day O'Connor College of Law), both for the promotion of the Optional Protocol and its ratification, and for Subcommittee activities.

## **IV. Issues of note arising from the work of the Subcommittee during the period under review**

### **A. Article 24 of the Optional Protocol**

40. In the third annual report it was noted that the Office of Legal Affairs had proposed that the discrepancy between differing language versions of article 24 of the Optional Protocol be addressed by rectifying the Spanish and Russian texts to provide that States parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the Optional Protocol "upon ratification", rather than "after ratification". This change entered into force, with retroactive effect, as of 29 April 2010.

### **B. The development of the Subcommittee's working practices**

41. Throughout the course of the year the Subcommittee reflected on its working practices. It now has the benefit of four years of experience on which to draw, but is also conscious that its expansion from 10 to 25 members poses both challenges for the continuation of its existing modus operandi and opportunities to develop additional forms of activities in the fulfilment of its mandate. As has been made clear in previous annual reports, the Subcommittee has three primary functions, set out in article 11 of the Optional Protocol. These are to: (a) conduct visits to places of detention in accordance with the provisions of the Optional Protocol; (b) exercise a variety of functions in relation to NPMs; and (c) cooperate more generally with other relevant mechanisms working for the prevention of torture.

42. These are open-ended functions and it is clear to the Subcommittee that there is no natural limit to the total amount of work which it could be expected to undertake in the fulfilment thereof. In practice, the limits that exist are those imposed by constraints resulting from a shortage of personnel (both within the Subcommittee and within its secretariat), time and money. The Subcommittee recognizes that it is in no different a position to any other bodies operating within the framework of OHCHR in facing these difficulties, but encourages OHCHR to address these shortages to the best of its ability, bearing in mind that its expansion from 10 to 25 members is intended to facilitate an increased overall level of activity. For its part, the Subcommittee recognizes that it must seek to make the most effective and efficient use of the resources available to it.

43. So far, the Subcommittee has focused its resources on conducting visits to States parties lasting on average between 8 and 10 days, which have included meetings with ministers and senior officials, NPMs (where established) and civil society, and conducting unannounced visits to places of detention. The Subcommittee continues to believe that visits of this nature reflect best practice and will continue to conduct such visits as a part of its regular programme of activities.

44. The Subcommittee has not so far been able to devote as much attention as it would have wished to the second and third elements of its mandate. It regrets that it has not had the opportunity to engage more quickly with States in the early stages of their participation in the system of the Optional Protocol, and in particular during the process of establishing their NPMs. Individual members have undertaken a great deal of NPM-related work at the invitation of other regional and national bodies, and the Subcommittee is most grateful to those who have supported and facilitated it. One lesson learned from this work is that contact during the period leading up to the designation of an NPM and in its early days of operation is most often wanted by both States parties and NPMs and is likely to have the greatest positive impact on the construction of an NPM system which conforms to the provisions of the Optional Protocol.

45. The Subcommittee is tending towards a model by which it would seek to visit States parties as soon as possible following their ratification of the Optional Protocol, in order to offer advice and assistance regarding the establishment of its NPM. Such visits, which would be undertaken as an addition to its current regular programme, need not necessarily include visits to places of detention and so could be of a shorter duration. The Subcommittee also believes that the operation of an effective NPM could be a factor to be taken into account when determining whether to undertake a longer visit.

### **C. Reflections on the role of confidentiality in the work of the Subcommittee**

46. Article 2, paragraph 3, of the Optional Protocol provides, *inter alia*, that the Subcommittee “shall be guided by the principles of confidentiality”. Confidentiality lies at the heart of the philosophy underlying the Optional Protocol, which is that it is possible to engage in a constructive dialogue on matters as sensitive as those relating to torture, cruel and inhuman or degrading treatment or punishment, through the establishment of a relationship founded upon mutual trust, and that confidentiality provides a means of building that relationship. The Subcommittee scrupulously observes the principle of confidentiality in order to help foster such a spirit of constructive engagement. It is the belief of the Subcommittee that the confidentiality of the person and of personal data must always be maintained.

47. As is clear from the Optional Protocol itself, however, confidentiality is a means to an end and may be dispensed with by the State, should it wish to do so, by authorizing the publication of Subcommittee reports and recommendations. While recognizing and respecting the right of States to maintain the confidentiality of reports, the Subcommittee welcomes their publication as a tangible sign of the maturing relationship between it and the State party in their common pursuit of prevention. The Subcommittee believes that the publication of reports significantly enhances their preventive impact by making them available to a wider audience who may then be better placed to share in the task of prevention by either encouraging or facilitating the consideration and implementation of the recommendations that the reports contain. Moreover, the Subcommittee is directly empowered under the Optional Protocol to release, in confidence, elements of its visit reports to the NPM of a State party, should it consider this appropriate, and has done so.

48. Confidentiality is attached to the information obtained during the course of a visit and the reports and recommendations transmitted to a State party thereafter unless and until it is lifted by the State concerned, or through the issuance of a public statement as provided for in the Optional Protocol. It follows therefrom that, while fully respecting the principal of confidentiality as provided for in the Optional Protocol, the Subcommittee does not consider either its activities or the approaches that it takes to its work to be confidential as such, and welcomes the opportunity to make them known as widely known as possible. In



that context, in 2010, the Subcommittee decided to publish its rules of procedure and its guidelines in relation to visits to States parties.

## **D. Issues arising from visits**

49. The Subcommittee has reflected on the visits it has conducted during the reporting period and believes it worth highlighting a number of general issues which it has encountered.

### **1. Practical aspects of cooperation during visits, including access to persons deprived of their liberty, to places of detention, records, etc.**

50. If the Subcommittee is to be able to undertake its visiting mandate effectively and efficiently it must have the full cooperation of the authorities. In particular, it is important that the authorities do all they can to ensure that those responsible for the day-to-day running of places of detention are made fully aware of the powers of the Subcommittee under the Optional Protocol in advance of its visits. The Subcommittee recognizes that it is inevitable that some short delay will usually be encountered when it enters a place of detention but believes that this should be measured in minutes, rather than in tens of minutes. It should not be necessary for the Subcommittee to have to explain its powers and mandate every time it arrives at a place of detention. Nor should it be necessary for those in charge of places of detention to refer to higher authorities before facilitating the visit.

51. The Subcommittee still runs into problems concerning access to persons deprived of their liberty, interviewing detainees in private, having access to registers, moving freely within places of detention and having access to any room, place, cupboard, etc. It is difficult to understand why this is the case, given that its mandate is so clearly set out in the Optional Protocol and explained at length to States prior to a visit. In this regard, the Subcommittee has found it immensely helpful when some of its members have been able to go to a country in advance of a visit for informal briefings. These have invariably assisted in identifying and resolving possible difficulties or misunderstandings which, in turn, have made the visits themselves more productive. The Subcommittee would like to undertake such activities prior to all visits if it were possible to do so.

### **2. Overcrowding and pretrial detention**

52. It is evident to the Subcommittee that the overuse — and misuse — of pretrial detention is a general problem that needs to be tackled as a matter of priority. It creates or contributes to the problem of endemic overcrowding, which is known to be rife in many States parties. The Subcommittee continues to be bemused by the complacency which seems to surround the routine use of pretrial detention for prolonged periods and the resulting chronic overcrowding, and all its associated problems. It is no secret that this is a problem in many States party to the Optional Protocol. It ought not to require a visit by the Subcommittee (or by its NPM) for States parties to begin the process of addressing these problems, as they are in any case bound to do as a consequence of their pre-existing human rights commitments. Rather than wait for the Subcommittee to come and recommend the obvious — such as, that the use of pretrial detention be used as the last resort, and only for the most serious offences or where there are serious risks that can only be mitigated by the use of pretrial detention — there is no reason why States parties should not embark on such strategies immediately, thus giving life to their obligation to prevent torture.

### **3. Making safeguards real**

53. Likewise, the Subcommittee continues to wonder why States parties should think it sufficient to have in place laws and procedures which provide for preventive safeguards but

which are manifestly not respected in practice. Safeguards can only be safeguards if they are actually used. So, for example, the right of access to a lawyer or to a doctor is virtually meaningless if there are no lawyers or doctors to which access might be had. It is simply not enough to provide for safeguards on paper only. It is necessary to ensure that there are systems in place to make those safeguards real. The Subcommittee is well aware of the disparities between law and practice in these areas and during its visits it will continue to probe the extent to which the preventive safeguards for which it argues are actually enjoyed in practice.

#### **4. “Normalizing” the unacceptable**

54. The Subcommittee cannot help notice that there is a tendency among some States parties to become inured to conditions and practices which they know to be unacceptable, but which they have come to accept as normal. The Subcommittee thinks it worth emphasizing that just because something is normal within a criminal justice or detention system does not make it right and that it is necessary to challenge such complacency wherever it is found. The Subcommittee understands and accepts that it is necessary to bear in mind the more general situation which is to be found within a given society when determining the precise parameters of provision within its systems of detention. Nevertheless, the Subcommittee does not believe that there can be any excuse for not treating persons deprived of their liberty in accordance with the basic standards of decency as generally reflected in international standards and according them, in practice, the basic guarantees for which the rule of law provides.

#### **5. The Subcommittee and cases concerning individuals (including reprisals)**

55. The Optional Protocol does not establish a “complaints mechanism”, nor are the preventive visits provided for thereunder intended to offer opportunities to investigate, examine and address the situation of particular individuals. The Subcommittee examines the treatment of persons deprived of their liberty in order to inform its general recommendations to the State party on how best to prevent torture and ill-treatment. Although it draws on individual cases of ill-treatment as examples of problems which need to be addressed, it does not seek to provide a remedy for those particular cases – although obviously the Subcommittee hopes and expects that many of the cases of individual mistreatment which it has observed will de facto be mitigated or addressed through the implementation of its generic recommendations.

56. Nevertheless, the Subcommittee is anxious that States parties should fully respect their obligation under the Optional Protocol to ensure that those with whom it meets and speaks during the course of its visits are not disadvantaged as a result. The Subcommittee is well aware that many of the detainees who choose to speak with it are concerned that they will suffer some form of reprisal and is continuing to reflect on how best to address this issue. Early follow-up visits by NPMs and/or by civil society to those places of detention visited by the Subcommittee may offer a potential safeguard in situations of particular concern. The Subcommittee would welcome a debate on this important issue.

#### **6. Prisoner self-governance systems**

57. The Subcommittee continues to encounter situations in which the day-to-day life of closed institutions is very much in the hands of detainees themselves. Sometimes this is the result of neglect, sometimes it is a matter of officially recognized policy. It is axiomatic that the State party remains responsible at all times for the safety and well-being of all detainees and it is unacceptable for there to be sections of institutions which are not under the actual and effective control of the official staff. At the same time, the Subcommittee is aware that some forms of prisoner self-governance systems can play a positive role in improving the

day-to-day experience within closed institutions. However, the Subcommittee is also aware of the dangers inherent in such systems and is of the view that there must always be effective safeguards to ensure that such systems of internal self-management do not work to the detriment of vulnerable prisoners, or are used as means of coercion or extortion. The Subcommittee is aware that such self-governance systems may themselves be connected to or influenced by more general problems of corruption within the criminal justice system, which must also be addressed. In addition, the authorities must ensure that all inmates are treated equally and that any advantages enjoyed by those exercising such functions do not exceed what is reasonably necessary to enable them to perform their recognized and legitimate functions. If such systems do exist, they should be officially recognized, with clear and transparent terms of reference and criteria for the selection of those exercising positions of internal responsibility. Such persons should be closely supervised. In no circumstances should such persons be able to control access to the authorities responsible for the places or detention, including access to medical staff or to complaints mechanisms, or to exercise any disciplinary powers over fellow inmates.

#### **E. Publication of Subcommittee visit reports and dialogue with States parties**

58. As has already been noted, States parties have now authorized the publication of five visit reports and one follow-up reply. Given that three reports have only been relatively recently transmitted, this suggests that there is a welcome trend towards publication. Publication is not, however, an end itself. Rather, it is an important enhancement to the process of dialogue and engagement, allowing the Subcommittee's specific recommendations to be more widely known. The Subcommittee is concerned that follow-up replies to visit reports (published or not) have either not been submitted within the time limit requested or, in some instances, have not been submitted at all. Whereas the former situation delays substantive dialogue on the implementation of recommendations, in the latter situation the focus of dialogue tends to become more focused on the question of when the reply might be received rather than measures of implementation. The Subcommittee therefore urges States parties to submit replies within the time frames requested, so that the dialogue on implementation can commence.

#### **F. The Subcommittee's website**

59. The Subcommittee's website has been mentioned frequently throughout this report. The Subcommittee would, however, like to draw particular attention to the rich sources of information that it contains and those that may easily be accessed through it. For example, it includes copies of relevant correspondence between the Subcommittee and States parties concerning the designation of NPMs. It also includes links to the websites of various national NPMs and copies of NPM annual reports which have been transmitted to the Subcommittee. It also contains links to excellent websites run by NGOs and others, containing materials related to the Optional Protocol. The Subcommittee is keen to see the further expansion of its website and will actively explore the possibilities of using it to facilitate the flow of information concerning the work of the Subcommittee and NPMs.

#### **G. The obligation to establish national preventive mechanisms**

60. Unless a declaration was made under article 24 at the time of ratification (see chap. II, sect. E above), all States parties to the Optional Protocol are obliged to designate their NPM within one year of the Optional Protocol's entry into force. The Subcommittee is

aware that the establishment of an NPM is not always easy and recognizes that it is better that it be done well than that it be done poorly in haste. Nevertheless, the Subcommittee believes that establishing an Optional Protocol-compliant NPM is a vital component of the preventive system and it is concerned that a considerable number of States parties remain in breach of this obligation.

61. The Subcommittee is able to offer advice and assistance on the establishment of an NPM, and believes that States parties should seek such advice and assistance at the earliest opportunity in order to ensure that they comply with their obligations under the Optional Protocol in this regard. To assist in this process, the Subcommittee has revised its initial guidance regarding the establishment of NPMs and this is set out in chapter V of this report.

## **H. The forms that national preventive mechanisms may take**

62. The Subcommittee is frequently asked if there is a preferred model for an NPM to take. The answer is that there is not. The form and structure of the NPM is likely to reflect a variety of factors which are particular to the country concerned, and it is not for the Subcommittee to say in the abstract what may or may not be appropriate. All NPMs must of course be independent. Beyond this, the Subcommittee looks at NPMs from a functional perspective, and recognizes that just because one model works well in one country does not mean it will work well in another. What is important is that the model adopted works well in its country of operation. This is why the Subcommittee does not formally “assess” or “accredit” NPMs as being in compliance with the criteria set forth in the Protocol. Rather, the Subcommittee works with designated NPMs in order to assist them to better operate in accordance with the letter and the spirit of the Optional Protocol.

## **V. Substantive issues**

### **A. Guidelines on national preventive mechanisms**

63. The Optional Protocol provides considerable, detailed guidance concerning the establishment of a national preventive mechanism (NPM), including its mandate and powers. The most relevant of these provisions are articles 3, 4, 17–23, 29 and 35, although other provisions of the Optional Protocol are also of importance for NPMs. It is axiomatic that all NPMs must be structured in a manner which fully reflects these provisions.

64. It is the responsibility of the State to ensure that it has in place an NPM which complies with the requirements of the Optional Protocol. For its part, the Subcommittee works with those bodies which it has been informed have been designated by the State as its NPM. Whilst the Subcommittee does not, nor does it intend to formally assess the extent to which NPMs conform to the Optional Protocol’s requirements, it does consider it a vital part of its role to advise and assist States and NPMs in fulfilling their obligations under the Optional Protocol. To this end, the Subcommittee has previously set out “preliminary guidelines” concerning the ongoing development of NPMs in its first annual report. It has had the occasion to further amplify its thinking in subsequent annual reports and also in a number of recommendations set out in its visit reports. In the light of the experience it has gained, the Subcommittee believes it would be useful to issue a revised set of guidelines on national preventive mechanisms which reflect and respond to some of the questions and issues which have arisen in practice.

65. These guidelines do not seek to repeat what is set out in the text of the Optional Protocol, but to add further clarity regarding the Subcommittee’s expectations regarding the establishment and operation of NPMs. Section 1 sets out a number of basic principles,

which should inform all aspects of the work of an NPM. This is followed in section 2 by guidelines addressed primarily to States and concerning a number of issues relating to the establishment of NPMs, and in section 3 by guidelines to both the State and to the NPM itself concerning the practical functioning of an NPM.

66. As it gains further experience, the Subcommittee will seek to add additional sections to these guidelines, addressing particular aspects of the work of NPMs in greater detail.

## 1. Basic principles

67. The NPM should complement rather than replace existing systems of oversight and its establishment should not preclude the creation or operation of other such complementary systems.

68. The mandate and powers of the NPM should be in accordance with the provisions of the Optional Protocol.

69. The mandate and powers of the NPM should be clearly set out in a constitutional or legislative text.

70. The operational independence of the NPM should be guaranteed.

71. The relevant legislation should specify the period of office of the member/s of the NPM and any grounds for their dismissal. Periods of office, which may be renewable, should be sufficient to foster the independent functioning of the NPM.

72. The visiting mandate of the NPM should extend to all places of deprivation of liberty, as set out in article 4 of the Optional Protocol.

73. The necessary resources should be provided to permit the effective operation of the NPM in accordance with the requirements of the Optional Protocol.

74. The NPM should enjoy complete financial and operational autonomy when carrying out its functions under the Optional Protocol.

75. The State authorities and the NPM should enter into a follow-up process with the NPM with a view to the implementation of any recommendations which the NPM may make.

76. Those who engage or with whom the NPM engages in the fulfilment of its functions under the Optional Protocol should not be subject to any form of sanction, reprisal or other disability as result of having done so.

77. The effective operation of the NPM is a continuing obligation. The effectiveness of the NPM should be subject to regular appraisal by both the State and the NPM itself, taking into account the views of the Subcommittee, with a view to its being reinforced and strengthened as and when necessary.

## 2. Basic issues regarding the establishment of an NPM

### (a) *The identification or creation of the NPM*

78. The NPM should be identified by an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society. This should also apply to the process for the selection and appointment of members of the NPM, which should be in accordance with published criteria.

79. Bearing in mind the requirements of article 18, paragraphs 1 and 2, of the Optional Protocol, members of the NPM should collectively have the expertise and experience necessary for its effective functioning.

80. The State should ensure the independence of the NPM by not appointing to it members who hold positions which could raise questions of conflicts of interest.

81. Members of NPMs should likewise ensure that they do not hold or acquire positions which raise questions of conflicts of interest.

82. Recalling the requirements of articles 18, paragraphs 1 and 2, of the Optional Protocol, the NPM should ensure that its staff have between them the diversity of background, capabilities and professional knowledge necessary to enable it to properly fulfil its NPM mandate. This should include, inter alia, relevant legal and health-care expertise.

(b) *Designation and notification*

83. The NPM should be established within one year of the entry into force of for the State concerned, unless at the time of ratification a declaration has been made in accordance with article 24 of the Optional Protocol.

84. The body designated as the NPM should be publicly promulgated as such at the national level.

85. The State should notify the Subcommittee promptly of the body which has been designated as the NPM.

**3. Basic issues regarding the operation of an NPM**

(a) *Points for States*

86. The State should allow the NPM to visit all, and any suspected places of deprivation of liberty, as set out in articles 4 and 29 of the Optional Protocol, which are within its jurisdiction. For these purposes, the jurisdiction of the State extends to all those places over which it exercises effective control.

87. The State should ensure that the NPM is able to carry out visits in the manner and with the frequency that the NPM itself decides. This includes the ability to conduct private interviews with those deprived of liberty and the right to carry out unannounced visits at all times to all places of deprivation of liberty, in accordance with the provisions of the Optional Protocol.

88. The State should ensure that both the members of the NPM and its staff enjoy such privileges and immunities as are necessary for the independent exercise of their functions.

89. The State should not order, apply, permit or tolerate any sanction, reprisal or other disability to be suffered by any person or organization for having communicated with the NPM or for having provided the NPM with any information, irrespective of its accuracy, and no such person or organization should be prejudiced in any way.

90. The State should inform the NPM of any draft legislation that may be under consideration which is relevant to its mandate and allow the NPM to make proposals or observations on any existing or draft policy or legislation. The State should take into consideration any proposals or observations on such legislation received from the NPM.

91. The State should publish and widely disseminate the annual reports of the NPM. It should also ensure that it is presented to, and discussed in, the national legislative assembly or Parliament. The annual reports of the NPM should also be transmitted to the Subcommittee, which will arrange for their publication on its website.

*(b) Points for NPMs*

92. The NPM should carry out all aspects of its mandate in a manner which avoids actual or perceived conflicts of interest.
93. The NPM, its members and its staff should be required to regularly review their working methods and undertake training in order to enhance their ability to exercise their responsibilities under the Optional Protocol.
94. Where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget.
95. The NPM should establish a work plan/programme which, over time, encompasses visits to all, or any, suspected, places of deprivation of liberty, as set out in articles 4 and 29 of the Optional Protocol, which are within the jurisdiction of the State. For these purposes, the jurisdiction of the State extends to all those places over which it exercises effective control.
96. The NPM should plan its work and its use of resources in such a way as to ensure that places of deprivation of liberty are visited in a manner and with sufficient frequency to make an effective contribution to the prevention torture and other cruel, inhuman or degrading treatment or punishment.
97. The NPM should make proposals and observations to the relevant State authorities regarding existing and draft policy or legislation which it considers to be relevant to its mandate.
98. The NPM should produce reports following its visits as well as produce an annual report and any other forms of report which it deems necessary. When appropriate, reports should contain recommendations addressed to the relevant authorities. The recommendations of the NPM should take account of the relevant norms of the United Nations in the field of the prevention of torture and other ill-treatment, including the comments and recommendations of the Subcommittee.
99. The NPM should ensure that any confidential information acquired in the course of its work is fully protected.
100. The NPM should ensure that it has the capacity to, and does, engage in a meaningful process of dialogue with the State concerning the implementation of its recommendations. It should also actively seek to follow-up on the implementation of any recommendations which the Subcommittee has made in relation to the country in question, liaising with the Subcommittee when doing so.
101. The NPM should seek to establish and maintain contacts with other NPMs with a view to sharing experience and reinforcing its effectiveness.
102. The NPM should seek to establish and maintain contact with the Subcommittee, as provided for and for the purposes set out in the Optional Protocol.

**B. The approach of the Subcommittee to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol**

103. It is beyond doubt that States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Optional Protocol”) are under a legal obligation to “prevent” torture and other cruel, inhuman or degrading treatment or punishment. Article 2, paragraph 1, of the Convention

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment — to which all States parties to the Optional Protocol must also be parties — provides that, “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”. Article 16, paragraph 1, of the Convention extends this obligation, providing that, “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture ...”. As explained by the Committee against Torture in its general comment No. 2, “article 2, paragraph 1, obliges each State party to take actions that will reinforce the prohibition against torture”.<sup>5</sup> Whilst the obligation to prevent torture and ill-treatment buttresses the prohibition of torture, it also remains an obligation in its own right and a failure to take appropriate preventive measures which were within its power could engage the international responsibility of the State, should torture occur in circumstances where the State would not otherwise have been responsible.

104. Drawing attention to article 2 of the Convention, the International Court of Justice has observed that “the content of the duty to prevent varies from one instrument to another, according to the wording of the relevant provisions, and depending on the nature of the acts to be prevented”.<sup>6</sup> The Committee has said that the duty to prevent is “wide-ranging”<sup>7</sup> and has indicated that the content of that duty is not static since “the Committee’s understanding of and recommendations in respect of effective measures are in a process of continual evolution”<sup>8</sup> and so are “not limited to those measures contained in the subsequent articles 3 to 16”.<sup>9</sup>

105. The Subcommittee on Prevention of Torture is of the view that, as these comments suggest, it is not possible to devise a comprehensive statement of what the obligation to prevent torture and ill-treatment entails *in abstracto*. It is of course both possible and important to determine the extent to which a State has complied with its formal legal commitments as set out in international instruments and which have a preventive impact but whilst this is necessary it will rarely be sufficient to fulfil the preventive obligation: it is as much the practice as it is the content of a State’s legislative, administrative, judicial or other measures which lies at the heart of the preventive endeavour. Moreover, there is more to the prevention of torture and ill-treatment than compliance with legal commitments. In this sense, the prevention of torture and ill-treatment embraces — or should embrace — as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring. Such an approach requires not only that there be compliance with relevant international obligations and standards in both form and substance but that attention is also paid to the whole range of other factors which bear upon the experience and treatment of persons deprived of their liberty and which by their very nature will be context specific.

106. It is for this reason that the Optional Protocol seeks to strengthen the protection of persons deprived of their liberty, not by setting out additional substantive preventive obligations but in contributing to the prevention of torture by establishing, at both the international and national levels, a preventive system of regular visits and the drawing up of reports and recommendations based thereon. The purpose of such reports and recommendations is not only to bring about compliance with international obligations and

<sup>5</sup> CAT/C/GC/2, para. 2.

<sup>6</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Merits, Judgment of 26 February 2007, para. 429.

<sup>7</sup> CAT/C/GC/2, para. 3.

<sup>8</sup> *Ibid.*, para. 4.

<sup>9</sup> *Ibid.*, para. 1.



standards but to offer practical advice and suggestions as to how to reduce the likelihood or risk of torture or ill-treatment occurring and will be firmly based on, and informed by, the facts found and circumstances encountered during the visits undertaken. As a result, the Subcommittee is of the view that it is best able to contribute to prevention by expanding on its understanding of how best to fulfil its mandate under the Optional Protocol, rather than by setting out its views on what prevention may or may not require either as an abstract concept or as a matter of legal obligation. Nevertheless, there are a number of key principles which guide the Subcommittee's approach to its preventive mandate and which it believes it would be useful to articulate.

### **Guiding principles**

107. The guiding principles are the following:

(a) The prevalence of torture and ill-treatment is influenced by a broad range of factors, including the general level of enjoyment of human rights and the rule of law, levels of poverty, social exclusion, corruption, discrimination, etc. Whilst a generally high level of respect for human rights and the rule of law within a society or community does not provide a guarantee against torture and ill-treatment occurring, it offers the best prospects for effective prevention. To that end, the Subcommittee is deeply interested in the general situation within a country concerning the enjoyment of human rights and how this affects the situation of persons deprived of their liberty;

(b) In its work, the Subcommittee must engage with the broader regulatory and policy frameworks relevant to the treatment of persons deprived of their liberty and with those responsible for them. It must also be concerned with how these are translated into practice, through the various institutional arrangements which are established in order to do so, their governance and administration and how they function in practice. Thus a holistic approach to the situation must be taken, informed by, but not limited to its experience gained through its visits to particular places of detention;

(c) Prevention will include ensuring that a wide variety of procedural safeguards for those deprived of their liberty are recognized and realized in practice. These will relate to all phases of detention, from initial apprehension to final release from custody. Since the purpose of such safeguards is to reduce the likelihood or rise of torture or ill-treatment occurring, they are of relevance irrespective of whether there is any evidence of torture or ill-treatment actually taking place;

(d) Detention conditions not only raise issues of cruel, inhuman or degrading treatment or punishment but in some circumstances can also be a means of torture, if used in a manner which accords with the provisions of article 1 of the Convention. Therefore, recommendations regarding conditions of detention play a critical role in effective prevention and will touch on a wide variety of issues, including matters relating to physical conditions, the reasons for, and levels of, occupancy and the provision of, and access to, a wide range of facilities and services;

(e) Visits to States parties and to particular places of detention should be carefully prepared in advance taking into account all relevant factors, including the general legal and administrative frameworks, substantive rights, procedural and due process guarantees pertaining to detention, as well as the practical contexts in which they operate. The manner in which visits are conducted, their substantive focus and the recommendations which flow from them may vary according to such factors and in the light of the situations encountered in order to best achieve the overriding purpose of the visit, this being to maximize its preventive potential and impact;

(f) Reports and recommendations will be most effective if they are based on rigorous analysis and are factually well-grounded. In its visit reports, the Subcommittee's

recommendations should be tailored to the situations which they address in order to offer the greatest practical guidance possible. In formulating its recommendations, the Subcommittee is conscious that there is no logical limit to the range of issues that, if explored, might have a preventive impact. Nevertheless, it believes that it is appropriate to focus on those issues which, in the light both of its visit to the State party in question and its more general experience, appear to it to be most pressing, relevant and realizable;

(g) Effective domestic mechanisms of oversight, including complaints mechanisms, form an essential part of the apparatus of prevention. These mechanisms will take a variety of forms and operate at many levels. Some will be internal to the agencies involved, others will provide external scrutiny from within the apparatus of government, whilst others will provide wholly independent scrutiny, the latter to include the NPM to be established in accordance with the provisions of the Optional Protocol;

(h) Torture and ill-treatment are more easily prevented if the system of detention is open to scrutiny. NPMs, together with national human rights institutions and ombudsman's offices, play a key role in ensuring that such scrutiny takes place. This is supported and complemented by civil society which also plays an important role in ensuring transparency and accountability by monitoring places of detention, examining the treatment of detainees and by providing services to meet their needs. Further complementary scrutiny is provided by judicial oversight. In combination, the NPM, civil society and the apparatus of judicial oversight provide essential and mutually reinforcing means of prevention;

(i) There should be no exclusivity in the preventive endeavour. Prevention is a multifaceted and interdisciplinary endeavour. It must be informed by the knowledge and experience of those from a wide range of backgrounds – e.g. legal, medical, educational, religious, political, policing and the detention system;

(j) Although all those in detention form a vulnerable group, some groups suffer particular vulnerability, such as women, juveniles, members of minority groups, foreign nationals, persons with disabilities, and persons with acute medical or psychological dependencies or conditions. Expertise in relation to all such vulnerabilities is needed in order to lessen the likelihood of ill-treatment.

## **VI. Looking forward**

### **A. The enlargement of the Subcommittee's membership**

108. The Subcommittee will be welcoming 15 new members at its thirteenth session in February 2011. The enlargement of the Subcommittee will in time significantly enhance capacity to fulfil its mandate. During the past year the Subcommittee reviewed its working practices in order to ensure that they are properly systematized and that it will be able to work effectively in a larger plenary group. It has increased its use of Rapporteurs and, as reported previously, sought to streamline its systems for liaising with regional bodies and NPMs. The first task of the enlarged Subcommittee will be to get to know each other and to consider how best to utilize the enhanced range of skills and experience that it will then possess. Training of new members in the approach of the Subcommittee to its work will also be important. The Subcommittee recognizes that expansion will necessitate change, but believes that such change must be informed by its experience of working to fulfil its complex mandate within the unique institutional setting provided by the United Nations and OHCHR. The Subcommittee hopes that, in time, its increased membership will permit it to increase its level of engagement with NPMs, and for this to be conducted in accordance

with a systematic programme rather than on a responsive basis, as has tended to be the case to date.

109. The Subcommittee notes that its enlargement means that it has the human resources within its membership to undertake significantly more visits than is currently the case. However, if the Subcommittee is to be able to take full advantage of the opportunities which its expanded membership offers it is vital that there is a significant increase in its secretariat. Its existing secretariat is already struggling to cope with its demanding workload and it is simply not possible for it to service the increased level of activity which the expansion of the Subcommittee is intended to bring. The Subcommittee believes that an expansion in the size of its secretariat is an essential prerequisite for the further expansion of its work, and that a failure to do so would frustrate the object and purpose of the second sentence of article 5, paragraph 1.

## **B. Plan of work for 2011**

110. In constructing its plan of work for 2011, the Subcommittee has been conscious of the need to balance a number of completing pressures. First, there is a pressing need to take full advantage of the increased membership of the Subcommittee and to construct a programme that helps induct and integrate new members as soon as possible. Second, there is a need to expand the range of follow-up activities with those States which have already received a visit from the Subcommittee, in order to enhance the intensity and effectiveness of the preventive dialogue with them. Third, there is an ongoing and increasing need to engage with NPMs. Fourth, there is a need to establish contact as soon as possible with new States parties. Fifth, there is need to maintain a significant capacity to respond to the ever increasing number of invitation and requests for advice and assistance which are received. Sixth, there is a need to make additional contributions to the overall work of the Office of the United Nations High Commissioner for Refugees where possible. Finally, there is a need to do all of the above within the context of a constrained budget, this requiring innovation and efficiency.

111. To that end, at its twelfth session in November 2010, the Subcommittee decided that, in the course of 2011, it would conduct visits to Brazil, Mali and Ukraine.

112. As in the past, these countries have been chosen after careful reflection, taking into account the variety of factors which have been identified in this and previous annual reports, which include date of ratification/development of NPMs, geographic distribution, size and complexity of State, regional preventive monitoring in operation, and specific or urgent issues reported.

## **C. Building working relations with other bodies**

113. The Subcommittee has much formal and informal contact with other bodies at national, regional and international levels. Much is said about collaboration and sharing information, etc., to facilitate each other's work, but it remains the case that this often proves difficult to do in practice. The Subcommittee hopes that establishing a system of regional Rapporteurs will open new opportunities for deepening the level of cooperation. To that end, the Subcommittee believes it may be helpful to set out a possible template for forms of co-operative activities which it has devised to inform its thinking on how best to build such relationships.

114. The Subcommittee believes that it is helpful to distinguish between a number of general forms of cooperative activity:

(a) Promotional/Awareness-raising: as the names imply, these forms of cooperation will be at a relatively general level, typified by one-off presentations of work, in order to foster better mutual understanding of the work of the bodies in question and of the Subcommittee. Such activities ought to be encouraged where resources permit and where it has broad, strategic significance for the work of the Subcommittee;

(b) Information exchange: where bodies are working in a relevant field, it will often be useful to share information on current issues, approaches and practices to enable each body to be better informed about the work the other is doing, or issues which it faces or is seeking to tackle so as to be able to take this into account when fulfilling its own mandate;

(c) Coordination: where bodies are engaged in similar activities, either in conducting visits to places of detention or in engaging with NPMs it will be often useful to ensure that the planned activities do not conflict with each other, both practically and conceptually;

(d) Participation: this involves playing a role in the activities of a relevant body in a manner which goes beyond those more general forms of engagement set out in subparagraphs (a) and (b) above. It may, for, example, involve a commitment to an event or a process which is led by others but which is believed to be significant for the work of the Subcommittee;

(e) Collaboration: this involves partnership in devising and delivering activities on a shared basis, with joint responsibility for both its design and execution.

115. At any given time the Subcommittee is liable to be involved in a range of such forms of engagement with a variety of bodies. There may often be an element of “confidence-building” within such relationships, as experience of successful relations encourages a move from one level of cooperation to another. However, it is not a question of “progression” within a relationship: each request or opportunity for cooperation must be considered on its own merits, though the overall nature of the institutional relationship may form part of the background to particular decisions.

## Appendices

### Appendix I

#### **Summary of the mandate of the Subcommittee on Prevention of Torture**

1. The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Subcommittee) was established following the entry into force in June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It started its work in February 2007. The Subcommittee is currently composed of 10 independent experts from the States parties that have ratified the Optional Protocol. As of January 2011, the number of independent experts will increase to 25, in accordance with article 5, paragraph 1, of the Optional Protocol.
2. The Optional Protocol mandates the Subcommittee to visit all places under the jurisdiction and control of the State party where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. The Subcommittee visits police stations, prisons (military and civilian), detention centres (pretrial detention, immigration detention, juvenile justice establishments, etc.), mental health and social care institutions, and any other places where people are or may be deprived of their liberty. The Subcommittee has a comprehensive preventive approach. During its visits, it examines the situation of persons deprived of their liberty, the prison system and other public agencies with detention authority with the aim of identifying gaps in the protection of the persons concerned and of making recommendations to the State party, which are intended to eliminate or reduce to the minimum the possibilities of torture or ill-treatment. The Subcommittee does not provide legal advice or assist in litigation and does not provide direct financial assistance. Under the Optional Protocol, the Subcommittee has unrestricted access to all places of detention, their installations and facilities and to all relevant information relating to the treatment and conditions of detention of persons deprived of their liberty. The Subcommittee must also be granted access to have private interviews with the persons deprived of their liberty, without witnesses, and to any other person who in the Subcommittee's view may supply relevant information. The States parties undertake to ensure that there are no sanctions or reprisals for providing information to Subcommittee members.
3. Furthermore, the Optional Protocol requires States parties to set up independent national preventive mechanisms (NPMs), which are national bodies mandated to examine the treatment of people in detention, make recommendations to Government authorities to strengthen protection against torture and comment on existing or proposed legislation. The Subcommittee is mandated under article 11, paragraph 1 (b), of the Optional Protocol to advise on and assist both States parties with the development and functioning of NPMs and the NPMs themselves to reinforce their powers, independence and capacities; and about ways to strengthen the protection of persons deprived of their liberty.
4. As provided for under article 11, paragraph 1 (c), of the Optional Protocol, the Subcommittee shall cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

5. The Subcommittee is guided by the core principles of confidentiality, impartiality, non-selectivity, universality and objectivity. The Optional Protocol is based on cooperation between the Subcommittee and the States parties. During its visits, the Subcommittee members meet with State officials, NPMs, representatives of national human rights institutions, non-governmental organizations and any other person who can provide information relevant to the mandate.

6. The Subcommittee communicates its recommendations and observations confidentially to the State party, and if necessary, to the NPM. The Subcommittee will publish the report, together with comments from the State party, whenever requested to do so by the State party. However, if the State party makes part of the report public, the Subcommittee may publish all or part of the report. Moreover, if a State party refuses to cooperate or fails to take steps to improve the situation in light of the Subcommittee's recommendations, the Subcommittee may request the Committee against Torture to make a public statement or to publish the Subcommittee report (Optional Protocol, art. 16, (para. 4)).

## Appendix II

### Members of the Subcommittee on Prevention of Torture

#### A. Composition of the Subcommittee for the present reporting period

<i>Name of member</i>	<i>Expiration of term</i>
Mr. Mario Luis Coriolano	31 December 2012
Ms. Marija Definis-Gojanovic	31 December 2010
Mr. Malcolm Evans	31 December 2012
Mr. Emilio Ginés Santidrián	31 December 2010
Mr. Zdenek Hájek	31 December 2012
Mr. Zbigniew Lasocik	31 December 2012
Mr. Hans Draminsky Petersen	31 December 2010
Mr. Victor Manuel Rodríguez-Rescia	31 December 2012
Mr. Miguel Sarre Iguíniz	31 December 2010
Mr. Wilder Tayler Souto	31 December 2010

#### B. Bureau of the Subcommittee

Chairperson: Víctor Manuel Rodríguez-Rescia

Vice-Chairpersons: Mario Luis Coriolano and Hans Draminsky Petersen

#### C. Composition of the Subcommittee as of 1 January 2011

[See annex VI of the present report to the General Assembly.]

## Appendix III

### Information on country visit reports, publication status and follow-up as of 31 December 2010

<i>Country visited</i>	<i>Dates of the visit</i>	<i>Report sent</i>	<i>Report status</i>	<i>Response received</i>	<i>Response status</i>
Mauritius	8–18 October 2007	Yes	Confidential	Yes	Confidential
Maldives	10–17 December 2007	Yes	Public	No	-
Sweden	10–14 March 2008	Yes	Public	Yes	Public
Benin	17–26 May 2008	Yes	Confidential	No	-
Mexico	27 August–12 September 2008	Yes	Public	No	-
Paraguay	10–16 March 2009	Yes	Public	Yes	Public
Honduras	13–22 September 2009	Yes	Public	No	-
Cambodia	2–11 December 2009	Yes	Confidential	No	-
Lebanon	24 May–2 June 2010	Yes	Confidential	-	-
Bolivia (Plurinational State of)	30 August–8 September 2010	Not yet	-	-	-
Paraguay	Follow-up visit: 13–15 September 2010	Yes	Confidential	-	-
Liberia	6–13 December 2010	Not yet	-	-	-



## Annex VIII

### **Joint Statement on the occasion of the United Nations International Day in Support of Victims of Torture**

**26 June 2011**

*The Committee against Torture; the Subcommittee on Prevention of Torture; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture marked the International Day in Support of Victims of Torture and the thirtieth anniversary of the Voluntary Fund for Victims of Torture with the following statement:*

“We have seen torture and ill-treatment continue to be widely practiced in recent public demonstrations that have been held in numerous countries around the world. It is essential to reiterate that it is the obligation of States to prevent, prohibit, investigate and punish all acts of torture and other forms of cruel, inhuman or degrading treatment. It is the obligation of States to respect the physical and mental integrity of all persons, ensure justice and accountability for victims and for the community as a whole, and bring those responsible for violations to justice.

“Moreover, States must ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain reparation, including redress, and are awarded fair and adequate compensation and receive appropriate and comprehensive rehabilitation services. In this context, while international law and practice requires certain minimum standards and principles in relation to redress and reparations for victims of torture, we are concerned that some States only award formal rights which are often modest and peripheral to the justice systems.

“We are equally dissatisfied by the lack of progress in institutionalizing basic principles and guidelines which seek to provide minimum standards for redress and reparations to victims. It is our conviction that victims must have a central role in holding torturers accountable for their actions. We would like to underline the preventive function of redress and reparation for victims of torture as part of the legal obligation to prevent torture and other cruel, inhuman or degrading treatment or punishment. We therefore continue to support those States, organizations and other organs of civil society that are committed to eradicating torture and securing redress for all torture victims.

“This year, the United Nations International Day in Support of Victims of Torture coincides with the thirtieth anniversary of the United Nations Voluntary Fund for Victims of Torture. During the past 30 years, the Fund has distributed over US\$ 120 million to projects providing medical, psychological, legal, social and financial assistance to victims of torture and their family members, enabling victims to obtain redress and exercise their enforceable right to fair and adequate compensation, including as full a rehabilitation as possible. With the Fund’s support, physicians, psychologists, forensics experts, social workers, lawyers and other concerned individuals or groups have employed a victim-centered approach to assist their clients for years on their long journey rebuilding their lives, while at the same time documenting the use and effects of torture.

“We express our gratitude to all donors to the United Nations Voluntary Fund for Victims of Torture, which currently supports the work of over 300 organizations in more than 70 countries, and hope that contributions to the Fund will continue to increase to make it possible for victims of torture and members of their families to receive the assistance they

need. We call on all States to contribute generously to the Fund as part of a universal commitment for the rehabilitation of torture victims and their families so as to enable it to continue providing organizations with funds for psychological, medical, social, legal and economic assistance. We also call upon States to support the work of the domestic organizations through financial and other means, as well as create an enabling environment for the organizations to provide redress and rehabilitation for torture victims.

“We further urge all States to become party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and make the declarations provided under articles 21 and 22 of the Convention, on inter-State and individual complaints, as well as become party to the Optional Protocol to the Convention, in order to maximize transparency and accountability in their fight against torture.”

## Annex IX

### Rules of procedure\*

#### Part One General rules

#### Contents

<i>Rule</i>	<i>Page</i>
I. Sessions.....	256
1. Meetings of the Committee .....	256
2. Regular sessions .....	256
3. Special sessions .....	256
4. Place of sessions .....	256
5. Notification of opening date of sessions.....	257
II. Agenda.....	257
6. Provisional agenda for regular sessions.....	257
7. Provisional agenda for special sessions.....	257
8. Adoption of the agenda .....	257
9. Revision of the agenda .....	257
10. Transmission of the provisional agenda and basic documents .....	258
III. Members of the Committee.....	258
11. Members .....	258
12. Beginning of term of office .....	258
13. Filling of casual vacancies.....	258
14. Solemn declaration .....	259
15. Independence of members .....	259
IV. Officers .....	259
16. Elections .....	259
17. Term of office.....	259
18. Position of Chairperson in relation to the Committee .....	259
19. Acting Chairperson.....	260
20. Powers and duties of the Acting Chairperson.....	260

---

\* Adopted by the Committee at its first and second sessions and amended at its thirteenth, fifteenth, twenty-eighth and forty-fifth sessions.

	21. Replacement of officers.....	260
V.	Secretariat .....	260
	22. Duties of the Secretary-General.....	260
	23. Statements .....	261
	24. Servicing of meetings .....	261
	25. Keeping the members informed .....	261
	26. Financial implications of proposals .....	261
VI.	Languages .....	261
	27. Official and working languages.....	261
	28. Interpretation from a working language .....	261
	29. Interpretation from other languages.....	262
	30. Languages of formal decisions and official documents.....	262
VII.	Public and private meetings .....	262
	31. Public and private meetings.....	262
	32. Issue of communiqués concerning private meetings .....	262
VIII.	Records .....	262
	33. Correction of summary records .....	262
	34. Distribution of summary records .....	263
IX.	Distribution of reports and other official documents of the Committee.....	263
	35. Distribution of official documents.....	263
X.	Conduct of business .....	263
	36. Quorum.....	263
	37. Powers of the Chairperson.....	263
	38. Points of order .....	264
	39. Time limit on statements .....	264
	40. List of speakers.....	264
	41. Suspension or adjournment of meetings.....	264
	42. Adjournment of debate .....	264
	43. Closure of debate.....	265
	44. Order of motions.....	265
	45. Submission of proposals.....	265
	46. Decisions on competence .....	265
	47. Withdrawal of motions .....	265
	48. Reconsideration of proposals.....	265

XI.	Voting .....	266
	49. Voting rights.....	266
	50. Adoption of decisions.....	266
	51. Equally divided votes .....	266
	52. Method of voting .....	266
	53. Roll-call votes.....	266
	54. Conduct during voting and explanation of votes .....	267
	55. Division of proposals.....	267
	56. Order of voting on amendments .....	267
	57. Order of voting on proposals.....	267
XII.	Elections.....	267
	58. Method of elections .....	267
	59. Conduct of elections when only one elective place is to be filled .....	268
	60. Conduct of elections when two or more elective places are to be filled.....	268
XIII.	Subsidiary bodies .....	268
	61. Establishment of subsidiary bodies .....	268
XIV.	Subcommittee on Prevention .....	269
	62. Meetings with the Subcommittee on Prevention .....	269
XV.	Information and documentation .....	269
	63. Submission of information, documentation and written statements .....	269
XVI.	Annual report of the Committee .....	269
	64. Annual report.....	269

## **Part Two**

### **Rules relating to the functions of the Committee**

XVII.	Reports from States parties under article 19 of the Convention.....	270
	65. Submission of reports .....	270
	66. List of issues submitted to a State party prior to receiving its report.....	270
	67. Non-submission of reports.....	270
	68. Attendance by States parties at examination of reports .....	271
	69. Request for additional reports and information .....	271
	70. Examination of report and dialogue with State party's representatives.....	271
	71. Concluding observations by the Committee .....	272
	72. Follow-up and Rapporteurs .....	272
	73. Obligatory non-participation or non-presence of a member in the consideration of a report .....	272

XVIII.	General comments of the Committee.....	273
	74. General comments on the Convention.....	273
XIX.	Proceedings under article 20 of the Convention .....	273
	75. Transmission of information to the Committee.....	273
	76. Register of information submitted.....	273
	77. Summary of the information.....	273
	78. Confidentiality of documents and proceedings .....	273
	79. Meetings .....	274
	80. Issue of communiqués concerning closed meetings.....	274
	81. Preliminary consideration of information by the Committee .....	274
	82. Examination of the information.....	274
	83. Documentation from United Nations bodies and specialized agencies .....	275
	84. Establishment of an inquiry .....	275
	85. Cooperation of the State party concerned.....	275
	86. Visiting mission.....	275
	87. Hearings in connection with the inquiry.....	276
	88. Assistance during the inquiry .....	276
	89. Transmission of findings, comments or suggestions .....	276
	90. Summary account of the results of the proceedings .....	277
XX.	Procedure for the consideration of communications received under article 21 of the Convention.....	277
	91. Declarations by States parties.....	277
	92. Notification by the States parties concerned.....	277
	93. Register of communications .....	278
	94. Information to the members of the Committee.....	278
	95. Meetings .....	278
	96. Issue of communiqués concerning closed meetings.....	278
	97. Requirements for the consideration of communications .....	278
	98. Good offices .....	279
	99. Request for information.....	279
	100. Attendance by the States parties concerned.....	279
	101. Report of the Committee .....	279

XXI.	Procedure for the consideration of communications received under article 22 of the Convention .....	280
A.	General provisions .....	280
	102. Declarations by States parties .....	280
	103. Transmission of complaints .....	280
	104. Registration of complaints; Rapporteur on new complaints and interim measures .....	280
	105. Request for clarification or additional information .....	281
	106. Summary of the information.....	281
	107. Meetings and hearings .....	281
	108. Issue of communiqués concerning closed meetings .....	282
	109. Obligatory non-participation of a member in the examination of a complaint .....	282
	110. Optional non-participation of a member in the examination of a complaint .....	282
B.	Procedure for determining admissibility of complaints .....	282
	111. Method of dealing with complaints .....	282
	112. Establishment of a working group and designation of special Rapporteurs for specific complaints .....	283
	113. Conditions for admissibility of complaints.....	283
	114. Interim measures.....	284
	115. Additional information, clarifications and observations.....	284
	116. Inadmissible complaints .....	285
C.	Consideration of the merits .....	286
	117. Method of dealing with admissible complaints; oral hearings .....	286
	118. Findings of the Committee; decisions on the merits.....	286
	119. Individual opinions .....	287
	120. Follow-up procedure.....	287
	121. Summaries in the Committee's annual report and inclusion of texts of final decisions .....	287

## **Part One**

### **General rules**

#### **I. Sessions**

##### **Meetings of the Committee**

###### **Rule 1**

The Committee against Torture (hereinafter referred to as “the Committee”) shall hold meetings as may be required for the satisfactory performance of its functions in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”).

##### **Regular sessions**

###### **Rule 2**

1. The Committee shall normally hold two regular sessions each year.
2. Regular sessions of the Committee shall be convened at dates decided by the Committee in consultation with the Secretary-General of the United Nations (hereinafter referred to as “the Secretary-General”), taking into account the calendar of conferences as approved by the General Assembly.

##### **Special sessions**

###### **Rule 3**

1. Special sessions of the Committee shall be convened by decision of the Committee. When the Committee is not in session, the Chairperson may convene special sessions of the Committee in consultation with the other officers of the Committee. The Chairperson of the Committee shall also convene special sessions:
  - (a) At the request of a majority of the members of the Committee;
  - (b) At the request of a State party to the Convention.
2. Special sessions shall be convened as soon as possible at a date fixed by the Chairperson in consultation with the Secretary-General and with the other officers of the Committee, taking into account the calendar of conferences as approved by the General Assembly.

##### **Place of sessions**

###### **Rule 4**

Sessions of the Committee shall normally be held at the United Nations Office at Geneva. Another place for a session may be designated by the Committee in consultation with the Secretary-General, taking into account the relevant rules of the United Nations.



---

## **Notification of opening date of sessions**

### **Rule 5**

The Secretary-General shall notify the members of the Committee of the date and place of the first meeting of each session. Such notifications shall be sent, in the case of regular sessions, at least six weeks in advance, and in the case of a special session, at least three weeks in advance, of the first meeting.

## **II. Agenda**

### **Provisional agenda for regular sessions**

#### **Rule 6**

The provisional agenda of each regular session shall be prepared by the Secretary-General in consultation with the Chairperson of the Committee, in conformity with the relevant provisions of the Convention, and shall include:

- (a) Any item decided upon by the Committee at a previous session;
- (b) Any item proposed by the Chairperson of the Committee;
- (c) Any item proposed by a State party to the Convention;
- (d) Any item proposed by a member of the Committee;
- (e) Any item proposed by the Secretary-General relating to his functions under the Convention or these Rules.

### **Provisional agenda for special sessions**

#### **Rule 7**

The provisional agenda for a special session of the Committee shall consist only of those items which are proposed for consideration at that special session.

### **Adoption of the agenda**

#### **Rule 8**

The first item on the provisional agenda of any session shall be the adoption of the agenda, except for the election of the officers when required under rule 16.

### **Revision of the agenda**

#### **Rule 9**

During a session, the Committee may revise the agenda and may, as appropriate, defer or delete items; only urgent and important items may be added to the agenda.

## **Transmission of the provisional agenda and basic documents**

### **Rule 10**

The provisional agenda and basic documents relating to each item appearing thereon shall be transmitted to the members of the Committee by the Secretary-General as early as possible. The provisional agenda of a special session shall be transmitted to the members of the Committee by the Secretary-General simultaneously with the notification of the meeting under rule 5.

## **III. Members of the Committee**

### **Members**

#### **Rule 11**

Members of the Committee shall be the 10 experts elected in accordance with article 17 of the Convention.

### **Beginning of term of office**

#### **Rule 12**

1. The term of office of the members of the Committee elected at the first election shall begin on 1 January 1988. The term of office of members elected at subsequent elections shall begin on the day after the date of expiry of the term of office of the members whom they replace.
2. The Chairperson, members of the Bureau and Rapporteurs may continue performing the duties assigned to them until one day before the first meeting of the Committee, composed of its new members, at which it elects its officers.

### **Filling of casual vacancies**

#### **Rule 13**

1. If a member of the Committee dies or resigns or for any other cause can no longer perform his/her Committee duties, the Secretary-General shall immediately declare the seat of that member to be vacant and shall request the State party whose expert has ceased to function as a member of the Committee to appoint another expert from among its nationals within two months, if possible, to serve for the remainder of his/her predecessor's term.
2. The name and the curriculum vitae of the expert so appointed shall be transmitted by the Secretary-General to the States parties for their approval. The approval shall be considered given unless half or more of the States parties respond negatively within six weeks after having been informed by the Secretary-General of the proposed appointment to fill the vacancy.
3. Except in the case of a vacancy arising from a member's death or disability, the Secretary-General shall act in accordance with the provisions of paragraphs 1 and 2 of the present rule only after receiving, from the member concerned, written notification of his/her decision to cease to function as a member of the Committee.

## **Solemn declaration**

### **Rule 14**

Before assuming his/her duties after his/her first election, each member of the Committee shall make the following solemn declaration in open Committee:

“I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee against Torture honourably, faithfully, impartially and conscientiously.”

## **Independence of members**

### **Rule 15**

1. The independence of the members of the Committee is essential for the performance of their duties and requires that they serve in their personal capacity and shall neither seek nor accept instructions from anyone concerning the performance of their duties. Members are accountable only to the Committee and their own conscience.

2. In their duties under the Convention, members of the Committee shall maintain the highest standards of impartiality and integrity, and apply the standards of the Convention equally to all States and all individuals, without fear or favour and without discrimination of any kind.

## **IV. Officers**

### **Elections**

#### **Rule 16**

The Committee shall elect from among its members a Chairperson, three Vice-Chairpersons and a Rapporteur. In electing its officers, the Committee shall give consideration to equitable geographical distribution and appropriate gender balance and, to the extent possible, rotation among members.

### **Term of office**

#### **Rule 17**

Subject to the provisions of rule 12 regarding the Chairperson, members of the Bureau and Rapporteurs, the officers of the Committee shall be elected for a term of two years. They shall be eligible for re-election. None of them, however, may hold office if he/she ceases to be a member of the Committee.

### **Position of Chairperson in relation to the Committee**

#### **Rule 18**

1. The Chairperson shall perform the functions conferred upon him by the Committee and by these rules of procedure. In exercising his/her functions as Chairperson, the Chairperson shall remain under the authority of the Committee.

2. Between sessions, at times when it is not possible or practical to convene a special session of the Committee in accordance with rule 3, the Chairperson is authorized to take action to promote compliance with the Convention on the Committee's behalf if he/she receives information which leads him to believe that it is necessary to do so. The Chairperson shall report on the action taken to the Committee at its following session at the latest.

## **Acting Chairperson**

### **Rule 19**

1. If during a session the Chairperson is unable to be present at a meeting or any part thereof, he/she shall designate one of the Vice-Chairpersons to act in his/her place.
2. In the event of the absence or temporary disability of the Chairperson, one of the Vice-Chairpersons shall serve as Chairperson, in the order of precedence determined by their seniority as members of the Committee; where they have the same seniority, the order of seniority in age shall be followed.
3. If the Chairperson ceases to be a member of the Committee in the period between sessions or is in any of the situations referred to in rule 21, the Acting Chairperson shall exercise this function until the beginning of the next ordinary or special session.

## **Powers and duties of the Acting Chairperson**

### **Rule 20**

A Vice-Chairperson acting as Chairperson shall have the same powers and duties as the Chairperson.

## **Replacement of officers**

### **Rule 21**

If any of the officers of the Committee ceases to serve or declares his/her inability to continue serving as a member of the Committee or for any reason is no longer able to act as an officer, a new officer shall be elected for the unexpired term of his/her predecessor.

## **V. Secretariat**

### **Duties of the Secretary-General**

#### **Rule 22**

1. Subject to the fulfilment of the financial obligations undertaken by States parties in accordance with article 18, paragraph 5, of the Convention, the secretariat of the Committee and of such subsidiary bodies as may be established by the Committee (hereinafter referred to as "the secretariat") shall be provided by the Secretary-General.
2. Subject to the fulfilment of the requirements referred to in paragraph 1 of the present rule, the Secretary-General shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Convention.

---

## **Statements**

### **Rule 23**

The Secretary-General or his representative shall attend all meetings of the Committee. Subject to rule 37, he or his representative may make oral or written statements at meetings of the Committee or its subsidiary bodies.

## **Servicing of meetings**

### **Rule 24**

The Secretary-General shall be responsible for all the necessary arrangements for meetings of the Committee and its subsidiary bodies.

## **Keeping the members informed**

### **Rule 25**

The Secretary-General shall be responsible for keeping the members of the Committee informed of any questions which may be brought before it for consideration.

## **Financial implications of proposals**

### **Rule 26**

Before any proposal which involves expenditures is approved by the Committee or by any of its subsidiary bodies, the Secretary-General shall prepare and circulate to its members, as early as possible, an estimate of the cost involved in the proposal. It shall be the duty of the Chairperson to draw the attention of members to this estimate and to invite discussion on it when the proposal is considered by the Committee or by a subsidiary body.

## **VI. Languages**

### **Official and working languages**

#### **Rule 27**

Arabic, Chinese, English, French, Russian and Spanish shall be the official languages of the Committee and, to the extent possible, also its working languages, including for its summary records.

### **Interpretation from a working language**

#### **Rule 28**

Speeches made in any of the working languages shall be interpreted into the other working languages.

## **Interpretation from other languages**

### **Rule 29**

Any speaker addressing the Committee and using a language other than one of the working languages shall normally provide for interpretation into one of the working languages. Interpretation into the other working languages by interpreters of the Secretariat may be based on the interpretation given in the first working language.

## **Languages of formal decisions and official documents**

### **Rule 30**

All formal decisions and official documents of the Committee shall be issued in the official languages.

## **VII. Public and private meetings**

### **Public and private meetings**

#### **Rule 31**

The meetings of the Committee and its subsidiary bodies shall be held in public, unless the Committee decides otherwise or it appears from the relevant provisions of the Convention that the meeting should be held in private.

### **Issue of communiqués concerning private meetings**

#### **Rule 32**

At the close of each private meeting, the Committee or its subsidiary body may issue a communiqué, through the Secretary-General, for the use of the information media and the general public regarding the activities of the Committee at its closed meetings.

## **VIII. Records**

### **Correction of summary records**

#### **Rule 33**

Summary records of the public and private meetings of the Committee and its subsidiary bodies shall be prepared by the Secretariat. They shall be distributed as soon as possible to the members of the Committee and to any others participating in the meetings. All such participants may, within three working days of the receipt of the records of the meetings, submit corrections to the Secretariat in the languages in which the records have been issued. Corrections to the records of the meetings shall be consolidated in a single corrigendum to be issued after the end of the session concerned. Any disagreement concerning such corrections shall be decided by the Chairperson of the Committee or the Chairperson of the subsidiary body to which the record relates or, in the case of continued disagreement, by decision of the Committee or of the subsidiary body.

## **Distribution of summary records**

### **Rule 34**

1. The summary records of public meetings shall be documents for general distribution.
2. The summary records of private meetings shall be distributed to the members of the Committee and to other participants in the meetings. They may be made available to others upon decision of the Committee at such time and under such conditions as the Committee may decide.

## **IX. Distribution of reports and other official documents of the Committee**

### **Distribution of official documents**

#### **Rule 35**

1. Without prejudice to the provisions of rule 34 and subject to paragraphs 2 and 3 of the present rule, reports, formal decisions and all other official documents of the Committee and its subsidiary bodies shall be documents for general distribution, unless the Committee decides otherwise.
2. Reports, formal decisions and other official documents of the Committee and its subsidiary bodies relating to articles 20, 21 and 22 of the Convention shall be distributed by the secretariat to all members of the Committee, to the States parties concerned and, as may be decided by the Committee, to members of its subsidiary bodies and to others concerned.
3. Reports and additional information submitted by States parties under article 19 of the Convention shall be documents for general distribution, unless the State party concerned requests otherwise.

## **X. Conduct of business**

### **Quorum**

#### **Rule 36**

Six members of the Committee shall constitute a quorum.

### **Powers of the Chairperson**

#### **Rule 37**

The Chairperson shall declare the opening and closing of each meeting of the Committee, direct the discussion, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions. The Chairperson, subject to these rules, shall have control over the proceedings of the Committee and over the maintenance of order at its meetings. The Chairperson may, in the course of the discussion of an item, propose to the Committee the limitation of the time to be allowed to speakers, the limitation of the number of times each speaker may speak on any question and the closure of the list of speakers. He/she shall rule on points of order. He/she shall also have the power to

propose adjournment or closure of the debate or adjournment or suspension of a meeting. Debate shall be confined to the question before the Committee, and the Chairperson may call a speaker to order if his/her remarks are not relevant to the subject under discussion.

## **Points of order**

### **Rule 38**

During the discussion of any matter, a member may, at any time, raise a point of order, and such a point of order shall immediately be decided upon by the Chairperson in accordance with the rules of procedure. Any appeal against the ruling of the Chairperson shall immediately be put to the vote, and the ruling of the Chairperson shall stand unless overruled by a majority of the members present. A member raising a point of order may not speak on the substance of the matter under discussion.

## **Time limit on statements**

### **Rule 39**

The Committee may limit the time allowed to each speaker on any question. When debate is limited and a speaker exceeds his/her allotted time, the Chairperson shall call him to order without delay.

## **List of speakers**

### **Rule 40**

During the course of a debate, the Chairperson may announce the list of speakers and, with the consent of the Committee, declare the list closed. The Chairperson may, however, accord the right of reply to any member or representative if a speech delivered after he/she has declared the list closed makes this desirable. When the debate on an item is concluded because there are no other speakers, the Chairperson shall declare the debate closed. Such closure shall have the same effect as closure by the consent of the Committee.

## **Suspension or adjournment of meetings**

### **Rule 41**

During the discussion of any matter, a member may move the suspension or the adjournment of the meeting. No discussion on such motions shall be permitted, and they shall immediately be put to the vote.

## **Adjournment of debate**

### **Rule 42**

During the discussion of any matter, a member may move the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, one member may speak in favour of and one against the motion, after which the motion shall immediately be put to the vote.



## **Closure of debate**

### **Rule 43**

A member may, at any time, move the closure of the debate on the item under discussion, whether or not any other member has signified his/her wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall immediately be put to the vote.

## **Order of motions**

### **Rule 44**

Subject to rule 38, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on the item under discussion;
- (d) For the closure of the debate on the item under discussion.

## **Submission of proposals**

### **Rule 45**

Unless otherwise decided by the Committee, proposals and substantive amendments or motions submitted by members shall be introduced in writing and handed to the secretariat, and their consideration shall, if so requested by any member, be deferred until the next meeting on a following day.

## **Decisions on competence**

### **Rule 46**

Subject to rule 44, any motion by a member calling for a decision on the competence of the Committee to adopt a proposal submitted to it shall be put to the vote immediately before a vote is taken on the proposal in question.

## **Withdrawal of motions**

### **Rule 47**

A motion may be withdrawn by the member who proposed it at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by any member.

## **Reconsideration of proposals**

### **Rule 48**

When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the Committee so decides. Permission to speak on a motion to

reconsider shall be accorded only to two speakers in favour of the motion and to two speakers opposing the motion, after which it shall be immediately put to the vote.

## **XI. Voting**

### **Voting rights**

#### **Rule 49**

Each member of the Committee shall have one vote.

### **Adoption of decisions**

#### **Rule 50**

1. Decisions of the Committee shall be made by a majority vote of the members present.
2. Before voting, the Committee shall endeavour to reach its decisions by consensus, provided that the Convention and the rules of procedure are observed and that such efforts do not unduly delay the work of the Committee.
3. Bearing in mind the previous paragraph of this rule, the Chairperson at any meeting may, and at the request of any member shall, put a proposal or the adoption of a decision to a vote.

### **Equally divided votes**

#### **Rule 51**

If a vote is equally divided on matters other than elections, the proposal shall be regarded as rejected.

### **Method of voting**

#### **Rule 52**

Subject to rule 58, the Committee shall normally vote by show of hands, except that any member may request a roll-call, which shall then be taken in the alphabetical order of the names of the members of the Committee, beginning with the member whose name is drawn by lot by the Chairperson.

### **Roll-call votes**

#### **Rule 53**

The vote of each member participating in any roll-call shall be inserted in the record.

---

## **Conduct during voting and explanation of votes**

### **Rule 54**

After the voting has commenced, there shall be no interruption of the voting except on a point of order by a member in connection with the actual conduct of the voting. Brief statements by members consisting solely of explanations of their votes may be permitted by the Chairperson before the voting has commenced or after the voting has been completed.

## **Division of proposals**

### **Rule 55**

Parts of a proposal shall be voted on separately if a member requests that the proposal be divided. Those parts of the proposal which have been approved shall then be put to the vote as a whole; if all the operative parts of a proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

## **Order of voting on amendments**

### **Rule 56**

1. When an amendment to a proposal is moved, the amendment shall be voted on first. When two or more amendments to a proposal are moved the Committee shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on, until all amendments have been put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon.
2. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

## **Order of voting on proposals**

### **Rule 57**

1. If two or more proposals relate to the same question, the Committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.
2. The Committee may, after each vote on a proposal, decide whether to vote on the next proposal.
3. Any motions requiring that no decision be taken on the substance of such proposals shall, however, be considered as previous questions and shall be put to the vote before them.

## **XII. Elections**

### **Method of elections**

#### **Rule 58**

Elections shall be held by secret ballot, unless the Committee decides otherwise in the case of elections to fill a place for which there is only one candidate.

## **Conduct of elections when only one elective place is to be filled**

### **Rule 59**

1. When only one person or member is to be elected and no candidate obtains in the first ballot the majority required, a second ballot shall be taken, which shall be restricted to the two candidates who obtained the greatest number of votes.
2. If the second ballot is inconclusive and a majority vote of members present is required, a third ballot shall be taken in which votes may be cast for any eligible candidate. If the third ballot is inconclusive, the next ballot shall be restricted to the two candidates who obtained the greatest number of votes in the third ballot and so on, with unrestricted and restricted ballots alternating, until a person or member is elected.
3. If the second ballot is inconclusive and a two-thirds majority is required, the balloting shall be continued until one candidate secures the necessary two-thirds majority. In the next three ballots, votes may be cast for any eligible candidate. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the two candidates who obtained the greatest number of votes in the third such unrestricted ballot, and the following three ballots shall be unrestricted, and so on until a person or member is elected.

## **Conduct of elections when two or more elective places are to be filled**

### **Rule 60**

When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining in the first ballot the majority required shall be elected. If the number of candidates obtaining such majority is less than the number of persons or members to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, to a number not more than twice the places remaining to be filled; provided that, after the third inconclusive ballot, votes may be cast for any eligible candidates. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

## **XIII. Subsidiary bodies**

### **Establishment of subsidiary bodies**

#### **Rule 61**

1. The Committee may, in accordance with the provisions of the Convention and subject to the provisions of rule 26, set up ad hoc subsidiary bodies as it deems necessary and define their composition and mandates.
2. Each subsidiary body shall elect its own officers and adopt its own rules of procedure. Failing such rules, the present rules of procedure shall apply *mutatis mutandis*.
3. The Committee may also appoint one or more of its members as Rapporteurs to perform such duties as mandated by the Committee.

## **XIV. Subcommittee on Prevention**

### **Meetings with the Subcommittee on Prevention**

#### **Rule 62**

In order to pursue its institutional cooperation with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture, especially as established in articles 10, paragraph 3, 16, paragraphs 3 and 4, and 24, paragraph 2, of the Optional Protocol to the Convention, the Committee shall meet with the Subcommittee on Prevention, at least once a year, during the regular session they both hold simultaneously.

## **XV. Information and documentation**

### **Submission of information, documentation and written statements**

#### **Rule 63**

1. The Committee may invite the Secretariat, specialized agencies, United Nations bodies concerned, special procedures of the Human Rights Council, intergovernmental organizations, national human rights institutions, non-governmental organizations, and other relevant civil society organizations, to submit to it information, documentation and written statements, as appropriate, relevant to the Committee's activities under the Convention.

2. The Committee may receive, at its discretion, any other information, documentation and written statements submitted to it, including from individuals and sources not mentioned in the previous paragraph of this rule.

3. The Committee shall determine, at its discretion, how such information, documentation and written statements are made available to the members of the Committee, including by devoting meeting time at its sessions for such information to be presented orally.

4. Information, documentation and written statements received by the Committee concerning article 19 of the Convention are made public through appropriate means and channels, including by posting on the Committee's web page. However, in exceptional cases, the Committee may consider, at its discretion, that information, documentation and written statements received are confidential and decide not to make them public. In these cases, the Committee will decide on how to use such information.

## **XVI. Annual report of the Committee**

### **Annual report**

#### **Rule 64**

The Committee shall submit an annual report on its activities under the Convention to the States parties and to the General Assembly of the United Nations, including a reference to the activities of the Subcommittee on Prevention, as they appear in the public annual report submitted by the Subcommittee to the Committee under article 16, paragraph 3, of the Optional Protocol.

## **Part Two**

### **Rules relating to the functions of the Committee**

#### **XVII. Reports from States parties under article 19 of the Convention**

##### **Submission of reports**

###### **Rule 65**

1. The States parties shall submit to the Committee, through the Secretary-General, reports on the measures they have taken to give effect to their undertakings under the Convention, within one year after the entry into force of the Convention for the State party concerned. Thereafter the States parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Committee may consider the information contained in a recent report as covering information that should have been included in overdue reports. The Committee may recommend, at its discretion, that States parties consolidate their periodic reports.

3. The Committee may recommend, at its discretion, that States parties present their periodic reports by a specified date.

4. The Committee may, through the Secretary-General, inform the States parties of its wishes regarding the form and contents as well as the methodology for consideration of the reports to be submitted under article 19 of the Convention, and issue guidelines to that effect.

##### **List of issues submitted to a State party prior to receiving its report**

###### **Rule 66**

The Committee may submit to a State party a list of issues prior to receiving its report. If the State party agrees to report under this optional reporting procedure, its response to this list of issues shall constitute, for the respective period, its report under article 19 of the Convention.

##### **Non-submission of reports**

###### **Rule 67**

1. At each session, the Secretary-General shall notify the Committee of all cases of non-submission of reports under rules 65 and 69. In such cases the Committee may transmit to the State party concerned, through the Secretary-General, a reminder concerning the submission of such report or reports.

2. If, after the reminder referred to in paragraph 1 of this rule, the State party does not submit the report required under rules 65 and 69, the Committee shall so state in the annual report which it submits to the States parties and to the General Assembly of the United Nations.

3. The Committee may notify the defaulting State party through the Secretary-General that it intends, on a date specified in the notification, to examine the measures taken by the

State party to protect or give effect to the rights recognized in the Convention in the absence of a report, and adopt concluding observations.

## **Attendance by States parties at examination of reports**

### **Rule 68**

1. The Committee shall, through the Secretary-General, notify the States parties, as early as possible, of the opening date, duration and place of the session at which their respective reports will be examined. Representatives of the States parties shall be invited to attend the meetings of the Committee when their reports are examined. The Committee may also inform a State party from which it decides to seek further information that it may authorize its representative to be present at a specified meeting. Such a representative should be able to answer questions which may be put to him/her by the Committee and make statements on reports already submitted by his/her State, and may also submit additional information from his/her State.

2. If a State party has submitted a report under article 19, paragraph 1, of the Convention but fails to send a representative, in accordance with paragraph 1 of this rule, to the session at which it has been notified that its report will be examined, the Committee may, at its discretion, take one of the following courses:

(a) Notify the State party through the Secretary-General that, at a specified session, it intends to examine the report and thereafter act in accordance with rules 68, paragraph 1, and 71; or

(b) Proceed at the session originally specified to examine the report and thereafter adopt and submit to the State party provisional concluding observations for its written comments. The Committee shall adopt final concluding observations at its following session.

## **Request for additional reports and information**

### **Rule 69**

1. When considering a report submitted by a State party under article 19 of the Convention, the Committee shall first determine whether the report provides all the information required under rule 65.

2. If a report of a State party to the Convention, in the opinion of the Committee, does not contain sufficient information or the information provided is outdated, the Committee may request, through a list of issues to be sent to the State party, that it furnish an additional report or specific information, indicating by what date the said report or information should be submitted.

## **Examination of report and dialogue with State party's representatives**

### **Rule 70**

1. The Committee may establish, as appropriate, country Rapporteurs or any other methods of expediting its functions under article 19 of the Convention.

2. During the examination of the report of the State party, the Committee shall organize the meeting as it deems appropriate, in order to establish an interactive dialogue between the Committee's members and the State party's representatives.

## **Concluding observations by the Committee**

### **Rule 71**

1. After its consideration of each report, the Committee, in accordance with article 19, paragraph 3, of the Convention, may make such general comments, concluding observations, or recommendations on the report as it may consider appropriate and shall forward these, through the Secretary-General, to the State party concerned, which in reply may submit to the Committee any comment that it considers appropriate.
2. The Committee may, in particular, indicate whether, on the basis of its examination of the report and information supplied by the State party, it appears that some of its obligations under the Convention have not been discharged or that it did not provide sufficient information and, therefore, request the State party to provide the Committee with additional follow-up information by a specified date.
3. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 1 of this rule, together with any observations thereon received from the State party concerned, in its annual report made in accordance with article 24 of the Convention. If so requested by the State party concerned, the Committee may also include a copy of the report submitted under article 19, paragraph 1, of the Convention.

## **Follow-up and Rapporteurs**

### **Rule 72**

1. In order to further the implementation of the Committee's concluding observations, including the information to be provided by the State party under rule 71, paragraph 2, the Committee may designate at least one Rapporteur to follow up with the State party on its implementation of a number of recommendations identified by the Committee in its concluding observations.
2. The follow-up Rapporteur(s) shall assess the information provided by the State party in consultation with the country Rapporteurs and report at every session to the Committee on his/her activities. The Committee may set guidelines for such assessment.

## **Obligatory non-participation or non-presence of a member in the consideration of a report**

### **Rule 73**

1. A member shall not take part in the consideration of a report by the Committee or its subsidiary bodies if he/she is a national of the State party concerned, is employed by that State, or if any other conflict of interest is present.
2. Such a member shall not be present during any non-public consultations or meetings between the Committee and national human rights institutions, non-governmental organizations, or any other entities referred to in rule 63, as well as during the discussion and adoption of the respective concluding observations.



## **XVIII. General comments of the Committee**

### **General comments on the Convention**

#### **Rule 74**

1. The Committee may prepare and adopt general comments on the provisions of the Convention with a view to promoting its further implementation or to assisting States parties in fulfilling their obligations.
2. The Committee shall include such general comments in its annual report to the General Assembly.

## **XIX. Proceedings under article 20 of the Convention**

### **Transmission of information to the Committee**

#### **Rule 75**

1. The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.
2. 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 has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

### **Register of information submitted**

#### **Rule 76**

The Secretary-General shall maintain a permanent register of information brought to the attention of the Committee in accordance with rule 75 and shall make the information available to any member of the Committee upon request.

### **Summary of the information**

#### **Rule 77**

The Secretary-General, when necessary, shall prepare and circulate to the members of the Committee a brief summary of the information submitted in accordance with rule 75.

### **Confidentiality of documents and proceedings**

#### **Rule 78**

All documents and proceedings of the Committee relating to its functions under article 20 of the Convention shall be confidential, until such time when the Committee decides, in accordance with the provisions of article 20, paragraph 5, of the Convention, to make them public.

## **Meetings**

### **Rule 79**

1. Meetings of the Committee concerning its proceedings under article 20 of the Convention shall be closed. A member shall neither take part in nor be present at any proceedings under article 20 of the Convention if he/she is a national of the State party concerned, is employed by that State, or if any other conflict of interest is present.
2. Meetings during which the Committee considers general issues, such as procedures for the application of article 20 of the Convention, shall be public, unless the Committee decides otherwise.

## **Issue of communiqués concerning closed meetings**

### **Rule 80**

The Committee may decide to issue communiqués, through the Secretary-General, for the use of the information media and the general public regarding its activities under article 20 of the Convention.

## **Preliminary consideration of information by the Committee**

### **Rule 81**

1. The Committee, when necessary, may ascertain, through the Secretary-General, the reliability of the information and/or of the sources of the information brought to its attention under article 20 of the Convention or obtain additional relevant information substantiating the facts of the situation.
2. The Committee shall determine whether it appears to it that the information received contains well-founded indications that torture, as defined in article 1 of the Convention, is being systematically practised in the territory of the State party concerned.

## **Examination of the information**

### **Rule 82**

1. If it appears to the Committee that the information received is reliable and contains well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite the State party concerned, through the Secretary-General, to cooperate in its examination of the information and, to this end, to submit observations with regard to that information.
2. The Committee shall indicate a time limit for the submission of observations by the State party concerned, with a view to avoiding undue delay in its proceedings.
3. In examining the information received, the Committee shall take into account any observations which may have been submitted by the State party concerned, as well as any other relevant information available to it.
4. The Committee may decide, if it deems it appropriate, to obtain additional information or answers to questions relating to the information under examination from different sources, including the representatives of the State party concerned, governmental and non-governmental organizations, as well as individuals.

5. The Committee shall decide, on its initiative and on the basis of its rules of procedure, the form and manner in which such additional information may be obtained.

## **Documentation from United Nations bodies and specialized agencies**

### **Rule 83**

The Committee may at any time obtain, through the Secretary-General, any relevant documentation from United Nations bodies or specialized agencies that may assist it in the examination of the information received under article 20 of the Convention.

## **Establishment of an inquiry**

### **Rule 84**

1. The Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to it within a time limit which may be set by the Committee.

2. When the Committee decides to make an inquiry in accordance with paragraph 1 of this rule, it shall establish the modalities of the inquiry as it deems it appropriate.

3. The members designated by the Committee for the confidential inquiry shall determine their own methods of work in conformity with the provisions of the Convention and the rules of procedure of the Committee.

4. While the confidential inquiry is in progress, the Committee may defer the consideration of any report the State party may have submitted during this period in accordance with article 19, paragraph 1, of the Convention.

## **Cooperation of the State party concerned**

### **Rule 85**

The Committee shall invite the State party concerned, through the Secretary-General, to cooperate with it in the conduct of the inquiry. To this end, the Committee may request the State party concerned:

(a) To designate an accredited representative to meet with the members designated by the Committee;

(b) To provide its designated members with any information that they, or the State party, may consider useful for ascertaining the facts relating to the inquiry;

(c) To indicate any other form of cooperation that the State may wish to extend to the Committee and to its designated members with a view to facilitating the conduct of the inquiry.

## **Visiting mission**

### **Rule 86**

If the Committee deems it necessary to include in its inquiry a visit of one or more of its members to the territory of the State party concerned, it shall request, through the Secretary-General, the agreement of that State party and shall inform the State party of its

wishes regarding the timing of the mission and the facilities required to allow the designated members of the Committee to carry out their task.

### **Hearings in connection with the inquiry**

#### **Rule 87**

1. The designated members may decide to conduct hearings in connection with the inquiry as they deem it appropriate.
2. The designated members shall establish, in cooperation with the State party concerned, the conditions and guarantees required for conducting such hearings. They shall request the State party to ensure that no obstacles are placed in the way of witnesses and other individuals wishing to meet with the designated members of the Committee and that no retaliatory measure is taken against those individuals or their families.
3. Every person appearing before the designated members for the purpose of giving testimony shall be requested to take an oath or make a solemn declaration concerning the veracity of his/her testimony and respect for the confidentiality of the proceedings.

### **Assistance during the inquiry**

#### **Rule 88**

1. In addition to the staff and facilities to be provided by the Secretary-General in connection with the inquiry and/or the visiting mission to the territory of the State party concerned, the designated members may invite, through the Secretary-General, persons with special competence in the medical field or in the treatment of prisoners as well as interpreters to provide assistance at all stages of the inquiry.
2. If the persons providing assistance during the inquiry are not bound by an oath of office to the United Nations, they shall be required to declare solemnly that they will perform their duties honestly, faithfully and impartially, and that they will respect the confidentiality of the proceedings.
3. The persons referred to in paragraphs 1 and 2 of the present rule shall be entitled to the same facilities, privileges and immunities provided for in respect of the members of the Committee, under article 23 of the Convention.

### **Transmission of findings, comments or suggestions**

#### **Rule 89**

1. After examining the findings of its designated members submitted to it in accordance with rule 84, paragraph 1, the Committee shall transmit, through the Secretary-General, these findings to the State party concerned, together with any comments or suggestions that it deems appropriate.
2. The State party concerned shall be invited to inform the Committee within a reasonable delay of the action it takes with regard to the Committee's findings and in response to the Committee's comments or suggestions.

## Summary account of the results of the proceedings

### Rule 90

1. After all the proceedings of the Committee regarding an inquiry made under article 20 of the Convention have been completed, the Committee may decide, after consultations with the State party concerned, to include a summary account of the results of the proceedings in its annual report made in accordance with article 24 of the Convention.
2. The Committee shall invite the State party concerned, through the Secretary-General, to inform the Committee directly or through its designated representative of its observations concerning the question of a possible publication, and may indicate a time limit within which the observations of the State party should be communicated to the Committee.
3. If it decides to include a summary account of the results of the proceedings relating to an inquiry in its annual report, the Committee shall forward, through the Secretary-General, the text of the summary account to the State party concerned.

## XX. Procedure for the consideration of communications received under article 21 of the Convention

### Declarations by States parties

#### Rule 91

1. The Secretary-General shall transmit to the other States parties copies of the declarations deposited with him by States parties recognizing the competence of the Committee, in accordance with article 21 of the Convention.
2. The withdrawal of a declaration made under article 21 of the Convention shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under that article; no further communication by any State party shall be received under that article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party has made a new declaration.

### Notification by the States parties concerned

#### Rule 92

1. A communication under article 21 of the Convention may be referred to the Committee by either State party concerned by notice given in accordance with paragraph 1 (b) of that article.
2. The notice referred to in paragraph 1 of this rule shall contain or be accompanied by information regarding:
  - (a) Steps taken to seek adjustment of the matter in accordance with article 21, paragraphs 1 (a) and (b), of the Convention, including the text of the initial communication and of any subsequent written explanations or statements by the States parties concerned which are pertinent to the matter;
  - (b) Steps taken to exhaust domestic remedies;
  - (c) Any other procedure of international investigation or settlement resorted to by the States parties concerned.

## **Register of communications**

### **Rule 93**

The Secretary-General shall maintain a permanent register of all communications received by the Committee under article 21 of the Convention.

## **Information to the members of the Committee**

### **Rule 94**

The Secretary-General shall inform the members of the Committee without delay of any notice given under rule 92 and shall transmit to them as soon as possible copies of the notice and relevant information.

## **Meetings**

### **Rule 95**

The Committee shall examine communications under article 21 of the Convention at closed meetings.

## **Issue of communiqués concerning closed meetings**

### **Rule 96**

The Committee may, after consultation with the States parties concerned, issue communiqués, through the Secretary-General, for the use of the information media and the general public regarding the activities of the Committee under article 21 of the Convention.

## **Requirements for the consideration of communications**

### **Rule 97**

A communication shall not be considered by the Committee unless:

- (a) Both States parties concerned have made declarations under article 21, paragraph 1, of the Convention;
- (b) The time limit prescribed in article 21, paragraph 1 (b), of the Convention has expired;
- (c) The Committee has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law, or that the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of the Convention.

---

## **Good offices**

### **Rule 98**

1. Subject to the provisions of rule 97, the Committee shall proceed to make its good offices available to the States parties concerned with a view to an amicable solution of the matter on the basis of respect for the obligations provided for in the Convention.
2. For the purpose indicated in paragraph 1 of this rule, the Committee may, when appropriate, set up an ad hoc conciliation commission.

## **Request for information**

### **Rule 99**

The Committee may, through the Secretary-General, request the States parties concerned or either of them to submit additional information or observations orally or in writing. The Committee shall indicate a time limit for the submission of such written information or observations.

## **Attendance by the States parties concerned**

### **Rule 100**

1. The States parties concerned shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.
2. The Committee shall, through the Secretary-General, notify the States parties concerned as early as possible of the opening date, duration and place of the session at which the matter will be examined.
3. The procedure for making oral and/or written submissions shall be decided by the Committee, after consultation with the States parties concerned.

## **Report of the Committee**

### **Rule 101**

1. Within 12 months after the date on which the Committee received the notice referred to in rule 92, the Committee shall adopt a report in accordance with article 21, paragraph 1 (h), of the Convention.
2. The provisions of paragraph 1 of rule 100 shall not apply to the deliberations of the Committee concerning the adoption of the report.
3. The Committee's report shall be communicated, through the Secretary-General, to the States parties concerned.

## **XXI. Procedure for the consideration of communications received under article 22 of the Convention**

### **A. General provisions**

#### **Declarations by States parties**

##### **Rule 102**

1. The Secretary-General shall transmit to the other States parties copies of the declarations deposited with him by States parties recognizing the competence of the Committee, in accordance with article 22 of the Convention.
2. The withdrawal of a declaration made under article 22 of the Convention shall not prejudice the consideration of any matter which is the subject of a complaint already transmitted under that article; no further complaint by or on behalf of an individual shall be received under that article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party has made a new declaration.

#### **Transmission of complaints**

##### **Rule 103**

1. The Secretary-General shall bring to the attention of the Committee, in accordance with the present rules, complaints which are or appear to be submitted for consideration by the Committee under paragraph 1 of article 22 of the Convention.
2. The Secretary-General, when necessary, may request clarification from the complainant of a complaint as to his/her wish to have his/her complaint submitted to the Committee for consideration under article 22 of the Convention. In case there is still doubt as to the wish of the complainant, the Committee shall be seized of the complaint.

#### **Registration of complaints; Rapporteur on new complaints and interim measures**

##### **Rule 104**

1. Complaints may be registered by the Secretary-General or by decision of the Committee or by the Rapporteur on new complaints and interim measures.
2. No complaint shall be registered by the Secretary-General if:
  - (a) It concerns a State which has not made the declaration provided for in article 22, paragraph 1, of the Convention; or
  - (b) It is anonymous; or
  - (c) It is not submitted in writing by the alleged victim or by close relatives of the alleged victim on his/her behalf or by a representative with appropriate written authorization.
3. The Secretary-General shall prepare lists of the complaints brought to the attention of the Committee in accordance with rule 103 with a brief summary of their contents, and shall circulate such lists to the members of the Committee at regular intervals. The Secretary-General shall also maintain a permanent register of all such complaints.



4. An original case file shall be kept for each summarized complaint. The full text of any complaint brought to the attention of the Committee shall be made available to any member of the Committee upon his/her request.

## **Request for clarification or additional information**

### **Rule 105**

1. The Secretary-General or the Rapporteur on new complaints and interim measures may request clarification from the complainant concerning the applicability of article 22 of the Convention to his/her complaint, in particular regarding:

- (a) The name, address, age and occupation of the complainant and the verification of his/her identity;
- (b) The name of the State party against which the complaint is directed;
- (c) The object of the complaint;
- (d) The provision or provisions of the Convention alleged to have been violated;
- (e) The facts of the claim;
- (f) Steps taken by the complainant to exhaust domestic remedies;
- (g) Whether the same matter is being, or has been, examined under another procedure of international investigation or settlement.

2. When requesting clarification or information, the Secretary-General shall indicate an appropriate time limit to the complainant of the complaint with a view to avoiding undue delays in the procedure under article 22 of the Convention. Such time limit may be extended in appropriate circumstances.

3. The Committee may approve a questionnaire for the purpose of requesting the above-mentioned information from the complainant.

4. The request for clarification referred to in paragraph 1 (c)-(g) of the present rule shall not preclude the inclusion of the complaint in the list provided for in rule 104, paragraph 3.

5. The Secretary-General shall instruct the complainant on the procedure that will be followed and inform him/her that the text of the complaint shall be transmitted confidentially to the State party concerned in accordance with article 22, paragraph 3, of the Convention.

## **Summary of the information**

### **Rule 106**

For each registered complaint the Secretary-General shall prepare and circulate to the members of the Committee a summary of the relevant information obtained.

## **Meetings and hearings**

### **Rule 107**

1. Meetings of the Committee or its subsidiary bodies during which complaints under article 22 of the Convention will be examined shall be closed.

2. Meetings during which the Committee may consider general issues, such as procedures for the application of article 22 of the Convention, may be public if the Committee so decides.

### **Issue of communiqués concerning closed meetings**

#### **Rule 108**

The Committee may issue communiqués, through the Secretary-General, for the use of the information media and the general public regarding the activities of the Committee under article 22 of the Convention.

### **Obligatory non-participation of a member in the examination of a complaint**

#### **Rule 109**

1. A member shall not take part in the examination of a complaint by the Committee or its subsidiary body:
  - (a) If he/she has any personal interest in the case; or
  - (b) If he/she has participated in any capacity, other than as a member of the Committee, in the making of any decision; or
  - (c) If he/she is a national of the State party concerned or is employed by that country.
2. Any question which may arise under paragraph 1 above shall be decided by the Committee without the participation of the member concerned.

### **Optional non-participation of a member in the examination of a complaint**

#### **Rule 110**

If, for any reason, a member considers that he/she should not take part or continue to take part in the examination of a complaint, he/she shall inform the Chairperson of his/her withdrawal.

## **B. Procedure for determining admissibility of complaints**

### **Method of dealing with complaints**

#### **Rule 111**

1. In accordance with the following rules, the Committee shall decide by simple majority as soon as practicable whether or not a complaint is admissible under article 22 of the Convention.
2. The Working Group established under rule 112, paragraph 1, may also declare a complaint admissible by majority vote or inadmissible by unanimity.

3. The Committee, the Working Group established under rule 112, paragraph 1, or the Rapporteur(s) designated under rule 112, paragraph 3, shall, unless they decide otherwise, deal with complaints in the order in which they are received by the secretariat.
4. The Committee may, if it deems it appropriate, decide to consider two or more communications jointly.
5. The Committee may, if it deems appropriate, decide to sever consideration of complaints of multiple complainants. Severed complaints may receive a separate registry number.

### **Establishment of a working group and designation of special Rapporteurs for specific complaints**

#### **Rule 112**

1. The Committee may, in accordance with rule 61, set up a working group to meet shortly before its sessions, or at any other convenient time to be decided by the Committee, in consultation with the Secretary-General, for the purpose of taking decisions on admissibility or inadmissibility and making recommendations to the Committee regarding the merits of complaints, and assisting the Committee in any manner which the Committee may decide.
2. The Working Group shall comprise no less than three and no more than five members of the Committee. The Working Group shall elect its own officers, develop its own working methods, and apply as far as possible the rules of procedure of the Committee to its meetings. The members of the Working Group shall be elected by the Committee every other session.
3. The Working Group may designate Rapporteurs from among its members to deal with specific complaints.

### **Conditions for admissibility of complaints**

#### **Rule 113**

With a view to reaching a decision on the admissibility of a complaint, the Committee, its Working Group or a Rapporteur designated under rules 104 or 112, paragraph 3, shall ascertain:

- (a) That the individual claims to be a victim of a violation by the State party concerned of the provisions of the Convention. The complaint should be submitted by the individual himself/herself or by his/her relatives or designated representatives, or by others on behalf of an alleged victim when it appears that the victim is unable personally to submit the complaint, and, when appropriate authorization is submitted to the Committee;
- (b) That the complaint is not an abuse of the Committee's process or manifestly unfounded;
- (c) That the complaint is not incompatible with the provisions of the Convention;
- (d) That the same matter has not been and is not being examined under another procedure of international investigation or settlement;
- (e) That the individual has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged or

is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(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.

## **Interim measures**

### **Rule 114**

1. At any time after the receipt of a complaint, the Committee, a working group, or the Rapporteur(s) on new complaints and interim measures may transmit to the State party concerned, for its urgent consideration, a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of alleged violations.
2. Where the Committee, the Working Group, or Rapporteur(s) request(s) interim measures under this rule, the request shall not imply a determination of the admissibility or the merits of the complaint. The State party shall be so informed upon transmittal.
3. The decision to grant interim measures may be adopted on the basis of information contained in the complainant's submission. It may be reviewed, at the initiative of the State party, in the light of timely information received from that State party to the effect that the submission is not justified and the complainant does not face any prospect of irreparable harm, together with any subsequent comments from the complainant.
4. Where a request for interim measures is made by the Working Group or Rapporteur(s) under the present rule, the Working Group or Rapporteur(s) should inform the Committee members of the nature of the request and the complaint to which the request relates at the next regular session of the Committee.
5. The Secretary-General shall maintain a list of such requests for interim measures.
6. The Rapporteur on new complaints and interim measures shall also monitor compliance with the Committee's requests for interim measures.
7. The State party may inform the Committee that the reasons for the interim measures have lapsed or present arguments why the request for interim measures should be lifted.
8. The Rapporteur, the Committee or the Working Group may withdraw the request for interim measures.

## **Additional information, clarifications and observations**

### **Rule 115**

1. As soon as possible after the complaint has been registered, it should be transmitted to the State party, requesting it to submit a written reply within six months.
2. The State party concerned shall include in its written reply explanations or statements that shall relate both to the admissibility and the merits of the complaint as well as to any remedy that may have been provided in the matter, unless the Committee, Working Group or Rapporteur on new complaints and interim measures has decided, because of the exceptional nature of the case, to request a written reply that relates only to the question of admissibility.

3. A State party that has received a request for a written reply under paragraph 1 both on admissibility and on the merits of the complaint may apply in writing, within two months, for the complaint to be rejected as inadmissible, setting out the grounds for such inadmissibility. The Committee or the Rapporteur on new complaints and interim measures may or may not agree to consider admissibility separately from the merits.
4. Following a separate decision on admissibility, the Committee shall fix the deadline for submissions on a case-by-case basis.
5. The Committee or the Working Group established under rule 112 or Rapporteur(s) designated under rule 112, paragraph 3, may request, through the Secretary-General, the State party concerned or the complainant to submit additional written information, clarifications or observations relevant to the question of admissibility or merits.
6. The Committee or the Working Group or Rapporteur(s) designated under rule 112, paragraph 3, shall indicate a time limit for the submission of additional information or clarification with a view to avoiding undue delay.
7. If the time limit provided is not respected by the State party concerned or the complainant, the Committee or the Working Group may decide to consider the admissibility and/or merits of the complaint in the light of available information.
8. A complaint may not be declared admissible unless the State party concerned has received its text and has been given an opportunity to furnish information or observations as provided in paragraph 1 of this rule.
9. If the State party concerned disputes the contention of the complainant that all available domestic remedies have been exhausted, the State party is required to give details of the effective remedies available to the alleged victim in the particular circumstances of the case and in accordance with the provisions of article 22, paragraph 5 (b), of the Convention.
10. Within such time limit as indicated by the Committee or the Working Group or Rapporteur(s) designated under rule 112, paragraph 3, the State party or the complainant may be afforded an opportunity to comment on any submission received from the other party pursuant to a request made under the present rule. Non-receipt of such comments within the established time limit should not generally delay the consideration of the admissibility of the complaint.

## **Inadmissible complaints**

### **Rule 116**

1. Where the Committee or the Working Group decides that a complaint is inadmissible under article 22 of the Convention, or its consideration is suspended or discontinued, the Committee shall as soon as possible transmit its decision, through the Secretary-General, to the complainant and to the State party concerned.
2. If the Committee or the Working Group has declared a complaint inadmissible under article 22, paragraph 5, of the Convention, this decision may be reviewed at a later date by the Committee upon a request from a member of the Committee or a written request by or on behalf of the individual concerned. Such written request shall contain evidence to the effect that the reasons for inadmissibility referred to in article 22, paragraph 5, of the Convention no longer apply.

## C. Consideration of the merits

### Method of dealing with admissible complaints; oral hearings

#### Rule 117

1. When the Committee or the Working Group has decided that a complaint is admissible under article 22 of the Convention, before receiving the State party's reply on the merits, the Committee shall transmit to the State party, through the Secretary-General, the text of its decision together with any submission received from the author of the communication not already transmitted to the State party under rule 115, paragraph 1. The Committee shall also inform the complainant, through the Secretary-General, of its decision.

2. Within the period established by the Committee, the State party concerned shall submit to the Committee written explanations or statements clarifying the case under consideration and the measures, if any, that may have been taken by it. The Committee may indicate, if it deems it necessary, the type of information it wishes to receive from the State party concerned.

3. Any explanations or statements submitted by a State party pursuant to this rule shall be transmitted, through the Secretary-General, to the complainant who may submit any additional written information or observations within such time limit as the Committee shall decide.

4. The Committee may invite the complainant or his/her representative and representatives of the State party concerned to be present at specified closed meetings of the Committee in order to provide further clarifications or to answer questions on the merits of the complaint. Whenever one party is so invited, the other party shall be informed and invited to attend and make appropriate submissions. The non-appearance of a party will not prejudice the consideration of the case.

5. The Committee may revoke its decision that a complaint is admissible in the light of any explanations or statements thereafter submitted by the State party pursuant to this rule. However, before the Committee considers revoking that decision, the explanations or statements concerned must be transmitted to the complainant so that he/she may submit additional information or observations within a time limit set by the Committee.

### Findings of the Committee; decisions on the merits

#### Rule 118

1. In those cases in which the parties have submitted information relating both to the questions of admissibility and the merits, or in which a decision on admissibility has already been taken and the parties have submitted information on the merits, the Committee shall consider the complaint in the light of all information made available to it by or on behalf of the complainant and by the State party concerned and shall formulate its findings thereon. Prior thereto, the Committee may refer the communication to the Working Group or to a case Rapporteur designated under rule 112, paragraph 3, to make recommendations to the Committee.

2. The Committee, the Working Group, or the Rapporteur may at any time in the course of the examination obtain any document from United Nations bodies, specialized agencies, or other sources that may assist in the consideration of the complaint.

3. The Committee shall not decide on the merits of a complaint without having considered the applicability of all the admissibility grounds referred to in article 22 of the Convention. The findings of the Committee shall be forwarded, through the Secretary-General, to the complainant and to the State party concerned.
4. The Committee's findings on the merits shall be known as "decisions".
5. The State party concerned shall generally be invited to inform the Committee within a specific time period of the action it has taken in conformity with the Committee's decisions.

## **Individual opinions**

### **Rule 119**

Any member of the Committee who has participated in a decision may request that his/her individual opinion be appended to the Committee's decisions.

## **Follow-up procedure**

### **Rule 120**

1. The Committee may designate one or more Rapporteur(s) for follow-up on decisions adopted under article 22 of the Convention, for the purpose of ascertaining the measures taken by States parties to give effect to the Committee's findings.
2. The Rapporteur(s) may make such contacts and take such action as appropriate for the due performance of the follow-up mandate and report accordingly to the Committee. The Rapporteur(s) may make such recommendations for further action by the Committee as may be necessary for follow-up.
3. The Rapporteur(s) shall regularly report to the Committee on follow-up activities.
4. The Rapporteur(s), in discharge of the follow-up mandate, may, with the approval of the Committee, engage in necessary visits to the State party concerned.

## **Summaries in the Committee's annual report and inclusion of texts of final decisions**

### **Rule 121**

1. The Committee may decide to include in its annual report a summary of the complaints examined and, where the Committee considers appropriate, a summary of the explanations and statements of the States parties concerned and of the Committee's evaluation thereof.
2. The Committee shall include in its annual report the text of its final decisions under article 22, paragraph 7 of the Convention.
3. The Committee shall include information on follow-up activities in its annual report.

## Annex X

### Overdue reports, as at 3 June 2011

#### A. Initial reports

<i>State party</i>	<i>Due date</i>
1. Andorra	22 October 2007
2. Antigua and Barbuda	17 August 1994
3. Bangladesh	4 November 1999
4. Botswana	7 October 2001
5. Burkina Faso	2 February 2000
6. Cape Verde	3 July 1993
7. Congo	30 August 2004
8. Côte d'Ivoire	16 January 1997
9. Equatorial Guinea	6 November 2003
10. Gabon	7 October 2001
11. Guinea	8 November 1990
12. Holy See	25 July 2003
13. Lebanon	3 November 2001
14. Lesotho	11 December 2002
15. Liberia	22 October 2005
16. Malawi	10 July 1997
17. Maldives	20 May 2005
18. Mali	27 March 2000
19. Mauritania	17 December 2005
20. Mozambique	14 October 2000
21. Niger	3 November 1999
22. Nigeria	28 June 2002
23. Saint Vincent and the Grenadines	30 August 2002
24. San Marino	27 December 2007
25. Seychelles	3 June 1993
26. Sierra Leone	25 May 2002
27. Somalia	22 February 1991



<i>State party</i>	<i>Due date</i>
28. Swaziland	25 April 2005
29. Thailand	1 November 2008
30. Timor-Leste	16 May 2004

## B. Periodic reports

<i>State party</i>	<i>Reports</i>	<i>Due date</i>	<i>Revised date, in accordance with the Committee's concluding observations on the latest report of the State party</i>
1. Afghanistan	Second	25 June 1992	
	Third	25 June 1996	
	Fourth	25 June 2000	
	Fifth	25 June 2004	
	Sixth	25 June 2008	
	Third	9 June 2003	
2. Albania	Fourth	9 June 2007	
	Fourth	11 October 2002	[20 June 2012]
3. Algeria	Fifth	11 October 2006	
	Sixth	11 October 2010	
	Second	17 August 1998	
4. Antigua and Barbuda	Third	17 August 2002	
	Fourth	17 August 2006	
	Fifth	17 August 2010	
	Fifth	25 June 2004	[25 June 2008]
5. Argentina	Sixth	25 June 2008	[25 June 2008]
	Fourth	12 October 2006	
6. Armenia	Fifth	12 October 2010	
	Fourth	6 September 2002	[30 June 2012]
7. Australia	Fifth	6 September 2006	[30 June 2012]
	Sixth	6 September 2010	
	Sixth	27 August 2008	[14 May 2014]
8. Austria	Fourth	14 September 2009	[20 November 2013]
9. Azerbaijan			

<i>State party</i>	<i>Reports</i>	<i>Due date</i>	<i>Revised date, in accordance with the Committee's concluding observations on the latest report of the State party</i>
10. Bahrain	Second	4 April 2003	[4 April 2007]
	Third	4 April 2007	
11. Bangladesh	Second	4 November 2003	
	Third	4 November 2007	
12. Belarus	Fifth	25 June 2004	
	Sixth	25 June 2008	
13. Belgium	Third	25 July 2008	[21 November 2012]
14. Belize	Second	25 June 1992	
	Third	25 June 1996	
	Fourth	25 June 2000	
	Fifth	25 June 2004	
	Sixth	25 June 2008	
15. Benin	Third	10 April 2001	[30 December 2011]
	Fourth	10 April 2005	
	Fifth	10 April 2009	
16. Bolivia (Plurinational State of)	Second	11 May 2004	
	Third	11 May 2008	
17. Botswana	Second	7 October 2005	
	Third	7 October 2009	
18. Brazil	Second	27 October 1994	
	Third	27 October 1998	
	Fourth	27 October 2002	
	Fifth	27 October 2006	
	Sixth	27 October 2010	
19. Burkina Faso	Second	2 February 2004	
	Third	2 February 2008	
20. Burundi	Second	19 March 1998	[31 December 2008]
	Third	19 March 2002	
	Fourth	19 March 2006	
	Fifth	19 March 2010	

<i>State party</i>	<i>Reports</i>	<i>Due date</i>	<i>Revised date, in accordance with the Committee's concluding observations on the latest report of the State party</i>
21. Cambodia	Third	13 November 2001	[19 November 2014]
	Fourth	13 November 2005	
	Fifth	13 November 2009	
22. Cameroon	Fifth	25 June 2008	[14 May 2014]
23. Cape Verde	Second	3 July 1997	
	Third	3 July 2001	
	Fourth	3 July 2005	
	Fifth	3 July 2009	
24. Chad	Second	9 July 2000	[15 May 2013]
	Third	9 July 2004	
	Fourth	9 July 2008	
25. Chile	Sixth	29 October 2009	[15 May 2013]
26. China, including Hong Kong, China and Macao, China	Fifth	2 November 2005	[21 November 2012]
	Sixth	2 November 2009	
27. Colombia	Fifth	6 January 2005	[20 November 2013]
	Sixth	6 January 2009	
28. Congo	Second	30 August 2008	
29. Costa Rica	Third	10 December 2002	[30 June 2012]
	Fourth	10 December 2006	
	Fifth	10 December 2010	
30. Côte d'Ivoire	Second	16 January 2001	
	Third	16 January 2005	
	Fourth	16 January 2009	
31. Croatia	Fourth	7 October 2004	[7 October 2008]
	Fifth	7 October 2008	[7 October 2008]
32. Cuba	Third	15 June 2004	
	Fourth	15 June 2008	
33. Cyprus	Fourth	16 August 2004	
	Fifth	16 August 2008	

<i>State party</i>	<i>Reports</i>	<i>Due date</i>	<i>Revised date, in accordance with the Committee's concluding observations on the latest report of the State party</i>
34. Democratic Republic of the Congo	Second	16 April 2001	[16 April 2009]
	Third	16 April 2005	[16 April 2009]
	Fourth	16 April 2009	[16 April 2009]
35. Djibouti	Second	5 December 2007	
36. Egypt	Fifth	25 June 2004	
	Sixth	25 June 2008	
37. El Salvador	Third	16 July 2005	[20 November 2013]
	Fourth	16 July 2009	
38. Equatorial Guinea	Second	6 November 2007	
39. Estonia	Fourth	19 December 2004	[31 December 2011]
	Fifth	19 December 2008	
40. Ethiopia	Second	12 April 1999	[19 November 2014]
	Third	12 April 2003	
	Fourth	12 April 2007	
41. Gabon	Second	7 October 2005	
	Third	7 October 2009	
42. Georgia	Fourth	27 November 2007	[24 November 2011]
43. Ghana	Second	6 October 2005	[3 June 2015]
	Third	6 October 2009	
44. Guatemala	Sixth	3 February 2011	
45. Guinea	Second	8 November 1994	
	Third	8 November 1998	
	Fourth	8 November 2002	
	Fifth	8 November 2006	
	Sixth	8 November 2010	
46. Guyana	Second	17 June 1993	[31 December 2008]
	Third	17 June 1997	
	Fourth	17 June 2001	
	Fifth	17 June 2005	
	Sixth	17 June 2009	

<i>State party</i>	<i>Reports</i>	<i>Due date</i>	<i>Revised date, in accordance with the Committee's concluding observations on the latest report of the State party</i>
47. Holy See	Second	25 July 2007	
48. Honduras	Second	3 January 2002	[15 May 2013]
	Third	3 January 2006	
	Fourth	3 January 2010	
49. Hungary	Fifth	25 June 2004	[31 December 2010]
	Sixth	25 June 2008	[31 December 2010]
50. Indonesia	Third	27 November 2007	[30 June 2012]
51. Ireland	Second	11 May 2007	[3 June 2015]
	Third	11 May 2011	
52. Israel	Fifth	1 November 2008	[15 May 2013]
53. Italy	Sixth	11 February 2010	[30 June 2011]
54. Japan	Second	29 July 2004	[30 June 2011]
	Third	29 July 2008	
55. Jordan	Third	12 December 2000	[14 May 2014]
	Fourth	12 December 2004	
	Fifth	12 December 2008	
56. Kazakhstan	Third	25 September 2007	[21 November 2012]
57. Kenya	Second	22 March 2002	[21 November 2012]
	Third	22 March 2006	
	Fourth	22 March 2010	
58. Kuwait	Third	6 April 2005	[3 June 2015]
	Fourth	6 April 2009	
59. Kyrgyzstan	Second	4 October 2002	
	Third	4 October 2006	
	Fourth	4 October 2010	
60. Latvia	Fifth	13 May 2009	[30 December 2011]
61. Lebanon	Second	3 November 2005	
	Third	3 November 2009	
62. Lesotho	Second	12 December 2006	
	Third	12 December 2010	
63. Liberia	Second	22 October 2009	

<i>State party</i>	<i>Reports</i>	<i>Due date</i>	<i>Revised date, in accordance with the Committee's concluding observations on the latest report of the State party</i>
64. Libyan Arab Jamahiriya	Fourth	14 June 2002	
	Fifth	14 June 2006	
	Sixth	14 June 2010	
65. Liechtenstein	Fourth	1 December 2003	[14 May 2014]
	Fifth	1 December 2007	
66. Lithuania	Third	2 March 2005	[21 November 2012]
	Fourth	2 March 2009	
67. Madagascar	Second	13 January 2011	
68. Malawi	Second	10 July 2001	
	Third	10 July 2005	
	Fourth	10 July 2009	
69. Maldives	Second	20 May 2009	
70. Mali	Second	27 March 2004	
	Third	27 March 2008	
71. Malta	Third	12 October 1999	[31 December 2000]
	Fourth	12 October 2003	
	Fifth	12 October 2007	
72. Mauritania	Second	17 December 2009	
73. Mauritius	Fourth	7 January 2006	[3 June 2015]
	Fifth	7 January 2010	
74. Mongolia	Second	23 February 2007	[19 November 2014]
	Third	23 February 2011	
75. Morocco	Fifth	21 July 2010	
76. Mozambique	Second	14 October 2004	
	Third	14 October 2008	
77. Namibia	Second	27 December 1999	
	Third	27 December 2003	
	Fourth	27 December 2007	
78. Nepal	Third	12 June 2000	[12 June 2008]
	Fourth	12 June 2004	[12 June 2008]
	Fifth	12 June 2008	[12 June 2008]

<i>State party</i>	<i>Reports</i>	<i>Due date</i>	<i>Revised date, in accordance with the Committee's concluding observations on the latest report of the State party</i>
79. Netherlands	Sixth	20 January 2010	[30 June 2011]
80. New Zealand	Sixth	8 January 2011	[15 May 2013]
81. Nicaragua	Second	4 August 2010	[15 May 2013]
82. Niger	Second	3 November 2003	
	Third	3 November 2007	
83. Nigeria	Second	28 June 2006	
	Third	28 June 2010	
84. Panama	Fourth	22 September 2000	
	Fifth	22 September 2004	
	Sixth	22 September 2008	
85. Peru	Fifth	5 August 2005	[5 August 2009]
	Sixth	5 August 2009	[5 August 2009]
86. Philippines	Third	25 June 1996	[15 May 2013]
	Fourth	25 June 2000	
	Fifth	25 June 2004	
	Sixth	25 June 2008	
87. Poland	Sixth	25 August 2010	[30 June 2011]
88. Portugal	Sixth	10 March 2010	[30 December 2011]
89. Qatar	Third	10 February 2008	
90. Republic of Korea	Third	7 February 2004	[7 February 2012]
	Fourth	7 February 2008	
91. Republic of Moldova	Third	27 December 2004	[20 November 2013]
	Fourth	27 December 2008	
92. Romania	Second	16 January 1996	
	Third	16 January 2000	
	Fourth	16 January 2004	
	Fifth	16 January 2008	
93. Russian Federation	Sixth	25 June 2008	
94. Saint Vincent and the Grenadines	Second	30 August 2006	
	Third	30 August 2010	

<i>State party</i>	<i>Reports</i>	<i>Due date</i>	<i>Revised date, in accordance with the Committee's concluding observations on the latest report of the State party</i>
95. Saudi Arabia	Second	21 October 2002	
	Third	21 October 2006	
	Fourth	21 October 2010	
96. Senegal	Fourth	25 June 2000	
	Fifth	25 June 2004	
	Sixth	25 June 2008	
97. Seychelles	Second	3 June 1997	
	Third	3 June 2001	
	Fourth	3 June 2005	
	Fifth	3 June 2009	
98. Sierra Leone	Second	25 May 2006	
	Third	25 May 2010	
99. Slovakia	Third	27 May 2002	[20 November 2013]
	Fourth	27 May 2006	
	Fifth	27 May 2010	
100. Slovenia	Fourth	14 August 2006	[3 June 2015]
	Fifth	14 August 2010	
101. Somalia	Second	22 February 1995	
	Third	22 February 1999	
	Fourth	22 February 2003	
	Fifth	22 February 2007	
	Sixth	22 February 2011	
102. South Africa	Second	9 January 2004	[31 December 2009]
	Third	9 January 2008	
103. Spain	Sixth	19 November 2008	[20 November 2013]
104. Sri Lanka	Fifth	1 February 2011	
105. Swaziland	Second	25 April 2009	
106. Syrian Arab Republic	Second	18 September 2009	[14 May 2014]
107. Tajikistan	Third	9 February 2004	
	Fourth	9 February 2008	



<i>State party</i>	<i>Reports</i>	<i>Due date</i>	<i>Revised date, in accordance with the Committee's concluding observations on the latest report of the State party</i>
108. The former Yugoslav Republic of Macedonia	Third	17 October 2000	[30 June 2012]
	Fourth	17 October 2004	
	Fifth	17 October 2008	
109. Timor-Leste	Second	16 May 2008	
110. Togo	Third	17 December 1996	
	Fourth	17 December 2000	
	Fifth	17 December 2004	
111. Tunisia	Sixth	17 December 2008	
	Fourth	22 October 2003	
	Fifth	22 October 2007	
112. Turkey	Fourth	31 August 2001	[19 November 2014]
	Fifth	31 August 2005	
	Sixth	31 August 2009	
113. Turkmenistan	Second	24 July 2004	[3 June 2015]
	Third	24 July 2008	
114. Uganda	Second	25 June 1992	[25 June 2008]
	Third	25 June 1996	
	Fourth	25 June 2000	
	Fifth	25 June 2004	
	Sixth	25 June 2008	
115. Ukraine	Sixth	25 June 2007	[30 June 2011]
116. United Kingdom of Great Britain and Northern Ireland	Fifth	6 January 2006	[31 December 2008]
	Sixth	6 January 2010	
117. United States of America	Third	19 November 2003	
	Fourth	19 November 2007	
118. Uruguay	Third	25 June 1996	
	Fourth	25 June 2000	
	Fifth	25 June 2004	
	Sixth	25 June 2008	
119. Uzbekistan	Fourth	28 October 2008	[30 December 2011]

---

<i>State party</i>	<i>Reports</i>	<i>Due date</i>	<i>Revised date, in accordance with the Committee's concluding observations on the latest report of the State party</i>
120. Venezuela (Bolivarian Republic of)	Fourth	20 August 2004	
	Fifth	20 August 2008	
121. Yemen	Third	4 December 2000	[14 May 2014]
	Fourth	4 December 2004	
	Fifth	4 December 2008	
122. Zambia	Third	6 November 2007	[30 June 2012]

---

## Annex XI

### Country Rapporteurs and alternate Rapporteurs for the reports of States parties considered by the Committee at its forty-fifth and forty-sixth sessions (in alphabetical order)

#### A. Forty-fifth session

<i>Report</i>	<i>Rapporteur</i>	<i>Alternate</i>
Bosnia and Herzegovina (CAT/C/BIH/2-5)	Mr. Gallegos	Mr. Wang
Cambodia (CAT/C/KHM/2 and Corr.1)	Ms. Sveaass	Ms. Gaer
Ecuador (CAT/C/ECU/4-6)	Mr. Grossman	Mr. Mariño
Ethiopia (CAT/C/ETH/1)	Mr. Gaye	Ms. Belmir
Mongolia (CAT/C/MNG/1)	Mr. Bruni	Ms. Kleopas
Turkey (CAT/C/TUR/3)	Mr. Bruni	Ms. Gaer

#### B. Forty-sixth session

Finland (CAT/C/FIN/5-6)	Mr. Mariño	Mr. Wang
Ghana (CAT/C/GHA/1)	Mr. Grossman	Ms. Sveaass
Ireland (CAT/C/IRL/1)	Mr. Gallegos	Ms. Kleopas
Kuwait (CAT/C/KWT/2)	Mr. Bruni	Ms. Belmir
Mauritius (CAT/C/MUS/3)	Mr. Gallegos	Mr. Bruni
Monaco (CAT/C/MCO/4-5)	Ms. Belmir	Mr. Gaye
Slovenia (CAT/C/SVN/3)	Mr. Mariño	Mr. Wang
Turkmenistan (CAT/C/TKM/1)	Ms. Gaer	Mr. Grossman

## Annex XII

### Decisions of the Committee against Torture under article 22 of the Convention

#### A. Decisions on merits

##### Communication No. 310/2007: *Chahin v. Sweden*

<i>Submitted by:</i>	Tony Chahin (represented by counsel, Bo Johansson)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	20 December 2006 (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 30 May 2011,

*Having concluded* its consideration of communication No. 310/2007, submitted to the Committee against Torture by Tony Chahin 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 against Torture

1.1 The complainant is Tony Chahin, a Syrian national born in 1964, currently illegally residing in Sweden, where he returned in 2003, despite a lifetime prohibition to re-enter the country, and where he has since been living in hiding. He claims to be a victim of torture suffered following his deportation from Sweden to the Syrian Arab Republic in 1997 and that a new deportation to Syria would again expose him to a risk of being subjected to torture, in violation of article 3 of the Convention. He is represented by counsel.

1.2 In his initial submission dated 20 December 2006, the complainant asked the Committee to request the State party to take interim measures by not deporting him to the Syrian Arab Republic until the Committee had taken a final decision on his communication. On 10 January 2008, the Rapporteur on new complaints and interim measures informed the complainant and the State party of his decision not to accede to the request for interim measures, while indicating that this decision could be reviewed and a request for interim measures formulated once the complainant emerged from hiding. On 13 December 2007, counsel informed the Committee that he had been unable to convince the complainant to emerge from hiding due to the latter's fear of being returned to the Syrian Arab Republic.

### The facts as submitted by the complainant

2.1 The complainant belongs to the Christian minority in the Syrian Arab Republic. In 1975, his family moved to Lebanon, where he joined the Lebanese Forces during the civil war in the 1980s, i.e. the Samir Jahjahs military group, an organization hostile to the Syrian Arab Republic. He took part in armed combat against the Syrian forces.

2.2 On 10 June 1989, the complainant married Fehima Melki in Beirut. Before that, in May 1989, Mrs. Melki had been informed that she had been granted a residence and work permit in Sweden, where her family had lived since 1986. In September 1989, following her arrival in Sweden, she applied for residence and work permits on behalf of the complainant, which were granted for a period of six months in December 1989 and later extended until January 1991 based on their marriage. In 1989 or 1990, the complainant arrived in Sweden. On 14 November 1990, he applied for a resident permit, a work permit and an alien's passport.

2.3 On 1 September 1991, the complainant had a fight with two men in a café in Norrköping, during which he stabbed one of the men in the back with a sharp object. As a result, the man died.

2.4 By judgment of 3 October 1991, the District Court of Norrköping convicted the complainant of manslaughter, sentenced him to eight years' imprisonment and ordered his expulsion from Sweden once he served his prison sentence. The expulsion order included a permanent prohibition to return to Sweden. When determining the length of the prison sentence, the Court considered as a mitigating factor that the complainant would be expelled. During the proceedings, the Swedish Immigration Board submitted an advisory opinion, noting that the complainant had not applied for asylum and that there were no impediments to him being expelled.

2.5 On 18 October 1991, the Swedish Immigration Board rejected the complainant's application for a resident and a work permit because of the expulsion order against him.

2.6 The complainant appealed the judgment of the District Court only insofar as it concerned his expulsion. On 12 November 1991, the Göta Court of Appeal confirmed the lower court's judgment. On 20 December 1991, after the Supreme Court had decided not to grant leave to appeal, the expulsion order became final.

2.7 In August 1993, while serving his prison sentence, the complainant lodged an application for his expulsion order to be revoked, submitting that in 1979, he had been recruited by force by a Christian Falangist-Assyrian military organization, Rabeta El-Soryanie, and had been involved in armed combat against Muslim forces during the Lebanese civil war. On several occasions, he had been wounded by shell splinters and gunshots. In 1989, he had been captured by other Christian forces under General Aoun's command, detained, tortured with electrical shocks and by suspension in a water-filled tyre, and forced to fight on their side. After six months, he managed to escape and return to his own forces, and later to Sweden. He contended that, as the Syrian Arab Republic occupied most of Lebanon, he would be at risk of being persecuted, tortured and executed upon return to Lebanon due to his engagement in the Falangist forces during the civil war. On 3 February 1994, the Government rejected the application finding that there were no special grounds to revoke the expulsion order.

2.8 On 11 November 1996, the complainant lodged another application to have the expulsion order revoked, invoking his ties to his wife and three children in Sweden, as well as his engagement in armed combat as a member of a Christian military group and as a bodyguard of two high-ranking Christian politicians during the Lebanese civil war, which would expose him to a risk of torture and execution on return to the Syrian Arab Republic or Lebanon. On 19 December 1996, the Government of Sweden rejected the application.

2.9 On 27 December 1996, a priest at the Norrköping prison, where the complainant was serving his sentence, lodged a further application with the Government on behalf of the complainant to have his expulsion order revoked. On 16 January 1997, the Government rejected the application.

2.10 On 5 January 1997, the complainant was deported to the Syrian Arab Republic, escorted by Swedish police, a Syrian security guard and an interpreter. Upon arrival at Damascus airport, he was accused of having participated in armed combat against the Syrian forces in Lebanon, thereby collaborating with "Zionist and Israeli interests". During long interrogations, he was questioned about the military group he had joined in Lebanon, and was forced to confess his guilt. He was subjected to torture.

2.11 On 7 October 1997, the Supreme State Security Court sentenced the complainant to three years' imprisonment with hard labour for membership in an organization pursuing the aim of overthrowing the social and economic order of the State of the Syrian Arab Republic. By joining the terrorist Samir Jahjahs group within the Lebanese Forces, which aimed at dividing Lebanon, he had committed high treason with the intention to undermine the State of the Syrian Arab Republic.

2.12 The complainant served his sentence in Saydnaya prison in Damascus. He spent the first nine months in solitary confinement, before he was placed in an ordinary cell. During imprisonment, he was subjected to torture and other inhuman and degrading treatment. However, the torture was not as frequent as during the interrogation by the security service. After serving his sentence, he was handed over to the army in 2000 to perform his military service for three years (one year more than the normal military service, in accordance with his sentence) in the town of Homas, where he worked under harsh conditions in an unarmed military construction unit.

2.13 In the beginning of 2003, the complainant finished his military service and settled in his home town Al-Jazire in northern Syrian Arab Republic, where his family was living. On arrival, he was summoned to the local office of the security service, where the following obligations were imposed on him: (a) to report to the security service every other day; and (b) to apply for special permission any time he wished to leave Al-Jazire; furthermore, he was prohibited (a) from leaving Syria; and (b) from applying for State employment.

2.14 The complainant feared for his security and contacted a professional human smuggler who provided him with a forged Syrian passport and visa for France. He left the Syrian Arab Republic by plane and arrived in Paris, via Cyprus, in May 2003. After one or two days, he travelled to Hamburg, from where he went to Sweden in July 2003. After his departure from the Syrian Arab Republic, members of the security service regularly visited his family in Al-Jazire asking for him. On one occasion, the complainant's 80-year-old father became so frightened that he required medical treatment in a hospital.

2.15 On 28 May 2003, the complainant's wife lodged an application on his behalf requesting that his expulsion order be revoked in the light of his conviction in Syria and in order to allow him to reunite with his family. By decision of 10 July 2003, the Ministry of Justice rejected the application.

2.16 On 23 November 2004, the complainant lodged another application for revocation of the expulsion order, claiming that he had been (a) tortured through lashes with belts and sticks, electric shocks, squeezing into tyres, suspension by his arms and hands, and beating of the soles of his feet ("falaka") during interrogations by the Syrian security service in 1997 on the suspicion that he had fought against the Syrian forces during the Lebanese civil war; (b) convicted of membership in a terrorist group; and (c) that he had violated three of the four restrictions imposed on him. He claimed that he would face a risk of torture if returned to the Syrian Arab Republic, where he would be considered a security risk owing to his past activities in Lebanon and the fact that he had served a prison sentence for having

committed a crime against the State. He would be detained and interrogated about his activities abroad. In support of his claim, he presented a copy of the judgment of the Supreme State Security Court, as well as a forensic medical report dated 7 September 2004 (examination on 26 August 2004) and a psychiatric report dated 15 September 2004 (examination on 25 August 2004), issued by experts of the Centre for Treatment of Crisis and Trauma Victims in Stockholm. The forensic medical report confirms that several scar formations on his body are consistent with the complainant's description of his torture. The psychiatric report states that it is very likely that he suffers from a post-traumatic stress syndrome as a consequence of his experience of war and torture and, possibly, from a personality disorder. The complainant concluded that his risk of being subjected to torture constitutes an absolute impediment to his expulsion to the Syrian Arab Republic under the Swedish Aliens Act and articles 3 of the Convention and of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2.17 The Ministry of Justice sent the copy of the Syrian judgment and other documents to the Swedish Embassy in Damascus to verify their authenticity. On 16 March 2005, the Embassy confirmed that the judgment was authentic but not that he was prohibited from leaving the Syrian Arab Republic.

2.18 On 12 April 2005, counsel for the complainant commented on the information received from the Embassy, questioning its source and reliability.

2.19 On 11 October 2005, the Migration Board, at the request of the Ministry of Justice, submitted an opinion on the case. Based on the Swedish Embassy's advice that no restrictions had been imposed on the complainant, the Board concluded that he would not face a risk of torture upon return to the Syrian Arab Republic. Therefore, there were no impediments to the enforcement of the expulsion order.

2.20 In a submission to the Government dated 9 November 2005, the complainant maintained that he had been prohibited from leaving his home town, as well as the Syrian Arab Republic, and that he had been required to regularly report to the authorities. He argued that the imposition of restrictions on him was plausible in the light of the political nature of the crime for which he had been convicted, and reiterated that it was unclear how any information to the contrary had been obtained by the Embassy.

2.21 On 21 June 2006, the Government rejected the complainant's application, concluding that there were no special grounds for revoking the expulsion order against him.

### **The complaint**

3.1 The complainant claims that his deportation to the Syrian Arab Republic in 1997 constituted a violation by the State party of article 3 of the Convention. Despite the fact that his torture in the Syrian Arab Republic was foreseeable, as it was known that he had been engaged in the Lebanese Forces, that the Syrian Arab Republic considered such engagement as treason, and that torture was common in the Syrian Arab Republic according to international human rights reports, particularly in cases related to national security, the State party had summarily rejected his applications and had returned him to the Syrian Arab Republic. His subjection to torture on return to the Syrian Arab Republic had been confirmed by two medical and psychiatric expert reports, had not been refuted by the State party, and must be attributed to the State party, in accordance with article 3 of the Convention.

3.2 The complainant claims that the State party would violate article 3 of the Convention, if it were to deport him to the Syrian Arab Republic again. It was an established fact that he had been gravely tortured and sentenced to three years' imprisonment for treason in the Syrian Arab Republic in 1997. International human rights reports indicated that the frequent use of torture by Syrian security forces had not changed

since then. He argues that the Syrian security service considered him a security risk and as someone who could join political groups hostile to the regime in power and engage in activities against national interests. It was therefore plausible that the security service would keep him under surveillance by requiring him to regularly report to it and by restricting his freedom of movement. The imposition of restrictions on him was a logical consequence of his past engagement in the Lebanese Forces. He reiterates that the Swedish authorities have failed to refute his prima facie case of a risk of torture in the Syrian Arab Republic, in particular that he had violated the restrictions on him by fleeing the country.

3.3 For the complainant, it is inevitable that if he were to be returned, the Syrian authorities would investigate his activities abroad, suspect him of conspiracy against the State of the Syrian Arab Republic, and consider him a valuable source of information about anti-Syrian political circles abroad. Therefore, it was likely that he would be detained, interrogated and subjected to torture, which formed a routine part of the investigation process in the Syrian Arab Republic. The Syrian authorities' motive to extract information from him was considerable; and it was unlikely that they would refrain from using torture. Even in the absence of restrictions, there would still be a high risk that the Syrian security service would arrest him on arrival at Damascus airport and interrogate and torture him. The fact that he had previously been convicted of treason and that he had been expelled from a third country after a prolonged stay abroad for "unclear" reasons, made him a politically suspicious person.

3.4 The complainant submits that he has exhausted all available domestic remedies in Sweden, as the decision of the Ministry of Justice rejecting his application to revoke the court orders against him and to grant him a residence permit was final and not subject to any appeal. He also submits that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

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

4.1 On 10 October 2007, the State party made a submission on the admissibility and the merits of the communication, arguing that the complainant's claims about his present risk of being subjected to torture and that in 1997 are inadmissible under article 22, paragraph 2, of the Convention, for being manifestly unfounded. Subsidiarily, the State party submits that his claims are without merit.

4.2 On admissibility, the State party, after describing the relevant domestic legislation (the Penal Code and the 1989 and 2005 Aliens Acts), does not challenge that the complainant has exhausted all available domestic remedies in Sweden and that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. However, it considers that his claims about the incompatibility with article 3 of the Convention of his deportation in 1997, as well as of a possible second deportation, fail to rise to the basic level of substantiation required for purposes of admissibility. The State party concludes that the communication is inadmissible for being manifestly unfounded under article 22, paragraph 2, of the Convention and under rule 107 (b) of the Committee's rules of procedure (CAT/C/3/Rev.4).

4.3 On substance, the State party recalls the Committee's general comment No. 1 (1996) on the implementation of article 3 of the Convention in the context of article 22.<sup>a</sup> While the Committee must take into account all relevant considerations when determining whether the forced return of a person to another country would violate article 3, including, where

---

<sup>a</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.*



applicable, the existence of a consistent pattern of gross, flagrant or mass violations of human rights, the aim of the determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in his or her country of origin. By reference to several human rights reports, the State party acknowledges that the human rights situation in the Syrian Arab Republic, albeit somewhat improved, continues to be problematic. At the same time, it recalls that such situation does not in itself suffice to establish that the forced return of the complainant was or would be in violation of article 3. In assessing whether the complainant faced or would face a foreseeable, real and personal risk of being subjected to torture on return to the Syrian Arab Republic, due weight must be attached to the credibility of his statements before the domestic authorities.

4.4 The State party submits that the complainant made incorrect, incomplete and contradictory statements about his nationality, age and family on several occasions:

(a) In his application for a resident and work permit in 1990, he stated that he was born in Beirut, Lebanon, in 1964, that his parents were of unknown citizenship and lived in Beirut, and that he had eight brothers and sisters, one of whom was Gabi C., who lived in the Syrian Arab Republic;

(b) During a supplementary investigation by the police in May 1991, he denied that he and his siblings came from the Syrian Arab Republic;

(c) During the criminal proceedings in 1991 and the proceedings concerning his applications for revocation of the expulsion order in 1993 and 1996, he claimed that he was a stateless Christian Syrian, born in Lebanon, brought up in the home of an older sister in Beirut, and unaware of the fate of his parents;

(d) During an interview in 1996, he denied that he was a Syrian citizen and stated that he had never seen his parents or been to the Syrian Arab Republic.

4.5 According to an inquiry report dated 17 June 1992 prepared by the Swedish Embassy in Damascus at the request of the Swedish police, the complainant was born in Malkie, in the north of the Syrian Arab Republic, as the son of Ibrahim C. and Myriam Y.; he had no brother named Gabi and left the Syrian Arab Republic at the age of 12 for Lebanon where he stayed for eight years until he went to Sweden. An excerpt from the Syrian family registry provided to the Swedish Embassy in 1996 contains information about a family called Chahin, registered as 773/Malkie, and consisting of two parents and 10 children, including one Anton Chahin born in 1968. However, it was not until the enforcement of the expulsion order in 1997 and his return to Sweden in 2003, that the complainant stated that he had been in possession of a Syrian passport and that he was a Syrian citizen born in the Syrian Arab Republic. In his November 2004 application for revocation of the expulsion order, he mentioned that his parents and siblings lived in the Syrian Arab Republic.

4.6 The State party submits that the complainant also provided contradictory information about his journey to Sweden:

(a) After initially stating that the time of his arrival in Sweden was August or September 1990, the complainant, in his August 1993 application for revocation of the expulsion order, changed that date to October 1990;

(b) In his November 2004 application for revocation of the expulsion order, he referred to the records of his examination at the Centre for Treatment of Crisis and Trauma Victims, according to which he had travelled back and forth between Lebanon and Sweden from 1984 to 1987 and, after two more years in Lebanon, had settled in Sweden in 1989;

(c) In his communication to the Committee, he repeated that he had arrived in Sweden in 1989;

(d) During the criminal proceedings in 1991, he stated that he had fled from Lebanon to Sweden in 1990 together with his family.

4.7 The State party challenges the complainant's claim that he had left Beirut on a Lebanese "laissez passer" passport, based on information from the Swedish Embassy in Damascus that he was not registered with relevant authorities in Beirut.

4.8 The State party argues that it cannot be excluded that the complainant's scar formations result from causes other than torture suffered between 1997 and 2000. Even assuming that he was tortured on return to the Syrian Arab Republic in 1997, the compatibility of his deportation with article 3 of the Convention must be decided in the light of the information that was known, or ought to have been known, to the State party at the time of the expulsion, although subsequent events are relevant to the assessment of the State party's knowledge. The State party argues that, prior to his expulsion in 1997, there were no substantial grounds for believing that the complainant would be tortured in the Syrian Arab Republic because:

(a) He had never applied for asylum in Sweden. During a supplementary investigation by the police in May 1991, the investigator specifically noted that since the complainant had applied for a residence permit in Sweden based only on his ties to Sweden, his political activities had not been examined in detail;

(b) It was not until his August 1993 application for revocation of the expulsion order that the complainant claimed that he would be at risk of being subjected to torture, and only if returned to Lebanon (rather than to the Syrian Arab Republic);

(c) It was only in April 1996, in an interview with the Swedish Immigration Board, and in his November 1996 application for revocation of the order, that he claimed a risk of torture if returned to the Syrian Arab Republic. However, he neither mentioned any torture suffered during the civil war in Lebanon nor did he submit any evidence to that effect;

(d) On several occasions before his expulsion, he had provided the Swedish authorities with contradictory, incorrect and incomplete information concerning his birthplace, age and family, the time of his arrival in Sweden and his travel documents. This had considerably complicated the authorities' task of making an adequate risk assessment prior to his expulsion to Syria;

(e) Prior to 1997, he had never claimed that he was wanted by the Syrian authorities for fighting against the Syrian Arab Republic during the Lebanese civil war or that he was at risk of being convicted of a State crime if returned to the Syrian Arab Republic. According to a protocol dated 8 January 1997 of the Norrköping police, he merely expressed concern during the journey to Damascus in January 1997 that he would be arrested for failing to perform his military service in the Syrian Arab Republic. However, he told the Syrian security guard escorting him that he had served a prison term in Sweden. At Damascus airport, he was welcomed by his brother, who gave him a Syrian birth certificate and identity card. He was handed over to the Syrian security service. When he told the immigration police that he had been in possession of a Syrian passport, the police replied that no Syrian passport had been issued for him and that he had failed to report for military service. The complainant stated that he had travelled to Sweden from Beirut on a Lebanese "laissez passer" passport. The immigration police then informed the security service that he had served a prison sentence in Sweden for killing a Turkish Kurd and that the authorities in his home town Kamishli had requested his transfer to that town;

(f) The Swedish authorities could not foresee that the complainant would be detained by the Syrian security service and later be convicted of a State crime by the Supreme State Security Court. Similarly, they could not anticipate that he would incriminate

himself by informing the Syrian security guard during the flight to Damascus that he had been in prison in Sweden and by telling the immigration police upon arrival at Damascus airport that he had killed someone in Sweden.

4.9 In addition, the State party submits that the complainant has never applied for political asylum in Sweden and that it was not until he applied for revocation of the expulsion order in 1993 and in 1996 that he claimed to have a well-founded fear of being tortured on return to the Syrian Arab Republic and/or Lebanon, without providing any medical certificates or other evidence in support of his claim.

4.10 As regards the pending expulsion order, the State party challenges that any restrictions were imposed on the complainant after finishing his military service in the Syrian Arab Republic. Had he failed to report to the security service despite an order to do so, he would now be wanted and his name would be registered in a special database for in- and outward journeys. However, there was no indication that he was wanted, required to report to the security service or to apply for special permission to leave his hometown, or prohibited from holding State employment. Such restrictions would have been registered by the Syrian authorities. According to information received on 16 March 2005 from the Swedish Embassy in Damascus, no arrest warrant had been issued against the complainant in the Syrian Arab Republic. While it was likely that the security service would summon him for several years, the Embassy could not confirm that he was prohibited from leaving the Syrian Arab Republic. In the absence of any evidence, the complainant had failed to substantiate that he was wanted by, or otherwise of interest to, the Syrian security service.

4.11 The State party does not contest that the complainant was tortured in the past, as confirmed by the medical records of the Centre for Treatment of Crisis and Trauma Victims. However, from those records, it was not possible to draw any conclusions about when and where he had been tortured. The State party reiterates that it cannot be excluded that the torture took place before 1997, when he was captured by enemy forces in Lebanon in 1989, and that some of the scar formations result from war injuries. Moreover, it was not until August 2004, i.e. one year after his arrival in Sweden, that he went to see a doctor, and not until his application dated 23 November 2004 for revocation of the expulsion order that he claimed to have been subjected to torture in the Syrian Arab Republic in 1997.

4.12 The State party argues that, having served his prison term and having performed his military service, the complainant was no longer in default vis-à-vis the State of Syria. It was unlikely that he would still be considered a security risk by the Syrian authorities, given that the judgment of the Supreme State Security Court concerned acts dating back to the 1980s, and that he had apparently not been engaged in anti-Syrian activities in the recent past.

4.13 The State party concludes that the enforcement of the expulsion order in 1997 was not in violation of article 3 of the Convention; nor would the enforcement of the pending expulsion order against the complainant constitute a violation of that article.

#### **Complainant's comments on the State party's observations**

5.1 On 13 December 2007, the complainant commented on the State party's observations. On the facts, he submits that he was granted residence in Sweden in 1990 due to his marriage with Fehima Melki. In the 1980s, he lived in Lebanon where he joined one of the armed fractions of the Lebanese Forces. A military superior helped him to leave Lebanon for Cyprus, where he lodged an application for a resident permit at the Swedish diplomatic representation.

5.2 The complainant submits that the reason why he concealed his Syrian nationality and first told the Swedish authorities that he was born in Beirut, where he pretended his parents and siblings were living, was that for obtaining a resident permit, it was more

favourable to be a Lebanese citizen or a stateless person from Lebanon at the time. Thus, it was a common strategy among Syrian Christian asylum-seekers to pretend to be Lebanese. Moreover, he self-identified as Lebanese. After his criminal conviction in 1991, he was afraid of being returned to the Syrian Arab Republic because of his engagement in a faction of the Lebanese Forces hostile to the Syrian Arab Republic.

5.3 The complainant submits that before his criminal conviction, he had contacted the Swedish police to submit an application for refugee status under the 1951 Geneva Convention. However, he was advised that such an application was unnecessary, since he already had a resident permit.

5.4 The complainant states that on arrival at Damascus airport in 1997, he was brought to a special interrogation room where he was forced to disclose that he had served a prison term in Sweden.

5.5 The complainant explains that the reason why he stated that he had raised his torture in the Syrian Arab Republic in 1997 only in his November 2004 application, was that the May 2003 application that his wife had lodged on his behalf had been prepared by a non-lawyer. Only after receiving funds from Amnesty International in Sweden was he able to undergo a medical and psychiatric examination at the Centre for Treatment of Crisis and Trauma Victims in August 2004 and to have the judgment of the Syrian Supreme State Security Court translated into Swedish to substantiate his torture claims.

5.6 The complainant reiterates that the State party has failed to disclose how and from what sources it had obtained the information that he was not wanted in the Syrian Arab Republic and that no restrictions had been imposed on him. He doubts that the Syrian authorities would share such secret and security-related information with a foreign, non-allied State, and claims that the State party has received inaccurate information, from which it has drawn its own conclusions.

5.7 On admissibility, the complainant argues that he has substantiated his risk of being subjected to torture on return to the Syrian Arab Republic by presenting a copy of the judgment of the Supreme State Council of the Syrian Arab Republic as well as medical evidence in support of his claim. Prior to his expulsion in 1997, he had substantiated his fear of being tortured in the Syrian Arab Republic based on his activities during the Lebanese civil war, even if he was unable to provide any medical evidence. The Swedish prison authority did not provide for free medical examinations of torture victims and his limited means as a prisoner did not allow him to arrange for a private examination. He concludes that his communication must be declared admissible under article 22, paragraph 2, of the Convention as being sufficiently substantiated.

5.8 On substance, the complainant argues that the State party has conceded that the human rights situation in the Syrian Arab Republic remained problematic. He submits several human rights reports to show that torture is frequently used by security agencies, especially in relation to security-related crimes and with regard to persons opposed to the Baath regime and to Syrian interests abroad. The State party was aware of his involvement in the Lebanese civil war; it was therefore foreseeable in 1997 that he would be arrested, detained, interrogated and tortured by the Syrian security service.

5.9 He claims that he continues to be personally at risk of being tortured in the Syrian Arab Republic. Even assuming that he had not violated any restrictions and that he would only be taken into preventive detention and referred to investigation for 10 to 14 days, as claimed by the State party, it would be more or less inevitable that he would be tortured again. The security service would have a special interest in him after his long absence from the Syrian Arab Republic and, notwithstanding the fact that he had served his Syrian prison sentence, would continue to consider him a security risk and a State enemy.

5.10 The complainant emphasizes that the State party has failed to refute that he had violated the restrictions imposed on him by the Syrian authorities. This was also supported by the fact that his father had been interrogated by the security service. His sister Georgette Chahin, his niece Carolin Chamoun, his nephew Josef Chamoun and his uncle Walid Chahin, all Swedish nationals and/or residents, were also interrogated by the security service about his whereabouts during visits to the Syrian Arab Republic between 2003 and 2007. His nephew was even subjected to ill-treatment during his interrogation.

5.11 For counsel, the complainant's credibility is not undermined by the fact that he had concealed his Syrian nationality and made contradictory statements about his arrival in Sweden: It is common for asylum-seekers and migrants to provide authorities with incorrect information, whether on rational or irrational grounds. What matters is that he is a Syrian citizen and that he was deported to the Syrian Arab Republic in 1997 and interrogated, tortured and sentenced for a crime against Syrian national interests.

5.12 The complainant rejects the State party's argument that his scars might as well result from war injuries. The number of medical findings was 16 and that of torture symptoms 6. It was more likely that those sequelae resulted from treatment by a State security agency with experience and knowledge in using torture as an interrogation method rather than by one of the Lebanese civil war fractions. During the war, he had once been hit by a bullet which had caused a minor flesh wound.

5.13 The complainant maintains that his deportation to the Syrian Arab Republic in 1997 violated article 3 of the Convention, and that another expulsion would violate the same article.

5.14 On 21 December 2007, the complainant submitted copies of the Swedish passports of his sister and nephew, showing that they had travelled to the Syrian Arab Republic in 2005 and 2006, respectively.

#### **State party's reply to the complainant's comments**

6.1 On 11 March 2008, the State party replied, reiterating that neither the deportation in 1997 nor the enforcement of the pending expulsion order were or would be in breach of article 3 of the Convention, respectively. There were substantial differences between the complainant's deportation in 1997 and the Agiza case, where the Committee had found that the Swedish authorities knew or ought to have known that Mr. Agiza, who had been sentenced in absentia and was wanted for alleged involvement in terrorist activities in his country of origin, would run a real and personal risk of being tortured if returned to that country. Unlike Mr. Agiza, the complainant had never applied for asylum in Sweden but was granted a residence permit based on his ties to Sweden. Had he been in need of protection, he would have applied for asylum directly on arrival in Sweden, irrespective of what the police had told him. The State party considers it unlikely that the police would have advised the complainant not to apply for asylum given that he had only been granted a temporary resident permit. Besides, the complainant was represented by a lawyer when he submitted his applications for revocation of the expulsion order in 1993 and 1996.

6.2 The State party emphasizes that, prior to his deportation, the complainant had not provided a wanted notice or any other evidence in support of his claim that he would be arrested and tortured in the Syrian Arab Republic because of his participation in the Lebanese civil war. In addition to providing the Swedish authorities with contradictory, incorrect and incomplete information about his identity, he had provided the Committee with different unconvincing explanations for those contradictions.

6.3 With regard to the pending expulsion order, the State party reiterates that the complainant has failed to provide any documents in support of his claim that he would still be considered a security risk and thus of special interest to the Syrian authorities. It

reiterates that he has served his prison sentence and performed his military service, in accordance with the judgment of the Supreme State Security Court, and that he has not claimed to have been involved in any political or other activities after 2003 that might be considered hostile to the Syrian regime. His claim that restrictions were imposed on him had been refuted by the Embassy report dated 7 August 2007, which states that even if he had left the Syrian Arab Republic illegally, he would probably only be sentenced to a fine. The Embassy report had been prepared "by a local lawyer with great knowledge of the Syrian system who carries out investigations on behalf of several European Embassies and United Nations bodies in Syria". The complainant had failed to present any counter-evidence to refute the report or even to explain why he considers the information contained therein to be incorrect.

6.4 The State party recalls that according to the medical certificate dated 6 September 1991, the complainant had been in hospital twice during the Lebanese civil war after suffering splinter injuries to his legs. His latest submission to the Committee that he had only once been wounded by a bullet causing him a minor flesh wound was also inconsistent with his application in 1993 for revocation of the expulsion order, where he stated that he had been wounded by shell splinters and gunfire on several occasions. Moreover, during the domestic proceedings, the complainant also claimed that he had been tortured in Lebanon in 1989. The forensic medical report submitted by him only concludes that the scar formations on his body could have been caused between 1997 and 2000. For the State party, this does not permit any positive conclusions as to when and where the torture of the complainant took place.

6.5 The State party also challenges the complainant's claim that the Syrian authorities forced him to disclose his prison term in Sweden on arrival at Damascus airport, recalling that according to the protocol of the Norrköping police, he had told the Syrian escort about his prison sentence during the flight to Damascus.

6.6 The State party dismisses as lodged out of time the information submitted by the complainant concerning the interrogation of his sister, niece, nephew and uncle by the Syrian security service during their visits to the Syrian Arab Republic. This information was not supported by any evidence and would have been available already at the time of the initial submission of the communication to the Committee.

6.7 Lastly, the State party reports that generally no reasons are given in decisions rejecting applications for revocation of expulsion orders.

#### **Further comments by the complainant**

7.1 On 21 April 2008, the complainant sent further comments. In particular, he reiterates that there were sufficiently strong indications prior to his deportation in 1997 that he could be arrested and subjected to torture in the Syrian Arab Republic, even if those indications were not as strong as in the Agiza case.

7.2 The complainant argues that although he cannot prove that restrictions were imposed on him, this was highly probable given that he was a former convict. The State party had failed to show how its lawyer had obtained information to the contrary. In any event, he should be given the benefit of the doubt, in accordance with internationally recognized principles.

7.3 The complainant justifies the contradictions in his statements before the Swedish authorities with his mental condition. The psychiatrist at the Centre for Treatment of Crisis and Trauma Victims had confirmed that he could suffer from a personality disorder and that he was most likely suffering from a post-traumatic stress syndrome. Such contradictions could not change the fact that he was tortured in 1997 in Syria and that he would face a grave risk of being tortured if returned to that country again.

7.4 The information about the interrogation of the complainant's family members during visits to the Syrian Arab Republic was brought to counsel's knowledge by the family members. According to counsel, the complainant himself is extremely passive when requested to present information, a behaviour which was typical for persons suffering from post-traumatic stress disorder. It was not possible to obtain any evidence apart from the passport copies submitted by the complainant.

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

#### *Consideration of admissibility*

8.1 Before considering an allegation in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. It notes that the State party has conceded that the complainant has exhausted all available domestic remedies. The Committee has also ascertained, as it is required to in accordance with 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.

8.2 The Committee notes that the State party has raised an objection to admissibility to the effect that the communication is manifestly unfounded under article 22, paragraph 2, of the Convention. In this connection, the Committee considers that a distinction must be made between (a) the complainant's deportation to the Syrian Arab Republic in January 1997 and (b) the expulsion order currently pending against him.

8.3 With regard to the complainant's deportation in 1997, the Committee takes note of the State party's argument that even assuming that the complainant was tortured on return to the Syrian Arab Republic, such risk of torture must have been foreseeable at the time of the enforcement of the expulsion order against the complainant on 5 January 1997 for a violation of article 3 of the Convention to be found. The Committee recalls that the complainant did not apply for asylum in Sweden prior to his deportation. It also notes that his contradictory statements about his nationality, personal circumstances and his travel to Sweden before the State party's authorities undermined his credibility and made it more difficult for the Swedish authorities to assess his risk upon return to the Syrian Arab Republic. The Committee therefore finds that the complainant has failed to substantiate, for purposes of admissibility, that his risk of torture upon return to the Syrian Arab Republic was foreseeable for the State party at the time of his deportation. It concludes that this part of the communication is therefore inadmissible as manifestly unfounded under article 22 of the Convention and rule 113 (b) of the Committee's rules of procedure (CAT/C/3/Rev.5).

8.4 With regard to the current expulsion order, the Committee considers that the complainant has adduced sufficient elements, including a copy of the judgement of the Syrian Supreme State Security Council and two medical reports, to substantiate his claim for purposes of admissibility. As the Committee finds no further obstacles to admissibility, it declares this part of the communication admissible and proceeds to the consideration of the merits.

#### *Consideration of the merits*

9.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

9.2 The issue before the Committee is whether the enforcement of the current deportation order against the complainant would violate the State party's obligation under article 3 of the Convention not to expel or return a person to a State where there are

substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.3 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture upon return, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the Syrian Arab Republic. The aim of such an analysis is to determine whether a complainant runs a personal risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on 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 flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

9.4 The Committee notes that the State party itself acknowledged that the human rights situation in the Syrian Arab Republic remains problematic, and recalls its concluding observations on the Syrian Arab Republic adopted in 2010, where it expressed concern about “numerous, ongoing and consistent allegations concerning the routine use of torture by law enforcement and investigative officials, at their instigation or with their consent, in particular in detention facilities”.<sup>b</sup> It also noted that “such acts commonly occur before formal charges are laid, as well as during the pretrial detention period, when the detainee is deprived of fundamental legal safeguards, in particular access to legal counsel”.<sup>c</sup> The Committee notes that in the meantime, the human rights situation in the Syrian Arab Republic has seriously deteriorated in connection with the Government’s crackdown on the protests for political reforms.<sup>d</sup> In April 2011, during a special session of the Human Rights Council on the current human rights situation in the Syrian Arab Republic, all special procedures mandate holders of the Human Rights Council called upon the Government of that country to stop the use of violence and “to respect its human rights obligations, in particular with regard to the non-derogable rights to life and to freedom from torture and ill-treatment”.<sup>e</sup>

9.5 With regard to the complainant’s personal risk of being subjected to torture if he is returned to the Syrian Arab Republic, the Committee notes that he has submitted documentary evidence in support of his claim, including a translation into Swedish of the judgement dated 7 October 1997 of the Syrian Supreme State Security Council convicting him of membership in a terrorist organization and sentencing him to three years’ imprisonment with hard labour. It also takes note of the forensic medical report dated 7 September 2004 and the psychiatric report dated 15 September 2004 from the Centre for Treatment of Crisis and Trauma Victims in Stockholm, which both confirm that it is likely that the complainant was subjected to torture in the past, without determining when such torture took place. It also notes the State party’s arguments relating to the complainant’s delay in submitting those documents and in raising his claims. However, the Committee considers that the complainant has provided satisfactory explanations for these delays, i.e. that his May 2003 application had been prepared by a non-lawyer and that it was only after

---

<sup>b</sup> CAT/C/SYR/CO/1, para. 7.

<sup>c</sup> Ibid.

<sup>d</sup> Amnesty International, “Follow-up to the concluding observations of Syria made at the 44th session of the Committee against Torture”, letter to the Committee against Torture, 17 May 2011, p. 4.

<sup>e</sup> Statement of all special procedures mandate holders of the Human Rights Council at the sixteenth special session of the Human Rights Council on the situation of human rights in the Syrian Arab Republic, 29 April 2011.



receiving funds from Amnesty International that he was able to obtain the documents. It observes that even if the medical reports fail to specify when and where the complainant was tortured, they provide grounds which go beyond mere theory or suspicion for believing that he was tortured in the recent past.

9.6 In the light of the current human rights situation in Syria, the Committee does not consider it decisive whether or not any restrictions were imposed on the complainant following his military service in the beginning of 2003. It recalls that the State party itself has submitted that the complainant would be taken into preventive detention upon arrival in the Syrian Arab Republic for having left the country illegally and subsequently would be transferred for further investigation for 10 to 14 days. This combined with the fact that the complainant was convicted of anti-State crimes by the Supreme State Security Court in 1997 is sufficient in the present circumstances for assuming that there are substantial grounds for believing that he would be detained, interrogated about his reasons for leaving the Syrian Arab Republic and about his activities abroad and, during such detention and interrogation, exposed to a risk of being subjected to torture. The Committee observes that such risk is personal and present.

9.7 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 deportation of the complainant to the Syrian Arab Republic would amount to a breach of article 3 of the Convention.

10. The Committee urges the State party, in accordance with rule 118, paragraph 5, of its rules of procedure (CAT/C/3/Rev.5), 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. 319/2007: *Singh v. Canada***

<i>Submitted by:</i>	Nirmal Singh (represented by counsel Stewart Istvanffy)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Canada
<i>Date of complaint:</i>	20 June 2007 (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 30 May 2011,*

*Having concluded* its consideration of complaint No. 319/2007, submitted to the Committee against Torture by Stewart Istvanffy on behalf of Nirmal Singh 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 against Torture**

1.1 The complainant, Nirmal Singh, an Indian national born in 1963, was residing in Canada at the time of submission of the present complaint and subject to an order for his deportation to India. He claims that his return to India would constitute a violation by Canada of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant alleges lack of judicial control required by the international human rights law on the administrative deportation decision and that he did not have an effective remedy to challenge the deportation decision. The complainant is represented by counsel, Stewart Istvanffy.

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 21 June 2007. At the same time, the Rapporteur on new complaints and interim measures requested the State party not to deport the complainant to India while his case was under consideration by the Committee, in accordance with rule 108, paragraph 1, of the Committee's rules of procedure (CAT/C/3/Rev.4). The State party subsequently informed the Committee that the complainant had not been deported.

**The facts as presented by the complainant**

2.1 The complainant is a baptized Sikh and was a part-time Sikh priest in the Indian provinces of Punjab and Haryana. Because of his preaching activities and frequent travel in the region, he was questioned and harassed by the Indian police on several occasions. The Indian police suspected him of being a terrorist or a sympathiser of the militant organization Khalistan Liberation Force (KLF) in India, as well as having helped militants by sheltering them. He was detained twice on false accusations, the first time for over three years from 1988 to 1991, and the second time in 1995.

2.2 On 10 April 1988, officers of the Shahbad police station (Haryana province) arrested the complainant, his brother and three other individuals without explaining the reasons for their arrest. At the police station the brothers were separated. The complainant was accused of involvement in a murder in the city of Shahbad and of being associated with one Daya Singh. The complainant denied the allegations. While in detention, the complainant was severely beaten and humiliated by the investigating officers and was forced to confess his guilt. After three years of detention, the complainant and his brother were bailed out on 14 March 1991 with a lawyer's help. On 19 February 1998, the complainant was acquitted of all charges related to the first accusation, but police officers continued to harass him under the pretext of visiting his home and place of religious services.

2.3 On 14 September 1995, an inspector of the Kotwali police station (Punjab province) accompanied by police officers, raided the complainant's house and arrested him. The complainant was handcuffed and his house was searched but no illegal items were discovered. The complainant was taken to the interrogation room at the police station and questioned by the inspector about one Paramjit Singh, who allegedly was involved in the assassination of the Punjab Chief Minister. The inspector alleged that the complainant had sheltered Paramjit Singh at his house before the Chief Minister's assassination. The inspector also stated that he had received secret information from the Haryana police that the complainant was associated with KLF and that another militant had reported to the police having sent Paramjit Singh to stay with the complainant. To make him confess his links with Paramjit Singh, the police subjected the complainant to the following forms of torture: a heavy wooden roller was rolled over his thighs with the legs spread apart; he was hung upside down and administered electric shocks; his soles were beaten with wooden rods, and he was not allowed to sleep. He was charged with harbouring a dangerous offender but released on bail on 30 September 1995, with a lawyer's help. The Patiala court acquitted him of the above charges on 19 March 1997.

2.4 After his acquittal in both cases, the complainant became a member of the Sarab Hind Shiromani Akali Dal (Akali Dal), the main Punjabi nationalist party, and on 4 July 1999, he was appointed as a Secretary-General of Akali Dal in Haryana province.

2.5 Although acquitted, the police still wanted the complainant to identify Paramjit Singh and two other individuals, who at that time were detained pending trial at the Burali jail. In 2000, he received three court summons, but the hearings were postponed each time. All this time the complainant was under police surveillance; he bribed the inspector to evade it and moved to Muzaffarnagar in Uttar Pradesh province. There, he applied for a passport, which was subsequently issued by the Ghaziabad Passport Office in September 2002.

2.6 On 13 January 2003, the complainant was arrested in Uttar Pradesh province and questioned about his domicile and activities. He admitted to having a residence in two places. Upon the request of Haryana police, he was transferred to Karnal on 15 January 2003, where he again suffered torture before being released on 20 January 2003, with the help of his parents and a prominent Akali Dal member.

2.7 On an unspecified date, after a Sikh function, the complainant was approached by an individual who was impressed by the service in the temple, in which the complainant was preaching at that time, and invited him to come to Canada. On the basis on an invitation of a Sikh temple in British Columbia, the complainant received a Canadian visa on 16 September 2003 and arrived in Vancouver, Canada on 24 September 2003. When the complainant was already in Canada, his father was arrested for three days, following the escape of killers of the Punjab's Chief Minister. Afterwards the complainant's family was constantly harassed by police, in attempts to establish his whereabouts.

2.8 After his arrival in Canada the complainant preached in two Sikh temples for a year and a half on voluntary basis. He was promised by the management of the Canada-based Gurudwara society that they would take care of his immigration status, but they failed to do so.

2.9 The complainant travelled to Montreal where, on 28 March 2005, he filed an application for refugee status and protection. The complainant's refugee claim was heard by the Immigration and Refugee Board ("the Board") on 3 October 2005. On 16 November 2005, the Board determined that he was not a Convention refugee. The Board concluded that the applicant was not credible, that his behaviour was not remonstrative of a person fearing for his life and that his departure was related to the invitation by the Sikh religious community to work in Canada.

2.10 The complainant applied to the Federal Court for leave to apply for judicial review of the Board's Decision, which was granted on 16 March 2006. The request for judicial review of this decision was heard on 7 June 2006 and it was denied by the Federal Court on 13 June 2006. The standard that the Federal Court applied to the credibility of the findings of the Board was that of "patent reasonableness". The Court concluded that the decision was not patently unreasonable, largely on grounds of the delay in claiming refugee status after arrival to the country and failure to provide credible or trustworthy evidence as to the complainant's background information in India.

2.11 After the refusal of refugee status and the decision from the Federal Court, on 27 December 2006, the complainant filed an application for stay for humanitarian reasons (so-called H&C application), submitting additional evidence under article 25(2) of the Immigration and Refugee Protection Act. The application was refused on 27 March 2007 by a Pre-Removal Risk Assessment (PRRA) officer who concluded that the applicant did not establish that he would be at risk should he return to India. The complainant applied to the Federal Court for leave to apply for judicial review of the H&C decision, which was dismissed without reasons on 6 September 2007.

2.12 On 12 December 2006, the complainant submitted an application for protection from Canada under the PRRA programme. On 27 March 2007, the latter was rejected by the same PRRA officer who refused the H&C application. The motivation was that the documentary evidence submitted by the complainant did not demonstrate that he might be listed or wanted by the Indian authorities; that the complainant had never claimed that he was a Sikh militant or a supporter of the militants; that he had not established that he held a high profile, nor that he was a person of interest for the Indian authorities. Therefore, the evidence submitted by the complainant did not corroborate that he might face a personal and objectively identifiable risk should he return to India.

2.13 After the PRRA application was refused, the complainant applied to the Federal Court for leave to apply for judicial review of the PRRA decision. The Federal Court dismissed his application without reasons on 14 August 2007.

2.14 On an unspecified date, the complainant applied to the Federal Court for a stay of execution of his removal order. A detailed affidavit about the present level of danger was submitted with a motion for stay of deportation that was heard on 18 June 2007 and refused on 20 June 2007. The deportation of the complainant was scheduled for 21 June 2007.

### **The complaint**

3.1 The complainant contends that he has exhausted all available and effective domestic remedies.

3.2 The complainant claims a violation of article 3 of the Convention against Torture by Canada if he is to be deported to India in the light of the treatment suffered by him in police custody in the past and the continuing interest in him by the police in India.

3.3 The complainant submits that Sikhs in India who are suspected of militant activities are routinely arrested, tortured and murdered by police with impunity. He refers to the report on the situation of impunity published in the *Harvard Human Rights Journal* in 2002 entitled "A judicial blackout: Judicial Impunity for Disappearances in Punjab", which is claimed to be an authoritative source on the current situation in Punjab. He further submits that as a result of being subjected to torture in the past, he suffers from post-traumatic stress disorder, the diagnosis of which is corroborated by medical reports from India and from Montreal. At the time of the scheduled deportation there was an ongoing crisis in the Punjab and Haryana provinces. This crisis is said to have caused the central Government to send large numbers of paramilitaries to these two provinces. There had been a general strike and widespread violence in May and June 2007 among Sikhs and another religious sect. The complainant claims that individuals such as himself are routinely targeted by the police at the slightest sign of political upheaval or disturbance.

3.4 The complainant also states that he did not have an effective remedy to challenge the deportation decision as guaranteed in article 2 of the International Covenant on Civil and Political Rights. He explains that the judicial review of the Immigration Board decision, denying him Convention refugee status, is not an appeal on the merits, but rather a very narrow review for gross errors of law. In the context of deportation these proceedings have no suspensive effect. The complainant also submits that the PRRA procedure of risk analysis is implemented by immigration agents who are not competent in matters of international human rights and are not independent, impartial and do not possess recognized competence in the matter. He claims that in the immigration department there is an extremely negative attitude towards refugee claimants and that its decisions do not undergo independent scrutiny as required by the international human rights law.

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

4.1 On 18 January 2008, the State party submitted observations on the admissibility and the merits of the communication.

4.2 With regard to the allegation of violations of article 3 of the Convention, the State party maintains that the complaint is inadmissible pursuant to article 22, paragraph 2 of the Convention and pursuant to rule 107, paragraph (1) (b) and (c), of the Committee's rules of procedure, as it is manifestly unfounded and incompatible with the Convention. The State party submits that the complainant has failed to substantiate on a prima facie basis that there are substantial grounds to believe that he personally faces a risk of torture on return to India. The State party refers to the Committee's general comment No. 1 (1997),<sup>a</sup> which states that it is the complainant's responsibility to establish a prima facie case for the purpose of admissibility of his or her communication.

4.3 The State party maintains that the communication is based on the same facts and evidence as presented to the competent and impartial domestic tribunals and decision makers and emphasizes that it is not the role of the Committee to weigh evidence or reassess findings of fact and credibility made by competent domestic decision-makers. The State party submits that the complainant's refugee claim was heard by the Immigration and Refugee Board, which is an independent, quasi-judicial, specialized tribunal that hears

---

<sup>a</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX, para. 4.*

refugee applications. The Board determines whether the person is a refugee based on an oral hearing and consideration of documentary evidence. The Board members are specialists in refugee law, who receive comprehensive, ongoing training and develop expertise on the human rights conditions in countries of alleged persecution. The State party submits that the Board's decision was subject to judicial review by the Federal Court.

4.4 The State party also submits that the complainant's case was reviewed under the PRRA programme, which is founded in Canada's domestic and international commitments to the principle of non-refoulement. Under this procedure an applicant whose claim to refugee protection has been rejected by the Board may present for consideration only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected to have presented at the time of the rejection. PRRA applications are considered by officers specially trained to assess risk and to consider the Canadian Charter of Rights and Freedoms as well as Canada's international obligations, including those under the Convention against Torture. The State party also makes reference to the complainant's unsuccessful H&C application. The State party makes reference to previous decisions of the Committee and other United Nation treaty bodies, which have considered the judicial review<sup>b</sup> and PRRA process<sup>c</sup> to be effective remedies.

4.5 The State party refers to the Committee's constant view that it can not review credibility findings unless it can be demonstrated that such findings are arbitrary or unreasonable; that the complainant has made no such allegations nor does the submitted material support a finding that the Board's decision suffered from such defects.

4.6 The State party refers to the complainant's claims that the Canadian refugee determination and post-determination process were insufficient and did not meet international human rights standards. The State party submits that these allegations fail to describe in sufficient detail how the above procedure violates article 3 or any other provision of the Convention or fail to provide for an effective remedy. It also notes that it is not within the scope of review of the Committee to consider the Canadian system in general, but only to examine whether, in the present case, the State party complied with its obligations under the Convention. The State party maintains that the allegation of lack of effective remedy should be found inadmissible since it constitutes an allegation for violation of article 2, paragraph 3, of the International Covenant on Civil and Political Rights and therefore it is not within the Committee's jurisdiction under article 22, paragraph 1, of the Convention.

4.7 The State party maintains that the complainant has failed to show that he is personally at substantial risk of torture if returned to India. The State party submits that the complainant's credibility is highly suspect, that his overall behaviour was not demonstrative of someone who fears persecution or serious harm; that there are no credible reasons to consider that he fits the personal profile of someone who would be of interest to the Indian authorities; that the general human rights situation in the country cannot by itself be sufficient to establish that the complainant would be personally at risk if returned; and

---

<sup>b</sup> Communications No. 66/1997, *P.S.S. v. Canada*, decision on admissibility adopted on 13 November 1998, para. 6.2; No. 42/1996, *R.K. v. Canada*, decision on admissibility adopted on 20 November 1997, para. 7.2; No. 95/1997, *L.O. v. Canada*, decision on admissibility adopted on 19 May 2000, para. 6.5; No. 22/1995, *M.A. v. Canada*, decision on admissibility adopted on 3 May 1995, paras. 3–4; No. 603/1994, *Badu v. Canada*, decision on admissibility adopted on 18 July 1997, para. 6.2; No. 604/1994, *Nartey v. Canada*, decision on admissibility, para. 6.2.

<sup>c</sup> The State party refers to communications No. 273/2005, *T.A. v. Canada*, decision adopted on 15 May 2006, para. 6.4; *Nartey v. Canada*, para. 6.2; *Badu v. Canada*, para. 6.2; No. 1302/2004, *Khan v. Canada*, decision on admissibility adopted on 25 July 2006, para. 5.5.

that the current human rights situation in India does not support the complainant's allegations of risk.

4.8 Should the Committee be inclined to assess the complainant's credibility, the State party submits that a number of key issues clearly supports a finding that the complainant's story can not be believed: the complainant's year-and-a-half delay in making a refugee claim and the reasons cited for it significantly detract from his credibility; the complainant's allegation that he feared harm is not plausible since he waited many months after receiving a passport before leaving India; there were inconsistencies in the author's allegations of political involvement – namely he was unable to provide details of Akali Dal party's ideology and failed to explain how he could continue to act as General Secretary of the Haryana Unit after leaving the geographic area.

4.9 The State party also submits that objective evidence does not corroborate the complainant's allegations with regard to the human right situation in India. It states that the human rights situation for Sikhs in Punjab and India has improved to the extent that there is not a significant risk of torture or other ill-treatment on the part of the police, and that only those considered to be high-profile militants may still be at risk and refers to several reports in support of that view.

4.10 The State party maintains that the complainant has failed to show in his submissions that he would be unable to lead a life free of torture in another part of India and makes reference to the previous practice of the Committee that while the complainant may face hardship should he not be able to return to his home, such hardship would not amount to torture or ill-treatment.<sup>d</sup>

4.11 In the event the Committee determines that the complainant's communication is admissible, the State party requests that the communication be found without merit.

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

5.1 The complainant submits in support of his communication a report prepared by the Punjab Human Rights Organization, regarding his case. He also notes that the State party does not seriously question that he had been targeted and subjected to torture in the past.

5.2 In a separate submission, the complainant underlines that the Federal Court of Canada is not effecting a real control over the immigration authorities when they look at stays of deportation, since the Court has established jurisprudence that if the Board has decided a refugee claimant is not credible, then his or her story cannot be a base for stopping their deportation, even when there is substantial evidence of an error in judgment. The complainant quotes cases where the Federal Court has consistently decided that the decisions of the Immigration Board are discretionary and that the Court should not intervene except if the immigration officer exercises his discretion pursuant to "improper purposes, irrelevant considerations, with bad faith, or in a patently unreasonable manner".<sup>e</sup> He maintains that when the judicial recourse is futile and in cases where there are substantial grounds to intervene the Court does not even hear the case, and that this is not a recourse that is effective and efficient following the recognized principles of the international law. The complainant claims that no human rights organizations dealing with

<sup>d</sup> Communications No. 183/2001, *B.S.S. v. Canada*, decision adopted on 12 May 2004, para. 11.5; No. 245/2004, *S.S.S. v. Canada*, decision adopted on 16 November 2005, para. 8.5.

<sup>e</sup> Case of Amir Shahin Sokhan, Imm-3067-96, 7 July 1997. Similar jurisprudence quoted from the case of Rahmatollah Khayambashi, Imm-1246-98, 7 January 1999.

refugees have any confidence in the PRRA as an effective recourse to protect victims of violations and refers to several documents in support of his view.

5.3 The complainant maintains that the State party's authorities are following a political line of refusing asylum to Sikh victims of torture from India. He states that the rate of acceptance of PRRA cases is 3 per cent for Canada and only 1 per cent in Quebec, where his case was reviewed. He further submits that most applicants are refused with identical motivation.

5.4 The complainant further submits that, even though Sikhs are not a targeted group, there are Sikhs who are targeted because of their political activities or their efforts to get justice for human rights abuses. He maintains that, according to Indian human rights groups, arbitrary arrests are happening all the time and individuals who were at risk in the past are still at risk. He maintains that there are no valid legal recourses for victims of human rights abuses in India and refers to the submitted article in the *Harvard Human Rights Law Journal*.

5.5 The complainant contests the suggestion that he could relocate and live in safety elsewhere in India, again refers to the article in the *Harvard Human Rights Law Journal*, and states that individuals have been detained for not reporting to the police. He also contests the State party's assertion that there would be no immediate danger for him upon arrival in India and states that there have been cases of individuals detained upon arrival at the airport and taken to prison, where they were tortured. Further, he contests that only high-profile individuals are at risk of torture and refers to a 2003 Amnesty International report which demonstrates how deeply ingrained is the system of torture and abuse. He also refers to pages 25-28 of the Danish Immigration Service *Report on the Fact-finding Mission to Punjab, India, 21 March to 5 April 2000*, where widespread torture and deaths in police custody are described.

5.6 The complainant submits that he is personally at risk of torture if returned to India because: he had previously been accused of participation in militant activities in 1988 and in 1995; he was detained for three and a half years between 1988 and 1991 and subjected to torture while in detention, and previous detainees for militant activities are one of the main risk groups according to human rights reports; he was a prominent Sikh priest at some of the most important Sikh temples in Punjab and Haryana and therefore is a high-profile figure, since prominent Sikh religious figures are among the most targeted figures by the security services; he was a prominent figure in the Akai Dal in Haryana; and he has personal family links with well known militants, as confirmed by the submitted report of the Punjab Human Rights Organization.

5.7 The complainant contests the State party's assertion that the torture with impunity in India has ended and in support describes several cases where human rights defenders or activists of Akali Dal have been detained and tortured by the police. He also maintains that after the 2008 Mumbai attacks there was a great wave of detentions, false accusations and torture taking place against large parts of the political class. The complainant also refers to the 2005 report of the organization ENSAAF, entitled *Punjab Police: Fabricating Terrorism through Illegal Detention and Torture*, which talks about large quantity of arbitrary detentions in the period June-August 2005, including a leader of Akali Dal. He submits that his political activities would make him particularly vulnerable to detention and torture if he were to be returned.

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

6.1 By note verbale of 17 July 2009, the State party submits that the "Fact-finding report regarding Nirmal Singh", presented by the complainant, contains no new evidence



demonstrating that there were substantial grounds to believe that the latter would personally be at risk of torture if returned to India.

6.2 Should it be determined that the report contains new evidence, the State party submits that the complainant should present it first to Canadian immigration authorities, that the complainant has not exhausted domestic remedies as required by article 22, paragraph (5) (b), of the Convention and therefore it is inadmissible. The State party notes that it remains open to the complainant to request a new PRRA or file a new H&C application for permanent residence based on the new report.

6.3 In conclusion, the State party continues to rely on their original submission of 17 January 2007 and asks the Committee to find the communication inadmissible and lacking in merits.

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

#### *Consideration of admissibility*

7.1 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. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement and that all available domestic remedies have been exhausted.

7.2 The Committee notes the State party's contention that the complaint of a violation of article 3 of the Convention, based on the return of the complainant to India, is manifestly unfounded and therefore inadmissible. The Committee, however, considers that the complainant has provided sufficient substantiation to permit it to consider the case on the merits.

7.3 The Committee notes the State party's submission that the allegation of lack of effective remedy should be found inadmissible since it constitutes an allegation for violation of article 2, paragraph 3, of the International Covenant on Civil and Political Rights and therefore it is not within the Committee's jurisdiction under article 22, paragraph 1, of the Convention. The Committee, however, recalls its jurisprudence that the prohibition on refoulement should be interpreted to encompass a remedy for its breach.<sup>f</sup>

7.4 Accordingly, the Committee decides that the complaint is admissible as pleaded in respect of the alleged violations of article 3 of the Convention.

#### *Consideration of the merits*

8.1 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 India.

8.2 The Committee notes the State party's argument that the human rights situation in the Punjab and in India has improved and stabilized in recent years. It observes, however, that reports submitted both by the complainant and the State party, confirm inter alia that numerous incidents of torture in police custody continue to take place, and that there is widespread impunity for perpetrators. The Committee observes that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not

---

<sup>f</sup> See communication No. 233/2003, *Agiza v. Sweden*, decision adopted on 20 May 2005, paras. 13.6 and 13.7.

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.<sup>8</sup>

8.3 The Committee notes the State party's submission that it is not the role of the Committee to weigh evidence or reassess findings of fact and credibility made by competent domestic decision-makers. According to its general comment No. 1, paragraph 9, the Committee gives "considerable weight ... to findings of fact that are made by organs of the State party concerned ... but the Committee is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case". The Committee notes that in the case under analysis, most of the facts are undisputed by the parties, however the assessment of the legal consequences of the relevant facts are challenged. In this situation, the Committee should assess the facts in the light of the State party's obligations under the Convention.

8.4 The Committee observes that the complainant submitted evidence in support of his claims that he was tortured during detention on at least three occasions, in 1988, 1995 and 2003, including medical reports, as well as written testimony corroborating these allegations. It also notes the medical reports from clinics in India and Canada, which conclude that there is sufficient objective physical and psychological evidence corroborating his subjective account of torture, and that the State party has not contested the complainant's allegations that he had been subjected to torture in the past.

8.5 The Committee notes the State party's submission that the complainant has failed to demonstrate that he is a "high profile" person and therefore that he would be of interest for the Indian authorities. However, the Committee notes that the complainant contends he was detained and tortured because he was accused of being a militant, that despite his formal acquittal by the courts, the police continued to harass him, that he is well known to the authorities because of his activities as a Sikh priest, his political involvement with Akali Dal party and his leadership role in the local structures of the party. The Committee observes that the complainant has provided documentary evidence that he has a history of being investigated and prosecuted as an alleged Sikh militant, that he was appointed as Secretary General of the Haryana unit of the Akali Dal party and that he served as a Sikh priest. The Committee accordingly considers that the complainant has provided sufficient evidence that his profile is sufficiently high to put him at risk of torture if arrested.

8.6 The Committee notes the State party's submission that the complainant has failed to show in his submissions that he would be unable to lead a life free of torture in another part of India. The Committee, however, observes that the complainant has submitted evidence that he had been arrested in three different provinces – Haryana, Punjab and Uttar Pradesh. The Committee also takes note of the evidence submitted that the Indian police continued to look for the complainant and to question his family about his whereabouts long after he had fled to Canada. In the light of these considerations, the Committee does not consider that he would be able to lead a life free of torture in other parts of India.

8.7 In the light of the foregoing, the Committee concludes that the complainant has established a personal, present and foreseeable risk of being tortured if he were to be returned to India.

8.8 The complaint states that he did not have an effective remedy to challenge the decision on deportation and that the judicial review of the Immigration Board decision,

---

<sup>8</sup> See communications No. 302/2006, *A.M. v. France*, decision adopted on 5 May 2010, para. 13.2; and No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006, para. 7.1.

denying him Convention refugee status, was not an appeal on the merits, but rather a very narrow review for gross errors of law. The State party in response submits that the Board's decision was subject to judicial review by the Federal Court. The Committee notes that according to Section 18.1(4) of the Canadian Federal Courts Act, the Federal Court may quash a decision of the Immigration Refugee Board if satisfied that: the tribunal acted without jurisdiction; failed to observe a principle of natural justice or procedural fairness; erred in law in making a decision; based its decision on an erroneous finding of fact; acted, or failed to act, by reason of fraud or perjured evidence; or acted in any other way that was contrary to law. The Committee observes that none of the grounds above include a review on the merits of the complainant's claim that he would be tortured if returned to India.

8.9 With regard to the PRPA procedure of risk analysis, to which the complainant also subjected his claim, the Committee notes that according to the State party's submission, PRRA submissions may only include new evidence that arose after the rejection of the refugee protection claim; further, the PRRA decisions are subject to a discretionary leave to appeal, which was denied in the case of the complainant. The Committee refers to its concluding observations (CAT/C/CR/34/CAN of May 2005, para. 5 (c)), that 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.<sup>h</sup> The Committee accordingly concludes that in the instant case the complainant did not have access to an effective remedy against his deportation to India, in violation of article 22 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, considers that the State party's decision to return the complainant to India, if implemented, would constitute a breach of article 3 of the Convention. The Committee also considers that in the instant case the lack of an effective remedy against the deportation decision constitutes a breach of article 22 of the Convention.

10. In conformity with rule 118, paragraph 5, of its rules of procedure (CAT/C/3/Rev.5), the Committee wishes to be informed, within 90 days, on the steps taken by the State party to respond to these Views.

---

<sup>h</sup> See communication No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010, para. 6.3.

**Communication No. 333/2007: T.I. v. Canada**

<i>Submitted by:</i>	T.I. (unrepresented)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Canada
<i>Date of complaint:</i>	15 September 2007 (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 15 November 2010,*

*Having concluded* its consideration of complaint No. 333/2007, submitted to the Committee against Torture by T.I. 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 against Torture**

1.1 The complainant is T.I., an Uzbek citizen, currently awaiting deportation from Canada. He claims that his deportation to Uzbekistan would constitute a violation by Canada of articles 1 and 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is unrepresented.

**Factual background**

2.1 The complainant was born in 1962 in Uzbekistan. He is an ethnic Tatar, who was educated in Russian and does not speak the Uzbek language. In 1991, he was allegedly forced to quit his job as a lawyer because he was a Tatar and only Uzbeks could work in the justice system. In 1992, he started his own company, which he claims was also unsuccessful because of his Tatar origin.

2.2 In 1995, he became a partner in a trading company operating in Dubai. The same year, while he was in Dubai on a business trip, he received a phone call from his mother, who informed him that his father had been arrested by the national security services of Uzbekistan, allegedly because of his involvement with ethnic Tatars and his friendship with a well-known Uighur writer.

2.3 Not too long after his father's arrest, after he had returned to Uzbekistan, the complainant was allegedly arrested, interrogated about his father's activities and subjected to torture, such as beatings, kicks, placing of needles under his fingernails, sleep and water deprivation, solitary confinement, continuous exposure to light and administration of psychotropic drugs. He complains that he had blood in his urine and lungs. He was held in detention for approximately one month. After his release, he fled, together with his wife and daughter, to the United Arab Emirates. In 1998, his mother informed him that his father had died in prison. Although the official cause of death was said to be "natural causes", the complainant and his family believe that he died from torture.

2.4 In November 2000, a person, identifying himself as a member of the Uzbek Ministry of the Interior, approached him near his house in Dubai and told him he was wanted in Uzbekistan. When the complainant told the person in question that he would not return, he was threatened that there were ways to make him go back to Uzbekistan, including by interfering with his visa. In December 2000, after this incident, the complainant left Dubai for Germany, where he applied for asylum under a false name, for security reasons. His claim was rejected. He subsequently travelled to Norway and filed a refugee claim there, again under a false name, which was also dismissed.

2.5 In September 2001, the complainant entered Canada as a stowaway on an Icelandic ship. On 15 September 2001, he filed a refugee claim in Canada. On 7 November 2002, the Immigration and Refugee Board (IRB) denied him refugee status, as he had failed to submit credible and trustworthy evidence to establish that there was a reasonable risk to his life or torture if returned to Uzbekistan. The IRB was also concerned about the identity of the complainant and found his claim that he would be persecuted because of his Tatar ethnicity implausible. The complainant appealed to the Federal Court, which denied him leave for judicial review on 24 February 2003.

2.6 On 1 April 2003, the complainant applied for permanent residence on Humanitarian and Compassionate Grounds (H&C) and on 19 June 2003, he submitted an application for a Pre-Removal Risk Assessment (PRRA). On 11 May 2006, both applications for PRRA and H&C were rejected, as it was determined that he would not be subjected to persecution, torture or cruel, inhuman or degrading treatment or punishment. The complainant claims that the decisions in relation to both applications were issued by the same PRRA officer, and that he did not receive proper notification of these decisions for more than six months. His official request to receive the decisions was refused by PRRA in December 2006. On 5 February 2007, he applied for leave for judicial review of the PRRA decision to the Federal Court. The Federal Court dismissed his appeal on 17 August 2007.

### **The complaint**

3.1 The complainant claims that he would be subjected to torture if he were forced to return to Uzbekistan and that this would constitute a violation of articles 1 and 3 of the Convention by Canada.

3.2 The claim is based on his Tatar ethnicity, allegedly a discriminated minority in Uzbekistan, and the complainant's past experience of torture with reference to the human rights situation in Uzbekistan.

3.3 According to the complainant, this case is not under consideration by any other international procedure of investigation or settlement.

3.4 No request for interim measures has been submitted by the complainant.

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

4.1 On 28 May 2008, the State party challenged the admissibility of the complaint for incompatibility with the Convention and non-substantiation in relation to his claim under article 1, and for non-exhaustion of domestic remedies and lack of substantiation in relation to his claims under article 3 of the Convention.

4.2 The State party recalls the allegations advanced by the complainant and submits that he did not present any new arguments to the Committee and merely reiterated the arguments presented to the Canadian authorities. He did not establish that any of the findings of the domestic decision-makers considering his case were arbitrary or amounted to a denial of natural justice. Thus, the State party assumes that the complaint is based on his dissatisfaction with the domestic decisions.

4.3 The State party notes that the complainant did not explain how Canada had allegedly violated his rights under article 1 of the Convention. Even if the complainant's story of alleged past torture by Uzbek authorities were true, it does not engage Canada's responsibility under article 1, in fact or in law. This aspect of the complaint is thus devoid of substantiation and incompatible with the Convention.

4.4 On domestic remedies, the State party submits that the complainant did not apply for leave to apply to the Federal Court for judicial review of the negative decision on his H&C application. It recalls the Committee's jurisprudence and submits that the H&C application is an effective remedy that must be exhausted. The H&C application can be based on risk, and if accepted, and subject to security and criminality prohibitions, which are not present here, may lead to permanent residence which can in turn lead to citizenship.

4.5 The State party adds that the complaint is manifestly unfounded, as the complainant did not substantiate his allegations under article 3 even on a prima facie basis. It recalls the Committee's general comment No. 1 (1997) on implementation of article 3 of the Convention in the context of article 22,<sup>a</sup> which places the burden of proof on the complainant to establish that he would be in danger of being subjected to torture. The ground on which the claim is established must be substantial, and must "go beyond mere theory or suspicion". The State party submits that the complainant's credibility is in question and his claims have been inconsistent and implausible; there is no medical or other credible evidence that he was tortured in the past; even if he had been tortured, this would have been in 1995, i.e. not in the recent past; there are no credible reasons to consider that he fits the personal profile of someone who would be of interest to the Government of Uzbekistan or particularly vulnerable if returned to Uzbekistan.

4.6 The State party submits that the analysis of the evidence and the conclusions drawn by the Board as well as by the PRRA officer, who assessed the risk, to which the complainant may be exposed if returned to Uzbekistan, were appropriate and well-founded. It recalls the Committee's jurisprudence that it cannot review credibility findings, "unless it is manifest that the evaluation was arbitrary or amounted to a denial of justice".<sup>b</sup> It cites several examples of inconsistencies and lack of credibility in the complainant's statements. He provided contradictory evidence about his identity documents, first telling immigration Canada that he had destroyed his travel documents in Iceland before boarding the ship to Canada, and then asserting in his Personal Information Form that he had destroyed his passport in Germany. He also admitted to having made refugee claims under different false names in Germany and Norway. The purported identity documents faxed by his wife from Dubai are insufficiently reliable to establish his identity.

4.7 The State party also submits that the Board's doubts about the complainant's arrest and mistreatment in 1995 are well-founded. It states that the complainant failed to mention his arrest in his first interview with an immigration officer and provided conflicting testimony to the Board, first saying that the threats of mistreatment were not carried out, then testifying that needles had been inserted under his nails. He had also complained that he had blood in his urine and lungs, but had no medical evidence to corroborate any of his allegations. He did not mention his father's arrest in the interview or interviews conducted by Canadian immigration officials after his arrival in Canada. It notes the complainant's claim that he was approached by an Uzbek investigator while in Dubai and was threatened that his visa would be interfered with, if he did not return to Uzbekistan to provide evidence

---

<sup>a</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.*

<sup>b</sup> *Communications No. 223/2002, S.U.A. v. Sweden*, decision adopted on 22 November 2004, para. 6.5; *No. 148/1999, A.K. v. Australia*, decision adopted on 5 May 2004, para. 6.4; and others.

against ethnic activists. Finally, the State party submits that his attempt to mislead asylum authorities in other States cast doubt on the reliability of his allegations made to Canadian tribunals.

4.8 The State party refers to the Committee's recent jurisprudence involving prospective deportations to Iraq<sup>c</sup> and the Islamic Republic of Iran<sup>d</sup> and notes that the problematic human rights situation in Uzbekistan is not in itself sufficient to substantiate the complainant's allegation that he would face a foreseeable, real and personal risk of torture in the event of his return. It refers to the complainant's claim that he was at risk of torture in Uzbekistan because he is an ethnic Tatar and submits that none of the main reports on the human rights situation in Uzbekistan suggest that Tatars are at particular risk of torture in Uzbekistan.

### **Complainant's comments**

5.1 On 7 July 2008, the complainant sought to refute the observations of the State party. He argues that he did not receive the decisions on H&C and PRRA dated 11 May 2006 for more than six months. He claims he received them only after complaining to the Federal Court and after he had received a removal order dated 18 October 2006. Both decisions (H&C and PRRA) were decided by the same immigration official. He claims that he indeed applied for a stay of his removal order and for judicial review of both PRRA and H&C decisions. The case file does not contain a copy of his application for judicial review of the H&C decision.

5.2 The complainant also claims that his credibility and trustworthiness were put in doubt by his lawyer, who was provided by Legal Aid Canada. He claims that his lawyer did not act in his interest and did not provide all the necessary facts and documents to support his claims. He allegedly refused to represent him in the Federal Court.

5.3 The complainant notes the submission by the State party that he failed to mention his arrest in his initial interview with an immigration officer, and provided conflicting information to the Board, first saying that the threats of mistreatment were not carried out, then testifying that needles had been inserted under his nails. He claims that he does not remember whether he had mentioned this detail or not. He could have possibly shown them his fingers and was given consent to do that. He claims that the Immigration and Refugee Board were satisfied with what they had seen at that time. He could not provide medical evidence to corroborate his mistreatment, namely the blood in his urine and lungs, as, he claims, it was unrealistic for him to request his torturers for such a medical report.

5.4 In relation to his identity, the complainant submits that he provided the Tribunal with his original birth certificate, which states that both his parents are Tatars, as it is the only document in Uzbekistan that can provide such detail with regard to ethnicity. He claims that the argument regarding contradictions about his identity documents was used by the Canadian authorities to undermine his credibility and that it would have been easier to clarify his identity if they had contacted his lawyer at the beginning of the asylum process. He argues that he would have used the official channels to immigrate to Germany as he had planned, if he had not been threatened by an Uzbek investigator.

5.5 The complainant argues that inconsistencies in relation to the documents that he used to come to Canada could be due to lack of other evidence. He submits that when he came to Canada he did not have documents on him as he had destroyed them in Iceland. He had destroyed his passport earlier upon arrival in Germany after he passed customs control allegedly in fear of deportation to Uzbekistan.

---

<sup>c</sup> Communication No. 286/2006, *M.R.A. v. Sweden*, decision adopted on 17 November 2006.

<sup>d</sup> Communication No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

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.

6.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any complaint, unless it has ascertained that the complainant has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of those 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 takes note of the State party's argument that the complaint should be declared inadmissible under article 22, paragraph 5 (b), of the Convention, as the complainant failed to apply for leave to apply for judicial review of the decision dated 11 May 2006 on his humanitarian and compassionate application. It also notes that the complainant does not challenge the effectiveness of the remedy of judicial review, although he had an opportunity to do so. In this regard, the Committee recalls that during its twenty-fifth session, in its final observations on the report of the State party, it considered the question of requests for ministerial stays on humanitarian grounds. It noted 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 underway. 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 only 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 the review of the case or hand down any decision. Rather, the decision depends 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.<sup>e</sup>

6.4 The Committee also recalls its previous case law<sup>f</sup> to the effect that the principle of exhaustion of domestic remedies requires petitioners to use remedies that are directly related to the risk of torture in the country to which they would be sent, not those that might allow them to remain where they are.

6.5 On the alleged violation of article 1, the Committee notes the State party's submission that this aspect of the complaint is unfounded and incompatible with the provisions of the Convention. The Committee observes that the complainant does not substantiate his claim under article 1 and does not refute the State party's arguments in this regard. Accordingly, the Committee finds that the complainant has failed to substantiate this part of the complaint for the purposes of admissibility, within the terms of article 22, paragraph 2, of the Convention.

<sup>e</sup> Communication No. 133/1999, *Falcon Ríos v. Canada*, decision adopted on 23 November 2004, para. 7.3.

<sup>f</sup> Communication No. 170/2000, *A.R. v. Sweden*, decision on admissibility adopted on 23 November 2001, para. 7.1.



6.6 On the alleged violation of article 3, the Committee is of the opinion that the complainant's arguments in relation to the general human rights situation in Uzbekistan, the allegations of discrimination against Tatars as well as his claims of past torture in Uzbekistan raise substantive issues, which should be dealt with on the merits and not on admissibility alone. Accordingly, the Committee finds this part of the communication admissible.

*Consideration of the merits*

7.1 The Committee must determine whether the forced return of the complainant to Uzbekistan would violate the State party's obligations 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.

7.2 The Committee recalls its general comment No. 1 on article 3 and its case law, which state that the burden is generally on the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While noting general comment No. 1, it also recalls that the Committee has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.3 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 Uzbekistan. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence, in the State concerned, of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of its determination is to establish whether the individual concerned would be personally at risk of being subjected to 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 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.<sup>g</sup> 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 necessarily mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.4 The Committee is aware of the poor human rights situation in Uzbekistan. It has itself cited numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by Uzbek law enforcement and investigative officials or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings, which commonly occur before formal charges are made and during pretrial detention, when the detainee is deprived of fundamental safeguards, as well as the failure to conduct prompt, impartial and full investigations into claims of torture.<sup>h</sup> However, the Committee notes that the complainant has not provided sufficient information to support his claim that Tatars, and therefore he himself, are discriminated against to the extent that would place him at a particular risk of torture in Uzbekistan. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.<sup>i</sup>

<sup>g</sup> *S.P.A. v. Canada* (footnote d above).

<sup>h</sup> Concluding observations of the Committee against Torture (CAT/C/UZB/CO/3).

<sup>i</sup> Communication No. 203/2002, *A.R. v. The Netherlands*, decision adopted on 21 November 2003,

7.5 The Committee notes that despite several inquiries about medical or any other documentary evidence in support of his account of events in Uzbekistan prior to his departure, namely of his alleged arrest, and ill-treatment in detention in 1995, which would corroborate his claim or possible effects of such ill-treatment, the complainant did not provide any such evidence. Neither did he provide any report of a medical examination after his arrival in Canada. In such circumstances, the Committee finds that he has failed to establish his claim that he would personally be exposed to a substantial risk of being subjected to torture if returned to Uzbekistan at the present time.

8. 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 Uzbekistan would not constitute a breach of article 3 of the Convention.

---

para. 7.3.

## Communication No. 336/2008: *Singh Khalsa et al. v. Switzerland*

<i>Submitted by:</i>	Harminder Singh Khalsa et al. (represented by counsel, Werner Spirig)
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	18 February 2008 (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 26 May 2011,

*Having concluded* its consideration of complaint No. 336/2008, submitted to the Committee against Torture by Werner Spirig on behalf of Harminder Singh Khalsa et al. 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 complainants, their counsel and the State party,

*Adopts* the following:

### **Decision under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

1.1 The complainants are Harminder Singh Khalsa and his family, Karan Singh and his family, Jasvir Singh and Dalip Singh Khalsa.<sup>a</sup> They are Indian citizens belonging to the ethnic group of Sikhs. At the time of submission of the present complaint they were residing in Switzerland and were subject to orders to leave to India.<sup>b</sup> They claim that their deportation from Switzerland to India would constitute a violation of article 3 of the Convention against Torture. They are represented by counsel, Werner Spirig.<sup>c</sup>

<sup>a</sup> Mr. Harminder Singh Khalsa, born on 14 December 1963, lives with Mrs. Navpreet Kour, born on 5 January 1977, and their common children Kour Harmehar and Singh Harbaaz, both born in Switzerland. They are not married but consider each other as spouses. They could not marry due to the fact they could not get the necessary identity documents from the Indian authorities. Mr. Karan Singh, born on 19 April 1961, lives with Mrs. Kour Tarvinder, born on 2 April 1969 and their common children Singh Kanttegh and Kour Keeratwaan, both born in Switzerland. They are not married but consider each other as spouses. They could not marry due to the fact they could not get the necessary identity documents from the Indian authorities. Mr. Jasvir Singh, born on 15 August 1943, lives apart from the rest of his family, which is in India. Mr. Dalip Singh Khalsa, born on 20 April 1953, lives apart from the rest of his family, which is in India.

<sup>b</sup> The first, second and third complainants were ordered to leave by 22 February 2008 and the fourth by 31 January 2008. The counsel submits that, according to the law in force as of 1 January 2008, after those dates the complainants could have been arrested and deported at any moment.

<sup>c</sup> The complainants submitted four separate communications but indicated that the communications are identical because they follow the same reasoning. Accordingly the communications were registered as one case.

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 25 February 2008. At the same time, the Rapporteur on new complaints and interim measures requested the State party not to deport the complainants to India while their case is under consideration by the Committee, in accordance with rule 114, paragraph 1 (previously rule 108, para. 1) of the Committee's rules of procedure (CAT/C/3/Rev.5). On 4 March 2008, the State party informed the Committee that the complainants will not be deported while their case is being examined by the Committee.

### **The facts as presented by the complainants**

2.1 On 29 September 1981, Karan Singh and Jasvir Singh were among a group of five persons who hijacked an airplane of the Indian Airlines on its flight between New Delhi and Srinagar (Kashmir) to Lahore in Pakistan. With this action, they protested against the arrest of Mr. Sant Jarnail Singh Bhindranwala, the leader of the movement fighting to have a separate Sikh state, and the killing of 36 Sikhs by the Indian security forces. At the time of this event, Karan Singh and Jasvir Singh were both members of groups which wanted a separate Sikh state, respectively the All India Sikh Students' Federation and Dal Khalsa.

2.2 In 1984, Dalip Singh Khalsa and Harminder Singh Khalsa were among a group of nine persons who hijacked an airplane of the Indian Airlines to Pakistan to respond to the attack of the Indian army on the Sikh Holy City of Amritsar and to draw the attention of the international community to the killings of thousands of innocents. The group belonged to the All India Sikh Students' Federation.

2.3 None of the passengers in either airplane were injured. The complainants were arrested by the Pakistan police. They were tried before a special court in Lahore. In January 1986, Dalip Singh Khalsa and Harminder Singh Khalsa were sentenced to death but their sentences were commuted into life imprisonments based on a general amnesty following the accession of Mrs. Benazir Bhutto to the post of Prime Minister. Karan Singh and Jasvir Singh were sentenced to life imprisonment. All complainants were released from prison at the end of 1994 and were ordered to leave the country. They left Pakistan and went to Switzerland where they applied for asylum immediately upon arrival in 1995.

2.4 In Switzerland, the complainants were heard by the Swiss Federal Office for Refugees, which rejected their asylum claims on 10 July 1998. The complainants filed appeals, which the Swiss Asylum Board rejected on 7 March 2003. From 7 March 2003 to 19 December 2007, the complainants filed several petitions for the negative asylum decisions to be reconsidered, which were all rejected. On 19 December 2007, the Federal Administrative Tribunal gave its final decision, confirming the refusal to grant them asylum, reasoning that it could not find any good reasons to believe that the Indian security forces would consider the complainants as dangerous enemies of the State of India.

2.5 The complainants have been living peacefully in Switzerland since 1995. Two of the complainants have founded families. They are very active in the Sikh community. Karan Singh is the President of the first Sikh temple built in Switzerland. Mr. Harminder Singh Khalsa is the Vice-President of the Sikh temple. The complainants submit that they continued to be involved in political activities during their stay in Switzerland and that the Indian authorities are well aware of that. Karan Singh participated as an observer in the fifty-sixth session of the Commission on Human Rights in Geneva, but was forced to leave early, because Indian Security Service people followed and harassed him. At the same time his relatives in India were harassed by the police. In 1998 Harminder Singh Khalsa participated in a conference which was opposed by the Government of India and reports of that appeared in a newspaper. In 2003, at a demonstration against the Government of India in Bern, Karan Singh gave an anti-government speech. In 2007 a human rights conference was held in the new Sikh temple in which two of the complainants participated. The

participants held a demonstration in front of the United Nations building in Geneva. Afterwards the parents of the complainants were harassed by the police and were warned of “dire consequences” if they did not stop their sons from organizing anti- Indian rallies.

### **The complaint**

3.1 The complainants submit that their deportation from Switzerland to India would constitute a violation of article 3 of the Convention against Torture because they would face serious threats to their health and lives. They claim that the Indian security forces still want to prosecute them for having hijacked two Indian planes. To support this allegation, the complainants submit that on 22 June 1995, the Indian Central Bureau of Investigation wrote a letter to the Canadian immigration authorities, requesting their assistance in capturing two of the participants in the airplane hijacking of 1984.

3.2 The complainants also indicate that two members of the group who participated in the 1984 hijacking, and who had been acquitted by the Pakistan Special Court in 1986 and released from prison, were killed by the Indian Security Forces in mysterious circumstances when they returned to India in 1990. They provide affidavits of relatives of the two members killed and refer to the 7 March 2007 judgment of the Swiss Asylum Appeal Commission in the case of Harminder Singh Khalsa, which allegedly recognizes the death of those two former hijackers.

3.3 The complainants also refer to the case of Mr. K.S. who had also participated in the hijacking of a civilian Indian aircraft in 1984. After having served a 12 years’ imprisonment sentence in India, a month after being released from prison, his dead body, which showed marks of injuries, was found in a canal in a village in Rajasthan and a magistrate inquiry concluded that he had been tortured prior to being thrown in the canal. The inquiry did not, however, identify the perpetrator(s) and the death of Mr. K.S. was considered irrelevant by the Swiss asylum authorities.

3.4 The complainants submit that Indian security forces are actively searching for them because they have a high profile and their names appear constantly in newspapers reporting that their asylum claims had been rejected in Switzerland and that they would be soon deported to India.<sup>d</sup> They maintain that they submitted to the Swiss authorities copies of a poster with pictures of individuals wanted for terrorist activities, among which were the pictures of two of the complainants and which was distributed in the region where they originated from (Jammu). They also submit that the houses in which they used to live in Jammu had been raided by the police. Further, they submit that the Head of the Indian Anti-Terrorist Cell in a television interview on 25 August 2005 called for the Government to press for their extradition to India.

3.5 The complainants submit that, because of their past involvement in the hijackings and their current political activities, they have high profiles as men who want a separate Sikh state. They maintain that the Indian authorities consider them a threat and are actively searching for them and that in case of their forced return to India they would be immediately arrested, subjected to torture or even killed. The complainants refer to a Human Rights Watch letter, dated 28 April 2003, which describes how the new anti-terror legislation could be used against them. They also refer to a letter written by Amnesty

---

<sup>d</sup> The complainants submit copies of articles (in translation) in the newspaper *Daily Ajit* (Jalandhar) dated 23 April 2003 and 18 May 2003; the first quotes the complainants’ names and report that the Government of Switzerland ordered their deportation; the second reports that the complainants have gone underground and escaped to Pakistan. They also submit a copy of an article mentioning the participation of one of the complainants in a demonstration in front of the United Nations office.

International, dated 7 May 2003, expressing concerns regarding their safety if returned to India.

#### **State party's observations**

4.1 On 21 April 2008, the State party submitted that it does not object to the admissibility of the complaint.

4.2 On 20 August 2008, the State party reiterated the facts related to the complainants' membership in the All India Sikh Student Federation and Dal Khalsa, their participation in the hijackings of airplanes, the criminal trials and sentences against them. The State party also confirms the dates of the complainants' asylum applications and of the subsequent unsuccessful appeals and requests for review of the asylum applications.

4.3 In relation to the existence in India of a consistent pattern of gross, flagrant or mass violations of human rights, the State party submits that, according to a decision of the Swiss Federal Council, dated 18 March 1991, India is considered as a country of origin without persecution. It notes that this creates a presumption which can be refuted in the course of an asylum application or of a demand to stay deportation.

4.4 The State party notes that the complainants do not allege that they had been tortured or maltreated in India, but rather use as evidence treatment to which other individuals had been subjected in similar situations. The State party refers to the example, presented by the complainants, of two members of their group, who had been arrested upon return by the security forces and killed. It maintains that these facts had been examined by the Swiss asylum authorities, which established that neither the moment, nor the precise circumstances of the deaths of these persons had been identified clearly and that the above events took place 18 years ago. It also maintains that the current situation of Sikhs in India and in particular of other participants in the hijackings of airplanes demonstrated that there is no risk of torture for the complainants if they are to return to India. In relation to the case of Mr. K.S., the State party maintains that the submitted report does not provide information on the motivation of his killing or on the perpetrators and therefore the responsibility for it, which the complainants attribute to the Indian authorities, is only their supposition. In addition, the above events took place 12 years ago and cannot be used to assess the possible risk existing at present.

4.5 The State party submits that, as of 1993, the situation in Punjab has become more stable and that a government had been elected following free elections. It notes that the Terrorist and Other Disruptive Activities Act was abolished eight years after its promulgation. Even after the assassination of Prime Minister Beant Singh on 31 August 1995, the situation remained calm. As of 1995, the police in Punjab had been under scrutiny and, following an order of the Supreme Court, a Central Bureau of Investigation had started more than 1,000 procedures against police officers. The newly elected government in 1997 announced that it would take measures against police officers at fault and that it would compensate the victims.

4.6 Concerning the poster with pictures of wanted terrorists, allegedly issued by the Indian police, the State party submits that the complainants did not deliver the original to the Swiss authorities, but presented a copy, on which it was not possible to identify whether any of the complainants' photos were present. Additionally the poster was not dated and it seemed improbable that the authorities would be looking for the complainants in that manner 20 years after the airplanes' hijackings.

4.7 Concerning the copies of the articles submitted by the complainants in support of the allegation that their names and activities were known to the Indian authorities, the State party submits that such copies have no evidentiary value and that the complainants could

have easily obtained the originals and submitted them to the Swiss authorities at an earlier stage of the proceedings.

4.8 The State party submits that, even if the Indian criminal justice authorities were still looking for the complainants at present, that in itself would not be sufficient to conclude that they would be subjected to treatment contrary to the Convention. The Indian justice system is based on the British model and can be qualified as independent. Therefore, the complainants could hire attorneys and defend themselves. There is no evidence that they would be at a disadvantage because of their political activities. The State party also submits that seven individuals who had participated in an airplane hijacking in 1984 had been deported to India and sentenced to life imprisonment, but had been freed after 12 years and were never persecuted.<sup>e</sup> It maintains that numerous Sikh militants are back in India, that the Sikh movement has been “largely normalized” and that today Sikhs are a recognized religious minority, benefitting from effective constitutional protection. In addition, Sikhs live in great numbers in different states and therefore they have the option to relocate to an Indian state other than their state of origin. The State party notes that the current Prime Minister of India is Sikh.<sup>f</sup>

4.9 Regarding the political activities of the complainants in Switzerland, the State party submits that they did not demonstrate that they have participated in activities aiming to overthrow by force the democratic institutions, but rather that they were involved in non-violent political activities. It maintains that such activities are protected by the Indian Constitution and tolerated in practice and that they can not constitute grounds to fear treatment which is contrary to the Convention.

4.10 The State party maintains that there are no serious reasons to fear that the complainants would be exposed to real, concrete and personal risk of being tortured if returned to India. It submits that the Committee should find that the deportation of the complainants to India would not amount to a violation of article 3 of the Convention.

### **Complainants’ comments**

5.1 On 28 October 2008, the complainants note that the State party does not dispute the facts as submitted by them and that it accepts that the Indian anti-terror police might be searching for them. They, however, disagree with the State party’s assessment that: India has an effective penal justice system, which prosecutes police personnel committing human rights violations; that since 1993 the political dissent in India is no different from the same phenomenon in western democracies; that if the complainants are wanted by the police, there is no good reason to believe they might be tortured; and that the complainants are only low-level Sikh activists abroad.

5.2 The complainants reiterate that three Sikh men involved in hijackings were killed upon their return to India by the Indian police, which was recognized by the Swiss Asylum Appeal Commission in its decision of 7 March 2003. They further submit that between 1999 and 2004 the Swiss authorities have granted asylum to at least six Sikhs who had cases similar to theirs. They maintain that even the Pakistan authorities, after releasing them from prison, did not expel them to India, since they believe that the Indian security forces would torture and kill them.

5.3 The complainants reiterate that they are wanted by the police and that the Head of the Anti-terror Cell announced it in a television interview. They maintain that the poster

<sup>e</sup> The State party refers to an article in BBC News dated 3 July 2007.

<sup>f</sup> The State party makes reference to the Country of Origin Information Report India of the British Home Office, Border and Immigration Agency, dated 31 January 2008, p. 87.

presented to the Swiss authorities is genuine and that it has pictures of two of them at the age when they participated in the hijackings. They further submit that several Sikhs who had returned from Europe between 2006 and 2008 had been questioned by the police about them.

5.4 The complainants maintain that they are very prominent figures in the radical European Sikh Community. They reiterate that on numerous occasions reports about their activities had appeared in the Indian media. They submit that, in March 2007, 27 Sikh organizations met in Switzerland and prepared a memorandum to the United Nations and that one of the complainants appeared as the spokesman of the assembly. On 10 April 2007, two of the complainants were among the Sikh representatives who participated in a meeting with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The complainants maintain that the Indian authorities want to apprehend all “Sikh militants” and “hardcore terrorists”, such as themselves, and refer to a publication on the Pioneer website, dated 2 October 2006, which states that wanted Sikh terrorists have taken shelter in many countries, including Switzerland, and quotes the Head of the police in Punjab, who expressed hope that western Governments will revise “their earlier stand of granting asylum to such people”.

5.5 The complainants maintain that torture and mistreatment in police custody and extrajudicial killings continue to be widespread and quote the United States Department of State Country Report on Human Rights Violations 2007 in India,<sup>g</sup> which states that: “authorities often used torture during interrogations to extort money and as summary punishment ...”; “human rights groups asserted that the new law had not decreased the prevalence of custodial abuse or killings”; “security forces often staged encounter killings to cover up the deaths of captured non-Kashmiri insurgents and terrorists from Pakistan or other countries. ... Most police stations failed to comply with a 2002 Supreme Court order requiring the central government and local authorities to conduct regular checks on police stations to monitor custodial violence”.

#### **Additional observations by the State party**

6. On 17 February 2009, the State party submitted that the allegations made by the complainants do not lead to the conclusion that they would be exposed to a real, personal and serious risk of torture in case they were deported to India. Even if the Indian authorities were interested in apprehending the complainants that would not necessarily mean that they would be tortured. The State party refers to the complainants’ argument that several Sikhs who had returned to India from Europe between 2006 and 2008 had been questioned by the police about them. It submits that, according to the written statement from one of these individuals that was provided by the complainants themselves, he did not allege having been tortured.

#### **Complainants’ additional comments**

7. On 17 February 2010, the complainants submitted additional documents on the case of a certain Mr. P.S. in support of their claims.<sup>h</sup> They maintain that, similarly to them, Mr.

<sup>g</sup> Section 1 (c), (f) and (g). Available from [www.state.gov/g/drl/rls/hrrpt/2007/100614.htm](http://www.state.gov/g/drl/rls/hrrpt/2007/100614.htm).

<sup>h</sup> The complainants submit: articles from *The Star*, dated 3 February 2010, and from SikhSiyasat.net, dated 2 February 2010, describing the immediate arrest and incarceration without trial of Mr. P.S. — a Sikh who participated in the 1984 hijacking — after his deportation to India; a letter describing the harsh conditions in which the arrested individual was held in the Tihar jail, dated 5 February 2010, signed by a lawyer, Mr. N.S., who visited him in that jail; a report on Mr. P.S.’s arrest and conditions of detention by the SikhSiyasat.net, dated 29 January 2010.



P.S. participated in the 1984 hijackings, served a 10-year sentence in Pakistan, led a peaceful life in Canada for 15 years, but was immediately arrested following his deportation to India on 26 January 2010 and placed in a high-security jail, where he was detained in appalling conditions. He is said to be facing charges under the National Security Act. On 7 April 2010, the complainants submitted a copy of the *Grounds of Detention against Mr. P.S. under the 1980 National Security Act*, by the Commissioner of the Delhi Police, which states that the former “is, obviously, a person of danger to Indian citizens”, that “he is inimical to the nation which was demonstrably proved by the fact that he took the hijacked plane to Lahore”, that he is “a desperate and hardened criminal whose activities are prejudicial to the Security of the State as well as maintenance of public order” and that “there is every possibility that ... he will indulge again in similar types of criminal activities”. The report mentions the names of two of the complainants as accomplices (Dalip Singh Khalsa and Harminder Singh Khalsa). The complainants submit that it is obvious that the Indian police would accuse them of working against the Government.

#### **State party’s additional observations**

8. On 19 October 2010, the State party submits that the new documents submitted by the complainants do not lead to the conclusion that they would be exposed to a real, personal and serious risk of torture in case they are deported to India. It maintains that the complainants do not indicate whether the detention described in it was confirmed by the competent authorities. The State party further refers to the Committee’s decision in case 99/1997, *T.P.S. v. Canada*, where it did not find a violation of article 3 of the Convention.

#### **Complainants’ additional comments**

9. On 7 December 2010, one of the complainants, Dalip Singh Khalsa, submitted that on 25 November 2010, he was granted a regular stay permit. Accordingly the complainant has withdrawn his complaint. According to information from the State party’s authorities, submitted on 18 February 2011, he had been granted a humanitarian permit, based on the fact that he has well integrated into the Swiss society. On 23 March 2011, the complainants submit that Mr. P.S. is still being kept in custody and his plea to release him was dismissed by the court on 9 February 2011 on the ground that he was a threat to public security.

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

##### *Consideration of admissibility*

10.1 Before considering a claim contained in a communication, 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) and (b), that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement and that all available domestic remedies have been exhausted.

10.2 The Committee takes note that the State party does not contest the admissibility of the communication and decides that it is admissible in respect of the alleged violation of article 3 of the Convention based on the return of the complainants to India.

##### *Consideration of the merits*

11.1 The Committee takes note of the fact that, on 25 November 2010, Dalip Singh Khalsa received a regular residence permit from the State party. Therefore, the Committee decides to discontinue the part of the communication relating to Dalip Singh Khalsa.

11.2 The issue before the Committee is whether the forced return of the three remaining complainants to India 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. In order to determine whether, at the time of removal, there were substantial reasons for believing that the complainants would be in danger of being subjected to torture if they were returned to India, the Committee must take into account all relevant considerations, 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 individuals concerned would be personally at risk of being subjected to torture in the country to which they were returned.

11.3 The Committee notes the State party's submission that, as of 1993, the situation in Punjab has become more stable, a government had been elected following free elections, which announced that it shall take measures against police officers; the Terrorist and Other Disruptive Activities Act has been abolished; and the Central Bureau of Investigation has started more than 1,000 procedures against police officers accused of inappropriate conduct. The Committee, however, observes that according to the available information, such as recent reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on extrajudicial, summary or arbitrary executions, ill-treatment<sup>i</sup> and torture<sup>j</sup> of individuals held in detention, as well as deaths in custody<sup>k</sup> or following detention<sup>l</sup> continue to be a problem in India. Special Rapporteurs also expressed their concerns relating to reports of alleged impunity for criminal acts committed by officials. In some cases relating to reports of death or ill-treatment while in detention, it was alleged that the authorities had attempted to block the investigation,<sup>m</sup> to destroy evidence,<sup>n</sup> or had taken no steps to investigate the allegations.<sup>o</sup>

11.4 The Committee notes the State party's submission that the complainants do not allege that they had been tortured or maltreated in India, and that the current situation of Sikhs in India and in particular of other participants in airplanes' hijackings demonstrated that there is no risk of torture for the complainants if they are to return. The Committee, however, recalls that whether the complainant has been subjected to torture in the past is but one of the factors that it finds pertinent in assessing the merits of a case.<sup>p</sup> It observes that the complainants have submitted information regarding cases, similar to theirs, where individuals who had participated in hijackings had been arrested, detained in inhuman conditions, tortured and/or killed. The Committee recalls its general comment No. 1 (1997) on the implementation of article 3, in which it states 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".<sup>q</sup>

<sup>i</sup> A/HRC/4/33/Add.1, paras. 78 and 80–82; E/CN.4/2006/6/Add.1, para. 87; E/CN.4/2005/62/Add.1, paras. 729, 730, 732, 734, 735, 744, 745, 761.

<sup>j</sup> E/CN.4/2005/62/Add.1, paras. 758, 759, 760.

<sup>k</sup> A/HRC/4/33/Add.1, paras. 76 and 83; E/CN.4/2005/62/Add.1, paras. 727, 733, 736, 762; E/CN.4/2005/7/Add.1, para. 298.

<sup>l</sup> E/CN.4/2006/6/Add.1, para. 84 and E/CN.4/2005/62/Add.1, paras. 724, 725, 726, 737, 756.

<sup>m</sup> E/CN.4/2005/62/Add.1, para. 726 and E/CN.4/2005/7/Add.1, para. 300.

<sup>n</sup> E/CN.4/2005/62/Add.1, para. 727.

<sup>o</sup> *Ibid.*, paras. 724, 725, 729 and 730. See also E/CN.4/2006/6/Add.1, para. 85 and A/HRC/4/33/Add.1, para. 77.

<sup>p</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX, para. 8.*

<sup>q</sup> *Ibid.*, para. 6.

11.5 The Committee notes that the State party questions whether the criminal justice authorities in India are still looking for the complainants and argues that, even if they were, that in itself would not be sufficient to conclude that they would be subjected to treatment contrary to the Convention. The Committee, however, observes that the complainants are clearly known to the authorities as Sikh militants and that they have submitted to the Swiss authorities and to the Committee several statements from public officials in India indicating them by name, which demonstrate that the criminal justice authorities were looking for them as late as in 2005. The Committee also notes that the complainants are well known to the Indian authorities because of their political activities in Switzerland and their leadership roles in the Sikh community abroad. The Committee accordingly considers that the complainants have provided sufficient evidence that their profile is sufficiently high to put them at risk of torture if arrested.

11.6 The Committee notes the State party's submission that that numerous Sikh militants are back in India, that Sikhs live in great numbers in different states and therefore the complainants have the option to relocate to another Indian state from their state of origin. The Committee, however, observes that some Sikhs alleged to have been involved in terrorist activities have been arrested by the authorities upon arrival at the airport and immediately taken to prisons and charged with various offences.<sup>r</sup> The Committee also takes note of the evidence submitted that the Indian police continued to look for the complainants and to question their families about their whereabouts long after they had fled to Switzerland. In the light of these considerations, the Committee does not consider that they would be able to lead a life free of torture in other parts of India.

11.7 Moreover, the Committee considers that, in view of the fact that India is not a party to the Convention, the complainants would be in danger, in the event of expulsion to India, not only of being subjected to torture but of no longer having the legal possibility of applying to the Committee for protection.<sup>s</sup>

11.8 In the light of the foregoing, the Committee concludes that the complainants have established a personal, present and foreseeable risk of being tortured if they were to be returned to India. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, therefore concludes that, under the circumstances, the complainants' removal to India would constitute a violation of article 3 of the Convention.

11.9 As the cases of the families of the first and second named complainants are dependent upon the cases of the latter, the Committee does not find it necessary to consider these cases separately.

12. In conformity with rule 118, paragraph 5, of its rules of procedure (CAT/C/3/Rev.5), the Committee wishes to be informed, within 90 days, on the steps taken by the State party to respond to this decision.

---

<sup>r</sup> See also Communication No. 297/2006, *Singh Sogi v. Canada*, decision adopted on 16 November 2007.

<sup>s</sup> See also Communication No. 13/1993, *Mutombo v. Switzerland*, Views adopted on 27 April 1994, para. 9.6.

**Communication No. 338/2008: *Mondal v. Sweden***

<i>Submitted by:</i>	Uttam Mondal (represented by counsel, Gunnel Stunberg)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	30 November 2007 (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 23 May 2011,*

*Having concluded* its consideration of complaint No. 338/2008, submitted to the Committee against Torture by Gunnel Stunberg on behalf of Uttam Mondal 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 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

1.1 The complainant is Uttam Mondal, a citizen of Bangladesh, currently awaiting deportation from Sweden. He claims that his deportation to Bangladesh would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel, Gunnel Stunberg.

1.2 Under rule 108, paragraph 1, of the Committee's rules of procedure (CAT/C/3/Rev.4), the Committee requested the State party not to expel the complainant to Bangladesh while his complaint was under consideration by the Committee.

**The facts as presented by the complainant**

2.1 The complainant was a political activist in Bangladesh, for a party named Bikolpo Dhara Bangladesh (BDB). The BDB was created in 2003, and the complainant joined it at the end of the same year. In 2004, he became the chairman of the party's youth organization, Juba Dhara, in the district of Sreenagar. He organized meetings and demonstrations and held speeches in close contact with Professor Chowdhury, the founder of the party, and his son Mahi Chowdhury. He also helped in organizing local committees of the party.

2.2 In 2004, Mahi Chowdhury was elected as a Member of Parliament from the BDB party. The complainant worked actively for the election, and allegedly had received several death threats from the rival Bangladesh National Party (BNP) militants. Both the complainant and BDB founder Professor Chowdhury were members of the BNP before founding and joining the BDB. The complainant was warned that he would be killed, that the BNP would make false accusations against him to the police, that his brother would be

kidnapped, and that his home would be destroyed. In the meantime, several supporters of the BDB were persecuted by the police.

2.3 On 20 June 2004, during a celebration of the BDB victory, a close friend of the complainant was killed by the BNP supporters. On 21 June 2004, the BDB held a demonstration in protest against the killing. When the complainant returned at his home, the police arrested him and informed him that he was suspected of having killed his friend because of political rivalry. He was brought to the police station and charged with the murder. He was asked to confess, and when he refused, the police officers beat him with iron bars on the sole of his feet, he was hung upside down, beaten with rifle butts and fists, and burned with cigarettes on his back. The officers allegedly had also put a hot iron in his rectum, which caused him to lose consciousness. He was kept at the police station for 48 hours and was released only because Mahi Chowdhury bribed the police. After his release, the complainant went to the Dhaka Clinic, and was treated there for a week.

2.4 On 10 August 2004, the complainant was arrested again. He was accused of having attacked “Khaleda Zia’s” motorcade in 1999. The complainant was kept in custody for three days, and was again released after the payment of a bribe. In the meantime, however, he was asked to testify against the other accused persons for the attack in question, and after his refusal to cooperate, he was allegedly raped by three officers. After release, he was placed in the hospital and remained there for five days.

2.5 The complainant is a Hindu, a religious minority group which is allegedly harassed and persecuted in Bangladesh. He claims that Muslims try to take possession of the Hindus’ land by force or by false papers and destroy their prayer houses. The prayer house of the complainant’s family was among those destroyed. Hindu women are raped, and Hindus are systematically discriminated against at work.

2.6 The complainant claims that he is an active homosexual. A Muslim friend of his informed other people about this fact and as a result, the Imam of the area issued a death fatwa against him. A few days after his release from his second arrest, the complainant’s house was surrounded by a group of Muslims searching for him, who subjected his family to violence and caused substantial material damage, vandalizing the family’s grocery store. He further claims Hinduism also forbids homosexual relations and that, for this reason, he had had problems with his family. When he was leaving his home town, stones were thrown at him and his family refused to talk to him.

2.7 The complainant then decided to go to Dhaka. There he found out that not only Islamist fundamentalists but also the police were searching for him because of the false accusations against him and because of his homosexuality. He decided then to leave the country. Mahi Chowdhury organized his flight through a smuggler. He adds that, while in Dhaka, he tried to commit suicide.

2.8 After his arrival in Sweden, the complainant contacted his family, and found out that the local Imam and other individuals had forced them to leave the area. The complainant’s boyfriend was also obliged to leave Bangladesh shortly after his departure.

2.9 In support of his claims, he had presented his national passport, the Mosque’s fatwa against him, as well as certificates of his membership in BDB, a press article, and a Swedish medical journal.

2.10 On 15 June 2005, the Migration Board rejected the complainant’s asylum application. The Board noted first, that the complainant failed to establish his identity as his passport was damaged. The complainant’s political activities were not placed at doubt, but the Board noted that they had been only limited in time and in place. As to the torture allegations, the Board concluded that it was an isolated act, and that the complainant should have complained at higher level in order to report the torture. The Board did not find any

evidence that a criminal case against the complainant was ongoing in Bangladesh. The religious faith of the complainant has not, according to the Board, given him problems so as to make him in need of protection. The Board had admitted that homosexuality was criminalized in Bangladesh and could be punished with life imprisonment. In practice, however, there is no active persecution of homosexuals in Bangladesh.

2.11 On appeal, the complainant affirmed that he had been in touch with Mahi Choudhury in August 2005, who informed him that the police was still investigating the accusations against the complainant. The procedure was at a preliminary stage and was confidential. The complainant adds that his family has disappeared. Even though a few pages of his passport were missing, they did not include those containing his name, address, photograph, etc. In relation to his political activities, he contended that even though his political activities were conducted only locally, he had been arrested and tortured on two occasions because of them.

2.12 In relation to his religion and homosexuality, the complainant has pointed out that these two grounds combined aggravate his situation in Bangladesh. The fact that he is a Hindu makes it more probable for him to be sentenced to life imprisonment because of his homosexuality than if he were a Muslim in the same situation. He also pointed out that the Migration Board has omitted to comment on the fatwa issued against him.

2.13 The Migration Board of Appeals ceased to exist in March 2006, and the complainant's case was referred to the Stockholm Migration Court. The complainant added to his complaint, *inter alia*, medical certificates issued in 2006 and 2007, by Swedish medical specialists, who concluded that the complainant suffered from post-traumatic stress syndrome and depression, and that he would need a long and continuous treatment.

2.14 On 3 April 2007, the Court found that the information before it did not permit it to doubt Mr. Mondal's credibility. It concluded, however, that the complainant failed to establish that in Bangladesh he would be persecuted because of his past political opinions. The Court further concluded, in relation to the complainant's homosexuality, that he again failed to prove that he would be persecuted on this ground. With regard to persecution based on religion, the Court found that the mere fact that he belonged to a minority group did not constitute sufficient reason. Finally, the Court found that the complainant had not proven that there existed reasons to believe that he would be punished with death penalty, or subjected to ill-treatment or torture, in relation to his allegations that there was a risk to be arrested again. The court found no humanitarian reasons to grant a residence permit to the complainant.

2.15 The complainant appealed this decision with the Supreme Court of Migrations Appeals. On 31 August 2007, the Supreme Court of Migrations Appeals rejected the complaint.

### **The complaint**

3.1 The complainant refers to reports on human rights violations in Bangladesh by non-governmental organizations and claims that in a case of his forced return to Bangladesh, Sweden would violate his rights under articles 3 and 16 of the Convention.

3.2 On 16 April 2008 under rule 108, paragraph 1, of the Committee's rules of procedure (CAT/C/3/Rev.4), the Committee requested the State party not to expel the complainant to Bangladesh while his complaint was under consideration by the Committee.

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

### *Consideration of admissibility*

4.1 On 30 October 2008, the State acknowledged that all available domestic remedies had been exhausted. However it maintains that the complainant's assertion that he is at risk of being treated in a manner that would amount to a breach of article 3 of the Convention fails to rise to a basic level of substantiation.

4.2 As for the claims under article 16 of the Convention, the State party questions the applicability of this article. It refers to the Committee's prior jurisprudence and submits that his claims under article 16 should be inadmissible *ratione materiae*. It submits that the claims under article 16 are incompatible with the Convention and fail to rise to the basic level of substantiation.

### *Consideration of the merits*

4.3 The State party acknowledges that the human rights situation in Bangladesh is problematic. Even if it has extensive legislation for the protection of human rights, in practice the situation is inadequate. It refers to reports by several human rights organizations and agencies<sup>a</sup> and submits that violence is a pervasive feature of politics in Bangladesh. Supporters of different political parties clash with each other and with police during rallies and demonstrations. Although the Bangladesh Constitution prohibits torture and cruel, inhuman and degrading punishment, the police reportedly use torture, beatings and other forms of abuse while interrogating suspects. Those responsible for torture are rarely punished. In January 2007, after the declaration of state of emergency and postponement of elections, the Government's human rights record has worsened. It adds that although there was a significant drop in extrajudicial killings by security forces, there remain serious abuses. The Government generally respects the rights to practice the religion of one's choice, however religious minorities are disadvantaged in practice in such areas as access to government jobs and political office. Nearly 10 per cent of the population is Hindu. Homosexual acts are illegal, however the legislation is used selectively.

4.4 The State party refers to the Committee's jurisprudence and submits that concerns regarding the human rights situation in Bangladesh cannot lead to the conclusion that persons liable to be arrested on criminal charges *ipso facto* face a real risk of torture. It submits that the material before the Committee does not indicate that the complainant would now be in danger of politically motivated persecution and that he would be particularly vulnerable during a possible period of detention. Thus, even if it were shown that the complainant is at risk of being detained upon his return to Bangladesh, this does not constitute substantial grounds for believing that he would be in danger of being subjected to torture.

4.5 The State party submits that several provisions of both the 1989 Aliens Act and the 2005 Aliens Act reflect the same principles as that laid down in article 3, paragraph 1, of the Convention. Thus the Swedish authorities apply the same kind of test when considering an application for asylum under the Aliens Act as the Committee. It adds that the national authority conducting the asylum interview is in a very good position to assess the information submitted by the asylum-seeker and to estimate the credibility of his or her claims. It mentions that the Migration Board took its decision after two interviews conducted with the complainant. The second interview lasted for two hours. Thus, it had

---

<sup>a</sup> Swedish Ministry of Foreign Affairs. Report on Human Rights 2007; United States State Department Report, 2007; British Home Office Guidance Note, 2007. Amnesty International, Annual Report 2008; Human Rights Watch report 2007.

sufficient information which, taken together with the facts and documentation in the case, ensured that it had a solid basis for its assessment of the complainant's need for protection.

4.6 The State party adds that in his complaint to the Committee, the complainant has not provided any detailed explanation of why his expulsion to Bangladesh would be in violation of the Convention. He indicated only the fact that he risks being arrested on return to Bangladesh and therefore also being subjected to torture. It adds that the complaint is too vague, imprecise and lacking in details on important points to be examined on the merits.

4.7 The political situation in Bangladesh has changed since the complainant left the country. According to the complainant, it was the ruling party, the BNP, that persecuted him and initiated false accusations against him. The complainant submitted an undated letter from Mahi Chowdhuri that he is under the threat from BNP members. However, the BNP is no longer the ruling party in Bangladesh. The country is at the moment run by a caretaker Government and will continue to be so until general elections have been held. Since the BNP does not have the same position as it did when the complainant left Bangladesh, the risk of being exposed to harassment by the authorities at the instigation of that party should have diminished considerably.

4.8 The State party adds that the complainant has not, with the exception of the above statement from Mahi Chowdhuri, submitted any documents supporting his claim that he is currently of interest to the Bangladeshi authorities owing to his political involvement or for any other reason. During the second interview by the migration authorities he stated that he had no documents regarding the false accusations against him. He also stated that he had not filed any complaint against the police officers who maltreated him. Nor has he provided any details or further information as to the present situation concerning the alleged accusations. He has argued that it is not possible to get hold of any evidence as long as the preliminary investigation is going on. However, the State party contends that in the proceedings before the Migration Board the complainant mentioned a document that was shown to him at the clinic in Dhaka, containing a list of suspected persons and including his name. He has also been able to get other documents from Bangladesh, allegedly from the same person who showed him the aforementioned list. It has therefore been questioned why it has been impossible for him to get hold of evidence of the alleged cases against him.

4.9 The State party also refers to the decisions by the Migration Board and Migration Court that the complainant does not appear to have held any leading position within the party. It contends that due to the length of his political involvement (less than a year) and also the amount of time that has passed since the political involvement and the alleged instances of torture the complainant would not be a political figure of such importance and of such interest to the authorities to believe that he would be in danger of being subjected to persecution upon his return. The complainant's former party has joined the Liberal Democratic Party and ceased to exist. Should the risk of persecution still exist it would be of a local character and he could therefore in any event secure his safety by moving within the country.

4.10 Regarding the complainant's past experience of torture, the State party notes that his request for a torture injuries examination was rejected by the Migration Board. It contends that he does not seem to have insisted on the examination after that, nor has he had the alleged torture injuries documented at his own initiative. The medical documentation that has been submitted by the complainant to both the Swedish Migration authorities and the Committee focuses on the complainant's mental health. The only exception is the two discharge certificates from the Dhaka Clinic that certify "cut injuries and laceration analfimere". The State party refers to the Committee's jurisprudence and states that the aim of the Committee's examination is to determine whether the complainant would risk being subjected to torture now, if returned to his home country. It submits that should the Committee consider it to be established that the complainant has been subjected to torture



by the Bangladeshi police in the manner he has asserted, this does not mean that he has thereby substantiated his claim that he will risk torture if returned to his country of origin.

4.11 The State party refers to the conclusions of the Migration Court relating the complainant's sexual orientation and his family's knowledge about this. He had had a relationship with his boyfriend since 1997 and they lived together in his house. He stated that no one found it strange as it was not unusual for two men to live together. It questions how he was able to keep his sexual orientation from his family as he had been living for such a long time in a relationship with another man. It states that homosexual acts are illegal in Bangladesh under its Penal Code. The sanction may be imprisonment for life. However, according to the information provided in human rights reports on Bangladesh it rarely happens that a person is prosecuted under this section. It also adds that the human rights reports do not support the conclusion that Bangladeshi authorities are actively persecuting homosexuals or that there is a general need of protection for homosexual asylum-seekers from Bangladesh. The biggest problem for homosexuals is the social stigma that follows for homosexuals and other persons living outside the social norms of the Bangladeshi society. The complainant did not submit any documents supporting his claim or otherwise substantiated his claim that he is currently of interest to the Bangladeshi authorities owing to his sexual orientation. However should he be of interest to Bangladeshi authorities, he would most probably be able to live and work in other places in Bangladesh where he is not previously known. The certificate from the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights submitted by the complainant is not an expert opinion as has been alleged by the complainant. Neither is the later certificate from the same federation dated 27 January 2007 also submitted to the Committee.

4.12 The State party submits that in order to support his claim that he risks being persecuted and even killed by Islamic fundamentalists because of his sexual orientation, the complainant submitted a poster with a proclamation of the fatwa that has been put on him. The poster with the fatwa and his face on it has been distributed in various areas but he does not know if it has been distributed throughout the whole country. The State party submits that the Government in Bangladesh is secular, even if a religion forms a platform for certain political parties, and sharia is not formally implemented. It also questions whether there is a risk that the complainant may now be of interest to Islamic fundamentalists, considering the time that has elapsed since he left Bangladesh. According to information available on Bangladesh, fatwa does not have legal force. However if such a risk exists, it would most certainly be of a local character so that the complainant would be able to secure his safety by moving within the country. The State party admits that the Migration Board did not consider the fatwa but the complainant does not know to what extent the fatwa has been spread and he has no evidence of this being the case.

4.13 As to the complainant's claim that Hindus are hindered in their religious activities, that the Muslims try to get their lands by illegal means and that they are disadvantaged as regards to access to jobs, the State party submits that the kind of difficulties that minority groups like Hindus may experience in Bangladesh can hardly be considered to amount to persecution on the part of the Bangladeshi authorities, let alone torture within the meaning of article 1. It refers to human rights reports and concludes that any persecution of Hindu people on religious grounds that may occur does not emanate from the State. Nor does such persecution take place with the consent or acquiescence of the State. Furthermore, regarding the complainant's reference to an occasion when the members of his family were attacked due to their Hindu beliefs and their place for prayer was destroyed, it notes that the complainant himself was not at home at that time and there is nothing to indicate that he himself was the target of religious persecution.

4.14 As to the allegations of violation of article 16, the State party submits that the complainant does not provide any reason why there would be such a violation. It refers to

the Committee's jurisprudence<sup>b</sup> and contends that aggravation of the complainant's state of health due to deportation would not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16 of the Convention.

4.15 The State party refers to the medical opinion of Dr. Ziad Yanes, a specialist in psychiatry, which was submitted by the complainant and which the State party contends is a reproduction of his story. The complainant has also invoked two medical certificates by Dr. Asa Magnusson. The State party submits that at the initial interview the complainant stated that he was worried but not suffering from any mental illness, however from the medical documentation it is evident that his health has deteriorated during his time in Sweden. Dr. Magnusson's certificate states that his health has improved due to the treatment he has been given. The State party submits that should he need medical care in his native country because of his mental health problems, it appears that such care is available at least in the big cities. Therefore, the possible aggravation of his health issues that his deportation might cause would not amount to the type of treatment covered by article 16.

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

5.1 On 4 September 2009, the complainant submitted executive summaries of the medical investigation into his torture injuries, which state that he was tortured twice in 2004 by the Bangladeshi police. He describes the methods of torture which include, being hit with fists, iron rods, rifle butts and police batons. He also claims that he was cut by bayonets, burnt with cigarettes, whipped on the soles of his feet, hung upside down, and subjected, inter alia, to water treatment, rape. As a result, he developed chronic pain in his joints, pain in his feet while walking and itchy skin. He also provides the summaries of the conclusion by a Dr. Edston, who found scar tissue on his head, both arms, his torso and both legs.

5.2 The complainant submitted a summary of examination by a Dr. Soegndergaard, which states that he was committed to hospital care due to suicide attempts and confirms that he has clear symptoms of post-traumatic stress disorder.

5.3 As to the State party's argument that his complaint does not rise to the basic level of substantiation, the complainant submits that he has shown grounds that he would be personally at risk if returned to Bangladesh. He claims that the evidence submitted, including the medical certificates, show that he has been subjected to torture by Bangladeshi authorities and claims that there continues to exist a substantial, personal and foreseeable risk of torture, if he is returned to Bangladesh.

5.4 The complainant contends that the State party did not in any way specify its argument that his claims are manifestly unfounded. The documents submitted as well as his statement provide detailed and specific information. Being highly traumatized, he cannot be demanded to give exact and detailed account of everything that has taken place, as it was not humanly possible.

5.5 As to the general situation in Bangladesh, he submits that the situation has developed even further, namely, the Awami League won the election in the previous December, however he points out that BNP still has power and the opponents of BNP are still being subjected to persecution.

---

<sup>b</sup> Communication No. 83/1997, *G.R.B. v. Sweden*, Views adopted on 15 May 1998.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

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.

6.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any complaint unless it has ascertained that the complainant has exhausted all available domestic remedies. The Committee notes the State party's acknowledgment that domestic remedies have been exhausted and thus finds that the complainant has complied with the requirements in article 22, paragraph 5 (b).

6.3 The Committee notes that no arguments or evidence have been submitted in substantiation of the claim under article 16 of the Convention, and therefore the Committee concludes that this claim has not been substantiated for the purposes of admissibility. This part of the communication is thus inadmissible.

6.4 On the alleged violation of article 3, the Committee is of the opinion that the arguments before it raise substantive issues, which should be dealt with on the merits and not on admissibility alone. Accordingly, the Committee finds this part of the communication admissible and proceeds to its consideration.

### *Consideration of the merits*

7.1 The Committee must determine whether the forced return of the complainant to Bangladesh would violate the State party's obligations 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.

7.2 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture upon return to Bangladesh. In reaching this decision, the Committee 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. In this regard, the Committee notes that the State party acknowledged that the general human rights situation in Bangladesh has worsened and that torture, beating and other forms of abuse are used by the police while interrogating suspects.

7.3 The aim of the present determination, however, is to establish whether the complainant would be personally at risk of being subjected to torture in Bangladesh after his return. A consistent pattern of gross, flagrant or mass violations of human rights in Bangladesh would not as such constitute sufficient grounds for determining that he would be in danger of being subjected to torture after his return to that country; specific grounds must exist indicating that he would be personally at risk.<sup>c</sup> The Committee notes the complainant's claim that he is at a particular risk of torture in Bangladesh due to his religion and sexual orientation. The State party argued that any persecution of Hindu people on religious grounds that may occur does not emanate from the State and noted that the complainant did not submit any documents supporting his claim. As for his sexual

<sup>c</sup> Communication No. 214/2002, *M.A.K. v. Germany*, decision adopted on 5 May 2004.

orientation, the State party acknowledged that homosexual acts are illegal under the Penal Code and can entail imprisonment for life in Bangladesh. In this regard, the Committee notes that the State party's argument that Bangladeshi authorities are not actively persecuting homosexuals does not rule out that such prosecution can occur.

7.4 Concerning the fatwa issued against the complainant because of his sexual orientation, the Committee considers that the State party's argument that the complainant did not know to what extent the poster with the fatwa had been spread within Bangladesh, and that it may only have been of a local character, is unjustified as it would be impossible for the complainant to prove the contrary given that he is outside the country. Furthermore, the notion of "local danger" does not provide for measurable criteria and is not sufficient to dissipate totally the personal danger of being tortured. The Committee also notes the State party's argument that the complainant does not appear to be of interest to Islamic fundamentalists, considering the time that has elapsed since he left Bangladesh, however it considers that the State party did not provide sufficient argument on how the lapse of time has diminished the risk of persecution based on the complainant's sexual orientation.

7.5 As for the complainant's arguments that he will be persecuted because of his past political activities, the Committee notes the State party's argument that the BNP is no longer the ruling party in Bangladesh and does not have the same position as it did when the complainant left Bangladesh. The Committee however notes that the political situation in Bangladesh remains unstable, with violence and rivalry among various political parties, and there continues to be many instances of violence based on political beliefs. The Committee also notes that the State party did not question that the complainant was subjected to torture in the past, albeit that in the State party's view this was an isolated act. Furthermore, the State party acknowledged that torture is still practiced in Bangladesh and that those responsible are rarely punished.

7.6 As for the medical documentation submitted by the complainant regarding the consequences of past torture, while recalling its jurisprudence<sup>d</sup> that previous experience of torture is but one consideration in determining whether a person faces a personal risk of torture upon return to his country of origin, the Committee notes that the medical reports confirm a causal link between the complainant's bodily injuries, his current psychological state and the ill-treatment he suffered in 2004.

7.7 In the light of the arguments provided above, and in particular the findings in the medical report, the complainant's political activities in the past and the risk of persecution on the basis of his homosexuality combined with the fact that he belongs to a minority Hindu group, the Committee considers that the complainant has provided sufficient evidence to show that he personally runs a real and foreseeable risk of being subjected to torture were he to be returned to his country of origin. In the circumstances, the Committee concludes that the expulsion of the complainant to Bangladesh would constitute a violation of the State party's obligations under article 3 of the Convention.

7.8 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, considers that the State party's decision to return the complainant to Bangladesh would constitute a breach of article 3 of the Convention.

8. In conformity with article 112, paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, on the steps taken by the State party to respond to this decision.

---

<sup>d</sup> Communication No. 235/2003, *M.S.H. v. Sweden*, decision adopted on 14 November 2005.

### Communication No. 339/2008: *Amini v. Denmark*

<i>Submitted by:</i>	Said Amini (represented by counsel, Jens Bruhn-Petersen)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Denmark
<i>Date of complaint:</i>	16 April 2008 (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 15 November 2010,

*Having concluded* its consideration of complaint No. 339/2008, submitted to the Committee against Torture by Said Amini 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 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

1.1 The complainant is Said Amini, born in 1979, currently awaiting deportation from Denmark to the Islamic Republic of Iran, his country of origin. He claims that his deportation to the Islamic Republic of Iran would constitute a violation by Denmark of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee requested the State party under rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant to the Islamic Republic of Iran while his complaint was under consideration by the Committee.

#### **The facts as presented by the complainant**

2.1 The complainant was born in Ghazvin in the Islamic Republic of Iran. He is an Iranian national and a Shia Muslim. He attended school for eleven years and completed two years of military service. After having completed his military service, he worked as a shop manager in one of his family's shops. He is unmarried and has no children. His mother, father and 9 brothers and sisters all live in the Islamic Republic of Iran.

2.2 In July 2002, the complainant became actively involved in a monarchist group called "Refrondom Komite" (the Committee for Reformation on the Wall), a subgroup of the Royalist Party. The group consisted of three persons, including the complainant. One of the three had contact with a person from the monarchist group "Hzbe-Mashrutekhanan Iran/Saltanat Talab" (the Royalist Party of Iran). Two or three times a week, the complainant and his two fellow group members would hand out leaflets, write slogans and put up posters, etc.

2.3 On 22 December 2002, while handing out leaflets, the group was surrounded and detained by representatives from the authorities in civilian clothes. The complainant was isolated in a cell and tortured. He was subjected, inter alia, to threats, kicks, beatings, electric torture, cuts on both nipples, suspension of heavy objects by his genitals and water torture. As a result of health problems caused by the torture, the complainant was transferred to a hospital in mid-February 2003. He managed to escape from the hospital, with the help of his father, his brother and hospital staff.

2.4 The complainant was driven to the city of Makoo where he stayed with one of his father's friends while his flight from the Islamic Republic of Iran was being arranged. On 16-17 May 2003, the complainant entered Turkey illegally from the Islamic Republic of Iran. From there, he travelled through the Netherlands to Denmark, where he arrived on 18 August 2003. On 19 August 2003, he contacted Danish police and applied for asylum. He was subsequently arrested and imprisoned until 16 December 2003. On 17 December 2003, the day after his release, he joined the Danish branch of the Constitutional Party of Iran (CPI). From that point on, he has been an active member of CPI Denmark. On 18 December 2003, after his release, he was medically examined by the Danish Red Cross.

2.5 On 4 March 2004, the complainant was interviewed by the Danish Immigration Service and was denied asylum on 17 May 2004. This decision was appealed to the Refugee Board. On 27 September 2004, he was denied asylum by the refugee Board, who found his statement to be untrustworthy. The Board stated in its findings that his explanation seemed unlikely based on the available background material concerning the level of activity of the monarchist movement in the Islamic Republic of Iran, and that he had not appeared politically well-informed.

2.6 The Refugee Board denied a request from the complainant's attorney to stay the proceedings while the complainant underwent a medical examination. On 30 December 2004, the medical team of Amnesty International Denmark concluded that the complainant's pains were consistent with the violence he stated he had been subjected to, and that his psychological symptoms were consistent with the diagnosis of post-traumatic stress disorder, and typical symptoms of persons who have been subjected to torture.

2.7 Based on the medical examination by Amnesty International, a request to reopen the case was sent to the Refugee Board on 25 April 2005. The request was denied on 24 January 2006.

2.8 From 19 to 29 July 2006, the complainant participated in a hunger strike in front of the Danish Parliament, which was widely covered by the Danish media, and on 3 August 2006 the Refugee Board stayed the removal date again. On 5 September 2006, the complainant once again requested the reopening of his case. This was rejected on 22 December 2006, on the basis that the complainant had not been exposed to an extent that might warrant a revised decision.

2.9 On 22 January 2007, the complainant requested the Refugee Board to reopen his case for the last time. The request was based solely on the fact that the Refugee Board had not given decisive importance to the information demonstrating that he had been tortured and the fact that the Refugee Board had not given any reason why this information had been disregarded.

2.10 On 10 July 2007, the Refugee Board once again denied to reopen the case. It repeated that the medical report could not result in a revised decision, and that the complainant had not given a trustworthy statement about his political activities in the Islamic Republic of Iran. It also stated that even if he had been subjected to torture in the Islamic Republic of Iran, they did not find that he, if returned there, would be at risk of any physical or mental harm that might warrant granting asylum.

2.11 The complainant submits that it is clear that political activities for different groups, including various monarchist groups, take place in the Islamic Republic of Iran. He acknowledges that the information in the background material is sometimes contradictory, but it is a fact that in several decisions made by the Danish Refugee Board, the Board has recognized such activities. For instance, in a decision of 9 October 2006, an Iranian man was granted a residence permit as the Refugee Board found that he was at risk of persecution in the Islamic Republic of Iran as a result of his activities when handing out leaflets for a small monarchist group.

### **The complaint**

3.1 The complainant claims that he is at risk of being subjected to torture if returned to the Islamic Republic of Iran. This fear is based on the fact that he was tortured in the past as a result of his political activities, and recommenced such political activities from Denmark. He reiterates that he escaped from the hospital, and that the torture took place during imprisonment immediately prior to his flight, thus indicating that his case remains open before the Iranian authorities.

3.2 According to the complainant, when evaluating whether he is at risk of being subjected to torture, decisive importance should not be given to whether or not he appeared politically well-informed.

### **State party's observations on the admissibility**

4.1 In its submission of 22 July 2008, while acknowledging that the complainant had exhausted domestic remedies, the State party challenged the admissibility of the case as manifestly unfounded. It stated that there were no substantial grounds for believing that returning the complainant to the Islamic Republic of Iran would imply that he would be in danger of being subjected to torture. The State party based this statement first and foremost on the four decisions of the Refugee Appeals Board.

4.2 Concerning the alleged torture, the State party emphasized that the Refugee Appeals Board did not, as such, dismiss the statement that the complainant had been subjected to the "outrages" described in the report by Amnesty International. However, this did not demonstrate that the complainant faces a foreseeable, real and personal risk of being subjected to torture if returned to the Islamic Republic of Iran.

4.3 In support of the claim that the complainant is still at risk of being subjected to torture in the Islamic Republic of Iran, the State party noted that he referred to the allegation that he had escaped from the hospital where he was admitted, and that the torture had taken place during imprisonment immediately prior to his flight from the Islamic Republic of Iran. The State party noted that these allegations had not been substantiated by the complainant.

4.4 With regard to the decision of the Refugee Appeals Board of 9 October 2006, relating to another asylum-seeker and referred to by the complainant, the State party explained that the Board makes a decision in each asylum case on the basis of the applicant's statements and the background information about the applicant's country of origin. The fact that the Board may have granted asylum in another case, unrelated to the complainant's, would not in itself lead to a revised assessment of the complainant's case.

4.5 Concerning the complainant's alleged political activities in the Islamic Republic of Iran for a monarchist organization, the State party submitted that the Refugee Appeals Board conducted a detailed assessment of this submission, and concluded that it seemed improbable, based on information on the level of activity of that organization in the Islamic Republic of Iran from the Office of the United Nations High Commissioner for Refugees (UNHCR) and other sources. The State party also referred to the initial submission, page 6,

where the complainant's attorney stated that "it cannot be ruled out that [the complainant] has exaggerated the extent of his political activities".

4.6 Concerning the complainant's alleged political activities after his arrival in Denmark, the State party submitted that he had failed to demonstrate the substantial political character of the majority of these activities. For instance, the purpose of the hunger strike the complainant participated in was to draw society's attention to the conditions of asylum-seekers in Denmark, and was in no way related to the situation in the Islamic Republic of Iran.

4.7 In sum, the State party submitted that the complainant has not sufficiently demonstrated that he had engaged in sustained political activities either in the Islamic Republic of Iran or in Denmark, or any other activities for that matter, which would, at present, give substantial grounds to believe that his return to the Islamic Republic of Iran would expose him to a real, specific and personal risk of torture, within the meaning of article 3 of the Convention.

#### **Complainant's comments on the State party's observations on the admissibility**

5.1 On 6 October 2008, the complainant submitted that the key to understanding the handling of this case by Danish authorities appears from the decisions by the Danish Immigration Service dated 17 May 2004 and the Danish Refugee Board on 27 September 2004. In both decisions, the application for asylum was refused, and the complainant's statements about torture were not mentioned at all. In its three decisions not to reopen the case, the Danish Refugee Board did not consider the case, but it merely defended its original decision of 27 September 2004, in which it completely failed to deal with the issue of torture.

5.2 The complainant argued that, as he had fled from his country of origin, he was unable to produce evidence other than the oral information provided. The State party had the opportunity to let the complainant undergo a medical examination concerning torture, but had chosen not to do so. He also added that the Iranian authorities were aware of his political activities outside the Islamic Republic of Iran, including an article published in a German monarchist newspaper.

#### **Decision on admissibility**

6.1 At its forty-second 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. On the issue of domestic remedies, the Committee noted the State party's acknowledgment that domestic remedies had been exhausted, and thus found that the complainant had complied with the requirements in article 22, paragraph 5 (b).

6.2 The Committee took note of the State party's contention that the complaint should be declared inadmissible under article 22, paragraph 2, of the Convention, on the basis that it failed to rise to the basic level of substantiation required for purposes of admissibility under article 22, paragraph 2, of the Convention. It considered, however, that the complainant had made sufficient efforts to substantiate his claim, particularly in the light of his account of previous torture (see communication No. 227/2003, *A.A.C. v. Sweden*) and the medical certificate which supported this contention, of a violation of article 3 of the Convention, for purposes of admissibility. Accordingly, the Committee declared the communication admissible and requested the State party to provide its observations on the merits of the case. The Committee also wished to receive additional information on why the State party had chosen not to take into account the medical examination performed by the Danish Red Cross and the torture examination performed by Amnesty International



Denmark. In particular, the Committee wished to know why the State party had only considered whether the complainant had been politically active, and not whether he had been tortured, taking into account the possible relationship between political activities and torture.

6.3 Accordingly, the Committee found the communication admissible and requested the State party to provide its observations on the merits, as well as written explanations and statements on the request for specific information in paragraph 6.2. It was also stated that these observations would be transmitted to the complainant.

#### **State party's observations on the merits**

7.1 On 14 September 2009, the State party submitted that following the Committee's admissibility decision it requested a supplementary opinion from the Danish Refugee Appeals Board. On 25 August 2009, without revising its assessment of the case the Board made the following comments on the Decision. It submits that the complainant's statement that he was tortured was taken into account in assessing his original asylum application and in subsequent requests for reopening his case. It notes that the Board had included the medical report from the Red Cross of 18 December 2003 in its original assessment of 27 September 2004. In its three decisions (24 January 2006, 22 December 2006 and 10 July 2007) denying the complainant's requests to reopen the case on the basis of the medical evidence on torture, the Board concluded that this information could not lead to a reassessment of his credibility regarding this political activities and detention in the Islamic Republic of Iran. Thus, regardless of whether it was considered a fact that the complainant had been subjected to torture in the past, the Board found that past torture in and of itself was insufficient to warrant asylum under section 7 (1) and/or (2) of the Aliens Act. The Board also draws attention to the Government's submission of 22 July 2008 in which it states that the Board does not as such dismiss the statement that the applicant has been subjected to the "outrages" as described in Amnesty International medical report. The Board also adds that the decision of 24 January 2006 was made by the entire Board in writing rather than the Chairman alone, thus ensuring that the original members of the Board carefully assessed the significance of the medical report in question.

7.2 As to the relationship between the complainant's alleged political activities and torture, the Board submits that although torture may contribute to evidence of political persecution, the conditions for asylum are not necessarily satisfied in all cases where an asylum-seeker has been subjected to torture.<sup>a</sup> In its original decision on 27 September 2004, the Board had found that the complainant's claims with respect to his activities for a monarchist organization seemed improbable based on information, from the UNHCR as well as other sources, on the level of activity of that organization in the Islamic Republic of Iran, the stereotypical statement regarding the political purposes of that organization and the fact that the complainant seemed to be politically ill-informed. The background information available to the Board at the time it made its decision provides a homogenous and unambiguous impression of a practically non-existent monarchist movement in the Islamic Republic of Iran.<sup>b</sup> The complainant himself had admitted that he did not know very much about the party as it was an underground movement. He stated that its purpose was to

---

<sup>a</sup> The Board refers to the Committee's Decision in Communication No. 277/2005, *N.Z.S. v. Sweden*, decision adopted on 29 November 2006, which referred to a case of forced removal to the Islamic Republic of Iran, and in which the Committee found no potential violation of article 3, despite the fact that it was probable that the complainant had been tortured, as the alleged events had taken place six years prior to the deportation decision and, among other things, he had failed to adduce any evidence of political involvement of such significance as would still attract the attention of the authorities.

<sup>b</sup> The Board refers to the information at its disposal at the time.

overthrow clerical rule and put power into the hands of the people but was uncertain about who had founded the party, when it was founded and the possibility that it had been banned by clerical rule. He did not know any other members of the organization apart from the two people with whom he had participated in the alleged activities and could not specify further what activities took place in the Islamic Republic of Iran, as the organization was secret. For these reasons, among others, the Board states that the complainant had not rendered it probable that he had become an object of interest to the Iranian authorities as a result of political activities for the monarchist organization. The Board refers to Amnesty International's medical report, arguing that it cannot be concluded from this report that the torture alleged was inflicted as a result of his participation in the political activities described by him. In the context of a reference to the Committee's jurisprudence that complete accuracy is seldom to be expected from people suffering from post-traumatic stress disorder, the State party submits that the complainant has not made inconsistent or incoherent statements about his alleged political activities in the Islamic Republic of Iran.

7.3 The State party submits that it relies on the view of the Board as set out above. As to the issue of background material at the Board's disposal, it states that this material is updated on an ongoing basis and that it is considered very important that it is of the highest quality. It provides the website where the material in question may be found, describes the basis upon which such information is relied upon and provides an annex of all of the information made available to the complainant when considering his case. To conclude, the State party submits that the two medical reports in question were taken into account by the Board; that the question of whether there is any connection between the torture alleged and the complainant's alleged political activities in the Islamic Republic of Iran was carefully considered; that the Danish authorities have been unable to establish the veracity of the complainant's statements regarding his alleged political activities; that the authorities have been unable to establish whether he was tortured by the Iranian authorities for political or other reasons; that even if it were accepted that he was tortured in the Islamic Republic of Iran he has not sufficiently demonstrated that he has engaged in sustained political activities, either in the Islamic Republic of Iran or Denmark, that would indicate that a return to the Islamic Republic of Iran would expose him to a real, specific and personal risk of torture; and that the Board has had access to comprehensive and sufficient background material on the Islamic Republic of Iran when considering the complainant's case.

#### **Complainant's comments on the State party's observations on the merits**

8.1 On 20 November 2009, the complainant states that the State party's most recent submission does not include any new information and despite maintaining that the complainant's statements on torture were included in the authorities' evaluation of the case, the fact remains that this information is neither mentioned in the decision of the Danish Immigration Service or the Danish Refugee Board. In addition, in its decisions denying a reopening of the case, the Board has failed to take any position on the allegations of torture and rejected his information on his political activities regardless of his objective evidence on torture. If it had accepted the evidence, it would have required a justification of a different character in refusing to grant him asylum. It would in fact have been required to deal with the potential correlation between torture and his political activities. In its latest submission the State party submits that the complainant has not given a varying or incoherent statement about his alleged political activities in the Islamic Republic of Iran. Thus, the Board's denial of asylum relies on the argument that the complainant has not shown any particular knowledge of political matters and that today Iranian Monarchists do not carry out political activities in the Islamic Republic of Iran.

8.2 As to the issue of his lack of political knowledge, the complainant argues that he was not so questioned during his hearing by the Board and that the type of work he undertook was the only type of political work possible in the Islamic Republic of Iran, i.e.,

underground propaganda work. Due to the political situation in the Islamic Republic of Iran, he did not have the opportunity to study and his lawyer considers that it is possible that his political knowledge is limited but does not take away from his claim that he was politically active. As to whether the Monarchists carry out activities in the Islamic Republic of Iran, the complainant submits that since the Revolution in 1979, the Board has consistently recognized that limited activities including the distribution of leaflets and other propaganda work is carried out by Monarchists. As to the fact that six years have passed since the alleged torture, the complainant argues that the lapse of time will have no bearing on the possibility of him being once again subjected to torture.

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

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

9.2 The issue before the Committee is whether the forced return of the author to the Islamic Republic of Iran would violate the obligation of Sweden 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.

9.3 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 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 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.

9.4 The Committee recalls its general comment No. 1 (1997) on implementation of article 3 in the context of article 22, which states that the Committee is to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if deported to the country concerned.<sup>c</sup> The risk need not be highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be “foreseeable, real and personal”.<sup>d</sup>

9.5 With regard to the burden of proof, the Committee also recalls its general comment and its previous decisions, according to which the burden is generally on the complainant to present an arguable case and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

9.6 In assessing the risk of torture in the present case, the Committee notes the complainant’s contention that there is a foreseeable risk that he will be tortured if returned to the Islamic Republic of Iran based on his claims of past detention and torture, as a result of his political activities, and the recommencement of his political activities upon arrival in

<sup>c</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.*

<sup>d</sup> Communication No. 203/2002, *A.R. v. The Netherlands*, decision adopted on 14 November 2003, para. 7.3.

Denmark. It notes his claim that the State party did not take his allegations of torture into account, and that it never formed a view on the veracity of the contents of his medical reports, which allegedly prove that he had in fact been tortured.

9.7 Following a request by the Committee in its decision on admissibility, for further clarification from the State party on the allegations of past torture, the latter referred to an advisory opinion from the Refugee Board. The Board indicated that it had in fact taken the complainant's allegations into account, including the medical reports in question and that in fact it had referred to these reports in its decisions of 27 September 2004, 24 January 2006, 22 December 2006 and 10 July 2007. Although the State party does not come to a decision on the veracity of the contents of the medical reports, it neither confirms nor denies the allegations of torture. On two occasions it states that it does not "dismiss" these allegations. It questions the complainant's claims relating to his involvement in political activities and is of the view that even if it were to accept that he had been tortured in the past, he has failed to relate these allegations to any political involvement.

9.8 The Committee finds that it is probable, based on the medical reports provided by the complainant, which indicate that his injuries are consistent with his allegations, that he was detained and tortured as alleged. It also notes that the State party does not dispute this claim of past torture but argues that he was unlikely to have been subjected to torture on the basis of involvement with the monarchists, given their low level of activity in the Islamic Republic of Iran. As to the general human rights situation in the Islamic Republic of Iran, the Committee is concerned with the deteriorating situation since the elections of June 2009, including with respect to a report of six independent United Nations experts in July 2009, who questioned the legal basis for the arrests of journalists, human rights defenders, opposition supporters and scores of demonstrators, giving rise to concern for the arbitrary detention of individuals legitimately exercising their right to freedom of expression, opinion and assembly.<sup>e</sup> In particular, the Committee is concerned about reports that monarchists have been recently targeted in the Islamic Republic of Iran. In the light of the above, including the complainant's corroborated claims of past torture, the Committee is of the view that there are sufficient arguments to conclude that the complainant would face a personal risk of torture if forcibly returned to the Islamic Republic of Iran.

9.9 The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the forcible return of the complainant to the Islamic Republic of Iran would constitute a breach by Denmark of his rights under article 3 of the Convention.

10. Pursuant to rule 112, paragraph 5, of its rules of procedure, the Committee invites 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 accordance with the above observations.

---

<sup>e</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8383&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8383&LangID=E). See also the compilation for the universal periodic review of the Islamic Republic of Iran in November 2009. A/HRC/WG.6/7/IRN/2; for example paras. 28, 31 and 56; and A/HRC/WG.6/7/IRN/3, paras. 28–29.

## Communication No. 341/2008: *Hanafi v. Algeria*

<i>Submitted by:</i>	Fatiha Sahli (represented by counsel, TRIAL (Track Impunity Always))
<i>Alleged victim:</i>	Djilali Hanafi (husband of the complainant)
<i>State party:</i>	Algeria
<i>Date of complaint:</i>	30 April 2008 (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 June 2011,

*Having concluded* its consideration of complaint No. 341/2008, submitted to the Committee against Torture by Fatiha Sahli 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 against Torture**

1.1 The complainant is Fatiha Sahli, born on 28 June 1972 in Mechraâ-Sfa (Tiaret wilaya), Algeria. She contends that her husband was the victim of a violation by Algeria of article 2, paragraph 1 and articles 11, 12, 13 and 14 read in conjunction with article 1, or alternatively with article 16, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. She is represented by TRIAL (Track Impunity Always).

1.2 On 15 September 2009 the Committee, at the request of the complainant and through its Rapporteur on new complaints and interim measures, requested the State party to refrain from invoking domestic legislation against the complainant and members of her family that might restrict their right to continue the procedure initiated in the Committee against Torture.

#### **The facts as submitted by the complainant**

2.1 On 1 November 1998 the complainant's husband went to work at his food store. He did not return home in the evening. On 2 November 1998 the family was visited by a man who informed them that Djilali Hanafi was being detained at the headquarters of the Mechraâ-Sfa gendarmerie. The man explained that he had been released the same day, having been detained at the same facility, where he had met Djilali Hanafi. He said that they had been held in a concrete cell of two square metres that was shared by more than 10 people. Djilali Hanafi was shivering heavily and constantly vomiting following the torture to which he had just been subjected. Other detainees confirmed the conditions of detention and Djilali Hanafi's state of health. They added that they banged on the door the whole night to draw the guards' attention in the hope that they would assist the victim. It was not until late the following morning that a gendarme came to take him out of the cell to get some air. He never received medical attention.

2.2 Having heard where his son was being detained, Djilali Hanafi's father went to the Mechraâ-Sfa gendarmerie and requested to see him, asking the reasons for his detention. The chief of the gendarmerie denied his request. His father then appealed to the gendarmerie captain in charge, the chief's superior, asking him to release his son. He too denied the request. On 3 November 1998 the victim's father returned to the gendarmerie headquarters with one of his sons. The gendarmes, who the previous day had refused to give the slightest information on Djilali Hanafi, released him that evening. He was in a lamentable state and had obviously been subjected to serious ill-treatment. Unable to walk upright, he was carried to his home in a gendarmerie vehicle.

2.3 As it was already night, and because of the troubles and insecurity in the country, the family decided to wait until morning to bring Djilali Hanafi to the hospital, which was located 30 kilometres from their home. On the night of 3 November 1998, a few hours after being handed over to his family, the victim died from his injuries, in extreme agony. In his misery, he repeated time and again that the gendarmes had beaten him and had killed him. At about 8 a.m., the gendarmes came to the family house and asked the victim's wife for the family civil-status record book so that the chief of the gendarmerie could fill in the death certificate. The complainant considers that this proves beyond any doubt to what extent the officers concerned were sure that the beatings inflicted on Djilali Hanafi while in detention would inevitably kill him.

2.4 On 4 November 1998 at around 3 p.m. the family was preparing to leave home for the cemetery to bury the deceased when gendarmes arrived and asked them to postpone the burial and transfer the victim's remains to the Youssef Damerdji hospital in Tiaret for an autopsy. According to information received verbally from members of the medical corps, the autopsy had been ordered by the Tiaret State prosecutor when signing the burial permit, noting that the death certificate had mentioned the victim's "suspicious death". An autopsy was conducted the following day, and the body was returned to the family that afternoon. They brought it home, then to the cemetery for burial. Despite numerous requests to the authorities, the family never received a copy of the autopsy report. They received only a copy of the death certificate. The causes of death were not specified, but it did contain the entry "suspicious death".

2.5 After the victim's death, his family brought the case to the attention of the office of the public prosecutor working in the competent courts for their district, both civil and military, challenging the arbitrary arrest and torture followed by the death of the victim, to no avail. On 12 January 1999 the complainant filed a case with the State prosecutor at the Tiaret court. However, she never received a reply from the authorities. Throughout 2000, the members of the victim's family also brought the case before the Tiaret prosecutor, the commander of the military sector, the commander of the national gendarmerie in Tiaret and the Ministry of Justice, but their complaints elicited no response. In 2006 the family undertook the procedure established by the Charter for Peace and National Reconciliation in order to secure State assistance for compensating the death of a family member during the time of unrest. A complete application was submitted with the Tiaret wilaya security office. Both the complainant and the victim's parents were questioned by the Mechraâ-Sfa gendarmerie as part of the inquiry into the cause of death. By a letter dated 21 November 2007 the State security officer reported that the application had been denied. The services had concluded that the victim had died a "normal death" and that consequently the link between his death and the national tragedy had not been established. The complainant points out that the inquiry was conducted by the same gendarmerie that had arrested and tortured the victim.

2.6 On 16 February 2008 the complainant and her family once again sent a request to the Tiaret prosecutor with a view to obtaining a copy of the autopsy report. The authorities have still not replied to her request or acknowledged their responsibility in the death of the

victim. Furthermore, the complainant has been legally incapable of bringing her case to court since the promulgation of Order No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation. Domestic remedies, previously useless and ineffective, have now become unavailable.

### **The complaint**

3.1 The complainant points out that Djilali Hanafi was subjected to extremely serious ill-treatment. The victim himself told his family, before dying from his injuries, that he had been violently beaten, treatment qualified as torture by the Committee.<sup>a</sup> Furthermore, his torturers did not provide him with the necessary care, despite the fact that he was in a serious state of health. Moreover, there was clearly an intention to inflict such pain, given the state of the victim. In the light of the treatment inflicted also on those detained with him, the complainant deduces that the practice was systematic, planned and coordinated at that place of detention. The complainant alleges that the aim of such treatment was to obtain information or a confession, to punish the detainee or intimidate him, or to bring pressure to bear on him because of his supposed political affiliation. As for the perpetrators, there was no doubt that they were public officials. The complainant therefore considers that the treatment constitutes torture under article 1 of the Convention, and at the very least constitutes cruel, inhuman or degrading treatment under article 16 of the Convention.

3.2 The complainant recalls that the State party has not adopted the legislative or regulatory measures required to prevent the commission of torture in its jurisdiction. It has therefore failed to fulfil the obligation set out in article 2, paragraph 1, of the Convention. It has also failed in its duty to carry out an investigation in respect of the victim. The measures set out by Order No. 06-01 of 27 February 2006 prohibiting the filing of charges against members of the Algerian security forces for serious crimes committed during the period of “national tragedy” further foster impunity. Furthermore, Algerian law contains no provisions prohibiting the use as evidence of confessions or statements extracted under torture, which does nothing to dissuade the police from using illicit means to obtain statements for later use in criminal trials against suspects or third parties. Furthermore, the Committee has cited a series of guarantees to prevent torture and ill-treatment of persons deprived of their liberty, including keeping an official register of detainees. The State party has numerous secret detention centres with no registers of detainees, and the families of the detainees have no way of locating them. Furthermore, Algerian law provides for police custody of up to 12 days with no possibility for contact with persons outside, including the family, counsel or an independent doctor. This long period of incommunicado detention exposes detainees to a greater risk of torture and ill-treatment. In such circumstances, detainees are materially unable to ensure that their rights are respected through legal proceedings.

3.3 The complainant says that the State party is not respecting its obligation under article 11 of the Convention to keep under systematic review laws and practices related to interrogations and the treatment of persons deprived of their liberty. She refers to the various recommendations made to the State party, in particular concerning the authorized length of police custody, the lack of judicial oversight at several detention centres, the system for the treatment of detainees, the obligation to have an independent body investigate all allegations of torture and cruel, inhuman or degrading treatment and the duty to ensure that all detainees effectively have the right to counsel as soon as they are arrested. Such shortcomings in the law and in the practices of the Algerian authorities have regularly

---

<sup>a</sup> Communications No. 207/2002, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 24 November 2004, para. 5.3; No. 269/2005, *Ben Salem v. Tunisia*, decision adopted on 7 November 2007, para. 16.4.

been pointed out since 1992. The fact that the same defects have been noted 15 years later demonstrates that the State party has been remiss in its obligations under article 11 of the Convention.

3.4 The complainant points out that the State party did not conduct a prompt and impartial investigation of the allegations that Djilali Hanafi was the victim of torture, thus disregarding the obligation imposed by article 12 of the Convention against Torture. Despite the numerous requests made by the victim's family members bringing the facts to the attention of the various State institutions and requesting that they take action, no criminal investigation was ever ordered. The only investigation carried out was conducted as part of the procedure for the granting of assistance, and it did not take place until 2006. The officials assigned the task of investigating the circumstances surrounding the death of Djilali Hanafi were the ones responsible for his death. The investigation was thus not impartial.

3.5 The complainant points out that the State party did not offer the victim's family members the opportunity to file a complaint with a view to the prompt and impartial examination of the allegations, in violation of article 13 of the Convention. The Tiaret State prosecutor and the various authorities later seized of the matter did not follow up on the complaints filed by the family members of the victim. Their request for the report of the autopsy carried out on 5 November 1998 was denied, as was access to the results of the inquiry the State said it had conducted following the request for compensation, in 2006.

3.6 The complainant also considers that the State party violated article 14 of the Convention against Torture. On the one hand, it disregarded the right of the victim's family members to redress, as the crimes perpetrated against him went unpunished owing to the unresponsiveness of the State, and on the other hand, those entitled to adequate compensation, far from receiving it, were denied any compensation, or even State assistance, at all.

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

4.1 On 2 March 2009 the State party submitted its observations on admissibility and the merits of the complaint. It contested the admissibility on the grounds that domestic remedies had not been exhausted as required under article 22, paragraph 5 (b), of the Convention and rule 107, paragraph 22 (e), of the Committee's rules of procedure (CAT/C/3/Rev.4). The State party also contests the merits of the complaint, according to which the victim, Mr. Djilali Hanafi, died between 1 and 3 November 1998 while in police custody at the Machraâ-Sfa gendarmerie in Tiaret wilaya.

4.2 The State party emphasizes that the exhaustion of domestic remedies is an essential obligation for a complaint to be admissible. In the case in question the complainant has not exhausted all remedies available under Algerian law. The State party insists on the importance of distinguishing between mere enquiries made with the political or administrative authorities, non-contentious appeals brought before advisory or mediation bodies and contentious remedies sought in the various competent judicial bodies. The State party notes that the statements made by the complainant indicate that she sent letters to the political or administrative authorities, that she brought the case before advisory or mediation bodies and sometimes sent complaints to the prosecution services (prosecutors or State prosecutors), without initiating a legal appeals procedure and taking it to its conclusion using all available remedies, including judicial appeal and cassation proceedings. Among all the authorities in question, it was only the representatives of the public prosecutor's office who by law had the authority to initiate a preliminary police investigation and to bring the case before an investigating judge to investigate a case as part of a judicial investigation. In the Algerian judicial system the State prosecutor is the person who receives complaints and who, if necessary, initiates the public action.



4.3 The State party notes, however, that to protect the rights of the victim or his survivors, the Code of Criminal Procedure authorizes the survivors to act by claiming damages in criminal proceedings directly before the investigating judge. In such cases, it is the victim and not the prosecutor who initiates the public action by bringing the case before the investigating judge. Such a procedure, covered by articles 72 and 73 of the Code of Criminal Procedure, was not used, although it would have been sufficient to allow the complainant to initiate the public action and oblige the investigating judge to proceed with the investigation, even if the prosecution decided otherwise. Thus, a simple signed and dated complaint filed with the investigating judge by the family would have sufficed to initiate public action. That procedure, covered by articles 72 and 73 of the Code of Criminal Procedure, was subject to appeal before the indictments and cassation appeals chamber of the Supreme Court. Under article 73 the investigating judge orders that complaints filed by victims or their survivors be forwarded within five days to the State prosecutor for indictment. The prosecutor must indict within five days of receiving the communication. The charges may be brought against a person who is named or unnamed. The State party notes that there are exceptions to this procedure. The prosecutor may indeed decide not to prosecute, either because the acts in question cannot be legally prosecuted or, if the acts have been proven, if no criminal provisions relate to them. In cases where the investigating judge decides to pursue another channel, he must provide a reasoned order to that effect.

4.4 The State party emphasizes that the victim and the prosecutor are two parties in the criminal proceedings, each of which has similar and parallel prerogatives under Algerian law. The complainant and her family decided not to use that channel for redress, which offered the possibility of initiating public action without having to wait for the prosecutor to voluntarily do so. The State party considers that the victim's family had preferred to await a "hypothetical" reply from the public prosecutor's office.

4.5 The State party furthermore notes that according to the complainant, the adoption by referendum of the Charter and its implementing legislation, in particular article 45 of Order No. 06-01 of 27 February 2006, make it impossible to consider that there are effective, useful and available national remedies in Algeria for families of victims. On that basis, the complainant believed that she was exempted from the obligation to bring the case before the competent authorities, prejudging their position and their assessment of how the aforementioned article 45 would be applied, both in respect of its compliance with the Algerian Constitution and with its compatibility with the Convention against Torture. The complainant cannot invoke the Order and its implementing legislation to absolve herself from initiating the available judicial proceedings. As a State based on the rule of law, the State party is governed by the constitutional principle of the separation of powers. By arguing that the case is admissible without submitting the underlying facts to the national courts, the complainant is indirectly calling for the Committee to share her suspicion and assumptions regarding the functioning of the Algerian justice system and the independence of Algerian judges. The State party thus calls on the Committee to declare the complaint inadmissible for failure to exhaust domestic remedies, in accordance with article 22, paragraph 5 (b), of the Convention.

4.6 The State party nonetheless intends to present some information following interviews held with persons cited in the complaint, as taken down in a record. These interviews have shown that the complaint is based on false or distorted testimony — an offence — with the aim of abusing the Committee's process, in violation of rule 107, paragraph (b), of the Committee's rules of procedure (CAT/C/3/Rev.4). The first witness, Boudali Benaissa, who was arrested on 1 November 1998 by the same gendarmerie for supporting and justifying terrorism, said that he was aware of the arrest of Djilali Hanafi on 2 November 1998 and his release on 3 November 1998 at the time of the Isha night-time prayer, as the victim was suffering from stomach pains. He continued his testimony stating that he had met with the victim at the gendarmerie headquarters the same day for nearly

half an hour, denying that they were together during the night and stating that he had not provided any written statement to the victim's family or any human rights organization.

4.7 The State party states that the second witness heard was Mohamed Belkacem, who said he had been arrested in 1997, that he did not know the victim at all and that he had never heard anything about him. He said that he knew nothing about the statement written in his name and enclosed with the complaint, noting that the signature was not his. The third witness was Djilali Malki. He denied having produced any testimony at all, oral or written, in the case in question. He added that Djilali Hanafi, who was with him in the provisional lock-up at the Mechraâ-Sfa local station of the national gendarmerie, had been subjected to no violence by the staff of that unit, pointing out that he had been released on 3 November 1998, at dusk, after having complained of stomach pains. He concluded that the victim had complained of such pains well before being arrested by the staff of the gendarmerie. The complainant, the victim's widow, had stated that she had first given a power of attorney to her brother-in-law, Sahraoui Hanafi, to bring the case to the attention of the human rights league in order to obtain financial compensation. She had added that her husband had been arrested by staff of the Mechraâ-Sfa local station of the national gendarmerie on 2 November 1998, and then released the following day, on 3 November 1998, at the time of the Isha night-time prayer, and that some four hours later, he had died as a result of his illness. She had finished her testimony stating that she had not noticed any signs of physical abuse on his body.

4.8 The State party adds that the forensic medical examiner for the Tiaret health sector presented investigators with a copy of the report of the autopsy carried out on the deceased. The copy showed that the death had been due to an acute heart attack, and the report cited no signs of violence. From the investigation carried out by the State party it became clear that the witnesses unanimously denied having produced any oral or written testimony in the case, just as they stated that they had never signed any statements.

4.9 The State party notes that the complaint contains contradictions, such as the reference to the time the victim reportedly spent in police custody. The complaint states that the custody lasted three days, while the witnesses unanimously stated that it was one day long. The State party concludes from this that the complainant's allegations are baseless and that her brother-in-law obtained false evidence and falsified the facts with the sole purpose of obtaining compensation to which they had no claim. The State party thus considers the complaint to be unfounded.

4.10 On 30 March 2009 the State party provided the Committee with a copy of the autopsy concerning the victim's death, drawn up by the forensic medical examiner for the Tiaret health sector. The autopsy concluded that the direct cause of death was an acute heart attack and that there were no signs of a struggle or of self-defence, externally or internally.

#### **Complainant's comments**

5.1 In a letter of 29 June 2009 the complainant's counsel informed the Committee that the brother of the victim, Sahraoui Hanafi, who had submitted the initial complaint, wished to withdraw the communication. His request was motivated by the fact that during the time given to the State party to submit its comments, Sahraoui Hanafi and other members of his family, as well as several witnesses, had been summoned by the Algerian security forces to provide explanations on this case under interrogation. This had occurred at the beginning of 2009, at the Mechraâ-Sfa gendarmerie.

5.2 The complainant's counsel recalls in this respect that according to article 45 of Order No. 06-01 of 27 February 2006, no proceedings may be instituted individually or collectively against any of the components of the defence and security forces of the Republic for actions taken to protect persons and property, safeguard the nation and

preserve the institutions of the Republic of Algeria. According to article 46 of the Order, anyone who, by statements, writings or any other act, uses or exploits the wounds caused by the national tragedy in order to attack the institutions of the Republic, undermine the State, sully the honour of the officials who have served it with dignity or tarnish Algeria's international image is subject to imprisonment of three to five years and a fine of 250,000 to 500,000 Algerian dinars. Criminal cases are automatically initiated by the prosecution services.

5.3 Counsel states that following those interrogation sessions, two witnesses reportedly withdrew their testimony, at least partially. Sahraoui Hanafi, the victim's brother, who had submitted the initial complaint, was convinced that the witnesses were afraid that they themselves would be prosecuted, and he also considered it probable that they would turn against him. For his part, he feared that criminal proceedings would be brought against him. The questions asked of him and his replies, which had been taken down in a record, a copy of which he had been unable to obtain, had been sufficiently explicit for him to view them as a real threat. For example, he was asked if he confirmed that he was filing a complaint against the gendarmerie. Another of his brothers and the complainant had been asked the same questions, followed by comments to the effect that Mr. Hanafi did not have the right to initiate such proceedings.

5.4 Counsel expressed surprise at the fact that the State party summoned the brother of the victim, the complainant and their family while the procedure was under way with the Committee, and while the same case had been closed by the Algerian authorities. That behaviour was perceived by the complainant, her family and counsel as a warning. Counsel also expressed surprise that it was only after proceedings were initiated in the Committee that the victim's family finally received the autopsy report. Lastly, the victim's brother learned that three of his cousins, who had been questioned by the Algerian secret services in a case unrelated to the complaint before the Committee, had heard that Sahraoui Hanafi was under surveillance. These were indirect threats that shook the confidence of the victim's brother that the Committee's procedure could be carried out without him being harmed.

5.5 On 13 August 2009 counsel informed the Committee that the victim's widow would replace the victim's brother as complainant in the procedure before the Committee.

#### **Additional comments by the State party**

6.1 In a note dated 30 November 2009 the State party expressed its disagreement regarding a violation of the procedure, as the Committee had unilaterally decided to extend the deadlines for the complainant and to accept a change in the name of the complainant.

6.2 The State party further recalls that, contrary to the claims made by the complainant, Order No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation in no way prevents a member of the public from bringing claims before the treaty bodies under the provisions of their treaties and to submit communications, in compliance with their procedures, in particular the one relating to the exhaustion of domestic remedies. The State party lastly recalls that no legal provision, including the Order mentioned above, prohibits members of the public from lodging complaints for assault committed for any reason other than to protect persons and property, safeguard the nation and preserve the institutions of the State party.

#### **Additional comments by the complainant**

7.1 On 30 December 2009, the complainant commented on the State party's observations of 2 March 2009. In respect of the admissibility of the complaint, she asserts that it was her intention not to avoid her obligation to apply to domestic bodies, but rather

to learn the truth about what really happened at Mechraâ-Sfa gendarmerie between 1 and 3 November 1998. However, all the steps taken have proved fruitless. Furthermore, the procedure before the investigating judge referred to by the State party is complicated and costly, and would certainly not have produced any results, as all such procedures have become meaningless since the adoption of the Charter for Peace and National Reconciliation.

7.2 The complainant recalls the numerous legal and administrative steps taken since the death of her husband in 1998. She notes that her last registered letter submitted to the principal State prosecutor of Tiaret on 16 February 2008 has elicited no response, despite the wording “suspicious death” on the death certificate issued on 3 April 2006 and signed by the Tiaret wilaya forensic unit. The complainant therefore considers that she did not attempt to avoid her obligation to exhaust domestic remedies. Indeed, there is every indication that the complaints made would inevitably have been to no avail. The complainant refers in particular to the fact that the Tiaret prosecution service requested the autopsy in haste on the day of the burial; that it was only possible to obtain a copy of the autopsy report more than 10 years after the victim’s death and only then in the context of the procedure before the Committee; that the officers in charge of questioning the witnesses to the events while the procedure was before the Committee were the same ones responsible for the death of the victim; that, after the complaint was submitted to the Committee, the complainant, members of her family and fellow detainees of the victim were summoned to appear and questioned in the gendarmerie where the victim is alleged to have been tortured; and that the victim’s brother is allegedly under surveillance by the State party’s authorities.

7.3 Although the State party’s authorities should have acted *proprio motu* and immediately, it was in fact the family who had to take steps and file a criminal complaint on 12 January 1999. Despite that, the prosecution service did not respond, which was incomprehensible to the complainant, particularly since it was the same prosecution service that had ordered the autopsy on the day of the victim’s burial. The complainant therefore believes that she is justified in mentioning the ineffectiveness and also the unavailability of domestic remedies.

7.4 The complainant considers the procedure before the investigating judge to be complicated and costly. She notes first of all that, given the victim’s detention until just a few hours before his death and his worrying state of health — he was not old and had previously been in perfect health — it was the responsibility of the prosecution service, not the family of the victim, to bring criminal proceedings. The complainant quotes the Committee’s previous concluding observations to the State party in which it considered that the State party should launch prompt and impartial investigations spontaneously and systematically wherever there was reasonable ground to believe that an act of torture has been committed, including in the event of the death of a detainee. The Committee added that the State party should ensure that the results of the investigation are communicated to the families of the victims.<sup>b</sup> Despite repeated requests from the family of the victim, no investigation has been undertaken, even 11 years after the event. The complainant thus alleges not only that the State party did not fulfil its obligation to carry out a prompt and impartial investigation, but also placed the burden of proving that charges should be brought on the family of the victim.

7.5 The complainant notes that a procedure before the investigating judge was not, in any case, an available option because, under national legislation, the prosecution service had to take a decision on action to be taken on proceedings initiated to allow the

---

<sup>b</sup> Committee against Torture, concluding observations on Algeria (CAT/DZA/CO/3), para. 14.

investigating judge to open a case or take up a case referred. The victim's family was thus deprived of any possibility of bringing the case before the investigating judge because no decision was ever taken by the prosecution service in this case. If the prosecution service had taken a decision not to prosecute, and if the case had been referred to the investigating judge, it would, under article 73 of the Algerian Criminal Code, still have been the responsibility of the prosecution service to indict within five days. If the decision had been not to conduct an investigation, the investigating judge would have had to give a reasoned order to go against the prosecution service's decision. The complainant intends to demonstrate here that Algerian criminal procedure does not encourage instructing judges to take action where it goes against the opinion of the prosecution. The complainant argues that the State party would not be able to cite a single case in which the investigating judge had been able, in response to a claim for damages, to ignore inaction on the part of the prosecution service and instigate a prompt, efficient and independent investigation into acts of such a serious nature by State officials.

7.6 The complainant notes the expense of bringing proceedings before the investigating judge because, under article 75 of the Code of Criminal Procedure, any complainant who does not receive legal aid must pay to the registry a sum set by order of the investigating judge to cover the costs of the proceedings. She points out that, on the death of her husband, she was left alone to raise her children and was thus in a precarious financial situation. The conditions for obtaining legal aid are subject to a complex procedure initiated by a request to the State prosecutor. Given the attitude of the prosecutor in this case, the complainant believes that the request would not have been granted.

7.7 The complainant argues that article 45 of the implementing legislation of the Charter for Peace and National Reconciliation has the direct effect of depriving plaintiffs of any useful remedy, even in the event of serious violations of fundamental rules such as the prohibition of torture. The Committee has itself expressed concern at the impunity of State officials since the Charter was adopted, as it provides for amnesty from prosecution for State officials and prohibits any prosecution for acts committed by those State officials in the context of the national tragedy. The complainant recalls that the Committee found the provisions not consistent with the obligation of every State party to conduct an impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed on territory under its jurisdiction, to prosecute the perpetrators of such acts and to compensate the victims.<sup>c</sup> The complainant adds that the Committee drew the State party's attention to paragraph 5 of its general comment No. 2 (2007) in which it expressed the view that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.<sup>d</sup>

7.8 The complainant considers that the action taken by herself and her family since 1998 to shed light on her husband's death falls within the scope of article 45 of the above-mentioned implementing legislation, which is an impediment to the exhaustion of effective and useful remedies. The complainant was thus not obliged to exhaust other remedies to meet the conditions for admissibility under article 22, paragraph 5 (b) of the Convention.

7.9 On the merits, she notes the suspicious attitude of the State party's authorities in respect of the autopsy report of November 1998. The victim's family had to wait until their request was submitted to the Committee before the State party decided to give them a copy of the autopsy report. The complainant stresses that the victim was in very good health before being imprisoned at Mechraâ-Sfa gendarmerie. When he came home, however, he

---

<sup>c</sup> CAT/C/DZA/CO/3, para. 11.

<sup>d</sup> Ibid.

said that he had been severely beaten. He was vomiting blood some hours after his release. It was the authorities' responsibility to ensure that the integrity of the detainee's person was respected, and it was thus the responsibility of the prosecution service to conduct a prompt, impartial and independent investigation, as the victim's death could have been linked to his detention. Given the content of the autopsy report that the family has now received, which shows death from cardiac arrest, the complainant wonders why the authorities concealed the conclusions of the report for 11 years, if not to prevent the family requesting a second forensic opinion at the proper time.

7.10 To demonstrate that the autopsy report had not been undertaken in a serious and professional manner, the complainant asked several forensic medical examiners to analyse it. They are unanimous in the conclusion that the report was brief and terse. They consider that the cardiac examination is inadequate, and it is impossible to draw a conclusion of cardiac death from the elements noted in the report. The only information on the state of the victim's heart is the existence of "several haemorrhagic areas on the cardiac surface". According to the forensic experts consulted by the complainant, that is not specific to heart failure and cannot, by itself, lead to the conclusion that the macroscopic aspect was characteristic of acute heart failure, that being the direct cause of death. The specialists are of the opinion that the terms "cyanosis of the extremities", "foam" and "pulmonary congestion and severe pulmonary oedema" in the autopsy report are characteristic of deaths resulting from asphyxia and are not specific to acute heart attack. In any case, the examination carried out by the two doctors from the Taret health sector who signed the autopsy report is not sufficient to lead to a conclusion of death from cardiac arrest in a person aged 32 and in full health at the time of his detention. Professor Patrice Mangin, Director of the University Forensic Medicine Centre in Switzerland also subscribes to this analysis. The complainant also notes that the medical certificate of death issued on 3 April 2006 refers to a suspicious death, while the autopsy report submitted by the State party does not allow that conclusion to be reached. This seriously challenges the credibility of the autopsy report released 11 years after the event.

7.11 As concerns the witness statements, the complainant states that the records of the hearings of Boudali Benaissa, Mohamed Belkacem and Djilali Malki were never communicated to the Committee. That being so, the State party's arguments are not based on any tangible proof, in contrast to the signed witness statements submitted to the Committee by the complainant in her initial complaint. The absence of proof also makes it impossible to identify the persons who modified their initial statements. Even though those persons were questioned by the State party, the complainant considers the method used to be unreasonable, in that the witnesses were questioned at the place where they had been detained and where the victim had been tortured, at a time when the procedure was before the Committee. In the event that the State party did have the right to conduct a supplementary investigation while the procedure was before the Committee, the complainant considers that special provisions should have been made to guarantee the integrity of the witness statements of those questioned. The complainant therefore considers that the hearings should have been subject to prior authorization from the Committee, which has a procedure before it. Moreover, a lawyer representing the interests of the complainant or any other person chosen by the complainant should have been present during the questioning to avoid any pressure, intimidation or constraint on the witnesses.

7.12 Finally, in respect of the allegations of contradictions in the complaint, the complainant states that she never alleged that the detention lasted for one day. That came rather from the statements of the State party. The complainant and her family always affirmed that the victim had been held for three days. Regarding the complainant's statement that she had not noticed signs of physical abuse on the victim's body, she affirms that, given her husband's state of health when he returned home, she and her family had simply laid him on a bed. He was vomiting blood before he died, and the complainant

indeed did not think to check for possible bruising on his body before the corpse was taken away. The complainant emphasizes that she never had the intention of initiating proceedings to obtain unreasonable financial redress, as the State party maintains. She also states that the demand for redress for acts of torture is not unreasonable, as the State party asserts, but is justified. Such redress includes not only financial compensation, but also a recognition of violations committed.

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

#### *Consideration of admissibility*

8.1 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.

8.2 Concerning compliance with the Committee's procedure, the Committee points out that, in accordance with rule 104, paragraph 2 (c), of its rules of procedure (CAT/C/3/Rev.5), a complaint may be submitted by the alleged victim or by a close relative of the alleged victim. In that the interests of the alleged victim are respected, there is no provision in its rules of procedure that prevents the Committee from considering the complaint. In respect of the time limits for submitting comments, the Committee wishes to recall its practice of granting extensions to deadlines for either party, on the party's request, if it considers the request valid.

8.3 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.

8.4 The Committee notes that, according to the State party, the complainant has not exhausted domestic remedies, as is required under article 22, paragraph 5 (b), of the Convention, since the complainant and her family did not consider the possibility of claiming damages in criminal proceedings before the investigating judge. The Committee notes the complainant's arguments that she and her family brought the case to the attention of the office of the public prosecutor working in the competent courts for their district, both civil and military, challenging the arbitrary arrest and torture, followed by the death of the victim, to no avail; that, on 12 January 1999, the complainant filed a complaint with the State prosecutor at the Tiaret court; that she never received a response from the authorities; that, in 2000, members of her family also brought the case before the Tiaret prosecutor, the commander of the military base, the commander of the national gendarmerie in Tiaret, and the Ministry of Justice, but no response was ever received. The Committee notes that the complainant argues that it was the responsibility of the State party's authorities to initiate an investigation, not that of the family to claim damages in criminal proceedings before the investigating judge, who could not, in any case, have opened a case because no decision, either positive or negative, had been taken by the prosecutor.

8.5 The Committee recalls that the rule on the exhaustion of domestic remedies does not 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.<sup>e</sup> The Committee recalls, in this regard, its previous concluding observations to the State party, in which it underlined the need for the State party to launch prompt and impartial investigations spontaneously and systematically wherever there is reasonable ground to

---

<sup>e</sup> Communication No. 133/1999, *Falcon Ríos v. Canada*, decision adopted on 23 November 2004, para.6.

believe that an act of torture has been committed, including in the event of the death of a detainee.<sup>f</sup> In the case of offences as serious as those alleged, a claim for damages in criminal proceedings cannot be a substitute for the State prosecutor bringing a prosecution. The Committee concludes that the insurmountable procedural obstacles 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.<sup>g</sup> The Committee also considers that the application of available domestic remedies was unduly prolonged, as the initial complaint was lodged on 12 January 1999 and, at the date of the Committee considering the complaint, no impartial and thorough investigation has yet been undertaken. The Committee concludes that the complaint is admissible under article 22, paragraph 5 (b) of the Convention. Finding no other obstacle to the admissibility of the complaint, it declares the complaint admissible and proceeds to its consideration of the merits.

#### *Consideration of the merits*

9.1 The Committee examined the complaint, taking due account of all the information provided to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

9.2 The complainant alleged a violation of article 2, paragraph 1, read in conjunction with article 1, of the Convention, on the grounds that the State party failed in its duty to prevent and punish acts of torture. These provisions are applicable insofar as the acts to which the complainant was subjected are considered acts of torture within the meaning of article 1 of the Convention.<sup>h</sup> The Committee notes in this regard that, according to the complainant, the victim himself, before dying from his injuries, told his family that he had been beaten very violently while in detention; that his torturers had not then provided him with the necessary care, despite his serious state of health; and that, given the state he was in, there was a clear intention to inflict suffering on him. The Committee also notes that, according to the complainant, the aim of such treatment was to obtain information, a confession, to punish or intimidate, or bring pressure to bear on the victim because of his supposed political affiliation; and that there is no doubt that the perpetrators of those acts were public officials. The Committee notes that all the allegations are challenged by the State party, which nevertheless has not provided any other evidence than the victim's autopsy report, which does not allow any conclusions to be drawn, and statements by fellow detainees of the victim, the records of which have not been submitted to the Committee.

9.3 The Committee considers that the elements of the complaint before it constitute torture within the meaning of article 1 of the Convention, for the following reasons. First, while in detention under the authority of public officials, the victim suffered treatment so harsh that it led to his death within a very short period of time. While the victim was still in detention, his fellow detainees allegedly alerted the authorities at the detention facility to his critical state of health and urgent need for medical treatment. Despite such action, the authorities do not seem to have called a doctor to examine him at any point. The Committee also notes that the victim died a few hours after being released, which the State party does not contest. With regard to the intention of the officials, the Committee recalls that it is the responsibility of the State party to provide evidence that the treatment of the victim in detention was not intended to be contrary to article 1 of the Convention, particularly in

<sup>f</sup> CAT/C/DZA/CO/3, para. 14.

<sup>g</sup> Communications No. 207/2002, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 24 November 2004, para. 5.2; No. 172/2000, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 16 November 2005, para. 6.2.

<sup>h</sup> Communication No. 291/2006, *Ali v. Tunisia*, decision adopted on 21 November 2008, para. 15.4.



respect of inflicting punishment. Such evidence has not been provided, nor did the State party conduct an immediate investigation *proprio motu* to establish the circumstances of the victim's death. In fact, throughout the victim's detention, and despite concurring witness statements alleging that he had been tortured, the authorities did not carry out any investigation or request a doctor to examine him, even though his fellow detainees had alerted guards to his critical state of health. Furthermore, although the death certificate refers to the "suspicious death" of the victim, the prosecutor has not taken any action in respect of the case, a fact which the State party has not contested. The Committee therefore concludes that the treatment of the victim and his resultant death constitute a violation of article 1 and article 2, paragraph 1, read in conjunction with article 1, of the Convention.

9.4 In the light of the above finding of a violation of article 1 of the Convention, the Committee need not consider whether there was a violation of article 16, paragraph 1.

9.5 With regard to article 11, the Committee notes the complainant's arguments that the victim was held at Mechraâ-Sfa gendarmerie for three days and was in perfect health before being detained; and that on his release from detention, he was in a serious state of health and was vomiting blood. The Committee notes that, according to the State party, the victim was released on 3 November 1998 because he was suffering from stomach pains; that the complaint mentions a period of three days in detention whereas the witnesses unanimously stated that it was one day; and that the autopsy report by the forensic medical examiner of the Tiaret health sector concluded that acute cardiac failure was the direct cause of death and there were no signs of a struggle or defence in either the external or the internal examination. The Committee is surprised at the State party's statements, based on the statements of the fellow detainees of the victim, that reject the complainant's allegations concerning the length of the period of detention. The Committee is also surprised that the only medical examination of the victim that seems to have taken place was carried out after his death; that the victim was released supposedly because he was suffering from stomach pains, whereas it was the responsibility of the officials in charge of the place of detention to conduct a medical examination if such symptoms appeared during the period of detention. In this regard, the Committee recalls its previous concluding observations to the State party, in which it recommended that the State party should ensure that the right of any detainee to have access to a doctor is respected in practice, and to establish a national register of prisoners.<sup>i</sup> Given the lack of information provided by the State party on these issues and the arguments put forward in its observations, the Committee is obliged to find that the State party has failed in its obligations under article 11 of the Convention.

9.6 In respect of the alleged violation of articles 12 and 13 of the Convention, the Committee observes that, according to the complainant, none of the authorities contacted, including the Tiaret prosecutor, told her whether an investigation was being or had been conducted as a result of the initial complaint filed in January 1999. According to the complainant, the only investigation conducted was part of the procedure concerning the allocation of assistance, and took place only in 2006; and the officials in charge of investigating the circumstances of the death of Djilali Hanafi were the people responsible for his death. The Committee notes the State party's argument that the victim's family decided to await a hypothetical reply from the public prosecutor's office rather than bring proceedings themselves. The Committee also finds that no impartial and thorough criminal investigation had been initiated to shed light on the death of the complainant's husband, even 12 years after the events, a fact not disputed by the State party. The absence of an investigation is particularly inexplicable in that the death certificate issued in April 2006 refers to the suspicious death of the victim. The Committee considers that such a delay

---

<sup>i</sup> CAT/C/DZA/CO/3, para. 5.

before an investigation is initiated into allegations of torture is unreasonably long and does not meet the requirements of article 12 of the Convention, which requires the State party to proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.<sup>j</sup> Nor has the State party fulfilled its obligation under article 13 of the Convention to ensure that the complainant has the right to complain to, and to have his or her case promptly and impartially examined by, its competent authorities.

9.7 With regard to the alleged violation of article 14 of the Convention, the Committee notes the complainant's allegations that the State party has deprived her of any form of redress by failing to act on her complaint and by not immediately launching a public investigation. The Committee recalls that article 14 of the Convention not only recognizes the right to fair and adequate compensation, but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee considers that redress should cover all the harm suffered by the victim, including restitution, compensation and measures to guarantee that there is no recurrence of the violations, while always bearing in mind the circumstances of each case.<sup>k</sup> Given the lack of a prompt and impartial investigation, despite the existence of an autopsy report and particularly of a death certificate that refers to a suspicious death, the Committee concludes that the State party was also in violation of its obligations under article 14 of the Convention.

9.8 With regard to respecting the procedure established in article 22, the Committee notes that, by letter of 29 June 2009, counsel for the complainant informed the Committee that the victim's brother, Sahraoui Hanafi, who had submitted the initial complaint, wished to withdraw his communication to the Committee; that this request was motivated by pressure brought to bear on him and on the victim's fellow detainees; and that they had allegedly been questioned by the State authorities to make them retract. The Committee notes that the State party does not contest the fact that it questioned the victim's brother and fellow detainees, and that it justifies such action by the need to demonstrate the defamatory nature of the complainant's allegations. The Committee reaffirms that, within the framework of the procedure for individual communications set out in article 22, the State party is required to cooperate with the Committee in good faith and refrain from taking any action that might hinder this process, that it is obliged to take all necessary measures to guarantee the right of every individual to have access to the procedure under article 22, and that such access should in no circumstances be restricted or withdrawn and should be exercised freely. In this case, methods consisting of questioning former fellow detainees of the victim and the complainant herself, with the aim of persuading them to withdraw their previous statements to the Committee, constitute unacceptable interference in the procedure set out in article 22 of the Convention.

9.9 The Committee wishes to recall its concluding observations to Algeria adopted at its fortieth session,<sup>l</sup> in which it considered that the State party should amend article 45, chapter 2, of Order No. 06-01 to specify that waivers of prosecution do not apply under any circumstances to crimes such as torture. The State party should immediately take all necessary measures to guarantee that cases of torture or ill-treatment are investigated systematically and impartially, the perpetrators of such acts are prosecuted and punished in a manner commensurate with the gravity of the acts committed and the victims and their dependents are adequately compensated. The Committee has drawn the attention of the State party to paragraph 5 of its general comment No. 2 (2007) in which it considers that

---

<sup>j</sup> Communication No. 269/2005, *Ben Salem v. Tunisia*, decision adopted on 7 November 2007, para. 16.7.

<sup>k</sup> *Ibid.*, para. 16.8.

<sup>l</sup> CAT/C/DZA/CO/3, para. 11.

amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability. The Committee thus rejects the State party's argument that the complainant cannot invoke that Order and its implementing legislation to absolve herself from initiating the available judicial proceedings, as the obligation is not on the alleged victims but on the State party to eliminate any impediment to the proper functioning of the prosecution. Finally, the Committee reminds the State party that the fact that victims cannot file complaints in respect of actions taken to protect persons and property, safeguard the nation and preserve the institutions of the State party constitutes an amnesty in the meaning of paragraph 5 of its general comment No. 2 (2007).

10. 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 facts before it disclose a violation of articles 1, 2, paragraph 1, 11, 12, 13 and 14 of the Convention.

11. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to conduct an impartial investigation into the incidents in question, with a view to bringing those responsible for the victim's treatment to justice, 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 the decision expressed above, including compensation of the complainant.

**Communication No. 344/2008: A.M.A. v. Switzerland**

*Submitted by:* A.M.A. (represented by the Service d'Aide Juridique aux Exilé-e-s (SAJE))

*Alleged victim:* The complainant

*State party:* Switzerland

*Date of complaint:* 22 May 2008 (date of 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 12 November 2010,

*Having concluded* its consideration of complaint No. 344/2008, submitted by A.M.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, the counsel and the State party,

*Adopts* the following:

**Decision under article 22, paragraph 7, of the Convention against Torture**

1.1 The complainant, A.M.A., born on 1 January 1983, submitted his complaint to the Committee on 22 May 2008. A Togolese national residing in Switzerland, he is currently awaiting deportation to his country of origin. He claims that his forced return to Togo would constitute a breach by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by the Service d'Aide aux Exilé-e-s (SAJE), an association providing legal assistance to asylum-seekers.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the attention of the State party in a note verbale dated 3 July 2008, attaching a request for interim protection measures.

**The facts as presented by the complainant**

2.1 The complainant is a fisherman from Lomé, Togo. He has never been involved in politics. On 27 February 2005, a demonstration took place, organized by several women's associations and calling for revision of the Togolese Constitution. The demonstration was suppressed by law enforcement personnel. That evening, the complainant and his father took their canoe fishing in the Bé lagoon. They noticed two lorries parked near the lagoon. Hearing the sound of items falling into the water, they switched on their electric torches. It was then that the complainant and his father saw men in military uniform throwing bodies into the water. Of the seven or eight soldiers present, they recognized two who lived in the same neighbourhood as themselves, behind Bé Château. Distressed, the complainant and his father called out to the soldiers, who then shone a torch at them. The two soldiers known to the complainant and his father also recognized them and called out to them by name. Three soldiers jumped into the water and headed towards them. The complainant and his father also jumped into the water in an attempt to swim away. As he escaped, the complainant looked over his shoulder and saw his father between two soldiers. He heard his

father call out for help, but, believing that he could not be of any help to him, he continued swimming. When the complainant reached the opposite bank, he threw off his clothes. He then ran all the way to the home of one of his friends in Bé. The friend advised him to visit the headquarters of the opposition party Union des Forces de Changement (UFC) in Bé-Kpehenou. They both went there the next day.

2.2 On 28 February 2005, at UFC headquarters, the complainant and his friend were received by a woman to whom they related the events of the previous night. Three men then accompanied them back to the scene of the incident. Together, they fished four bodies out of the lagoon, including that of a child between 10 and 12 years of age. The complainant found no trace of his father. On the evening of 28 February 2005, the complainant left Bé to visit a friend in another town. Upon his arrival, the complainant renewed contact with M.A. and asked him to inform his (the complainant's) uncle A.D. of the situation and to fetch the savings that he and his father had been hiding in his room. On 2 March 2005, M.A. visited the complainant's home. Neighbours told him that the previous day, 1 March 2005, three strangers had arrived at the complainant's home, broken the door down and searched his room.

2.3 On 3 March 2005, the complainant's aunts called him and advised him to leave the country. The complainant decided, however, to await the outcome of the elections, hoping for an opposition victory. He remained concealed at his friend S.'s house and never left it. On 26 April 2005, upon learning of Faure Gnassingbé's election victory, the complainant decided to leave the country. His friend made contact with an acquaintance who had emigrated to Switzerland and who was in Togo at the time; the acquaintance had previously helped someone to escape the country. For a payment of 3 million CFA francs, this individual agreed to help him to leave the country, offering to lend him his own son's passport. The complainant sent his friend home to look for his identity card, but S. found only an old card that had already expired. It was this document that the complainant submitted to the Swiss authorities.

2.4 On 28 April 2005, the complainant left Togo for Cotonou, Benin, where he boarded a plane for Switzerland. On 29 April 2005, he submitted an application for asylum in Switzerland to the Vallorbe Registration Centre. On 3 May 2005, he was interviewed in the centre for the first time. Two other interviews were held on 24 May and 22 August 2005.

2.5 From Switzerland, the complainant telephoned his uncle, who told him that he had visited Lomé prison in the hope of locating the complainant's father, but without success. On 30 July 2005, in another telephone call, the uncle told the complainant that the previous day, law enforcement personnel had returned to his home to ask the other residents questions about the complainant. They had assaulted the residents, beating them with weapons; all the residents had left the house. In a letter dated 13 February 2006, the uncle said that he had resigned himself to looking for the complainant's father in the town's mortuaries. He said that he had visited the Tokoin teaching hospital and the Tsevié and Kpalimé mortuaries. It was in Aného, on 7 February 2006, that he finally found the body of the deceased. According to the death certificate signed by the chief of the special delegation of the Aného commune, the body had been brought to the mortuary on 15 November 2005. An autopsy had been carried out on the day the complainant's uncle located the body, i.e., 7 February 2006. Upon examination, the body had been found to be covered in wounds and bruises. It had also been established that the deceased's head had been crushed. The complainant's father was buried on 11 February 2006.

2.6 By decision of 19 February 2007, the Swiss Federal Office for Migration (ODM) rejected the complainant's application for asylum. It found the complainant's account to be implausible, and set his removal for 18 April 2007. On 23 February 2007, the complainant filed an appeal with the Federal Administrative Tribunal (TAF), requesting annulment of the Federal Office's decision, the granting of asylum and, as an ancillary measure,

temporary admission. On 8 June 2007, the complainant filed an additional submission. On 12 December 2007, the Tribunal rejected his appeal. On 17 January 2008, the complainant filed an application for review of the judgement of 12 December 2007, but on 30 January 2008 the Tribunal ruled the application inadmissible.

2.7 In additional submissions dated 17 November and 9 December 2008, counsel informed the Committee that by decision of 27 October 2008, the Etablissement vaudois d'accueil des migrants (EVAM) (Vaud Department for the Reception of Immigrants) had allocated accommodation to the complainant in the collective emergency support centre in Vennes, in the canton of Vaud. The complainant challenged this decision on the grounds that the support centre in question was an emergency centre that received only rejected asylum-seekers who fell under the special "emergency assistance" procedure. This procedure was allegedly introduced by the authorities in the State party with the aim of inducing the most recalcitrant asylum-seekers to leave Swiss territory for lack of prospects. In this support centre, the complainant no longer enjoyed basic necessities and found himself in a communal environment which was noisy and makeshift, which was guarded round the clock by the administration police responsible for deportations, and which was consequently hostile. By decision of 11 November 2008, EVAM rejected the complainant's challenge and upheld the decision of 27 October 2008 to place him in the Vennes support centre. The complainant appealed on 25 November 2008.

### **The complaint**

3.1 The complainant submits that his deportation to Togo would constitute a violation of article 3 of the Convention against Torture. As a witness to the acts committed during the night of 27 to 28 February 2005, he would be in danger in his own country, as confirmed by his father's dramatic death. He considers that he would run a foreseeable, real and personal risk of torture if returned to Togo. Moreover, he claims that the emergency assistance procedure consisting of minimum assistance coupled with surveillance by the Swiss administration police pending removal violates article 22 of the Convention.

3.2 Under article 3, the complainant notes that the Swiss authorities have not challenged the authenticity of the documents he submitted, which, contrary to the assessment made by TAF, confirm the credibility of his account, the circumstances surrounding his father's death and the risks he would personally run in the event of his return to Togo. The complainant highlights the fact that the archives of the UFC website cite the Togolese Human Rights League as referring on 28 February 2005 to at least four bodies being fished out of Bé lagoon, including that of a 12-year-old child.

3.3 The complainant stresses that all international stakeholders have denounced the abuses carried out by Togolese law enforcement personnel during the 2005 presidential elections. He recalls that the Committee itself, in its concluding observations of 15 May 2006 on the initial report of Togo, said it was "concerned by allegations received, in particular following the April 2005 elections, of the widespread practice of torture, enforced disappearances, arbitrary arrests and secret detentions" (CAT/C/TGO/CO/1, para. 12). The Committee also criticized "the lack of impartial inquiries to establish the individual responsibility of the perpetrators of acts of torture and cruel, inhuman or degrading treatment, in particular following the April 2005 elections, which contributes to the climate of impunity prevailing in Togo" (*ibid.*, para. 22), while taking note of the report of the national independent commission of inquiry (CNSEI). The complainant contends that the Togolese authorities appear to wish to forget about the abuses committed by law enforcement personnel during the 2005 elections, ignoring the victims of the many violations of human rights. According to a report on Togo issued on 11 March 2008 by the Bureau of Democracy, Human Rights, and Labor in the United States Department of State,

serious problems continue in the field of violation of human rights, even though the situation has improved.

3.4 Under article 22, the complainant submits that the purpose of proceedings before the Committee against Torture and the granting of interim protection measures is to suspend the removal procedure pending the Committee's decision on the merits. However, the emergency assistance procedure could be regarded as a coercive procedure designed to make a continued stay in Switzerland less attractive and break the morale of unwanted aliens considered to be residing illegally in Switzerland, causing them to take the necessary steps to leave the country or go into hiding.

#### **State party's observations on the merits**

4.1 On 9 December 2008, the State party submitted its observations on the merits of the complaint. Briefly recalling the facts as presented by the complainant, the State party contends that he has not provided the Committee with any new evidence. On the contrary, the complainant first contests the domestic authorities' assessment of the facts and then gives a general description of the human rights situation in Togo. Lastly, he makes his own assessment of the facts in order to claim that he would be exposed to a real, personal and immediate risk of being tortured in the event of his removal to Togo.

4.2 Recalling the provisions of article 3 of the Convention, the State party refers to the case law of the Committee and its general comment No. 1 (1997) on the implementation of article 3,<sup>a</sup> of which paragraph 6 and subsequent paragraphs stipulate that the complainant must prove that there is for him a personal, actual and serious risk of being subjected to torture if he is deported to his country of origin. The State party notes that this provision means that the facts alleged must go beyond mere suspicion and that they must demonstrate a serious risk. Comparing the elements to be considered when assessing risk with the complainant's situation, the State party states that he has never been involved in political activities and that his religious activities were limited to membership of a prayer group, which did not get him into any trouble. As the complainant has also not made any allegations of torture, the State party has limited its observations to paragraphs 8 (a), (d) and (g) of the general comment.

4.3 The State party states that the events the complainant claims he witnessed on 27 February 2005 were related to the April 2005 presidential elections, which were accompanied by violence. According to the State party, the situation in Togo has improved considerably since the complainant left the country. In August 2006, the five main opposition parties signed a Global Political Accord with the ruling party, the Rassemblement du peuple togolais (RPT), establishing a government of national unity. This led to the appointment of a long-standing member of the opposition to the post of prime minister, the establishment of a government that included opposition parties, and the formation of the Independent National Electoral Commission, in which the UFC was represented, although it remained in the opposition. The State party adds that a tripartite agreement between Togo, Ghana and Benin was concluded in April 2006 under the auspices of the United Nations High Commissioner for Refugees. In this agreement, the Government of Togo undertook to take the necessary measures to ensure that refugees could return to their homes in secure and dignified conditions. In June 2008, some of those who had fled Togo during the presidential elections returned to their country, and no persecution was reported.

---

<sup>a</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.*

4.4 The State party adds that legislative elections were held on 14 October 2007 and that, according to several independent sources, the electoral process was carried out in a broadly satisfactory way. The State party considers that it was this development and the improvement of the human rights situation in Togo that had led the European Commissioner for Development and Humanitarian Aid to consider that the conditions for re-establishing full cooperation between the European Union and Togo had been fulfilled. The impunity that the complainant refers to remains a problem, but several signs of improvement have been observed, with more than 30 State officials reportedly having been brought to justice for their involvement in robberies. Lastly, the State party notes that the existence of impunity does not as such mean that people who have seen or reported atrocities are currently persecuted by the authorities. Assuming that the complainant's presentation is credible, this alone is not a substantial ground for believing that he would be subject to torture in the event of his return to Togo. However, the State party contests the credibility of the complainant's allegations.

4.5 The State party refers to the views of domestic bodies such as the Federal Office for Migration (ODM) and the Federal Administrative Tribunal (TAF), which pointed out factual discrepancies that made the presentation implausible. The complainant submitted to the TAF a copy of an article from the magazine *Le Point*, dated 2 March 2005, which was supposed to attest to the truthfulness of his account. According to this article, following the violence of the day before, four bloody corpses were fished out of the Bé lagoon on 28 February 2005. However, this article describes only this specific incident, and the complainant and his father are not mentioned. The article also does not describe the nature of the violence that occurred, while the report by the Togolese Human Rights League (LTDH), to which the Swiss authorities referred, describes these events in detail and gives an alternative version to that described by the complainant. The TAF took into account the statements made by the complainant, to the effect that he did not witness a murder, but simply bodies being carried and then thrown into the water. Furthermore, the complainant did not give the same version of events as the LTDH. According to the LTDH, the soldiers who controlled the area surrounding the lagoon reportedly fired gunshots, used tear-gas grenades and committed several murders at the Bé lagoon itself. The State party also considers it unlikely that the complainant heard about these events only the day after, even though these were large-scale events that took place in the area where he lived. The TAF also pointed out time discrepancies – according to the LTDH, the bodies were reportedly fished out in the afternoon of the following day, not the morning. The victims reportedly drowned, but this does not tally with the complainant's testimony. Lastly, although the death of the complainant's father has been proven, the date of his death does not seem to coincide with the sequence of events as presented by the complainant. The State party doubts that the army imprisoned the complainant's father for six months before killing him. It would seem therefore that the complainant's father certainly died in violent circumstances, but not those described by the complainant. The discrepancies between the complainant's testimony and the descriptions provided by the LTDH, as well as the gaps in his testimony, led the TAF to dismiss any risk to the complainant if he were to return to his country of origin.

4.6 With regard to the allegation of a violation of article 22 of the Convention, the State party recalls that no removal order for the complainant has been issued or envisaged since the Committee's request for interim protection measures. Article 3 protects people from being returned when there is a risk of torture. This provision does not guarantee a high standard of living in the State where the complainant is located. The State party adds that the obligations that may be inferred from article 22 of the Convention cannot go beyond the substantive provisions of the Convention. At all events, in the light of the benefits granted to the complainant by the cantonal authority in this case, the granting of emergency assistance does not contradict any obligation that might arise under article 22 of the



Convention. The State party further recalls that emergency assistance is granted on request and is designed to provide anyone in a situation of hardship with the essential means of living a life of human dignity. The State party concludes that, insofar as the author considers that the benefits granted are not enough for a decent life, he may bring the matter before the appeal bodies, which was what he did on 6 November 2008.

#### **Author's comments on the State party's observations**

5.1 On 16 February 2009, counsel informed the Committee that he had no particular remarks to make on the position of the State party, as all the arguments relating to article 3 of the Convention had been set out in the initial communication. However, counsel sent the Committee a letter written by the complainant's uncle, A.D., attesting to the searches made for his father. The uncle explained that he had found the father's body in the Aného mortuary on 7 February 2006. According to staff at the mortuary, the body was left there on 15 November 2005 by unknown persons. The letter also attests to the fact that soldiers in civilian clothes harassed the tenants in the complainant's house.

5.2 On 15 June 2009, the complainant raised the issue of the interim measures requested by the Committee. The two appeals filed by the complainant against being placed in the Vennes emergency support centre (in the canton of Vaud), where he received only benefits in kind, were rejected by the Department of Home Affairs on 11 May 2009 and by the Vaud cantonal court on 21 April 2009. The cantonal court decision stated that, in accordance with domestic legislation, the complainant had no right to social assistance.<sup>b</sup> He was not, however, illegally in the country and could receive emergency assistance. The complainant did not appeal against this decision in the Federal Court because of the Court's recent case law dating from March 2009, in which it confirmed the principle that emergency assistance stems from the fundamental right to minimum means of subsistence income and cannot be likened to a coercive measure preparatory to expulsion. Before the Committee, the complainant maintains that, contrary to what has been laid down by the domestic courts, emergency assistance is a coercive measure and that its main purpose is to induce asylum-seekers to leave Switzerland.

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

##### *Consideration of admissibility*

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 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not examine any communication without being assured that the complainant has exhausted all available domestic remedies. The Committee notes that the State party recognizes that domestic remedies have been exhausted and therefore finds that the complaint complies with article 22, paragraph 5 (b), of the Convention.

6.3 With regard to the allegations under article 22 of the Convention, the Committee notes the complainant's allegation that the emergency assistance system to which he is subject is comparable to a coercive measure which would ultimately induce asylum-seekers to leave Switzerland. It also notes the State party's argument that the emergency assistance,

---

<sup>b</sup> Article 49 of the Law on assistance for asylum-seekers and certain categories of foreigners (LARA).

which is granted only on request, is designed to meet an individual's basic needs, and that the obligation under article 3 is one of non-return (non-refoulement), not one of ensuring a high standard of living in the host country. In this case, the Committee considers that the complainant has not sufficiently substantiated his allegations under article 22 of the Convention. This part of the communication is therefore inadmissible.

*Consideration of the merits*

7.1 The issue before the Committee is whether the removal of the complainant to Togo would violate the State party's obligation under article 3 of the Convention not to expel or return (*refouler*) 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 In assessing the risk of torture, the Committee takes 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. The aim of such assessment, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would be returned. It follows that the existence in a country 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 on his or her return to that country. Additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person may not be subjected to torture in his or her specific situation.

7.3 The Committee recalls its general comment No. 1 on the implementation of article 3 of the Convention in the context of article 22, which states that the Committee must assess whether there are substantial grounds for believing that the complainant would be in danger of torture if returned to the country in question. The risk of torture need not be highly probable, but it must be personal and present. In this regard, the Committee has established in previous decisions that the risk of torture must be "foreseeable, real and personal".<sup>c</sup>

7.4 As to the burden of proof, the Committee again recalls its general comment and its case law, which provide that the burden is generally on the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

7.5 In assessing the risk of torture in the case under consideration, the Committee has noted the complainant's claim that he and his father saw soldiers throw bodies into the Bé lagoon. It also notes that two of the soldiers recognized them and started to chase them; that the complainant's father was reportedly captured, while the complainant was apparently able to escape; and that his father's beaten body was reportedly found some months after the events of 27 February 2005. The Committee notes the complainant's claim that these events and the later raids on his home by soldiers in civilian clothes mean that returning to his country of origin would entail a risk for him. Lastly, the Committee notes the allegation that serious human rights problems continue to exist in Togo, and that those responsible for the violent acts committed during the 2005 elections are still at large.

7.6 The Committee notes the State party's argument that the events at which the complainant was reportedly present took place in the context of the presidential elections, and that, since that time, the human rights situation has considerably improved. It also notes

---

<sup>c</sup> Communications No. 203/2002, *A.R. v. the Netherlands*, decision adopted on 14 November 2003, para. 7.3; No. 285/2006, *A.A. et al. v. Switzerland*, decision adopted on 10 November 2008, para. 7.6.

that, according to the State party, the existence of impunity does not as such mean that those who have witnessed atrocities are now persecuted in Togo. It notes that domestic bodies have pointed out a series of implausibilities in the complainant's account, such as the inconsistencies between the numerous testimonies collected by the LTDH and the complainant's testimony, which give opposing versions of the same events; that, given the extent of the protests and the violent acts that were committed, it would not have been possible for the complainant not to have heard about these events until the day after, especially if they took place at the Bé lagoon; that the way in which the complainant reportedly surprised the soldiers, the fact that the soldiers went into the water in order to chase him even though he was in his canoe, and that he then reportedly got into the water even though it would have been easier for him to get away in the boat are particularly implausible; and, lastly, that the date of his father's death does not coincide with the sequence of events as described by the complainant. The Committee notes the State party's argument that, assuming that his testimony is credible, it does not mean that this one fact would constitute a substantial ground for believing that, if returned to Togo, he would be subjected to torture.

7.7 Having taken into account the arguments set out by the parties, the Committee notes that the complainant has not provided evidence of a real, present and foreseeable risk. It considers that the complainant's account contains factual discrepancies that make it implausible, in particular with regard to the allegation that he was not aware of the violence that took place on the day he was actually present; and that only his uncle's testimony saying that soldiers in civilian clothes continue to harass the tenants in his house could substantiate the claim of present risk. The Committee further notes that the complainant was heard by the Swiss authorities on three occasions and that they tried, despite the lack of documentation or testimony in support of the complainant's claims, to shed light on the facts of the case; and that the complainant was also heard by the domestic courts, which substantiated the denial of his request for asylum. The main issue being whether the complainant currently runs a risk of being tortured if he was deported to Togo, there is no substantive evidence that, several years after the events in question, a real, personal and foreseeable risk still exists.<sup>d</sup>

7.8 Taking into account all information made available to it, the Committee considers that the complainant has failed to provide sufficient evidence to demonstrate that he would face a foreseeable, real and personal risk of being subjected to torture if deported to his country of origin.

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 the deportation of the complainant to Togo would not constitute a breach of article 3 of the Convention.

---

<sup>d</sup> See communication No. 309/2006, *R.K. et al. v. Sweden*, decision adopted on 16 May 2008, para. 8.5.

**Communication No. 349/2008: Güclü v. Sweden**

<i>Submitted by:</i>	Mükerrem Güclü (represented by counsel, Ingerman Sahlström)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	29 July 2008 (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 11 November 2010,

*Having concluded* its consideration of complaint No. 349/2008, submitted to the Committee against Torture by Ingerman Sahlström on behalf of Mükerrem Güclü 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 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

1.1 The complainant Mükerrem Güclü, a Turkish national, born on 3 May 1973, is residing in Sweden and is subject to an order for her deportation to Turkey. She is living with her husband and daughter, who have also submitted a case to the Committee (communication No. 373/2009, *Aytulun and Güclü v. Sweden*). She claims that her return to Turkey would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Ingemar Sahlström.

1.2 On 31 July 2008, the Rapporteur on new complaints and interim measures requested the State party not to deport the complainant to Turkey while her case is under consideration by the Committee, in accordance with rule 108, paragraph 1, of the Committee's rules of procedure. On the same date, the State party acceded to this request.

**The facts as presented by the complainant**

2.1 The complainant joined the Kurdish Workers' Party (the PKK) in May 1990 at the age of 17. She participated in its activities for 15 years as a "guerrilla soldier", and took part in a two-month training course in Iraq. Between 1991 and 1998, her role was to type articles written by other members of the PKK for magazines. She performed such work for the PKK leader Öcalan and submitted photos to the Swedish authorities, where she could be seen with him and other PKK leaders. Until 1998, she was active mostly in areas surrounding Sirnak and Diyarbakir in Turkey. Although she never participated in battle, she had to carry arms like any other guerrilla soldier. She was armed with a Kalashnikov. On 10 occasions, the Turkish army attacked the guerrilla camp where she was located. In 1997, her elbow was injured during an attack by the Turkish army.

2.2 In 1998, she was transferred to the main PKK base called the Academia in the Syrian Arab Republic. There she participated in a 10-month political education course. During the training, she was a leader of a group of 20. She was elected to participate in the sixth congress of the PKK in Iraq in December 1998-February 1999. After that, she was active in the women's wing of the PKK (the PJA) in Qandil in Iraq. She mostly typed articles of leaders of the party and colleagues for the magazine *Tanrica Zilan*, but she also wrote some articles herself.

2.3 At the end of the 1990s, the complainant started to have doubts about the ideology of the PKK. In 2002, she was detained by them for several months on suspicion of having helped a guerrilla soldier escape and not supporting the PKK and the PJA. She was questioned repeatedly and humiliated in front of her comrades. She was also brought before the PKK court called the Platform. After a while she was allowed to continue her work at the PKK Media department where she was kept under supervision. She tried to keep a low profile. Those who have tried to escape from the guerrilla camps have been executed.

2.4 In May 2004, she was permitted to meet some relatives at a refugee camp in Machmoor in Iraq. From there, she escaped with the assistance of her uncle, who is a Swedish citizen. She stayed a couple of months in the Islamic Republic of Iran, then returned to Turkey with false identification papers and stayed there for a certain period of time, but was afraid to go to regions where the PKK was active for fear of being recognized and killed. She went to Sweden and applied for asylum on 14 April 2005. While in Sweden she married a man who also had an asylum application pending and with whom in 2007 she had a child. Her husband is also a former PKK guerrilla soldier who fled the organization, and was subsequently denied refugee status in Sweden.

2.5 The complainant believes she is wanted by the Turkish authorities, who have searched for her many times, and arrested and questioned her family members about her whereabouts. According to her, the Turkish authorities are well aware of her PKK involvement, as they told her relatives that they know she was a guerrilla soldier. Her brother told the police that she is in Sweden. She argues that if returned to Turkey she risks up to 15 years of imprisonment for her activities in the PKK, as well as torture in detention. She also believes that if she is returned to Turkey she will be identified by the PKK as a defector and killed, and that the Turkish authorities will not protect her.

2.6 On 23 May 2006, the Migration Board rejected her asylum claim and her applications for residence and work permits. The Board also ordered her expulsion to her country of origin. It did not question her account of her activities with the PKK, but stated that she failed to establish that she was wanted by the Turkish authorities. The Board admitted that there is a risk that she would be arrested and tried, but saw no evidence that she would receive a "more severe punishment than other persons in the same situation". The Board also stated that such punishment would not be disproportionate considering that she had been a member of a terrorist organization. Moreover, the Board quoted recent Turkish policies of "zero tolerance" towards torture and stated that even though isolated incidents of torture still occur, they saw no evidence indicating that it would take place in the complainant's case. The Board also stated that she had not proven that the PKK would kill her for leaving the organization without permission.

2.7 The complainant appealed against the Migration Board decision to the Migration Court (the County Administrative Court in Stockholm). On 8 January 2007, Amnesty International filed a submission to the Court supporting the complainant's appeal. It argued that she wouldn't get a fair trial in Turkey and would be exposed to torture and other inhuman and cruel treatment. It stated that persons in her situation do not get legal representation and are forced to confess under torture.

2.8 On 22 November 2007, the Migration Court rejected her appeal. The complainant applied for leave to appeal the Migration Court decision in front of the Migration Court of Appeal, but she was denied such leave on 10 June 2008.

### **The complaint**

2.9 The complainant claims that upon her return to Turkey she will be arrested and tortured by the authorities and/or by the PKK. She states that she will not get a fair trial and will be sent to prison, where she will not be protected from the PKK.

2.10 The complainant refers to the British Home Office guidelines on the treatment of PKK members in Turkey, to the European Union Commission's report on Turkey, to Amnesty International reports from July 2007, and to Canadian immigration "guidelines" on the PKK and Turkey, all of which indicate that there are instances of ill-treatment and torture in the Turkish correctional system, two of which explicitly indicate that security forces target PKK members. Most of the reports are dated 2007.

### **State party's observations**

3.1 On 30 January 2009, the State party partially reiterates the facts presented by the complainant in her initial communication to the Committee. It also points to the reforms that have been undertaken by the Turkish authorities to address the problem of torture, although acknowledging that incidents of torture still occur. It reiterates the reasoning of the Migration Board and states that the PKK is considered to be a terrorist organization both by Turkey and the European Union. The State party recognizes that the complainant is likely to be arrested, tried and imprisoned, but submits that refugee status cannot be solely based on the fact that a person risks punishment according to their domestic legislation.

3.2 The State party notes that the complainant's activities were at a relatively low level and maintains that she has not demonstrated that she would risk "disproportionate punishment" if tried in Turkey. She has not demonstrated a risk of being subjected to persecution, threats and harassment from the PKK, which would make her in need of protection. Even if she were to risk such treatment, the State party maintains that it is the responsibility of the Turkish judicial and law enforcement authorities to protect her.

3.3 The State party recalls that one of the judges of the Migration Court had a different opinion, proposed in favour of the complainant and stated that the information on the complainant's activities in the PKK is sufficient to make her a person "otherwise in need of protection" and that she should accordingly be granted residence permit in Sweden.

3.4 On admissibility, the State party acknowledges that the complainant has exhausted all available domestic remedies and is not aware of the matter having been or being subject to any other international investigation or settlement. It maintains that the complainant's assertion that she is at risk of being treated in a manner which would amount to a breach of article 3 of the Convention fails to rise to the basic level of substantiation required for purposes of admissibility. The State party therefore submits that the communication is manifestly unfounded and thus inadmissible pursuant to article 22, paragraph 2 of the Convention and rule 107 (b) of the Committee's rules of procedure.

3.5 The State party disputes the claims on the merits. It reiterates the reforms in Turkey in the area of human rights, including adoption of a policy of zero tolerance on torture and significant legislative reforms, which provide for avenues of complaint for victims of torture. It contends that great weight must be given to the opinion of its authorities, as the latter are in a very good position to assess the information submitted by the asylum-seeker and estimate the credibility of her claim. The complainant's involvement with the PKK was at a low level and her work was limited to typing and editing. Thus, the State party denies that she would be of as much interest to the Turkish authorities as she claims. The

complainant had stated that she had never been deprived of her liberty, imprisoned or arrested. In its original decision, the Migration Board had commented that the complainant could not establish by documentary evidence that she was of interest to the Turkish authorities and in particular that she had not presented an extract from the national registration authority demonstrating that she was wanted by the authorities. However, in its submission to the Committee, the State party notes that, according to their information, since 2004 it is illegal to note in the Turkish national population register that a person is so wanted. For this reason, the State party takes no issue with her failure to provide such documentary evidence.

3.6 The State party is aware that, as the PKK is classified as a terrorist organization, under the Turkish Anti-Terrorist Law, any involvement with it is criminalized and punishable by a 50 per cent higher sentence than would otherwise be the case. The State party also maintains that the risk of being detained does not in itself constitute a substantial ground to believe that the complainant risks being exposed to treatment contrary to article 3 of the Convention. Moreover, the State party quotes numerous reports on the issue of torture in Turkey,<sup>a</sup> maintains that the human rights situation in the country has improved, despite the certain increase in the torture cases reported by NGOs in 2007 and concludes that the information on the vulnerability of the PKK members in prison was somewhat contradictory.

3.7 The State party also maintains that the risk of being subjected to ill-treatment by a non-State actor 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, and therefore this alleged risk was of no relevance to the present communication. The State party also notes that the complainant had spent 10 months in the country after leaving the PKK without any consequences and denies that she would be of as much interest to the PKK as she claims. The State party points to contradictions in the statements of the complainant regarding the possibilities of escaping from the PKK. During her asylum procedure, she stated that she was not allowed to leave the PKK and described the consequences for those who tried to escape. However, she also stated that she was allowed to see her uncle outside the guerrilla area and that the rules were changed in 2004 so that those who wanted to leave could do so.

#### **Complainant's comments**

4.1 On 15 April 2009, the complainant disputed the State party's arguments on the admissibility and merits of the complaint.

4.2 She provides a statement from the Diyarbakir Branch of the Human Rights Association in Turkey, dated 13 August 2008, to support her claims. This statement indicates that cruel and inhuman treatment is often used by the security forces; that people who had been denied refugee status and deported back to Turkey were frequently arrested upon arrival at the airports and questioned with the use of physical force and psychological pressure. It submits that there is a warrant against the complainant, issued on the basis of

---

<sup>a</sup> The Report on Human Rights 2007, issued by the Swedish Ministry for Foreign Affairs, the United States Department of State Country Report on Human Rights Practices in Turkey 2007, the British Home Office Country of Origin Information report on Turkey, dated 29 August 2008, the British Home Office Operational Guidance Note on Turkey, dated 2 October 2008, the Amnesty International Annual Report 2008, the Human Rights Watch World Report 2008, the European Commission 2008 Turkey Progress Report, the Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture, dated 6 September 2006.

her being a member of an armed terrorist organization and quotes the number of the criminal case initiated against her by a prosecutor in Diyarbakir (2005/298). The statement declares that complaints lodged with them about torture in the region have been steadily increasing since 2004 and that these had increased by 260 per cent between 2007 and 2008 alone (172 and 434 torture complaints registered respectively in 2007 and in 2008). With regard to former PKK members, the Association claims that they are forced to confess, provide information about the PKK and the locations of its bases and participate in combat against their former comrades. Additionally, the Association states that in the event that both the complainant and her husband are returned and arrested, their child will be left to live in the streets.

4.3 The complainant also provides copies of decisions of the Migration Board and the Migration Court on cases similar to the complainant's case, where former PKK members had been granted refugee status in Sweden. She maintains that according to their own practice the authorities should have granted asylum to the complainant.

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

#### *Consideration of admissibility*

5.1 Before considering a claim contained in a communication, 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) and (b), that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement and that all available domestic remedies have been exhausted.

5.2 As to the complainant's allegation that if returned to Turkey she would be killed by the PKK in retaliation for leaving the organization without permission, the Committee considers that the issue of 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.<sup>b</sup> Thus, the Committee finds that this claim is inadmissible in accordance with rule 107 (c) of the Committee's rules of procedure.

5.3 The Committee takes note of the State party's contention that the communication is manifestly unfounded and therefore inadmissible, as the complainant's assertion that she is at risk of being treated by public officials in a manner that would amount to a breach of article 3 of the Convention fails to rise to the basic level of substantiation required for purposes of admissibility. However, the Committee considers that the complainant has provided sufficient evidence to permit it to consider the case on the merits.

#### *Consideration of the merits*

6.1 The issue before the Committee is whether the forced return of the complainant to Turkey 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 she would be in danger of being subjected to torture.

6.2 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture upon return to Turkey. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including

---

<sup>b</sup> See communication No. 83/1997, *G.R.B v. Sweden*, Views adopted on 15 May 1998.



the existence of a consistent pattern of gross, flagrant or mass violations of human rights. In this regard, the Committee notes the State party's argument that certain improvements have been made to the human rights situation, including through a zero-tolerance policy and introduction of mechanisms for complaints against torture. It also notes the complainant's argument that the above changes have not reduced the number of reported incidents of torture in Turkey (172 and 434 torture complaints respectively registered with a local NGO in 2007 and in 2008).<sup>c</sup>

6.3 The aim of the present determination, however, is to establish whether the complainant would be personally at risk of being subjected to torture in Turkey after her return. Even if a consistent pattern of gross, flagrant or mass violations of human rights existed in Turkey, such existence would not as such constitute a sufficient ground for determining that the complainant would be in danger of being subjected to torture after her return to that country; specific grounds must exist indicating that she 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.<sup>d</sup>

6.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 in which it states 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".<sup>e</sup>

6.5 The Committee notes that the State party does not dispute the complainant's involvement with the PKK, but rather argues that her involvement was at a low level. It notes that while the State party denies that she would be of much interest to the Turkish authorities now, it admits, as did the Migration Board itself, that if she is pursued by the Turkish authorities, there is a risk that she will be arrested, detained pending trial and sentenced to a long term of imprisonment (para. 3.1 above). In addition, the State party indicates that it takes no issue with the complainant's failure to provide direct evidence of her claim that she is wanted by the authorities. It also notes that the complainant has provided information on a criminal case initiated against her, number 2005/298 (para. 4.2 above), which remains uncontested by the State party. Thus, in the Committee's view, sufficient information has been provided to indicate that the complaint is likely to be arrested if forcibly returned to the State party.

6.6 The Committee observes that, according to various sources, including the reports provided by the complainant, the Turkish security and police forces continue to use torture, in particular during questioning and in detention centres, including against suspected terrorists. The Committee also notes that according to the State party's own submission in 2007 (see para. 3.6 above) the number of reports of ill-treatment has increased. More than one of the reports submitted by the State party<sup>f</sup> indicate that, despite the legislative measures taken by the Government of Turkey, perpetrators often enjoy impunity, and the reports question the effectiveness of the reform. Many of the recent reports quoted by the State party also indicate that there is an increasing number of reports of ill-treatment and torture committed by members of the security and police forces outside official premises and thus more difficult to detect and document.

<sup>c</sup> Letter of the Diyarbakir Branch of Human Rights Association in Turkey submitted by the complainant.

<sup>d</sup> See communication No. 214/2002, *M.A.K. v. Germany*, decision adopted on 12 May 2004.

<sup>e</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX, para. 6.

<sup>f</sup> See footnote a, above.

6.7 In conclusion, the Committee notes that the complainant was a member of the PKK for 15 years; that even though she was operating at a low level, she did on occasion work for its leader Öcalan and other high-profile PKK leaders; that she is wanted in Turkey, to be tried under anti-terrorist laws and thus is likely to be arrested upon arrival. In the light of the foregoing, the Committee considers that the complainant has provided sufficient evidence to show that she personally runs a real and foreseeable risk of being subjected to torture were she to be returned to her country of origin.

6.8 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, considers that the State party's decision to return the complainant to Turkey would constitute a breach of article 3 of the Convention.

7. In conformity with rule 112, paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, on the steps taken by the State party to respond to this decision.

## Communication No. 350/2008: *R.T-N. v. Switzerland*

*Submitted by:* R.T-N. (represented by Kathrin Stutz of  
Zürcher Beratungsstelle für Asylsuchende)

*Alleged victim:* The complainant

*State party:* Switzerland

*Date of complaint:* 5 August 2008 (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 June 2011,*

*Having concluded* its consideration of complaint No. 350/2008, submitted by R.T-N. 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 against Torture**

1.1 The complainant is R.T-N., a national of the Democratic Republic of the Congo born on 25 December 1970 and currently living in Switzerland. He claims that his deportation to the Democratic Republic of the Congo would constitute a violation by Switzerland of article 3 of the Convention. He is represented by Kathrin Stutz (Zürcher Beratungsstelle für Asylsuchende).

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention on 18 August 2008. At the same time, in application of rule 114, paragraph 1, of its rules of procedure<sup>a</sup> (formerly rule 108), the Committee asked the State party not to deport the complainant to the Democratic Republic of the Congo while his complaint was being considered.

#### **Factual background**

2.1 The complainant is originally from the Democratic Republic of the Congo and always lived in Kinshasa, where he was an active member of a movement called the Groupe des jeunes chrétiens pour le changement (Young Christians' Movement for Change) (GJCC). In May 2004, he gave a series of talks to sensitize young people to the upcoming presidential elections, during which he informed them that President Joseph Kabila was not of Congolese origin. On 15 July 2004, he was arrested for this reason and his wife was allegedly raped. He was interrogated three days later and the same evening was flown to a prison in Katanga (a region close to the border with Zambia). He managed to escape from the prison on 13 September 2004, thanks to the help of an officer, and left the country four days later. He subsequently learned through his wife that he was being sought by the Congolese authorities.

<sup>a</sup> New rules of procedure dated 21 February 2011 (CAT/C/3/Rev.5).

2.2 The complainant flew to Switzerland on 20 September 2004 and filed an asylum application the same day. On 17 September 2006, the Swiss Red Cross asked if he would agree to share his experiences with the Swiss television channel Télévision Suisse Romande (TSR) for a report on coercive measures in the canton of Zurich timed to coincide with the referendum concerning new laws on asylum and foreign nationals due to take place on 26 September 2006. The complainant agreed to be interviewed without his face obscured because the reporters told him that the programme would air in Switzerland only. Shortly after the programme was broadcast, he received a number of phone calls from the Democratic Republic of the Congo because the TSR news programme was carried on TV5, a channel which also aired in that country. In the meantime, the complainant's wife had fled to Zimbabwe with their daughter. Both were granted refugee status in December 2007 and are now under the protection of the Office of the United Nations High Commissioner for Refugees (UNHCR).

2.3 The complainant developed mental health problems as a result of his experiences in the Democratic Republic of the Congo, the protracted asylum process and the situation of his wife, who is now a refugee in Zimbabwe, along with their daughter. Persistent nightmares and severe anxiety resulted in an emergency consultation at the outpatient psychiatric clinic of the university hospital in Lausanne (CHUV) on 17 February 2005. The complainant's mental health problems also led to regular consultations with two practitioners at the Bülach outpatient psychiatric centre attached to the Psychiatrie-Zentrum Hard clinic. A medical report issued at the complainant's request by the psychiatric clinic of the university hospital in Zurich on 22 January 2009 stated that the complainant's symptoms were consistent with his account of the treatment he allegedly suffered in the Democratic Republic of the Congo and concluded that, from a clinical point of view, there was no doubt that the complainant had experienced considerable traumatic stress. The report gave a diagnosis of post-traumatic stress disorder.

2.4 On 20 September 2004, upon arrival in Switzerland, the complainant filed an asylum application while in the transit zone of Zurich airport. In a decision dated 30 September 2004, the Federal Office for Migration refused to authorize his entry to Switzerland on the grounds that his account of the alleged facts was not plausible. On 26 October 2004, the Swiss Asylum Appeals Commission (since replaced by the Federal Administrative Court) declared the complainant's appeal inadmissible on the grounds that the advance required as surety for procedural costs had not been deposited by the statutory deadline. On 11 January 2005, the complainant requested a review of the decision on his case. The Federal Office for Migration rejected his request on 27 January 2005. An appeal against this decision was declared inadmissible by the Swiss Asylum Appeals Commission on 9 March 2005 on the grounds of late payment of the required deposit to cover costs. On 17 March 2005 the complainant filed a new application with the Federal Office for Migration, which was rejected on 24 March 2005. The complainant lodged an appeal against this decision, and on 6 December 2006 the Federal Office for Migration overturned the decision of 24 March 2005 on the grounds that the complainant was invoking the existence of subjective reasons that had arisen since his flight, and that they should be considered in a second asylum application procedure.

2.5 In a decision dated 12 July 2007, the Federal Office for Migration dismissed the second asylum application pursuant to article 32, paragraph 2 (e) of the Asylum Act of 26 June 1998. The complainant's appeal against this decision was rejected by the Federal Administrative Court (formerly the Swiss Asylum Appeals Commission) on 1 February 2008 on the grounds that the new evidence submitted by the complainant provided insufficient reason to challenge the former judicial authorities' findings. On 8 April 2008 the complainant lodged a request for review with the Federal Office for Migration which, for jurisdictional reasons, was referred to the Federal Administrative Court, which in turn rejected the request on 20 June 2008. The complainant had had until 19 February 2008 to

leave Switzerland. He filed a request for review accompanied by an application for interim measures, but the Federal Administrative Court rejected the request for review, and thus the application for interim measures also, on 20 June 2008. Thus, as of this date, the complainant could be deported at any time.

### **The complaint**

3.1 The complainant claims that he would be in danger of being subjected to torture in violation of article 3 of the Convention if deported to his country of origin. As an active member of GJCC, he gave three talks about the elections in the Democratic Republic of the Congo, during which he alerted young Christians to the fact that Joseph Kabila was not of Congolese origin. After these pronouncements, he was tortured and imprisoned for two weeks before managing to escape from prison and to flee the country. The complainant affirms that the events leading up to his flight and his appearance on the Swiss television channel TSR, without his face obscured, in a programme about asylum applications which aired on 26 September 2006 have placed him at risk of being subjected to torture if deported to the Democratic Republic of the Congo. The complainant adds that his wife was raped and has for this reason become a refugee in a third country.

3.2 The complainant cites Amnesty International's annual report for 2008, which recounts the political and military tensions that degenerated into violent clashes in Kinshasa and the province of Bas-Congo. Killings, arbitrary arrests and detention, acts of torture and other cruel, inhuman and degrading forms of treatment were practised throughout the country by the security forces and armed groups, most often targeting persons perceived as being political opponents. Accordingly, the complainant affirms that the situation in the Democratic Republic of the Congo meets the specifics of the situation envisaged in article 3, paragraph 2, of the Convention, in that a consistent pattern of gross, flagrant or mass violation of human rights exists in the country. The complainant emphasizes that detainees, especially those perceived as being political opponents, are systematically tortured while in custody.

3.3 To substantiate his allegations, the complainant provides copies of the following documentation: a wanted notice issued by the Congolese national police; an article from the newspaper *Le Satellite* mentioning that a wanted notice was issued on 17 July 2004 in an attempt to find the complainant; two summonses issued to the complainant's wife and to the president of GJCC, respectively, by the same commander, Clément Konde; a wanted notice issued by the National Intelligence Agency on 10 November 2004; and a page from the newspaper *Le Palmarès*, dated 6 September 2006, which reports the disappearance of the president of GJCC in Kinshasa, specifying that he had gone missing after the disappearance of the complainant. A letter attesting to the complainant's appearance in a TSR programme subsequently broadcast on TV5 is also attached. The complainant also provides copies of medical reports issued by psychologists and therapists which attest to his state of health since arriving in Switzerland.

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

4.1 The State party submitted its observations on the admissibility and the merits of the complaint on 18 February 2009. Briefly reviewing the facts as presented by the complainant, the State party contends that he has presented no new evidence to the Committee, except perhaps for the information on his deteriorating state of health. On this point, the State party recalls that the judicial authorities, and specifically the Federal Administrative Court, considered the complainant's situation in depth prior to issuing the decisions of 1 February and 20 June 2008 and that none of the arguments put forward by the complainant provided sufficient grounds to challenge their decisions. The State party also underlines that, in his communication, the complainant failed to explain the

inconsistencies and contradictions inherent in his allegations, although they had been clearly highlighted by the competent Swiss authorities.

4.2 Recalling the provisions of article 3 of the Convention, the State party refers to the case law of the Committee and its general comment No. 1 (1997).<sup>b</sup> Pursuant to paragraph 6 et seq. of general comment No. 1, the author must establish that he would face a personal, present and serious risk of being subjected to torture if deported to his country of origin. The State party notes that this provision means that the grounds must go beyond mere suspicion and that they must demonstrate a serious risk. Comparing the various factors to be taken into account in assessing this risk with the complainant's specific situation, the State party acknowledges that the situation in the Democratic Republic of the Congo is worrying. However, based on the case law of the Committee and the aforementioned general comment, the situation in the complainant's country does not in itself constitute sufficient grounds to conclude that the complainant would be at risk of being subjected to torture in the event of his return.

4.3 With regard to the complainant's allegations of torture, the State party notes that the allegations were presented to the Committee without further details being given. The only items of evidence presented to substantiate the allegations in the course of the proceedings were two medical reports, dated 27 September 2006 and 30 August 2007, which had been considered by the Federal Office for Migration in its decision of 12 July 2007, and by the Federal Administrative Court in its judgement of 1 February 2008, respectively. The State party emphasizes that prior to submitting the two medical reports the complainant had not at any time raised such allegations of torture before the Swiss authorities. These allegations were in fact raised for the first time while the complainant was being questioned about the content of the first medical report, on 28 March 2007. The State party adds that both reports rested on a case history based on the patient's account alone, and did not therefore prove the veracity of the alleged facts, notably with regard to the circumstances, the reasons or even the perpetrator of the ill-treatment. Furthermore, the reports made no mention of signs of physical torture.

4.4 The State party does not dispute the mental health problems documented by the doctors, but notes that the medical reports did not prove the alleged cause of the mental health problems, which, moreover, the attending physicians attributed to other factors. The medical reports indicated that the complainant's suffering was attributable to his separation from his family and his precarious status in Switzerland. The State party adds that the problems from which the complainant appears to be suffering are not in any case of sufficient gravity to constitute an obstacle to his deportation, especially since he has the option of consulting a doctor in his country of origin by requesting, if necessary, financial assistance for his return. The State party therefore endorses the assessment made by the domestic judicial authorities and contends that the medical reports do not establish the veracity of the alleged facts, and consequently do not constitute grounds to conclude that the complainant would actually face a risk of torture if returned to his country of origin. The State party adds that the asylum application submitted by the complainant's wife to the Swiss Ambassador to Zimbabwe on 17 April 2008 made no mention, or at least no explicit mention, of torture or violence suffered in the Democratic Republic of the Congo. The State party therefore concludes that none of the evidence in the case file substantiates the claim that the complainant has been subjected to torture in the past.

4.5 With regard to the question of whether or not the complainant engaged in political activities within or outside his country of origin, the State party notes that he claims to have

---

<sup>b</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.*

been an events organizer for GJCC in the Democratic Republic of the Congo. However, the GJCC documents (specifically the complainant's membership card) and the statements from GJCC parish leaders who confirmed that in 2004 the complainant had given talks on the subject of "the elections and nationality" do not constitute evidence of a present and real risk of torture. The State party also makes reference to a document issued by the Swiss Refugee Council (OSAR) on 24 March 2005 which was submitted during the proceedings by the complainant. The complainant had contacted OSAR to request various items of information and seek its advice on his case. In its reply, OSAR had confirmed that members of religious groups such as GJCC were not subject to persecution and had raised certain doubts as to the veracity of the complainant's claims. The State party adds that Joseph Kabila's origin has been a subject of contention for years, both before and during the presidential election campaign. His victory on 29 October 2006 not only confirmed Joseph Kabila as the country's President, but also gave him a legitimacy that he could not claim beforehand. The State party emphasizes that the complainant has been unable to explain why he should be wanted in the Democratic Republic of the Congo for pre-electoral propaganda which was widely used at the time by opposition parties that are now represented in the Congolese parliament.

4.6 In Switzerland, the complainant recounted his story in a report on coercive measures broadcast on the Swiss television channel TSR on 17 September 2006, prior to the referendum on the asylum law. He did not claim to have criticized the Government of the Democratic Republic of the Congo in this broadcast, nor did he provide information about the circumstances behind his asylum application. The mere fact that the authorities of his country learned through this programme that he had applied for asylum in Switzerland was not grounds to conclude that he would actually face a risk of torture if returned to his country. The State party adds that the complainant has failed to provide evidence of the messages and telephone calls he supposedly received after the report was broadcast on TSR and TV5. The State party also concurs with the Federal Administrative Court's observation (in its decision of 1 February 2008, observation 6.2) that the complainant's appearance in this programme without his face obscured was inconsistent with the behaviour of a person who felt genuinely persecuted and threatened, and therefore detracts from his credibility.

4.7 The State party notes that other items of evidence, in addition to those set out above, indicate that the author's allegations are not plausible. This evidence has been analysed by the Swiss authorities.<sup>c</sup> Among this evidence, the State party cites the fact that upon his arrival in Switzerland the complainant attempted to mislead the authorities by presenting fake identity documents and a Red Cross identity card which had clearly been falsified. In addition, at the end of 2006, the complainant tried to gain entry to France using a residence permit (C permit) that was not his. These facts give grounds to doubt the complainant's credibility.

4.8 To his request for review dated 11 January 2005 and his appeal to the Swiss Asylum Appeals Commission dated 27 January 2005, the complainant attached a press release and a look-out notice posted on the Internet site [www.societecivile.cd](http://www.societecivile.cd) on 15 October 2004, which indicated that the non-governmental organization Action contre les violations des droits des personnes vulnérables (Action against Violations of the Rights of Vulnerable Persons) (ACVDP) was searching for him. In an e-mail sent to the complainant's counsel on 18 February 2005, the President of ACVDP, Crispin Kobolongo, confirmed that GJCC had informed him of the complainant's abduction and that this information had prompted ACVDP to speak with the president of GJCC and the complainant's wife. She had

---

<sup>c</sup> Decisions of the Federal Office of Migration of 30 September 2004 and 12 July 2007; interlocutory decision of the investigating judge of the Swiss Asylum Appeals Commission of 5 October 2004; and Federal Administrative Court judgements of 1 February 2008 and 20 June 2008.

confirmed that her husband had been abducted, that she had been raped on the same day, and that her husband had since been missing. It was because the investigations to ascertain the complainant's whereabouts had reportedly proved fruitless that the look-out notice and press release had been issued. However, the complainant's family — specifically his wife and his uncle — had had mobile telephone, fax and e-mail contact with the complainant while he was confined to Zurich airport in late September and early October 2004, and were therefore aware of his whereabouts. The State party concludes from this that the wife's sole interest in having the notice published was to provide her husband with documentary evidence to support his asylum application in Switzerland. The fact that the complainant himself provided this supposedly convincing evidence in 2005, when he had actually been in telephone contact with his wife at least two weeks before its publication, further discredits the complainant and his entourage.

4.9 In support of his appeal dated 27 January 2005, the complainant also submitted the notice of his disappearance published in the biweekly newspaper *Le Satellite* on 22 October 2004. In this notice, his family urged readers to report any information that might help ascertain his whereabouts to a family member or the police. The State party finds it incongruous that the family should urge readers of the newspaper to facilitate the police's efforts to ascertain the complainant's whereabouts. Noting that the issue of the wanted person notice by the National Intelligence Agency on 10 November was also contrived, the State party underlines that both the notice dated 19 September 2004 and the summons dated 26 September 2004 (in which the complainant's wife was asked to report to the police station the next day at 10.30 a.m.) have very little evidentiary value. The two documents, both of which were signed by Clément Konde, had been issued a week apart, each on a Sunday, when offices are usually closed. The State party notes that the Swiss authorities generally doubted the evidentiary value either of the summonses (which are for the most part faxed copies) or of the articles published in the press or on the Internet. It also notes that in Kinshasa it is easy to obtain such documents for payment.

4.10 In his request for review dated 8 April 2008, the complainant claimed that, after losing all contact for several years, he had finally managed to find his wife in March 2008. She had supposedly informed him that she had left Kinshasa in 2005, as the Congolese authorities' efforts to find the complainant were putting her in danger. Before leaving to request asylum in Zimbabwe at the end of 2007, she had reportedly spent most of the time living with her parents in the centre of the country. The Federal Administrative Court considered that, since the complainant's wife could easily have found people in contact with her husband since his disappearance, the couple's claims of a total loss of contact, with contact re-established only a few days after the complainant was informed of the imminent outcome of his appeal, were hardly convincing.

4.11 Lastly, the State party notes that the assessment made by the Federal Office for Migration in the first asylum proceedings, in which it had concluded that the complainant lacked credibility, was shared by UNHCR, to which the case had been referred on 27 September 2004. In the light of the documents submitted and the human rights situation prevailing in the Democratic Republic of the Congo, UNHCR had concluded that the complainant was clearly not at risk of persecution in his country of origin.<sup>d</sup>

4.12 With regard to the medical report dated 22 January 2009 submitted to the Committee by the complainant and forwarded to the State party, the State party notes that, as in the case of the previous medical reports submitted by the complainant, the facts set out in the case history rest solely on the patient's account, and that the report does not prove the origin, as claimed by the complainant, of the mental health problems documented (post-

---

<sup>d</sup> The UNHCR assessment is annexed to the State party's observations.



traumatic stress disorder, depression). The State party maintains that these problems could be attributed to other factors, such as the complainant's separation from his family and his precarious status in Switzerland. In addition, an examination of the medical report reveals that certain facts recounted by the complainant are inconsistent with the claims he made in the asylum proceedings. For example, in the report he claims for the first time to have heard about his wife's rape. He makes no mention of his transfer from Kinshasa to Kasapa prison in Katanga. In the request for review submitted to the Federal Administrative Court, the complainant had claimed that he had not been able to speak to his wife until March 2008, after years of total loss of contact, while in the medical report he says contact was restored in October 2008. These contradictions and inconsistencies detract from the complainant's credibility. Lastly, the complainant gives no details of the ill-treatment allegedly suffered in the Democratic Republic of the Congo. The State party therefore maintains that the medical report dated 22 January 2009 provides no evidence on which to conclude that the complainant would be in danger if he were returned to his country of origin.

### **Complainant's comments on the State party's observations**

5.1 On 27 April 2009, the complainant wrote that, with regard to the torture, the medical reports dated 4 March 2005 and 1 June 2006 showed that in his initial therapy sessions he had already reported the ill-treatment in the Democratic Republic of the Congo. The reports also stated that the complainant had been traumatized by the events experienced in the Democratic Republic of the Congo. With his comments, the complainant also provides a copy of the wanted notice issued by the National Intelligence Agency, which was displayed at all border crossing points in the Democratic Republic of the Congo. He also refers to confirmations provided by three churches where he reportedly had given talks. The complainant points out that the State party has so far failed either to carry out investigations or to provide any evidence to disprove his allegations. He adds that the first hearing of the asylum proceedings had been conducted by a police officer who had failed to gain the complainant's trust. Because of the manner in which the police had treated him (making threats and ordering him to undress), the complainant had not felt able to speak freely about the torture he had been subjected to in the Democratic Republic of the Congo.

5.2 The complainant emphasizes that the asylum application lodged by his wife in Zimbabwe is backed up by proof of the violence that she suffered in the Democratic Republic of the Congo. With regard to safety and security in the Democratic Republic of the Congo in general, the complainant underlines that the Swiss Refugee Council's report cannot be considered relevant, due to the absence of research on GJCC and on the complainant's activities in the Democratic Republic of the Congo. The complainant highlights, however, that the Swiss Refugee Council acknowledges the risks to which activists of certain religious communities who are said to have engaged in political activities opposing Joseph Kabila and the Government on behalf of their groups may be exposed. The complainant adds that he has regularly taken part in activities organized by political parties and associations of the Congolese diaspora in Switzerland. He is a supporter of the Alliance des Patriotes pour la Refondation du Congo (Alliance of Patriots for the Refoundation of the Congo) (APARECO), a political party led by President Ngbanda, which is based in Paris. He is also a regular contributor to programmes on Radio Kimpwanza hosted by the political group Rassemblement des Patriotes pour la Libération du Congo (Rally of Patriots for the Liberation of Congo) (RPLC). However, the complainant's uncertain status in Switzerland limits his contributions to this movement, especially since the television programme broadcast first by TSR and then by TV5 has already led to more than enough media exposure.

5.3 The complainant adds that even though it was aware of his whereabouts, GJCC had a duty to inform the human rights organization of his disappearance, firstly to expose the abuse perpetrated by the Kabila Government, and secondly to encourage human rights

organizations to monitor violations of this kind. The article published in *Le Satellite* simply repeated the content of the press release issued in July 2004, at which point the complainant's family was not yet aware of his abduction. When the complainant's wife learned of her husband's departure for Switzerland in September 2004, she was unable to inform the newspaper, as her husband was still in detention in Zurich airport.

5.4 The complainant maintains that the wanted person notices challenged by the State party could have been issued on a Sunday because of the delicate nature of their content and the urgency attached to issuing such documents. If their issue had been contrived, the second wanted person notice would no doubt have been amended to correct the error in the first. The complainant further specifies that he had no contact with his wife from May or June 2005, when his wife left Kinshasa, until March 2008, when he was able to talk to her thanks to help from the Red Cross in Zurich. With regard to the UNHCR position, the complainant thinks that the Office must have based its assessment solely on the documents submitted to it by the Federal Office for Migration. Lastly, the complainant notes that during the first asylum proceedings he had been asked to submit all evidence supporting his application within two weeks of filing the request. For a person in flight from their home, meeting such a deadline is impossible.

#### **Additional comments by the parties**

6.1 On 14 May 2009, the State party commented on the new allegations and evidence presented by the complainant in his comments. The State party points out that an asylum application presented to the Swiss Ambassador in Zimbabwe by the complainant's wife was rejected on 19 August 2008 and that no appeal against the decision was lodged with the Federal Administrative Court. Furthermore, the complainant's wife failed to provide any evidence to support her asylum application. She also failed to take the opportunity to comment on an advance notice relating to her application issued by the Federal Office for Migration on 27 June 2008. The State party notes that the medical certificate dated 1 June 2006 confirms that the complainant reportedly consulted a doctor in 2004 about the violence to which he had reportedly been subjected in the Democratic Republic of the Congo. Noting also the information concerning the complainant's claim to be a member of APARECO and his supposedly regular contributions to programmes on Radio Kimpwanza, the State party observes that neither of these items of information were ever brought to the attention of the Swiss authorities in the course of the domestic appeals, and that in any case neither can be considered to have evidentiary value, since the certificate does not establish the veracity of the claims and the complainant's claimed affiliation to the political party APARECO does not appear to be of an extent sufficient to place him at risk in the event of deportation to his country of origin.

6.2 On 19 May 2009, the complainant informed the Committee that on 24 April 2009 he had been arrested by the Zurich police, even though the State party had deferred execution of his deportation since 19 August 2008. Although the cantonal immigration offices were still open and a simple administrative check could therefore have been carried out, the complainant had been arrested and detained for four days. Not until 28 April 2009 was it established, thanks to checks performed first by the public prosecutor and then by the investigating judge, that the complainant was legally residing in Switzerland following the Committee's request for interim protection measures.

6.3 On 19 June 2009, the complainant informed the Committee that his wife's health had deteriorated, and submitted a medical certificate issued by Harare Central Hospital in Zimbabwe attesting to the fact that she too was suffering from post-traumatic stress disorder.

6.4 On 10 July 2009, the State party commented on the allegations made by the complainant on 19 May 2009. It observed that the complainant had been arrested by the

Zurich police during an identity check. Suspected by the police of being in Switzerland illegally, he had been placed in custody for violation of the provisions of the Federal Act on Foreign Nationals, and not for the purpose of his deportation. He had been referred to the prosecution service in Zurich-Limmat. On 27 April 2009, the sole judge sitting on the Zurich district court refused to place the complainant in pretrial detention, since execution of his deportation had been suspended following the Committee's request for interim protection measures on 18 August 2008. The complainant was immediately transferred to the Migration Office of the Canton of Zurich, which released him the following day. The cantonal authorities could not in any case have deported him without an order from the Federal Office for Migration. The complainant therefore was not at any time in danger of being expelled from Switzerland, and these details are not relevant to the content of the communication before the Committee.

6.5 On 19 October 2010, the complainant drew the Committee's attention to his precarious situation, as he was living in an emergency assistance centre under constant threat of arbitrary arrest and of repeated identity checks by the police, and to the financial hardship associated with emergency assistance, which provided a daily living allowance of 10 Swiss francs. The complainant also informed the Committee that although he had applied for a hardship permit (a permit granted on humanitarian grounds) his application could not be considered while the current procedure was before the Committee. He reiterated the fact that the Congolese Government did not safeguard citizens' rights in the Democratic Republic of the Congo, citing the recent assassinations of Armand Tungulu, an activist within the Congolese diaspora in Belgium, and Floribert Chebeya Bahizire, and the disappearance of Fidèle Bazana Edadi.

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

#### *Consideration of admissibility*

7.1 Before considering any complaint submitted 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.

7.2 The Committee also notes that all domestic remedies have been exhausted pursuant to article 22, paragraph 5 (b), and that the State party is not contesting the admissibility of the complaint. The Committee therefore declares the communication admissible and proceeds to its consideration on the merits.

#### *Consideration of the merits*

8.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

8.2 The Committee must determine whether, in deporting the complainant to the Democratic Republic of the Congo, the State party would be failing in its obligation under article 3 of the Convention not to expel or return (*refouler*) 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.

8.3 In assessing the complainant's allegations under article 3, 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 of such assessment, however, is to determine whether the complainant would personally be in

danger of being subjected to torture in the Democratic Republic of the Congo. It follows that the existence in that country of a consistent pattern of gross, flagrant or mass violations of human rights does not in itself constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture if expelled to that country. Additional grounds must be adduced to show that the individual concerned would be personally at risk.<sup>e</sup>

8.4 The Committee recalls its general comment No. 1 on implementation of article 3 of the Convention in the context of article 22, which states that while it is not necessary to demonstrate that the risk of torture is highly probable, the risk must be personal and present. In this regard, the Committee has established in previous decisions that the risk of torture must be “foreseeable, real and personal”.<sup>f</sup> As to the burden of proof, the Committee recalls that it is generally incumbent upon the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

8.5 The Committee is aware of the dire human rights situation in the Democratic Republic of the Congo<sup>g</sup> and notes that the State party acknowledges that the situation in the country gives cause for concern. However, it also notes the doubts expressed by the State party as to the credibility of the allegations made by the complainant since his first asylum application was lodged in September 2004 and the State party’s reference to a letter from UNHCR, dated 30 September 2004, in which UNHCR had concluded, in the light of the documents submitted and the human rights situation in the Democratic Republic of the Congo, that the complainant was clearly not at risk of persecution in his country of origin.

8.6 In assessing the risk of torture in the case under consideration, the Committee notes the complainant’s claims that as an active member of the Christian group GJCC he organized three talks on the presidential elections in the Democratic Republic of the Congo, and at these events alerted young Christians to the fact that Joseph Kabila, the main candidate, was not of Congolese origin; that, after making these pronouncements he was arrested, interrogated, and then transferred to a prison in Katanga where he was tortured; and that two weeks later he escaped from prison and fled the country for Switzerland. The Committee notes that according to the complainant, his wife was raped at the time of his arrest and, a few years later, had in turn managed to flee the country and seek asylum in Zimbabwe. The Committee also notes the complainant’s claim that his appearance, without his face obscured, on a TSR programme that was subsequently aired on TV5, his political activities as a supporter of APARECO and his participation in programmes broadcast on

<sup>e</sup> Communication No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; see also communications No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

<sup>f</sup> Communications No. 203/2002, *A.R. v. the Netherlands*, decision adopted on 14 November 2003, para. 7.3; and No. 285/2006, *A.A. et al. v. Switzerland*, decision adopted on 10 November 2008, para. 7.6.

<sup>g</sup> See, inter alia, the report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo (A/HRC/16/27); the report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (S/2011/20); the Committee’s concluding observations on the report submitted by the Democratic Republic of the Congo under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/DRC/CO/1), 2006; concluding observations of the Human Rights Committee on the report submitted by the State party under the International Covenant on Civil and Political Rights (CCPR/C/COD/CO/3), 2006; The combined report of seven thematic special procedures on technical assistance to the Government of the Democratic Republic of the Congo and urgent examination of the situation in the east of the country (A/HRC/10/59), 2009.

Radio Kimpwanza contribute to the risk of torture that he would face if deported to his country of origin. Lastly, it notes the information according to which the various medical reports issued by psychotherapists since 2005 attest to post-traumatic stress disorder in the complainant, confirming the trauma suffered as a result of the events he experienced in the Democratic Republic of the Congo.

8.7 The Committee notes the State party's argument that the medical reports submitted by the complainant rest on a case history based solely on information provided by the patient and that they do not prove the veracity of the allegations made, notably with regard to the circumstances, the reasons or even the identity of the perpetrator of the alleged ill-treatment. The Committee notes that the State party is not contesting the mental health problems, but is questioning the causal link between these problems and their alleged origin. It further notes that these problems are attributed by the doctors themselves to other factors, including the anxiety associated with the complainant's separation from his family and his precarious status in Switzerland. The Committee also notes the doubts raised by the State party with regard to the credibility of the acts alleged by the complainant, which are the basis for the alleged risk of torture that he would face if deported to the Democratic Republic of the Congo. In this connection the Committee notes that the complainant provides no details about the torture he allegedly suffered in the Democratic Republic of the Congo, that documents such as the wanted notices and press articles submitted lack evidentiary value, and that the complainant's statements regarding contact with his wife since leaving the Democratic Republic of the Congo are contradictory.

8.8 In the light of the information provided by the parties, the Committee observes that the complainant has not substantiated a causal link between the events that led him to leave his country of origin and those that have occurred since his arrival in Switzerland on the one hand and the risk of torture he would face if deported to the Democratic Republic of the Congo on the other. The complainant has not in fact provided any information that would give grounds to conclude that pronouncements concerning the non-Congolese origin of President Joseph Kabila made by Christian movements such as GJCC would lead to the Congolese authorities' torturing the persons concerned, years after the event, when the same issue has apparently been widely discussed by the opposition. In addition, the complainant has provided no details about the torture allegedly suffered during his detention in the Democratic Republic of the Congo and has failed to prove that his appearance in the TSR report and his participation in radio programmes would place him at risk of being subjected to torture if returned to his country of origin. The Committee recalls that the tragic acts to which the complainant's wife was reportedly subjected do not in themselves create a real, personal and foreseeable risk of torture for the complainant.

8.9 Taking into account all information made available to it, the Committee considers that the complainant has failed to provide sufficient evidence to demonstrate that he would face a real and foreseeable risk of being subjected to torture if deported to his country of origin.

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 deportation of the complainant to the Democratic Republic of the Congo would not constitute a breach of article 3 of the Convention.

**Communication No. 352/2008: S.G. et al. v. Switzerland**

*Submitted by:* S.G. et al. ( represented by counsel)

*Alleged victim:* The complainants

*State party:* Switzerland

*Date of complaint:* 15 August 2008 (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 30 May 2011,

*Having concluded* its consideration of complaint No. 352/2008, submitted to the Committee against Torture on behalf of S.G. et al. 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 complainants, their counsel and the State party,

*Adopts* the following:

**Decision under article 22, paragraph 7, of the Convention against Torture**

1.1 The complainants are Mr. S.G. (“the complainant”), his wife Ms. D.G. and their son, all nationals of Turkey, awaiting deportation from Switzerland. They claim that their deportation to Turkey would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”). They are represented by a lawyer.

1.2 Under rule 114 (former rule 108), of its rules of procedure,<sup>a</sup> the Committee requested the State party, on 28 August 2008, not to expel the complainants to Turkey while their communication was under consideration by the Committee.

**The facts as presented by the complainants**

2.1 The complainants are Turkish nationals of Kurdish origin. After completing his education, the complainant opened a store where he sold electrical devices in Gaziantep city, an area where the Kurdish political party PKK is active. He was neither a member of the PKK nor in any other way active in it. He supported it only with an annual amount of money, because members of the party visited him to collect funds and he felt obliged to contribute. The PKK also regularly left party newspapers in his shop for him to distribute. The complainant declares that he used to dispose of the newspaper as soon as the party members had left.

2.2 On 15 July 2000, the complainant was arrested, blindfolded, and brought to a police station where he was beaten up and questioned about his connection with PKK. He was released after one or two days. He was detained and taken to the police station several times after that and was kept there, for another day or two.

---

<sup>a</sup> CAT/C/3/Rev.5, 21 February 2011.

2.3 In September 2000, the complainant was informed by one of the PKK members who visited his shop of the arrest of another PKK member in possession of a list of PKK supporters. The complainant's name appeared on that list too. As a result, he and his wife left for Istanbul. They borrowed from a friend a mountain house outside the city, where they stayed for two years. The owner used to bring them food from time to time and they had planted vegetables in the garden. On 25 March 2001, their son was born.

2.4 In August 2002, the complainant's brother visited them in Istanbul. He brought with him the 2 October 2000 edition of the newspaper *Dogus*. The front page of the newspaper carried an article about the complainant being searched for by the police and included a picture of him.

2.5 On 25 August 2002, the complainants left Turkey. They were smuggled into Switzerland, where they applied for asylum on 2 September 2002. The complainant explains that he was first heard on his asylum request on 9 September 2002, and he presented the newspaper *Dogus* of 2 October 2000 in support of his case. According to him, the Federal Office for Refugees (ODR) sent the newspaper to the Swiss Embassy in Ankara to have its authenticity verified. On 21 July 2003, the Embassy reported that, according to their investigations, the copy of the newspaper was forged. The complainant contends that the Embassy noted that it had contacted an employee of the newspaper, who could not deliver a copy of the 2 October 2000 edition as the newspapers of the year 2000 were already archived; the person in question had however denied that the 2 October 2000 edition contained any report about the police ever having conducted a search for the complainant.

2.6 After being informed by the ODR that the newspaper was considered to be false, the complainant asked his father to send him a copy of the arrest warrant against him. His father sent him the original arrest warrant, issued on 18 January 2005, by a criminal judge in Gaziantep. The complainant notes that the ODR also considered this document to be forged, because it was not possible in general to get such document in an original form, and because the stamp used was that of a prosecutor and not of a judge. The complainant notes in addition, that according to the Swiss Embassy in Ankara, he was not wanted by the police in Turkey, and there was no data about him in the police registers there.

2.7 Based on the lack of credibility of the complainant, the Swiss authorities also dismissed medical reports, both by State and private doctors, which attested to the complainant suffering post-traumatic stress disorder as a consequence of the torture suffered, as well as a certified court statement made by a PKK member in Turkey, which named the complainant as a PKK supporter. The complainant notes that the State party's authorities dismissed allegations of mistreatment against him and his wife, as they had not raised them during their initial asylum hearings.

2.8 On 4 April 2008, the complainant requested the reconsideration of the decision not to grant him asylum, on the basis of new elements – i.e. the copy of the statement by the PKK member, designating him as a PKK supporter, the authenticity of which was certified by a Turkish lawyer in a letter. On 17 April 2008, the Federal Administrative Tribunal (TAF) refused to grant legal assistance, and ordered the complainant to pay 2,400 Swiss francs as advance fees for the revision of the case. The judge pointed out, inter alia, that the appeal appeared “*mutwillig*”, i.e. somehow frivolous, with very limited chances of success, and that the new elements — the statement of the PKK member to the effect that he had supplied the complainant with PKK newspapers — had in fact already been brought to the attention of the Swiss authorities on previous appeals. As the complainant refused to pay the fees, the TAF rejected the request for revision on 19 May 2008.

### **The complaint**

3. The complainants claim that they would be at risk of being subjected to torture if returned to Turkey, in particular the complainant, because of his past beatings by the police and because the Turkish authorities believe that he is a member of the PKK.

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

4.1 On 28 October 2008, the State party explained that the complainants had applied for asylum on 3 September 2003. Their request was rejected by the former Federal Office for Refugees (now called the Federal Office for Migrations, FOM) on 29 December 2003. An appeal against this decision was filed with the former Federal Commission on Asylum (replaced in 2007 by the TAF). Subsequently, the complainants have introduced several requests for reconsideration and/or revision. The fifth request for a revision was made on 7 April 2008, before the TAF. On 17 April 2008, the competent judge rejected the complainants' request for legal assistance. The judge considered the revision request to have minimal chances of success, if not to be abusive, and ordered the complainants to pay 2,400 Swiss francs as guarantee fees. As the complainants did not pay the fees, their request for revision was rejected by the TAF on 19 May 2009.

4.2 The State party recalls that the Committee may not examine communications if domestic remedies have not been exhausted. It refers to the Committee's jurisprudence and recalls that States' authorities must be given an opportunity to assess new elements of proof before these are submitted to the Committee under article 22 of the Convention. In the present case, the decision by a judge on the prospect of success of the complainant's appeal or to request and advance payment does not, according to the State party, pre-judge the case. If the advance payment is made, the judge can decide on the merits of the case only after consultation with a second judge. If the two judges disagree, the decision has to be taken by a commission of three judges. In addition, nothing in the present communication indicates that the request for an advance payment prevents the complainant from exhausting domestic remedies. Thus, in the present communication, the complainant has not exhausted the available domestic remedies, and the communication should be declared inadmissible.

### **Complainant's comments on the State party's observations**

5.1 The complainants submitted their comments on the State party's observations on 5 January 2009. They note, first, that according to the State party, they would have had a chance to succeed with their motion for revision of 4 April 2008. They claim, however, that there was no guarantee that the judge in charge of their case would not have declared the case inadmissible once the payment of the 2,400 Swiss francs was made – a particularly high sum for the complainants without any income. They claim that the request to pay the above sum was intended to bar them finishing their appeal in the asylum procedure. In addition, the judge wrote to them that the petition (appeal) in question was "*mutwillig*" in German, i.e. it was not totally unfounded but was, in a way, malicious. The judge had also declared that the grounds of their petition and the evidence to support it were not credible and would not lead to a modification of the previous decisions – i.e. not to grant them refugee status. According to the complainants, this unequivocally meant that their appeal simply had no prospect of success.

5.2 The complainants note further that the State party has not focused on these specific circumstances or the statements of the judge, but limited itself in quoting the legal provisions in general. The reality, according to the complainants, is that the asylum judges are under pressure to render quick decisions to the vast number of cases attributed to each of them.



### State party's observations on the merits

6.1 By note verbale of 20 March 2009, the State party presented further observations. First, it recalls its previous observations challenging the admissibility of the communication, and adds that it has studied the complainant's comments of 5 January 2009. It notes that the complainants recognize that the State party has described the judicial situation correctly. Thus, the judge examining the case could not reject it without the consent of a second judge. Therefore, one could not affirm, as advanced by the complainant, that the decision of 17 April 2008 has pre-judged the outcome of the eventual examination of the merits of the case. As far as the amount of advance payment is concerned — 2,400 Swiss francs — the State party contends that the amount in question was determined in accordance with the pertinent rates adopted on 14 September 2007 by the judges of the TAF (a list of the rates in question is provided).

6.2 According to the State party, the Committee may examine a communication presented by an individual under the jurisdiction of a State party recognizing the Committee's competence under article 22 of the Convention. In the present case, the complainants contend that they are still in Switzerland. The decisions of the TAF (for example the one of 29 June 2007) make it clear, however, that the residence of the complainants is unknown as of 6 July 2005. The Tribunal has thus concluded that the presence of the complainants in Switzerland could not be established and there was no proof of their presence. The complainants, who do not risk a forced removal from Switzerland while their case is considered by the Committee, do not adduce any element to refute the above conclusions. In the light of the fact that the last medical report submitted to the Committee is dated 16 January 2006, the State party cannot but align itself to the Tribunal's conclusions. Therefore, the State party considers that the present communication is inadmissible on this second ground.

6.3 On the merits, the State party notes that before the Committee (and as they had already done before the Swiss asylum authorities), the complainants claim that their forcible return to Turkey would amount to a breach, by the State party, of its obligations under article 3 of the Convention. The complainants consider that the Swiss asylum authorities have wrongly qualified as false or irrelevant a number of evidentiary elements and have concluded that they lacked credibility. The complainant has claimed that on 15 July 2000, he had been arrested and ill-treated by officials of the security forces, as he was suspected of having cooperated with the PKK; he was helped by a friend and lived with his wife in Istanbul for two years. In August 2002, he received a copy of a newspaper *Dogus*, containing an arrest warrant for him on the cover page. The complainant, his wife, and their sons escaped from Turkey and arrived in Switzerland on 25 August 2002.

6.4 According to the State party, in his communication to the Committee, the complainant repeats the same claims he formulated in his asylum claim, without adducing new elements. According to the State party, thus there is no reason to question the grounds for the decision of the national authorities in this case but rather the complaint challenges the evaluation of facts and evidence as made by the authorities.

6.5 The State party recalls the numerous proceedings undertaken by the complainants in Switzerland. Thus, the complainant applied for asylum on 3 September 2003. The ODR rejected his application on 29 September 2003. It took into consideration the verifications carried out by the Swiss Embassy in Turkey; it qualified as non-credible the complainant's allegations and concluded that the complainant had used false evidence — including a faked copy of a newspaper. The complainant filed an appeal against this decision on 2 January 2004 with the Federal Asylum Appeals Commission (CRA). On 28 June 2005, the CRA confirmed the initial conclusions of the ODR.

6.6 On 10 June 2005, the complainant submitted a request for re-consideration of his case with the ODR, which was qualified as a request for a revision and was transmitted to the CRA. As the complainant did not pay in advance the corresponding fees, the CRA rejected his request without examination.

6.7 On 6 February 2006, the complainant submitted a second request for revision, but subsequently he withdrew it.<sup>b</sup> Also in February 2006, the complainant introduced a third request for revision, rejected by the CRA on 28 March 2006. The CRA considered on this occasion that the medical certificates provided in support of his allegations of past acts of torture having been committed against the complainant were of no relevance and did not refute the past conclusions of the CRA on the complainant's credibility. Contrary to what is submitted by the complainant, on this occasion the CRA did not limit itself to rejecting the request for revision. According to the State party, the CRA took note of the new medical certificates indicating that the complainant's wife had suffered psychological problems after the rejection of the complainant's asylum claim, and it decided to transmit the case to the FOM, for further verification. On 3 May 2006, the FOM rejected the request for re-examination of the complainants' case, considering that the problems in question were not the consequence of persecution by the Turkish authorities, and that an adequate medical treatment was available in Turkey. The State party notes that no appeal was filed against this decision.

6.8 On 11 December 2006, the complainant submitted a fourth request for re-examination of his case. He adduced an interrogation record dated 18 April 2001, according to which, first, the accused, Mr. A.A., confessed having collaborated with the PKK by distributing newspapers, magazines, etc, and that he had transmitted such documents *inter alia* to the complainant, and, second, that the inquiry authorities had asked Mr. A.A. to provide them with the address of the complainant. The TAF — which replaced the CRA in January 2007 — rejected this request on 29 June 2007 (copy provided). The Tribunal declared that the interrogation record was of no relevance, especially given that its content was in contradiction with the conclusions of both the FOM and the CRA on the lack of credibility of the complainant in the light of the results of the inquiries carried out by the Swiss Embassy in Turkey. The State party notes in this respect that on 21 July 2003, the Swiss Embassy confirmed that no record on the political activities of the complainant existed with the police, that he was not under an arrest warrant by the police or the gendarmerie, and that he was not under an interdiction to be issued with a passport. In addition, the TAF expressed serious doubts as to the authenticity of the interrogation record in question.

6.9 The State party explains further that the complainants have submitted a fifth request for a revision, dated 8 April 2008. The complainants apparently tried to demonstrate the authenticity of the investigation record of 2001, without, according to the State party, commenting on its relevance in the light of the conclusions of the Swiss Embassy in Turkey. On 17 April 2008, the TAF rejected this request as frivolous and, in fine, did not examine it on the merits, due to the non-payment of the correspondent procedure fees. The State party concludes that the complainant's allegations have been examined thoroughly by the Federal Office of Migrations, and, on numerous occasions, by the CRA and the TAF.

6.10 The State party further examines the complainants' allegations in the light of article 3 of the Convention. It recalls that States parties to the Convention have the obligation not to expel an individual, under their jurisdiction, if there are grounds to believe that he or she would face a serious risk of torture. If a complainant is not under the jurisdiction of a State

---

<sup>b</sup> The State party supplied the Committee with the copy of two decisions of the CRA on the matter, dated 10 February 2006 and 16 February 2006, respectively.

party, he or she cannot be expelled by this State, and thus article 3 of the Convention does not apply. In the present case, the continuous presence of the complainants in Switzerland could not be established. Thus, according to the State party, article 3 of the Convention does not apply to the complainants, and no violation of this provision could take place in this case.

6.11 Having recalled the Committee's jurisprudence and its general comment No. 1 (1997) on the implementation of article 3,<sup>c</sup> the State party endorses the grounds cited by the Swiss authorities substantiating their decisions to reject the complainants' application for asylum. It recalls the Committee's jurisprudence whereby the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not constitute sufficient reason for concluding that a particular individual is likely to be subjected to torture on return to his or her country, and that additional grounds must therefore exist before the likelihood of torture can be deemed to be, for the purposes of article 3, paragraph 1, "foreseeable, real and personal".

6.12 The State party recalls that the Committee has examined a number of communications on behalf of complainants claiming that they would be at risk of torture in Turkey. It notes that the Committee has concluded in the past that the human rights situation there was of concern, in particular in relation to PKK militants, who could suffer torture by officials of the security services.<sup>d</sup> However, when concluding that a violation of article 3 of the Convention would occur in the case of forcible return, the Committee has established that the complainants were engaged politically in favour of the PKK, that they had been detained and tortured prior to their departure from Turkey, and that their allegations of torture were substantiated by independent sources, such as medical certificates. In two previous communications against Switzerland, however, the Committee concluded that the complainants' forcible return to Turkey would not breach article 3 of the Convention.

6.13 The State party notes that in the first case, communication No. 112/1998, *H.D. v. Switzerland*, Views adopted on 30 April 1999, the Committee noted, inter alia, that the complainant was never subjected to prosecution for specific charges, and that the prosecutions invoked in the communication concerned his relatives, who belonged to the PKK, not himself. The Committee also noted that nothing indicated that the complainant had cooperated with the PKK after his departure from Turkey, or that his relatives were intimidated by the Turkish authorities. In Communication No. 107/1998, *K.M. v. Switzerland*, the Committee took into consideration the fact that nothing showed that the complainant had cooperated with the PKK after his departure from Turkey.

6.14 The State party recalls that in the present case, its competent authorities have concluded, after a thorough analysis of all pertinent elements, that the complainant's allegations to the effect that he had been arrested, ill-treated and persecuted by the Turkish authorities because of his suspected links with the PKK were not plausible. The State party recalls, first, that the Swiss Embassy in Turkey has conducted an inquiry and that thus a Turkish lawyer confirmed after verifications that in 2003, no political record existed with the Turkish police against the complainant, he was not under an arrest warrant by the police, and has no interdiction to have a passport issued. The interrogation recorded on 18 April 2001, as supplied by the complainant, has thus not resulted in the launch of a search/arrest warrant against the complainant. This was also noted by the TAF in its

---

<sup>c</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.*

<sup>d</sup> The State party refers, inter alia, to communication No. 97/1997, *Ayas v. Sweden*, Views adopted on 12 November 1998, para. 6.4.

decision of 29 June 2007. The Tribunal, contrary to what is alleged by the complainant, did not reject his fourth request for a revision based only on its doubts about the authenticity of the record in question.

6.15 According to the State party, if the complainant were wanted by the authorities, he would have been able to present other documentary evidence, such as, for example, confirmations of his arrests, official arrest warrants, police investigation records, accusation acts, or correspondence with his lawyer(s). In addition, as far as the interrogation record provided by the complainant is concerned, the State party contends that the name of the Prosecutor who had signed it remains unknown to it. This reinforces the subsisting doubts as to the authenticity of the record in question.

6.16 The State party further notes that the complainant has provided the FOM with the copies of two arrest warrants (so-called "Örnek 29"), in substantiation of his claims. The authenticity of the first one, dated 4 August 2000 (copy provided), was examined scrupulously by the FOM. The State party notes that arrest warrants are issued by courts in Turkey. The document supplied by the complainant contains a header of a tribunal, and is apparently signed by a judge. However, the document is stamped with the stamp of the Prosecution Office. The State party finds it difficult to imagine that a judge would use a stamp of a prosecutor. It is also difficult to understand, according to the State party, how an individual with a warrant against him or her is in possession of the original of his arrest warrant. As noted by the Swiss Embassy, the complainant was never wanted by the police. The complainant presented the copy of the above mentioned arrest warrant only once he was provided with the copy of the Swiss Embassy's report. Therefore, the State party finds it unnecessary to proceed with the complainant's request to verify the authenticity of the arrest warrant in question with a Turkish lawyer. According to the State party, the second "Örnek 29" form presents the same characteristics as the first one, i.e. contains a stamp by a Prosecutor.

6.17 In relation to the hard copy of the newspaper *Dogus* of 2 October 2000, as provided by the complainant, the State party explains that the Swiss Embassy in Turkey has contacted an employee of the newspaper. It transpired, after verification in the archives, that the copy was false. The original issue of 2 October 2000 did not contain a search warrant for and a picture of the complainant. The content of the first page of the original newspaper differed completely from the one submitted by the complainant. In addition, the compulsory requisites about periodicals "Impressum", contained on the fourth page, were incorrect in the copy provided by the complainant. Finally, the original newspaper has its title on the first page in red, but these letters appear in white in the copy provided by the complainant. Therefore, the State party believes that no arrest warrant concerning the complainant was published in the newspaper, which corroborates the findings, as already laid out, of the Turkish lawyer contacted by the Swiss Embassy.

6.18 The State party adds that the complainant's allegations on his persecution are contradicted by the circumstances surrounding the closure of his shop. In his testimony to the police as an asylum-seeker, the complainant had claimed that his shop was closed by the police in September 2000. As revealed by the CRA, the Swiss Embassy in Turkey reported in July 2003 that the complainant's shop was in fact closed in July 2002 by his brother, and not by the police. The complainant has provided no observations thereon.

6.19 The State party recalls that its asylum authorities have qualified as non-credible the allegations of the complainant that he has been persecuted. His and his wife's medical troubles are not the consequence of past persecution, but had different cause. This is confirmed by the fact that, in particular, the complainant's mental troubles (such as domestic violence) manifested themselves after the refusal to grant him political asylum, in December 2003.

6.20 The State party declares that in the light of all these considerations, it aligns itself with the grounds put forward by the ODR and the TAF, when concluding that the complainant's allegations lacked credibility. It also contends that the presentation made by the complainant does not lead to believing that there exist serious grounds that he would be subjected to torture in Turkey. Thus, nothing indicates that there exist serious grounds to consider that the forced removal of the complainants would expose them to a foreseeable, real, and personal risk of torture in Turkey.

6.21 The State party concludes by inviting the Committee to declare the communication inadmissible for both non-exhaustion of domestic remedies and because of the non-applicability of article 3 of the Convention in the present case, or, subsidiarily to reject the communication on the grounds that the complainant does not have a standing as a victim, or to find that the forcible return of the complainants to Turkey would not constitute a violation, by Switzerland, of its obligations under article 3 of the Convention.

### **Complainant's observations on the State party's submissions**

7.1 On 26 May 2009, the complainant's counsel presented his comments to the State party's observations. On the State party's argumentation on the issue of exhaustion of domestic remedies, he contends that the explanation that a second judge would co-examine the case is purely theoretical. According to him, the workload of the TAF is such, that judges requested to provide a second opinion in a particular case cannot sufficiently familiarize themselves with the merits of each case dealt with by another judge.

7.2 The counsel further explains that he is in contact with the petitioners, and receives regular phone calls. The last meeting in person took place when they provided him with additional elements for their last request for a revision of their case. He adds that in the circumstances of the present case, the address of the petitioners cannot be provided to the State party's authorities.

7.3 On the State party's conclusion that the "Örnek 29" arrest warrants of 4 August 2000 and 10 January 2005 are false as they contained a stamp from a prosecutor, the counsel explains that the complainants did not bring these documents themselves, but that they were provided to them by their relatives in Turkey. The warrants were not examined by the Turkish lawyer working for the Swiss Embassy, but analysed only by an official in Switzerland, who concluded that, since the complainant provided originals, and they were stamped by a prosecutor, they were false. But the official did not contend that the forms themselves were false. The counsel adds that the complainant knew that the Swiss authorities had doubts about the authenticity of the first arrest warrant when he requested his relatives in Turkey to provide him with the copy of the second arrest warrant, and he probably has informed his relatives about the problematic prosecutor's stamp on a court document. Notwithstanding this, his relatives provided him with similarly stamped arrest warrant.

7.4 The counsel further claims that, on the closing of the complainant's shop, the Swiss Embassy has relied on the statements of a district mayor who, according to counsel, was unaware of the circumstances of the complainant's case. The mayor had stated that the shop in question was run by the complainant and his brother for one or two years, and that he had heard around a year earlier that the brothers had closed it and that the complainant had travelled abroad. This only confirms, according to the counsel, that the petitioner had had a shop. In addition, the mayor also contended that he was unable to find out for what reasons the complainant had left the country. Therefore, there is no contradiction with what the complainant has explained before the Swiss asylum authorities.

7.5 As to the State party's contention that the complainant's health problems had occurred after the rejection of his asylum request, counsel explains that a psychiatrist,

M.E.B. has concluded that the complainant suffered post-traumatic stress disorder, as a consequence of serious torture. According to counsel, it is clear that the petitioner was depressed after the rejection of his asylum application and the threat of having to leave the country, without protection of not being subjected once more to torture. The State party, according to the counsel, did not pay sufficient attention to the report of the psychiatric expert.

7.6 On 12 February 2010, the complainant's counsel provided the Committee with four reports prepared by medical doctors and the Swiss Red Cross ("Ambulatorim Für Folter-und Kriegsopfer SRK"), in 2009-2010, concerning the complainant, and a medical doctor's report of 2009 concerning his wife. The counsel explains that in 2008, the complainant started consulting the Ambulatorim Für Folter-und Kriegsopfer SRK, as his "psychic suffering was not anymore bearable to him and his family". The complainant also suffered extreme pain in his genitals, burning and itching of his body, and headaches. The medical report of the Ambulatorim Für Folter-und Kriegsopfer SRK of 12 December 2009 states that the complainant suffered flashbacks due to the torture suffered. At the end of 2009, the complainant was treated in a psychiatric clinic (12 November 2009–7 January 2010). A report dated 1 January 2010, prepared in the clinic, states that the complainant suffered flashbacks due to the torture he had been subjected to, and that the petitioner had suicidal ideas. At times, he behaved very aggressively in the clinic and refused to interact with anyone.

7.7 According to counsel, the reading of the medical reports implied that the complainant also suffered "of other things as hopelessness, desperateness, problems to concentrate, nightmares, etc". In addition, he has a great fear of policemen.

7.8 The complainant's counsel further notes that an urologist, Dr. G., did not find any problems in the complainant's genitals. According to counsel, in his report of 14 September 2009, the urologist had expressed the view that the complainant was "a man destroyed by torture" and suggested that his pains had psychological rather than physical origins.<sup>e</sup>

7.9 The counsel contends that in the light of this information, it is clear that the complainant's problems are the result of past torture, and he and his family suffer from the present uncertain situation. The counsel also points out that the medical reports submitted are the result of emergency assistance. The medical doctors did not investigate the root causes of the complainant's problems, but rather tried to provide him with temporary relief. In any event, the complainant has repeated to all the doctors that he had been subjected to torture in Turkey. As far as the complainant's wife is concerned, a report of the Swiss Red Cross of 25 November 2010 states that she also suffers, because of the state of health of her husband, his aggressive behaviour, and the situation of uncertainty.

#### **Additional information from the State party**

8.1 On 19 March 2010, the State party reiterated its previous position and reacted to counsel's submission of 12 February 2010. It notes that, as far as the complainant's pain in the genitals is concerned, the medical specialist examining the complainant has concluded that the latter does not suffer from injuries which could show that he had been subjected to ill-treatment.

8.2 The State party also notes that the different medical reports submitted to the Committee mention that the complainant has declared having been tortured in Turkey. It contends, however, that the report of the Ambulatorim Für Folter-und Kriegsopfer SRK

---

<sup>e</sup> It transpires from the documents on file, that Dr. G. was requested by the Ambulatorim Für Folter-und Kriegsopfer SRK, Swiss Red Cross, to provide an opinion on the complainant's case.

(Swiss Red Cross) of 16 December 2009 mentions that the complainant had explained that he had been detained and tortured, at the age of 25, for three months in a police office, and that he was subjected to electroshocks on the genitals. The State party notes that this description is in contradiction with what the complainant had declared to the Swiss asylum authorities – i.e. that he had been arrested and ill-treated on several occasions, for one to two days, without mentioning having been tortured on his genitals. Therefore, the medical reports submitted by the complainant do not contradict the conclusion that the complainant's mental problems are not caused by past torture.

#### **Additional information by the complainant**

9.1 On 31 August 2010, the complainant's counsel provided further clarifications. He admits that the State party was correct in noting that the report of the Ambulatorium Für Folter-und Kriegsopfer SRK (Swiss Red Cross) of December 2009 indicates that the complainant was arrested and tortured for three months. He explains, however, that the report reflected what was discussed with the complainant, in the absence of an interpreter. The counsel believes that the psychologist examining the complainant probably misunderstood his explanations. This is confirmed, according to counsel, by the text of a letter from two officials of the Ambulatorium Für Folter-und Kriegsopfer SRK dated 10 August 2010, according to which, it was assumed that the complainant had, at the time, said that he was imprisoned several times over a period of three months, and not for three full months. According to the officials in question, the complainant had refused the services of an interpreter, as he had no trust in his compatriots.

9.2 According to counsel, this is consistent with what the complainant has always claimed – his first arrest took place on 15 July 2000, and his last arrest was at the end of August 2000. Even if this period covers one and a half months, it should be remembered, according to counsel that these events took place more than 10 years ago and a certain deviation in the complainant's mind should be considered normal.

9.3 As to the alleged torture with electricity of the complainant, as reported by Dr. G., counsel, once again, considers that it is the result of a misunderstanding, due to the poor German language proficiency of the complainant and the absence of an interpreter. In a new letter, the Ambulatorium Für Folter-und Kriegsopfer SRK explained that the patient, at the time, described feeling pain as if he was receiving electricity in his genitals, what was interpreted to be a description of past torture. The counsel assumes that when examining the complainant, Dr. G. was misled similarly, as the consultation again took place in the absence of an interpreter.

9.4 On 9 September 2010, the counsel submitted a letter from Dr. G., dated 7 September 2010. Dr. G. confirms that the consultation of the complainant in 2009 was held in the absence of an interpreter. Dr. G. explains that he might have misunderstood that the complainant had been tortured, while in reality he had told him that he feels a pain like receiving electricity on the genitals. According to counsel, this information is very important, given that the Ambulatorium Für Folter-und Kriegsopfer SRK studied the 2009 report of Dr. G. at the time, and may have been influenced by it.

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

##### *Consideration of admissibility*

10.1 Before considering a claim contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, first, as it is required to do under article 22, paragraph 5 (a), that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

10.2 The Committee has noted that the State party has challenged the admissibility of the communication, as the complainant has failed to exhaust available domestic remedies, as his fifth request for a revision by the TAF was dismissed without examination, because he did not pay the corresponding fees in advance. The Committee notes further, as acknowledged by the State party, that the judge in charge of the complainant's case, when rejecting his request for legal aid, had, in advance, assessed the complainant's revision request as presenting minimal chances of success, and expressed doubts as to the nature of the request, concerned that it was possibly abusive.

10.3 The Committee notes that the complainant has filed a number of previous appeals, including requests for revision, and that the majority of these were rejected. It also notes that the complainant has requested the revision in question on the basis of a letter confirming the authenticity of a court record where a PKK supporter had invoked his name. The Committee notes that, in any event, the court record in question was already submitted and examined by the Swiss asylum authorities in the context of the complainants' previous appeals. In the light of this, and in spite of the State party's explanation that the judge in charge did not assess the merits of the case and that if the case was to be rejected, the judge in question would have had to seek an additional opinion of another judge, the Committee is not convinced that this particular remedy constitutes sufficient ground to prevent it from examining the merits of the communication, as far as the complainant's allegations are sufficiently substantiated for purposes of admissibility.

10.4 The Committee further notes that the State party does not explain why the particular remedy invoked — a fifth request for revision — would be pertinent to the case under examination. It considers that the State party has limited itself to invoking the availability of the remedy in question and its potential effectiveness, without providing further explanation. In the circumstances, and in the light of the information on file, the Committee considers that, in the present case, the complainants have provided sufficient information to permit it to proceed with the examination of the merits of the case.

10.5 The State party has invoked a second ground for the inadmissibility of the communication, namely that its authorities have concluded that the presence of the complainants in Switzerland was not established, and that therefore article 3 does not apply in the present case. The Committee has also noted the complainant's counsel reply (see paragraph 7.2 above) — i.e. that he is in constant contact with the complainants and receives regular phone calls from them. In the circumstances, the Committee does not consider that the provisions of the Convention do not apply in the present case.

10.6 In the light of the above considerations, the Committee decides that the communication is admissible, as far as it raises issues under article 3 of the Convention, and decides to proceed with its examination on the merits.

#### *Consideration of the merits*

11.1 The Committee examined the complaint, taking due account of all the information provided to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

11.2 The Committee must determine whether the forced return of the complainants to Turkey would violate the State party's obligations 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.

11.3 In assessing whether there are substantial grounds for believing that the complainant and his wife would be in danger of being subjected to torture if returned to Turkey, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim



of such an analysis is to determine whether the complainants run a personal risk of being subjected to torture in the country to which they would be returned. The Committee reiterates that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on 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 flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

11.4 The Committee recalls its general comment on the implementation of article 3, 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), but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.<sup>f</sup> Furthermore, the Committee observes that considerable weight will be given, in exercising the Committee’s jurisdiction pursuant to article 3 of the Convention, to findings of facts that are made by organs of the State party concerned.

11.5 In the present case, the Committee considers that the facts as presented do not permit it to conclude that the complainant and his wife would be at personal, foreseeable, present and real risk of torture in case of their return to Turkey. In reaching this conclusion, the Committee has noted, in particular, the State party’s observations on the conclusions of the Swiss asylum authorities on the lack of credibility of the complainant, the conclusions on the use of false evidence, such as an issue of a newspaper containing an arrest warrant and the picture of the complainant, and the use of two arrest warrants allegedly signed by a judge but carrying the stamp of a prosecutor’s office, and the information emanating from the Swiss Embassy through a Turkish lawyer to the effect that no police records or arrest/search warrants existed with the Turkish authorities against the complainant in connection to political activities. The Committee has given due attention to the complainant’s and his wife’s comments, but it considers that the complainants have failed to sufficiently substantiate the arguments in refuting or clarifying the contradictions as pointed out by the State party in its replies.

11.6 Finally, the Committee has noted the conclusions of the medical and psychiatric experts as submitted by the complainants subsequent to the registration of the communication, and the existence of contradiction or misunderstandings with what the complainants have claimed before the Swiss asylum authorities. However, it is of the opinion that the very fact that the complainant suffers, at present, from psychological problems as reported by medical experts, cannot be seen as constituting sufficient grounds to impose an obligation, on the State party, to refrain from proceeding with the complainant’s and his wife’s removal to Turkey, where, as indicated by the State party’s authorities, adequate medical care is available.

11.7 In the light of all the above, the Committee is not persuaded that, read as a whole, the facts before it are sufficient to allow it to conclude that the complainants would face a foreseeable, real and personal risk of being subjected to torture if returned to Turkey. Accordingly, the Committee concludes that their removal would not constitute a breach of article 3 of the Convention.

---

<sup>f</sup> See, inter alia, communications No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005; No. 226/2003, *T.A. v. Sweden*, decision adopted on 6 May 2005; No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010.

12. 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 complainants' removal to Turkey by the State party would not constitute a breach of article 3 of the Convention.

## Communication No. 357/2008: *Jahani v. Switzerland*

*Submitted by:* Fuad Jahani (represented by counsel, Urs Ebnöther)

*Alleged victim:* Fuad Jahani

*State party:* Switzerland

*Date of complaint:* 9 October 2008 (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 23 May 2011,

*Having concluded* its consideration of complaint No. 357/2008, submitted to the Committee against Torture by Mr. Fuad Jahani under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all the 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 against Torture**

1.1 The complainant, Fuad Jahani, is a national of the Islamic Republic of Iran, was born in 1981 and is facing deportation from Switzerland to his country of origin. He claims that his deportation would constitute a violation by Switzerland of article 3 of the Convention. He is represented by counsel, Urs Ebnöther.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention on 15 October 2008. At the same time, the Committee, pursuant to rule 108, paragraph 1, of its rules of procedure (CAT/C/3/Rev.4), requested that the State party refrain from deporting the complainant to the Islamic Republic of Iran while his complaint was being considered.

#### **The facts as submitted by the complainant**

2.1 The complainant is an Iranian national belonging to the Kurdish minority. He claims that, because of his activities as a member of the Communist Workers' Party, he had to leave his country of origin and apply for asylum in Switzerland, where he arrived on 11 July 2005.<sup>a</sup> Shortly after he arrived in Switzerland, the complainant applied for asylum and has become an active member of the Iranian opposition movement in Switzerland.

2.2 On 26 November 2007, the Federal Office for Migration decided not to consider the merits of the complainant's application. However, on 25 January 2008, an appeal lodged by the complainant against that decision was upheld by the Federal Administrative Tribunal, which instructed the Federal Office for Migration to consider the merits of the case.

<sup>a</sup> The initial decision of the Federal Office for Migration gives 9 July 2005 as the complainant's date of entry.

2.3 On 25 March 2008, the Federal Office for Migration rejected the complainant's asylum application. An appeal against that decision was rejected by the Tribunal on 6 May 2008, as it had not been filed before the deadline.

2.4 On 3 June 2008, the complainant lodged a new asylum application on the basis of his political activities in Switzerland. The Federal Office for Migration, in its decision of 18 June 2008, decided not to consider the merits of the application. On 14 July 2008, the Tribunal rejected the complainant's appeal against that decision. On 18 July 2008, the Federal Office for Migration ordered the complainant to leave the territory of the State party by 30 July 2008 at the latest. The complainant has been residing illegally in Switzerland since that date.

2.5 According to the complainant, the Federal Administrative Tribunal, in its decision of 14 July 2008, wrongly considered that his activities as the cantonal representative of the Democratic Association for Refugees (which is part of the Iranian opposition movement in Switzerland), his regular attendance at meetings of that movement, his close contact with the President of the Democratic Association for Refugees and his regular involvement in radio broadcasts did not demonstrate the existence of a risk of persecution in the event of his return to the Islamic Republic of Iran. The complainant considers that, the Tribunal has failed to take into account the many credible reports which demonstrate that the Iranian authorities closely monitor the Iranian diaspora and keep records on its members' political activities.<sup>b</sup> He adds that, for these reasons, Iranian political activists in exile are exposed to a real risk of arrest and torture in the event of being forcibly returned to their country of origin. According to the complainant, a detailed report of the Swiss Refugee Council confirms that Iranian citizens living in Switzerland who hold a position of importance within the Democratic Association for Refugees face such a risk.<sup>c</sup>

2.6 The complainant contends that he has participated in many events and meetings organized by the Iranian opposition movement in Switzerland and that the Swiss authorities have not disputed this fact. He also claims that numerous photographs of him at such events have been posted on Internet sites<sup>d</sup> and have appeared in newspapers. Furthermore, the complainant has allegedly participated regularly in radio broadcasts in Switzerland. He emphasizes that, as the leader of the cantonal branch of the Democratic Association for Refugees, he holds a position of importance within the Iranian opposition movement in Switzerland as defined in the recent jurisprudence of the Tribunal.<sup>e</sup> For these reasons, the complainant reiterates that it is highly likely that he has attracted the attention of the Iranian authorities and that his political activities would be perceived by them not only as having defamed the current regime — which is a crime in itself in the Islamic Republic of Iran — but also as a threat to national security.

2.7 Given the deplorable human rights situation in the Islamic Republic of Iran and the regime's notorious repression of any form of opposition to it in the country, the complainant claims his fears of suffering acts of torture in the event of a forcible return to the Islamic Republic of Iran are well founded. He adds that the Federal Administrative Tribunal has recently decided that a person who performs the duties of a cantonal

---

<sup>b</sup> In support of his claim, the complainant refers to a report entitled *Verfassungsschutzbericht* (issued by the German Federal Ministry of the Interior), 2007, p. 297.

<sup>c</sup> Michael Kirschner, "Iran: Dangers encourus par les activistes et membres des organisations politiques en exil de retour dans leur pays. Moyens d'accès à l'information des autorités iraniennes", Swiss Refugee Council, 4 April 2006.

<sup>d</sup> The complainant mentions, as an example, the website [www.k-d-panahandegan.org](http://www.k-d-panahandegan.org).

<sup>e</sup> The complainant invokes decision No. D-6849/2006 of the Federal Administrative Tribunal of 26 August 2008.

representative of the Democratic Association for Refugees runs a real risk of persecution in the event of returning to the Islamic Republic of Iran,<sup>f</sup> and he argues that the same reasoning should therefore be applied to his case.

2.8 The complainant adds that he belongs to the Iranian Kurdish minority, which considerably increases the risk of persecution in the event of forcible return. He asserts that political actions taken against the ruling regime by members of ethnic minorities are even more likely to attract the attention of the authorities and result in even more severe penalties than those committed by Iranians of Persian descent.

### **The complaint**

3.1 The complainant claims that his expulsion from Switzerland to the Islamic Republic of Iran would be in violation of article 3 of the Convention, as there are substantial grounds for believing that he would be in danger of being subjected to torture if sent back.

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

4.1 On 14 April 2009, the State party presented its observations on the admissibility and merits of the complaint. It argues that the complainant has failed to establish that he faces a personal, real and foreseeable risk of torture if sent back to the Islamic Republic of Iran. While noting the worrisome human rights situation in the Islamic Republic of Iran and referring to general comment No. 1 (1997) of the Committee,<sup>g</sup> the State party recalls that this situation is not in itself a sufficient basis for concluding that the complainant would be in danger of being subjected to torture if returned. It contends that the complainant has failed to demonstrate that he faces a foreseeable, personal and real risk of torture if returned to the Islamic Republic of Iran.

4.2 According to the State party, the complainant declared, during the domestic judicial proceedings, that he had been arrested and detained for two weeks in 2002 for having taken part in a demonstration in support of the separatist leader Öcalan. However, the complainant did not claim to have been tortured during his detention. The State party adds that the complainant's allegations concerning the reasons that precipitated his departure from the Islamic Republic of Iran had not been considered plausible by the Federal Office for Migration, which announced its decisions on 26 November 2007 and 25 March 2008. The State party notes, in addition, that the complainant has not exhausted all domestic remedies with regard to his first asylum application, since the appeal that he had lodged against the decision of the Federal Office for Migration of 25 March 2008 was rejected on 6 May 2008 by the Federal Administrative Tribunal because it had been submitted after the legal deadline. The decision of the Federal Office for Migration therefore came into force. The State party notes, however, that the complainant's communication before the Committee focuses on his second asylum application, which is based on his political activities after he left the Islamic Republic of Iran, and that he has exhausted all remedies for that application.

4.3 With regard to the complainant's political activities in the Islamic Republic of Iran as outlined during his first asylum procedure, the State party notes that the Federal Office for Migration substantiated, in detail, the reasons why it did not consider them to be credible. It also reiterates that the complainant has not exhausted all the domestic remedies

<sup>f</sup> Ibid., pp. 12–13, para. 4.2.2.2.

<sup>g</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.* The State party also refers to communications No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, and No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998.

with regard to that procedure. In the State party's view, the same is true of the claims made by the complainant during his second asylum procedure, according to which he had attracted the attention of the Iranian authorities as a result of his political activities as the representative of the Democratic Association for Refugees for the Canton of Schaffhausen. These claims have been examined in detail by different national judicial authorities, who have concluded that the complainant would not be in danger if returned to the Islamic Republic of Iran. In many decisions concerning the removal of unsuccessful asylum-seekers to the Islamic Republic of Iran, the Federal Administrative Tribunal has found that the Iranian secret service may carry out surveillance of political activities in opposition to the regime undertaken abroad, but only when those involved in such activities fit a certain profile, take action that falls outside the usual scope of the mass opposition movement, and hold office or carry out activities of such a nature that they represent a serious and real threat to the Government.<sup>h</sup> The State party adds, referring to various sources of information, that those suspected of being involved in a serious crime or of acting on behalf of specific political groups also risk being arrested.

4.4 The State party asserts that the report of the Swiss Refugee Council cited by the claimant does not state that people who hold a particular position within the Democratic Association for Refugees would be exposed to a specific risk if they were to return. According to the same report, even repeated support for actions in opposition to the current Iranian regime would not lead to an increased risk of reprisals. The report does note, however, that such actions might be taken if a person were to commit acts of violence or hold a particularly senior post in certain opposition groups.<sup>i</sup> The State party suggests that the Democratic Association for Refugees is not one of the main opposition groups in exile referred to in the report of the Swiss Refugee Council.<sup>j</sup> It adds that the Democratic Association for Refugees has been described by some members of the press as an organization whose primary purpose is to provide its members with evidence of political activity so that they can remain in Switzerland.<sup>k</sup> Therefore, if the Iranian authorities are monitoring the activities of this association, they are also likely to be aware of these reservations and to be taking them into account.

4.5 The State party notes that the complainant's second application was based entirely on his political activities from 25 March 2008 to 14 July 2008 (date of the last decision of the Federal Administrative Tribunal). It was therefore rejected on the basis of his alleged activities, namely, his role as a representative of the Democratic Association for Refugees, his participation in three demonstrations and his recruitment by a local radio station. The State party observes that his role as a representative of the Democratic Association for Refugees had already been considered during the first asylum procedure and that there have been no new developments in this connection since then. It reaffirms that it cannot be inferred from the information put forward by the complainant regarding his various activities that he would be perceived as a leader of an opposition organization representing a potential threat to the Iranian regime and that he would, therefore, be at risk of being tortured if returned.

4.6 When considering the complainant's first asylum application, the Federal Office for Migration<sup>l</sup> had carefully examined a newspaper article which he had written and had

---

<sup>h</sup> The State party refers to decision No. D-6849/2006 of the Federal Administrative Tribunal of 26 August 2008, para. 4.2.2.1.

<sup>i</sup> The State party refers to the aforementioned report of the Swiss Refugee Council; see footnote c above.

<sup>j</sup> The State party is referring to the report of the Swiss Refugee Council cited above.

<sup>k</sup> The State party refers here to an article in the weekly *Die Weltwoche* of 25 April 2007.

<sup>l</sup> Decision of 26 November 2007.

concluded that, although it seemed to use a call for the overthrow of the Mullahs' regime as a catchphrase, it did not give the impression that the complainant held clearly delineated political beliefs or that he represented a potential danger to the regime in the Islamic Republic of Iran. The article rather seemed to have been intended to serve as grounds for asylum following the complainant's flight from the Islamic Republic of Iran, and the Iranian authorities would be able to see that.

4.7 Regarding the complainant's participation in radio broadcasts with political content, the State party notes that the Federal Office for Migration concluded that the complainant had not demonstrated that the Iranian authorities had been aware of this or that they would consider him as dangerous on this basis. Finally, the State party maintains that the complainant has not provided any evidence to demonstrate that the fact that he belongs to the Kurdish minority would increase his risk of being persecuted if returned.

#### **Complainant's comments on the State party's submission**

5.1 On 16 June 2009, the complainant contended that the fact that the Democratic Association for Refugees is not included in the list of the most prominent Iranian opposition organizations is explained by the fact that this list is only indicative in nature. He further states that, when the report of the Swiss Refugee Council was published, the Democratic Association for Refugees was still a young association that was not well known enough to be classed with other, older opposition movements. However, several court decisions of the State party have recognized the existence of the Democratic Association for Refugees. The complainant objects to the fact that the State party is echoing newspaper articles that describe the political activism of the Democratic Association for Refugees as nothing more than an alibi for asylum-seekers and asserts that such a point of view is marginal and inaccurate.

5.2 With regard to the decision of the Federal Administrative Tribunal of 16 August 2008 to grant asylum to a member of the Democratic Association for Refugees, the complainant maintains that the person concerned was, like him, a cantonal representative of the Democratic Association for Refugees, and that this person's name also appeared, along with his contact details, in *Kanoun* magazine. According to the complainant, the Federal Administrative Tribunal has therefore explicitly recognized that holding a position as a representative of the Democratic Association for Refugees at the cantonal level and having one's name and contact details published should be considered as an indication that such a person would be perceived to be a danger to the regime in Tehran. He adds that, in a more recent decision, the Tribunal also granted refugee status to an asylum-seeker who was a member of the Democratic Association for Refugees and whose political profile was lower than that of the complainant, as he was simply responsible for security during demonstrations.<sup>m</sup> The complainant adds that the Federal Office for Migration has accorded refugee status to several individuals who were cantonal representatives for the Democratic Association for Refugees.<sup>n</sup>

5.3 With regard to the newspaper article which he had written and which had been examined by the Federal Office for Migration during his first asylum application procedure, the complainant emphasizes that it is similar to other articles published in *Kanoun* magazine. The members of the Democratic Association for Refugees who have been recognized as political refugees by the State party on the basis of such articles did not employ a notably different style or make more strongly supported political remarks.

---

<sup>m</sup> The complainant refers to decision No. D-4581/2006 of 19 February 2009, para. 4.3.

<sup>n</sup> The complainant refers to decision Nos. N 440 341 of July 2006, N 409 182 of November 2006, N 397 027 of February 2007, and N 404 499 of February 2009 of the Federal Office for Migration.

Furthermore, the complainant has continued to publish other articles in *Kanoun* and to participate in demonstrations against the Iranian regime and in radio broadcasts.

#### **Additional observations by the State party**

6.1 On 24 August 2009, the State party responded to the complainant's claims that some members of the Democratic Association for Refugees had been granted asylum in Switzerland further to a decision of the Federal Office for Migration or the Federal Administrative Tribunal. It reiterates that these bodies consider each individual case on the basis of its specific elements. It adds that the Federal Administrative Tribunal has issued 40 decisions since the beginning of 2007 in cases in which applicants have adduced political activities as members of the Democratic Association for Refugees. Asylum has only been granted in a certain number of cases after due consideration of all of the circumstances involved.<sup>o</sup> Even if they have undertaken similar activities within the same organization, two individuals may be exposed to a different level of risk if returned to the Islamic Republic of Iran because other factors influence how much attention the Iranian authorities focus on them. The State party reiterates that the Iranian authorities are able to distinguish between political activities deriving from a serious, personal conviction, which thus represent a significant subversive potential in their eyes, and activities aimed primarily at providing those involved with a residence permit in a third country.

6.2 The State party adds that the Democratic Association for Refugees systematically seeks to provide its members with personal grounds for asylum by setting up stalls on an almost weekly basis at which the Association photographs its members carrying pamphlets in ways that ensure that they are recognizable and publishes the photographs on its website. After the Federal Administrative Tribunal ruled that simply being a member of the association did not in itself constitute personal grounds for asylum after having fled from another country, the Democratic Association for Refugees began to establish different roles for its members, such as logistics or security manager, etc. Since then, the majority of cases involving its members have had to do with persons who play a "leading role" within the Association. In conclusion, the State party reiterates that the risk of being subjected to torture must be assessed on the basis of the particular circumstances of each case and that the complainant in this case has not established that he would face such a danger if returned to the Islamic Republic of Iran.

#### **Additional observations by the complainant**

7.1 On 11 June 2010, the complainant referred to a decision by the European Court of Human Rights,<sup>p</sup> which held that the forcible return to the Islamic Republic of Iran of a complainant who had been arrested and tortured in that country in the past constituted a violation of article 3 of the European Convention on Human Rights, given, inter alia, the general situation in the Islamic Republic of Iran, particularly after the elections held in the country in June 2009. The complainant notes in particular that in this decision, the Court accepted that the Iranian authorities frequently arrest and torture individuals participating in peaceful demonstrations in the country, not only when they hold a leading political role, but also when they are simply opponents of the regime. The Court also noted that the situation was particularly risky for complainants who had left the country illegally.

---

<sup>o</sup> The State party refers to the decisions of the Federal Administrative Tribunal of 2 July 2007 concerning the logistics manager of the Democratic Association for Refugees, of 21 January 2008 and 18 September 2008 concerning two other members of the Association, of 16 January 2009 concerning a security manager of the Association, and of 19 March 2009 concerning a cantonal manager of the Association.

<sup>p</sup> *R.C. v. Sweden*, application No. 41827/07 of 9 March 2010.



7.2 In the same submission, the complainant claims that he left the Islamic Republic of Iran illegally for political reasons. He reiterates that since his arrival in Switzerland in 2005, he has been active in exile opposition movements against the regime. Not only has he participated in many demonstrations, but he also runs a radio show called “The Voice of the Resistance”, in addition to being the regional leader of the Democratic Association for Refugees. Given that the Iranian authorities closely monitor all activities of political dissent, which according to them includes participation in peaceful demonstrations, there are substantial grounds for believing that the complainant would be detained and questioned if he were deported to the Islamic Republic of Iran. The fact that he would not be able to prove he had left the country legally would make his situation even worse.

7.3 On 28 February 2011, the complainant informed the Committee that he has continued to host a radio broadcast on a local station called *Lora* for the past several months. In a weekly broadcast called “The Voice of the Resistance” on that radio station, he has been able to read poems he has written reflecting his opinions on the current situation in the Islamic Republic of Iran.<sup>9</sup> He adds that he remains an active member of the Democratic Association for Refugees and is still the representative of that association for the Canton of Schaffhausen. Moreover, he continues to participate in demonstrations and other public events organized by the Iranian opposition in exile throughout Switzerland.

7.4 In the same submission, the complainant also notes that the human rights situation in the Islamic Republic of Iran has seriously deteriorated over the past few months. He claims that at least 66 persons, including many political activists, were executed in the month of January 2011 alone. The complainant encloses, inter alia, a press release from the International Federation for Human Rights dated 6 January 2011, reporting some 70 executions in the Islamic Republic of Iran in one month, including an execution by public hanging. At least 18 of the 70 persons mentioned were said to have been executed for political reasons, facing the vague charges of moharebeh (“fighting God”) and “corruption on earth”. He also mentions a European Parliament resolution dated 18 January 2011 expressing concern about, inter alia, the persecution of certain religious and ethnic groups, and about the recent allegations of extrajudicial executions carried out in the Islamic Republic of Iran since June 2009. The complainant further claims that the Iranian Government recently established a “cyber police” unit responsible for tracking and gauging the extent of “espionage and riots” on opposition social networks on the Internet.<sup>f</sup> The complainant also notes that as an ethnic Kurd belonging to the Sunni denomination, his risk of persecution if he was returned would be threefold: as a political activist, as a member of an ethnic minority, and as a member of a religious minority.<sup>g</sup> According to the complainant, several Kurds have been executed in the past year, or are currently on death row for supporting the armed Kurdish resistance.<sup>h</sup> In conclusion, the complainant reiterates that, given the highly alarming human rights situation in the Islamic Republic of Iran, a situation that has seriously deteriorated over the past few months, particularly for human rights

<sup>9</sup> The complainant encloses two of his poems.

<sup>f</sup> The complainant encloses an article from the *Boston Globe* dated 24 January 2011 reporting on the establishment of such a police unit, as announced by Iranian State television.

<sup>g</sup> He refers to a report by Minority Rights Group International entitled “State of the World’s Minorities and Indigenous Peoples 2010 – Iran” of 1 July 2010, which points out that non-Shiite Muslims face social discrimination and that many Sunni mosques have been destroyed in various parts of the country. The report also emphasizes that Sunnis are politically underrepresented in the provinces where they make up the majority of the population, such as Kurdistan and Khuzestan.

<sup>h</sup> The complainant refers to a report by Human Rights Watch entitled “Iran: deepening crisis on rights” from 26 January 2011, which claims that there were many irregularities in the trials of these individuals, such as credible allegations of torture, forced confessions, and violations of the right to have access to a lawyer.

activists and political opponents, and given that he himself left the country illegally and is a member of a double ethnic and religious minority and an active political opposition figure on the Internet and radio, he would undoubtedly be arrested if returned. He adds that there is an extremely high risk that he would be subjected to torture or other inhuman or degrading acts, including the death penalty following an unfair trial.<sup>u</sup>

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

#### *Consideration of admissibility*

8.1 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.

8.2 The State party asserts that the complainant had not exhausted domestic remedies with regard to his first asylum application, since his appeal before the Federal Administrative Tribunal against the decision of the Federal Office for Migration of 25 March 2008 was rejected on 6 May 2008 because it was submitted after the legal deadline. Consequently, the aforementioned decision of the Federal Office for Migration came into force. The Committee notes, however, as the State party itself has pointed out, that the complainant's communication before the Committee is based on his second asylum application, which he initiated on 3 June 2008 and which was rejected on 18 June 2008 by the Federal Office for Migration. On 14 July 2008, the Federal Administrative Tribunal rejected the appeal lodged by the complainant against that decision. The complainant has therefore exhausted all domestic remedies in respect of his second asylum application. Accordingly, the Committee finds that the complaint is admissible and proceeds to its consideration on the merits.

#### *Consideration of the merits*

9.1 The Committee examined the complaint, taking due account of all the information provided to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

9.2 The issue before the Committee is whether or not the complainant's removal to the Islamic Republic of Iran would constitute a violation of 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 would be in danger of being subjected to torture.

9.3 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to the Islamic Republic of Iran, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned.

9.4 The Committee recalls its general comment on the implementation of article 3 of the Convention, that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being highly probable, the Committee recalls that the burden of proof normally falls to the complainant,

---

<sup>u</sup> The complainant refers to the decision of the European Court of Human Rights in the case of *Öcalan v. Turkey*, application No. 46221/99 of 12 March 2003.

who must present an arguable case establishing that he runs a “foreseeable, real and personal” risk.<sup>v</sup> Furthermore, in its general comment the Committee states that it must also determine whether the complainant has engaged in political activity within or outside the State concerned which would appear to make him particularly vulnerable to the risk of being placed in danger of torture.<sup>w</sup> The Committee also recalls that, while it gives considerable weight to the findings of fact of the State party’s bodies, it is entitled freely to assess the facts of each case, taking into account the circumstances.

9.5 The Committee notes first of all, that the actual human rights situation in the Islamic Republic of Iran is extremely worrisome, particularly after the elections held in the country in June 2009. The Committee has seen many reports describing, in particular, the repression and arbitrary detention of many reformers, students, journalists and human rights defenders, some of whom have been sentenced to death and executed.<sup>x</sup> The State party itself has recognized that the human rights situation in the Islamic Republic of Iran is worrisome on many levels.

9.6 The Committee also recalls that although the complainant did not mention the fact before the Committee, it appears that he, a member of the Kurdish minority, was detained in the Islamic Republic of Iran for two weeks in March 2002 for participating in a demonstration in support of the separatist leader Öcalan. Since his arrival in Switzerland, he has been active within the Democratic Association for Refugees, for which he is the cantonal representative for the canton of Schaffhausen. The Committee notes that the complainant has participated in several demonstrations organized by the Democratic Association for Refugees and in radio broadcasts where he has expressed his political opinions against the Iranian regime. The State party has not contested these activities. The Committee also notes that the complainant has written several articles published in *Kanoun* magazine, in which his name and telephone number were published. Under these circumstances, the Committee considers that the complainant’s name could have been identified by the Iranian authorities. The Committee also takes note of the decision of the Federal Administrative Tribunal cited by the complainant, in which it granted asylum to a member of the Democratic Association for Refugees who held, like him, a position as a cantonal representative for the Association.<sup>y</sup>

9.7 Consequently, and in the light of the general human rights situation in the Islamic Republic of Iran that particularly affects human rights defenders and members of the

<sup>v</sup> See general comment No. 1 of the Committee, footnote g above, and communication No. 203/2002, *A.R. v. The Netherlands*, decision adopted on 14 November 2003, para. 7.3.

<sup>w</sup> See general comment No. 1, para. 8 (e).

<sup>x</sup> For example, on 7 July 2009, six human rights experts of the Human Rights Council (working in the areas of arbitrary detention; extrajudicial, summary or arbitrary executions; right to freedom of opinion and expression; torture and other cruel, inhuman or degrading treatment or punishment; situation of human rights defenders; and enforced or involuntary disappearances) expressed their concern regarding the protests linked to the Iranian presidential elections of 2009, following which at least 20 people were killed and hundreds of others seriously injured in clashes with security forces, who allegedly used live ammunition and rubber bullets. The same experts have also expressed their concern about reports of arrests and detention without charge and ill-treatment of detainees. See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8383&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8383&LangID=E); see also the documents prepared by the Office of the United Nations High Commissioner for Human Rights for the universal periodic review in respect of the Islamic Republic of Iran: A/HRC/WG.6/7/IRN/2, e.g. paras. 28, 31 and 56; and A/HRC/WG.6/7/IRN/3 and Corr.1, paras. 28–29. See also the statement made by the High Commissioner for Human Rights on 2 February 2011 on the execution of at least 66 persons in the month of January 2011, including at least 3 political prisoners, [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10698&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10698&LangID=E).

<sup>y</sup> Decision No. D-6849/2006 of the Federal Administrative Tribunal of 26 August 2008.

opposition seeking to exercise their right to freedom of expression, and in view of the complainant's political opposition activities in Switzerland, which could suggest that he has attracted the attention of the Iranian authorities, the Committee considers that there are substantial grounds for believing that the complainant risks being subjected to torture if returned to the Islamic Republic of Iran.

10. 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 deportation of the complainant to the Islamic Republic of Iran would amount to a breach of article 3 of the Convention.

11. The Committee urges the State party, in accordance with rule 118, paragraph 5, of its rules of procedure (CAT/C/3/Rev.5), 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. 369/2008: *E.C.B. v. Switzerland*

*Submitted by:* E.C.B.  
*Alleged victim:* The complainant  
*State party:* Switzerland  
*Date of complaint:* 14 December 2008 (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 26 May 2011,*

*Having concluded* its consideration of complaint No. 369/2008, submitted by E.C.B. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all the 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 against Torture**

1.1 The complainant is E.C.B. of the Congo, born on 10 January 1977. He claims that his return to the Congo would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He was not represented by counsel at the time of submission of the communication. On 5 December 2009, the complainant designated Alfred Ngoyi wa Mwanza as his representative.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 30 December 2008.

1.3 On 21 January 2009, based on new information obtained by the complainant, the Rapporteur on new complaints and interim measures requested the State party not to deport the complainant to the Congo or to Côte d'Ivoire while his complaint was being considered by the Committee. He indicated that this request could be reviewed in the light of information and comments received from the State party. On 23 January 2009, the State party informed the Committee that no steps to deport the complainant would be taken while his communication was being considered by the Committee.

### **The facts as submitted by the complainant**

2.1 The complainant is from Nkayi, a town in the south of the Congo. He is an activist and an active member of the Pan-African Union for Social Democracy (UPADS) and has always played an important role in the establishment of democracy in his country of origin. He was president of the UPADS youth movement.

2.2 From 1997–1998, during the clash between Government troops and the militia of the future President Sassou-Nguesso, the complainant became a target of the Sassou-Nguesso militia because of his political opinions and because of the role he played against the attempt by Sassou-Nguesso's forces to take power. On 15 January 1999, the complainant was able to take refuge in Côte d'Ivoire, from where he continued his political activities. He

joined the Cercle d'études pour le retour de la démocratie au Congo (Discussion group for a return to democracy in the Congo) (CERDEC). The complainant's elder brother, G.D.B., collaborates closely with the founder of CERDEC and lives in exile in the Russian Federation.

2.3 Following a recommendation by leading members of CERDEC, the complainant decided not to disclose the real reasons why he had fled in his asylum application to Côte d'Ivoire, reckoning that Sassou-Nguesso was on good terms with the president of Côte d'Ivoire and would thus be able to pursue CERDEC activists.

2.4 During his stay in Côte d'Ivoire, the complainant established an association known as Jeunesse pour la paix, l'entreprise et l'unité (Youth for peace, enterprise and unity) (JE-PEU). The association enjoyed some success and a number of young people joined, mainly supporters of Alassane Ouattara from the north. Supporters of Laurent Gbagbo thought the association likely to encourage the emergence of nationals from the north and, consequently, the complainant was threatened by some Young Patriots. Fearing for his life and safety, he left Côte d'Ivoire to join his brother in the Russian Federation. In view of the racism and attacks to which he was subjected there, the complainant left the Russian Federation.

2.5 On 26 December 2003, the complainant applied for asylum in Switzerland. On 25 August 2004, the Federal Office for Migration rejected his asylum application. On 24 November 2008, the Federal Administrative Tribunal rejected his appeal and set 5 January 2009 as the deadline for his departure from Switzerland.

2.6 During his stay in Switzerland, the complainant continued to run his JE-PEU association, which is considered close to CERDEC.

2.7 On 10 January 2009, the complainant provided new evidence, including an attestation from the president of CERDEC and some of his elder brother's identity documents.

### **The complaint**

3.1 The complainant claims that although an amnesty has been signed allowing all opponents to return to the Congo, scores are settled against people from the south who are considered to be real opponents of the current regime. He also contends that his brother G.D.B.'s activities, which are very hostile to the Sassou-Nguesso regime, would put him at substantial and serious risk. Several persons close to his family have been persecuted by the current regime for their ties with his brother and have been subjected to torture and other cruel and humiliating punishment.

3.2 He also contends that as a member of an opposition party he risks being interrogated, pressured or subjected to other measures to make him disclose the true nature of his activities abroad. Moreover, the fact that he established and directed the pro-democracy association JE-PEU after he fled would place him at risk, in particular as both his association and his party are opposed to the current ideologies of the ruling power in the Congo. In support, the complainant cites the case of G.T.M., who was arrested in December 2008 for being an active member of CERDEC, contending that this is evidence that he would be subjected to torture if he was returned to the Congo.

3.3 With regard to a return to Côte d'Ivoire, his most recent country of residence, the complainant contends that the Young Patriots considered him to be a supporter of Mr. Ouattara; given that the rule of law did not prevail, he would be in real danger without being assured of any effective protection. Moreover, in view of the cooperation between African countries, the complainant claims that he runs the risk of being handed over to the

Congolese authorities, principally for having concealed from the Ivorian authorities the real reasons why he fled the Congo in 1999.

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

4.1 On 30 June 2009, the State party presented its observations on the admissibility and merits of the complaint. The State party maintains that in his communication of 14 December 2008, the complainant simply reiterates the reasons that he cited to the Swiss authorities and refers to the evidence produced in support of his asylum application. The State party contends that the additional documents submitted to the Committee by the complainant on 10 January 2009 contain no pertinent evidence or argument that would call into question the Federal Administrative Tribunal's judgement of 24 November 2008.

4.2 The State party recalls the Committee's case law and its general comment No. 1 (1997),<sup>a</sup> which provide that the complainant must establish that he would be in personal, real and serious danger of being subjected to torture if deported to his country of origin. With regard to evidence of systematic, flagrant or gross human rights violations in the State concerned, the State party refers to the Federal Administrative Tribunal's judgement of 24 November 2008 which held that after the civil wars had ended and a peace agreement had been signed between the Government of Sassou-Nguesso and the opposition militias, the situation in the country has calmed down considerably and a generalized state of civil war no longer prevails. Furthermore, the complainant is not from Pool, which is the most unstable region in the country, but from Nkayi. The State party also underscores that the complainant has at no time claimed to have been tortured or ill-treated in the past.

4.3 With regard to the complainant's alleged political activities in the Congo, the State party maintains that the Swiss authorities found that the complainant's statement lacked substance and that he had made a number of contradictory and inconsistent statements. At his first hearing in December 2003, the complainant claimed to have been the coordinator of the UPADS youth movement in Nkayi, whereas at his hearing on 10 February 2004 maintained that he had been president of the UPADS youth movement. Moreover, the complainant claimed to have left Nkayi in November 1998 because of the attacks by Sassou-Nguesso's militias during that month, whereas the attacks had in fact begun only in December 1998.<sup>b</sup> Furthermore, the claim dated 20 January 1996 that the Secretary-General of UPADS was an activist does not indicate when the complainant joined the party or that he was president or coordinator of a section. In addition, the State party emphasizes that the complainant did not provide any details of his alleged political activities or the dangers that they entailed. Moreover, the Federal Administrative Tribunal has found that members of UPADS, one of the largest legal opposition parties in the Congo, are not at present subject to reprisals.<sup>c</sup> After the peace agreement, the National Assembly passed an amnesty law in August 2003 for the militias that had clashed with Sassou-Nguesso's government troops. In August 2008, UPADS held a party meeting in Brazzaville without any report of trouble or

---

<sup>a</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX.

<sup>b</sup> United States Committee for Refugees and Immigrants, *U.S. Committee for Refugees World Refugee Survey 1999 – Congo-Brazzaville*, 1 January 1999; Amnesty International, *Republic of Congo: An old generation of leaders in new carnage*, 25 March 1999.

<sup>c</sup> *Amnesty International Report 2008, Congo, (Republic of)*; Human Rights Watch, *Congo (Brazzaville)*; United States Department of State, *2007 Country Reports on Human Rights Practices – Congo, Republic of the*, 11 March 2008.

reprisals. Consequently, the State party maintains that the complainant has no objective grounds to expect any form of persecution because of his alleged membership of UPADS.<sup>d</sup>

4.4 With regard to the complainant's claim that he worked for the CERDEC platform after he fled his home town, the State party emphasizes that it is difficult to imagine that the complainant would have immediately been able to work for an organization which, according to him, had just been established in Paris in December 1998. Moreover, the complainant spoke only in vague terms about his activities for CERDEC and mentioned only at the second hearing that his activities for CERDEC could place him in danger in the Congo. In his additional submission of 10 January 2009 to the Committee, the complainant says that a high-ranking member of CERDEC was arrested in December 2008. However, as he has not established his involvement or reputation as a political opponent, he cannot infer any personal risk from this fact. With regard to the identity documents of the complainant's alleged brother, G.D.B., the State party maintains that the family name of the alleged brother, a political opponent, is different from the complainant's family name and does not match that of the president of CERDEC Russia, G.D.B. The alleged brother's handwritten attestation is not sufficient to establish a family relationship.

4.5 With regard to the allegations of persecution as a result of his activities for JE-PEU, the association that the complainant claims to have established in Côte d'Ivoire in 2000, the State party maintains that the signature on the memorandum of association is different from the complainant's signature on the records of the hearings and that his name does not appear on the receipt issued by the Ministry of Interior. Moreover, the complainant's account of the activities that he organized for CERDEC and the resultant threats are vague and evidently lack substance. Furthermore, the complainant claims to have been threatened by groups of Young Patriots, not by agents of the State. The State party therefore contends that it appears highly improbable that the complainant would be subjected to treatment which, in accordance with article 1, paragraph 1, of the Convention, could be ascribed to persons acting in an official capacity. In addition, according to investigations carried out by the Swiss embassy in Abidjan, the complainant never mentioned his involvement in JE-PEU or difficulties with Young Patriots. The State party maintains that the complainant has not plausibly established that he was a member of UPADS or that he was engaged in activities for CERDEC or JE-PEU; apart from that, the activities in which he claims to have engaged for them could not currently sustain a well-founded fear of persecution in the Congo or the Côte d'Ivoire.

4.6 The fact that UNHCR in Côte d'Ivoire recognized the complainant as a refugee is not evidence that he was individually persecuted in the Congo. According to the Swiss embassy in Abidjan, which the complainant does not challenge, he was recognized as a refugee because of the general situation in the Congo.

4.7 The State party underscores that the complainant has not substantiated his claim to be still engaged in political activities for his association, JE-PEU, in Switzerland, and there is no indication that such activities have been brought to the attention of the Congolese authorities or that they could lead to persecution by the authorities. The State party therefore submits that, all considered, nothing would indicate that there are substantial grounds to fear that the complainant would be at real and personal risk of torture in the event of his return to the Congo.

---

<sup>d</sup> See European Court of Human Rights decision of 28 June 2008 on the inadmissibility of application No. 25087/06, *M. v. United Kingdom*, in which the Court finds that the current situation in the Congo would not give a former employee and supporter of former President Lissouba cause to fear inhumane treatment if he were returned there.



### **Complainant's comments on the State party's submission**

5.1 On 21 August 2009, the complainant made his comments on the State party's observations. He rejects the State party's observation that the Congo is not in a generalized situation of violence and war and asserts that there are mass human rights violations. He emphasizes that the amnesty agreements of 2003 concerned only former opponents of the current regime who had changed position; the UPADS members who had been able to meet unhindered and participate in the elections were corrupt and did not belong to the real UPADS, which advocated democracy and justice. To illustrate the acts of torture and ill-treatment against journalists, human rights defenders and certain members of political parties in exile and those close to them, he cites the example of the journalist B.O. and the recent statement by the president of CERDEC decrying the re-election of Sassou-Nguesso and asserting that Sassou-Nguesso follows Stalinist and dictatorial practices.

5.2 On the subject of personal, substantial and serious risk, he repeats that his efforts to establish the rule of law and democracy are known to the Congolese authorities and have made him an enemy of the Government. He emphasizes that the risks of torture are serious because of his political activity before and after his arrival in Switzerland and because of his relationship to the president of CERDEC Russia-CIS branch, G.D.B.<sup>e</sup> The complainant confirms that he did not claim to have been tortured prior to his departure but fears persecution upon return.

5.3 On 10 April 2009, the complainant established CERDEC in Switzerland. Moreover, he continues his activities through JE-PEU, which has legal personality in Switzerland. He maintains that his political activities are known to the Congolese authorities, represented in Switzerland by the embassy and by secret agents among the Congolese population in Switzerland.

5.4 With regard to the factual contradictions mentioned by the State party, the complainant clarifies that the words president or coordinator of an association are often used interchangeably, and that that does not detract from the credibility of his political activities in the Congo. With regard to the statement about his political activism, he emphasizes that it could do no more than prove his membership and commitment as a member of the political party.

5.5 With regard to the European Court of Human Rights decision of 28 June 2008 (see para. 4.3), the complainant states that the person concerned was a former employee and ardent supporter of the former President Lissouba, whereas the complainant had been politically active within UPADS and, abroad, in CERDEC and JE-PEU.

5.6 Moreover, the complainant contends that his return to Côte d'Ivoire would place him in danger in view of his continuing activities in JE-PEU in Switzerland.

### **Additional comments by the complainant**

6. On 5 December 2009, the complainant, through his new counsel Alfred Ngoyi wa Mwanza,<sup>f</sup> asked the Committee to suspend consideration of his communication in order to allow the Zurich cantonal authorities to continue with proceedings for granting a humanitarian permit.

<sup>e</sup> A letter from his brother explains that they are born of the same father and mother and that brothers are not required to have the same name. He offers to undergo a blood test in order to establish that he is the complainant's brother.

<sup>f</sup> A power of attorney was attached to the letter of 5 December 2009.

**Additional observations by the State party**

7. On 6 January 2010, the State party observed that the competent authorities of the Canton of Zurich could not decide on applications for permits in hardship cases (humanitarian permits) while other proceedings were under way, before the Committee or elsewhere. It pointed out that the grant of a hardship permit is subject to the approval by the federal authorities and is governed by criteria entirely distinct from the conditions stipulated in article 3 of the Convention.

**Further comments by the author**

8.1 In a letter dated 7 January 2010, after being notified of the State party's position, the complainant asked the Committee to cancel the suspension and to take a decision on his complaint.

8.2 On 13 June 2010, the complainant submitted a second confirmation from his elder brother, who is an active member of CERDEC. His brother underscores that the complainant would face persecution within the meaning of article 3 of the Convention given his former and current political activities as president of CERDEC Switzerland and the family relationship between them.

8.3 In a letter dated 25 August 2010, the complainant asked the Committee to consider his complaint at its next session. He explains that the cantonal authorities of Zurich were disposed to grant him a humanitarian permit as a hardship case, provided that his case before the Committee was settled. In addition, he emphasizes that his current status is precarious.

**Issues and proceedings before the Committee***Consideration of admissibility*

9. 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 addition, the Committee notes that all domestic remedies have been exhausted and that the State party has not challenged the admissibility of the communication. Accordingly, the Committee finds the communication admissible and proceeds to its consideration on the merits.

*Consideration of the merits*

10.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

10.2 The issue before the Committee is whether the removal of the complainant to the Congo or Côte d'Ivoire would violate the State party's obligation under article 3 of the Convention not to expel or return (*refouler*) 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.

10.3 In assessing the risk of torture, the Committee takes 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. The aim of such assessment, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would be returned. It follows that the

existence in a country 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 on his or her return to that country. Additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person may not be subjected to torture in his or her specific situation.

10.4 The Committee recalls its general comment No. 1 (1997) on implementation of article 3 of the Convention in the context of article 22, which states that the Committee must assess whether there are substantial grounds for believing that the complainant would be in danger of torture if returned to the country in question. The risk of torture need not be highly probable, but it must be personal and present. In this regard, the Committee has established in previous decisions that the risk of torture must be “foreseeable, real and personal”.<sup>g</sup>

10.5 As to the burden of proof, the Committee again recalls its general comment No. 1 and its case law, which provides that the burden is generally on the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. In its general comment, the Committee also emphasized that it would give considerable weight to findings of fact made by organs of the State party concerned but reserved the power to freely assess the facts based upon the full set of circumstances in every case.<sup>h</sup>

10.6 In assessing the risk of torture in the case under consideration, the Committee takes note of the complainant’s claim that he was president of the Pan-African Union for Social Democracy (UPADS) youth movement and that he was forced to leave the country because of his political opinion. It also notes that in Côte d’Ivoire, the complainant continued his political activities, joined the Cercle d’études pour le retour de la démocratie au Congo (Discussion group for a return to democracy in the Congo) (CERDEC) and created an association known as Jeunesse pour la paix, l’entreprise et l’unité (Youth for peace, enterprise and unity) (JE-PEU). The Committee notes the complainant’s assertion that his relationship to the president of CERDEC Russia-CIS, a prominent person known to be very hostile to the Sassou-Nguesso Government, would mean that he was likely to face persecution. Lastly, it notes that the complainant is said to have been targeted by the Young Patriots in Côte d’Ivoire as a supporter of Ouattara in the north, and that returning to Côte d’Ivoire would thus be likely to expose him to real danger without protection from the State.

10.7 The Committee further notes the State party’s argument that, apart from the identity documents of his alleged brother and an article reporting the arrest in December 2008 of a high-ranking member of CERDEC, the complainant has not submitted any new evidence to the Committee, and all other documents have been considered in depth by the domestic courts. The Committee notes that the State party believes that the peace agreements and the amnesty laws adopted by the Congo have given rise to a new situation that was not one of generalized civil war and, further, notes that the complainant does not come from Pool but from Nkayi. The Committee notes that the State party has pointed to some contradictions and inconsistencies in the complainant’s allegations about his political activity in UPADS and that, according to independent sources, members of UPADS, one of the largest

---

<sup>g</sup> Communications No. 203/2002, *A.R. v. the Netherlands*, decision adopted on 14 November 2003, para. 7.3; and No. 285/2006, *A.A. et al. v. Switzerland*, decision adopted on 10 November 2008, para. 7.6.

<sup>h</sup> See communication No. 195/2002, *Brada v. France*, decision adopted on 17 May 2005, para. 13.2.

opposition parties in the Congo, are not subject to reprisals. The Committee notes that the complainant's claims about his activities in CERDEC are very vague, and that the statement of his alleged brother and president of CERDEC Russia-CIS does not establish a family relationship. The State party has argued that the complainant was recognized as a refugee in Côte d'Ivoire because of the general situation in the Congo. The Committee notes the State party's argument that the complainant alleged to have been threatened by non-State agents in Côte d'Ivoire and, furthermore, had not credibly shown that he had been involved in activities for CERDEC or JE-PEU. In addition, according to the State party, the alleged activities do not give justifiable grounds for fearing persecution. Lastly, the Committee notes the State party's assertion that the complainant has not substantiated his political activities in Switzerland and that nothing indicates that such activities have been brought to the attention of the Congolese authorities.

10.8 The Committee notes the author's argument that, despite the peace agreements and the amnesty, there were mass human rights violations and the real UPADS, which promoted the values of democracy and justice, was still in danger. Furthermore, it notes that according to the complainant, his political activities in the Congo and in Switzerland and his relationship to G.D.B., the president of CERDEC Russia-CIS, are known to the Congolese authorities. Lastly, it notes the complainant's assertion that his activities in JE-PEU would place him in danger were he to return to Côte d'Ivoire.

10.9 Having taken into account the arguments submitted by the parties, the Committee finds that the complainant has not provided evidence of a real, present and foreseeable risk. The Committee points out that the complainant contends that his political activities in the Congo, in Côte d'Ivoire and in Switzerland, in addition to his relationship to the president of CERDEC Russia-CIS, would place him in danger of persecution, without however providing substantial evidence of his active role in a political party or his political activities that would justify his fear of persecution.

10.10 With regard to his fear of persecution in the event of his return to the Republic of the Congo, the Committee observes that the complainant submitted an attestation that he was an active member of UPADS that did not mention his role as president of the UPADS youth movement. It also notes that according to independent sources, UPADS members are not subject to reprisals in the Congo. The Committee observes that apart from a newspaper article concerning the arrest of the former Minister of Finance and member of CERDEC, the complainant has not sufficiently substantiated his allegation that the Congolese authorities persecuted and tortured all CERDEC members. Moreover, even if the complainant was in fact an active member of UPADS and of CERDEC, he has not clearly established that his activities are sufficiently important to arouse the interest of the authorities if he were returned to the Congo. Furthermore, and regardless of the credibility of his relationship to the president of CERDEC Russia-CIS, the Committee observes that the only evidence in the file comes from his alleged brother, who states that the complainant would face persecution if he were to return to the Congo. Although the complainant asserts that other members of his family have had problems because of their relationship to G.D.B., the Committee has no information about or evidence of these problems and no objective indication that the complainant's possible relationship to G.D.B. would place him at risk of torture.

10.11 As the State party does not specify the country to which the complainant would be returned, the Committee must also determine whether the complainant risks being subjected to torture if he is returned to Côte d'Ivoire. By way of substantiating his personal risk, the complainant asserts that as the founder of JE-PEU, he left Côte d'Ivoire fearing for his life and safety because of problems with the Young Patriots, supporters of Laurent Gbagbo. The Committee observes that the information obtained in Abidjan by the State party did not mention his membership of JE-PEU or difficulties encountered with the Young Patriots.

---

The Committee notes that, during its deliberations, Mr. Ouattara, whom the complainant supported, was elected President. It also observes that the complainant has not established a personal, present and serious risk of torture upon his return to Côte d'Ivoire and that his allegations are merely theories.

10.12 Lastly, the Committee observes that on 10 April 2009, the complainant established CERDEC in Switzerland and registered JE-PEU in the register of associations. Nevertheless, the complainant has not established that his activities in Switzerland were sufficiently important to arouse the interest of the Congolese or Ivorian authorities at present.

10.13 Taking into account all the information made available to it, the Committee considers that the complainant has failed to provide sufficient evidence to demonstrate that he would face a real and foreseeable risk of being subjected to torture if deported to the Congo or Côte d'Ivoire.

11. 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 the Congo or Côte d'Ivoire would not constitute a breach of article 3 of the Convention.

**Communication No. 373/2009: Aytulun and Güclü v. Sweden**

*Submitted by:* Munir Aytulun, and Lilav Güclü (represented by counsel, Ingerman Sahlstrom)

*Alleged victim:* The complainant

*State party:* Sweden

*Date of complaint:* 27 January 2009 (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 19 November 2010,*

*Having concluded* its consideration of complaint No. 373/2009, submitted to the Committee against Torture by Munir Aytulun and Lilav Güclü 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 against Torture**

1.1 The complainants are Munir Aytulun, born in 1965 and his daughter Lilav Güclü, born in 2007, both citizens of Turkey of Kurdish ethnicity. They are currently in Sweden, awaiting deportation to Turkey. Their deportation was initially scheduled for the end of February 2009. They claim that the first-named complainant's deportation to Turkey would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainants are represented by counsel, Ingemar Sahlstrom. The wife of the first-named complainant submitted a similar complaint to the Committee against Torture, registered as case No. 349/2008, *Güclü v. Sweden*.

1.2 Under rule 108, paragraph 1, of the Committee's rules of procedure, the Committee requested the State party, not to expel the complainants to Turkey while their complaint was under consideration by the Committee.

**The facts as presented by the complainant**

2.1 In 1991, the first-named complainant, a teacher, became a member of the Kurdish Workers' Party (PKK). Soon after, he was sent to join the fighting forces of the PKK base in Haftanin in Iraq. In 1995, he was trained for six months on the politics of the PKK at their headquarters in Damascus.

2.2 At the end of 1996, he was wounded and was treated in the field. He was only sent to a hospital in Urimia, the Islamic Republic of Iran, three months later. Since then, he continued to work as a PKK teacher. In 2000, he was sent to teach in the Syrian Arab Republic and in 2003, he was sent as a PKK teacher to Iraq, where he met his future wife, who was a PKK soldier. Since having a relationship with a fellow soldier was prohibited, he was arrested by the PKK for one month. He "deserted" the PKK on 16 October 2005 and

arrived in Sweden four days later. He claims that in 1991–1992 his photo was published in national newspapers in Turkey.

2.3 He submits that he is wanted by the military and the police, who searched for him at his parent's home. On several occasions, his siblings were forced to accompany the authorities while they searched for him in the mountains. He claims that the family's phone had been and remains tapped by the authorities. A letter from his lawyer confirms that he is wanted and will be prosecuted for crimes under articles 302 and 314 of Turkish criminal legislation. He claims that under this legislation he will be sentenced to 15 years' imprisonment and subjected to torture by the security forces. This was confirmed by the Diyabakir Human Rights Association.

2.4 On 18 January 2008, the Migration Board rejected the complainants' application. On 2 September 2008, the Migration Court issued a decision, dismissing the appeal and arguing that the first-named complainant did not hold any prominent position within the PKK and had not participated in any combat on its behalf. Two judges out of four disagreed with the decision of the court and considered that the complainant had a well-founded fear of being exposed to torture if he were to be deported to Turkey.

2.5 On 22 October 2008, the Migration Court of Appeal decided not to grant the complainants leave to appeal.

### **The complaint**

3.1 The complainants claim that the forcible return of Mr. Aytulun to Turkey would constitute a breach by Sweden of his rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3.2 Counsel refers to the British Home Office guidelines, which states that despite the policy of zero tolerance against torture, which has resulted in the elimination of the most severe forms of torture and abuse, there remain reports of incidents of torture during police custody.

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

4.1 On 18 September 2009, the State party reiterated the facts as submitted by the complainants and added that, according to the information given by the first-named complainant during the course of interviews with the migration authorities, he was allegedly first arrested in 1989 on suspicion of association with a teacher colleague who was a member of the Turkish Communist Party. He was interrogated over a period of four days. During the interrogations, he was beaten and subjected to electric shocks. He was also prosecuted for handing out political leaflets. During the criminal trial, he managed to demonstrate that the accusations against him were false and he was released.

4.2 Until 1994, he was also involved in teaching new PKK recruits. He was a leader of the PKK from 1994–1995. At some point, he was also active in criticizing the policies and strategies of the organization, arguing that armed conflict would not be a successful strategy in reaching the political goals of the PKK. As a result, he had been accused by the PKK leadership of questioning the guerrilla organization. One of his brothers had been imprisoned for seven months merely due to the first complainant's membership in the PKK.

4.3 The State party admits that the Migration Board did not question the first-named complainant's statement about his activities in the PKK and acknowledged the risk that he could be arrested and tried if returned to Turkey. However, it considered that there was no reason to believe that his sentence would be a more severe punishment than that of other persons in similar situations. It also referred to the Turkish government's policy of zero

tolerance of torture and legislation changes to that end, which increased the possibilities for persons who have been tortured to report the perpetrators.

4.4 The State party submits that in the appeal to the Migration Court the complainants added that the Migration Board had not taken into consideration that the first-named complainant would be prosecuted before a special criminal court in Turkey, namely the Heavy Penal Court and might be sentenced to life imprisonment. The claim was allegedly supported by a human rights non-governmental organization and the first-named complainant's lawyer in Turkey. The first-named complainant claimed that he would be subjected to torture and the second-named complainant would be forced to live in a public institution. He argues that the residence permits in similar cases had been granted. He was also threatened by the PKK during his time in Sweden.

4.5 On 2 September 2008, the Migration Court issued a decision, dismissing the appeal and arguing that the first-named complainant did not hold any prominent position within the PKK and had not participated in any combat on its behalf. His actions could not be regarded as terrorist acts and he had spent relatively little time in Turkey. It confirmed that membership in a terrorist organization can entail up to 15 years imprisonment, however refugee status can not be based solely on the circumstance that the person risks punishment under legislation of their native country. It stated that the persecution should be distinguished from punishment for breach of law, adding that the punishment is not disproportionate considering that he has been active in a terrorist organization. Considering whether the complainants could be regarded as persons otherwise in need of protection, it pointed to the reforms that had been undertaken to address the problem of torture although, it noted that, despite the efforts made, incidences of torture still occur. However, it was neither systematic nor supported by the Government of Turkey. It added that the first-named complainant had not plausibly shown that he was at risk of persecution by the PKK due to his defection from the organization, as to make him in need of protection. It added that if he were to risk persecution by the PKK, it was the judicial and law enforcement authorities in Turkey that should offer him protection. Only if such protection is unsatisfactory, would there be a need for protection in Sweden and there was no indication that the authorities could not offer adequate protection. The Court also stated that the complainants had a large family in Turkey and should both parents of the second-named complainant be convicted and sentenced to imprisonment, it would be the responsibility of the Turkish authorities to decide on her care.

4.6 The State party adds that before the migration authorities the first-named complainant claimed that he had never had a passport and submitted a copy of a transcript from the Turkish national register of citizens dated 2003 and an original transcript from the same register dated 2005. It submits that according to the transcript from 2003 he had been sought by the police at that time, while the latter original transcript contains no such information.

4.7 On the issue of admissibility, the State party submits that it is not aware of the present matter having been or being subject to any other investigation or settlement. It also acknowledges that all domestic remedies have been exhausted. It, however, contends that the complainants' claims fail to rise to the basic level of substantiation required for purposes of admissibility. It, therefore, submits that the communication is manifestly unfounded and thus should be inadmissible.

4.8 On the merits, the State party notes that Turkey has ratified several major human rights instruments and signed the Optional Protocol to the Convention against Torture. It states that Turkey cooperates with the Council of Europe's Committee for the Prevention of Torture and accepts the publication of the Committee's reports. It reiterates a policy of zero tolerance declared by the Government of Turkey and important legislative reforms to this end. It also notes that despite the efforts made the incidents of torture still occur, especially



during arrest and outside detention centres. It refers to reports by human rights organizations,<sup>a</sup> which reported a rise in cases of torture and abuse during 2007. It submits that the most severe methods of torture have been eliminated, but incidents of ill-treatment during police custody continue and courts rarely convict security officials accused of torture and tend to issue lighter sentences when they do convict. The judiciary is still not independent from the executive and the proceedings are lengthy. It refers to the 2007 report by the United States Department of State, which stated that those arrested for ordinary crimes were as likely to suffer torture and mistreatment in detention as those arrested for political offences, although they were less likely to report the abuse. It also cites the report issued by the Swedish Ministry of Foreign Affairs that members of the PKK should be considered a specific target group for individual civil servants who violate the prohibition on using torture. It, nevertheless, contends that concerns regarding the human rights situation in Turkey cannot lead to the conclusion that persons liable to be arrested on criminal charges ipso facto face a real risk of torture.

4.9 The State party submits that it must take into account the recent developments in the efforts made by the Government of Turkey to eradicate torture and submits that torture is not used systematically and the use that still occurs does not have the acquiescence of the State of Turkey. Thus, the State party contends that it might be legitimate to question whether reported incidents of torture could be imputed to the State of Turkey or whether they are rather viewed as criminal acts for which Turkey cannot be held responsible.

4.10 The State party submits that several provisions of the 2005 Aliens Act reflect the same principles as those laid down in article 3, paragraph 1, of the Convention. Thus, the Swedish authorities apply the same test when considering an application for asylum as the Committee. It notes that the national authorities conducting the interview are in a good position to assess the information submitted by the asylum-seeker and to evaluate the credibility of his or her claims. The Migration Board took the decision after two extensive interviews and had sufficient information taken together with the facts and documentation.

4.11 The State party adds that the migration authorities did not question the first-named complainant's involvement in the PKK, as well as his claim that he is wanted by the Turkish police and risks being arrested and put on trial. The State party concurs with the conclusions of the migration authorities and submits that the first-named complainant's involvement in the PKK should be regarded as having been at a low level, despite his claims that he had educated new PKK recruits and was a leader of a PKK base (until 1995). He had been in the PKK for a long time but had not participated in active combat for the PKK. Against this background, the State party questions whether he would be of much interest to the Turkish authorities.

4.12 The State party submits that it was aware of the fact that all individuals dealing with the PKK are criminally prosecuted and sentenced. It refers to a report by the Swedish Embassy in Ankara and submits that a founder of an illegal and armed organization or a person in a leading position in such an organization can be sentenced to 10–15 years' imprisonment. If the organization is classified as a terrorist organization, it results in a 50 per cent increase in the sentence under the Turkish Anti-Terrorist Law. Membership of an illegally-armed organization can result in 7.5–15 years' imprisonment (including the 50 per cent increase). Thus, the State party does not dispute the first-named complainant's claim

---

<sup>a</sup> The 2008 Report issued by the Swedish Ministry of Foreign Affairs, the United States State Department 2007 Country Report on Human Rights Practices in Turkey, The British Home Office Country of Origin Information Report on Turkey, 29 August 2008, The British Home Office Operational Guidance Note on Turkey, 2 October 2008 and Amnesty International 2008 Annual Report and the Human Rights Watch World Report 2008.

that he runs the risk of being arrested and tried on his return to Turkey. It, however, submits that no reason has emerged for believing that he would be sentenced to more severe punishment than other persons in the same situation. It reiterates the arguments by the Migration authorities and submits that the punishment that he risks is not disproportionate to the crime of membership of the PKK, considering that he has been active in an organization that is considered a terrorist organization by the Turkish government and the European Union. It adds that due to the Government of Turkey's declaration of zero tolerance of torture and legislative changes, there are increased possibilities for persons who have been subjected to torture to report the perpetrators.

4.13 The State party submits that the first-named complainant has not shown that he was at risk of persecution by the PKK due to his defection from the organization, as to make him in need of protection. It 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 falls outside the scope of article 3 of the Convention. In any event, it contends that the claim is not substantiated. It questions whether there is a risk of the first-named complainant being of interest to the PKK now, considering the time that had elapsed since he left Turkey. It submits that if such risk exists he would most certainly be able to obtain protection from the Turkish authorities.

4.14 In relation to the second-named complainant, the State party agrees with the migration court's assessment that the complainants have a large family in Turkey. Should both parents be convicted and imprisoned it would be the responsibility of the Turkish authorities to decide on the child's care.

#### **Complainants' comments on the State party's observations on the admissibility and the merits**

5.1 On 11 December 2009, the complainants challenged the State party's argument as to the low level of the first-named complainant's involvement in PKK activities. They claim that he was a member for a long time and because of his elevated position he served in many countries.

5.2 The complainants submit that a criminal case against the first-named complainant (No. 1999/190) in Van is still open in relation to his membership of a terrorist organization. If returned he would be sentenced to 15 years in prison. He adds that the occurrences of torture in Turkey have increased.

5.3 He submits that the migration courts were aware of the criminal case against him as well as of the increasing occurrences of torture in Turkey.

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

##### *Consideration of admissibility*

6.1 Before considering a claim contained in a communication, 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, and b), that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement and that all available domestic remedies have been exhausted.

6.2 As to the complainants' allegation that if returned to Turkey the first-named complainant would be killed by the PKK in retaliation for leaving the organization without permission, the Committee considers that the issue of 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.<sup>b</sup> Thus, the Committee finds that this claim is inadmissible in accordance with rule 107 (c) of the Committee's rules of procedure.

6.3 The Committee takes note of the State party's contention that the communication is manifestly unfounded and therefore inadmissible, as the complainants' assertion that the first-named complainant is at risk of being treated by public officials in a manner that would amount to a breach of article 3 of the Convention fails to rise to the basic level of substantiation required for purposes of admissibility. However, the Committee considers that the complainants have provided sufficient information to permit it to consider the case on the merits.

#### *Consideration of the merits*

7.1 The Committee must determine whether the forced return of the complainants to Turkey would violate the State party's obligations 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.

7.2 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the complainants would be in danger of being subjected to torture upon return to Turkey. In reaching this decision, the Committee 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. In this regard, the Committee notes the State party's argument that certain improvements have been made to the human rights situation, including through a zero-tolerance policy and relevant legislative changes. It also notes the complainants' argument that despite the changes, there remain reports of incidents of torture during police custody.

7.3 The aim of the present determination, however, is to establish whether the first-named complainant would be personally at risk of being subjected to torture in Turkey after his return. Even if a consistent pattern of gross, flagrant or mass violations of human rights existed in Turkey, such existence would not as such constitute a sufficient ground for determining that he would be in danger of being subjected to torture after his return to that country; specific grounds must exist indicating that he 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.<sup>c</sup>

7.4 The Committee recalls its general comment on the implementation of article 3 in which it states, *inter alia*, 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".<sup>d</sup>

7.5 The Committee notes that the State party does not dispute the first-named complainant's involvement with the PKK, but rather argues that his involvement was at a low level. It notes that while the State party denies that he would be of much interest to the Turkish authorities now, it admits, as did the Migration Board itself, that if he is pursued by the Turkish authorities, there is a risk that he will be arrested, detained pending trial and sentenced to a long term of imprisonment (paras. 4.11 and 4.12 above). It also notes that the

<sup>b</sup> Communication No. 83/1997, *G.R.B v. Sweden*, Views adopted on 15 May 1998.

<sup>c</sup> Communication No. 214/2002, *M.A.K. v. Germany*, decision adopted 12 May 2004.

<sup>d</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX, para. 6.

complainants have provided information on a criminal case initiated against the first-named complainant, No. 1999/190 (para. 5.2 above), which remains uncontested by the State party. Thus, in the Committee's view sufficient information has been provided to indicate that the first-named complainant is likely to be arrested if returned to Turkey.

7.6 The Committee observes that, according to various sources there are serious allegations that the security and police forces continue to use torture, in particular during questioning and in detention centres despite the Government's policy of zero tolerance of torture. The Committee also notes that according to the State party's own submission in 2007 (see para. 4.8 above) the number of reports of ill-treatment has increased. More than one of the reports submitted by the State party indicate that despite the legislative measures taken by the Government of Turkey perpetrators often enjoy impunity, and question the effectiveness of the reform. Many of the recent reports quoted by the State party also indicate that there are an increasing number of reports of ill-treatment and torture committed by members of the security and police forces outside official premises and thus more difficult to detect and document. The Committee also takes note of the statement from the report by the Swedish Ministry of Foreign Affairs quoted by the State party that members of the PKK should be considered a specific target group for individual civil servants who violate the prohibition on using torture. It also notes that according to the Diyarbakir Branch of Human Rights Association, those persons who defected from PKK are subjected to forced confessions to reveal the names of their former comrades.

7.7 In conclusion, the Committee notes that the complainant was a member of the PKK for 14 years; and that there are strong indications that he is wanted in Turkey, to be tried under anti-terrorist laws and thus is likely to be arrested upon arrival and subjected to forced confessions. In the light of the foregoing, the Committee considers that the complainants have provided sufficient evidence to show that the first-named complainant personally runs a real and foreseeable risk of being subjected to torture were he to be returned to his country of origin.

7.8 As the case of the second-named complainant is dependent upon the case of the first, the Committee does not find it necessary to consider the case of the former, a minor child of the first-named complainant, separately.

7.9 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, considers that the State party's decision to return the complainants to Turkey would constitute a breach of article 3 of the Convention.

8. In conformity with rule 112, paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, on the steps taken by the State party to respond to this decision.

## Communication No. 375/2009: *T.D. v. Switzerland*

*Submitted by:* T.D. (represented by counsel, Tarig Hassan)

*Alleged victim:* The complainant

*State party:* Switzerland

*Date of complaint:* 10 March 2009 (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 26 May 2011,*

*Having concluded* its consideration of complaint No. 375/2009, submitted to the Committee against Torture by T.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, his counsel and the State party,

*Adopts* the following:

### **Decision under article 22, paragraph 7, of the Convention against Torture**

1.1 The complainant, T.D., is an Ethiopian national born in 1973 who faces deportation from Switzerland to his country of origin. He claims that such a measure would constitute a violation by Switzerland of article 3 of the Convention against Torture. He is represented by counsel, Tarig Hassan.

1.2 On 16 March 2009, the Committee brought the complaint to the attention of the State party, in accordance with article 22, paragraph 3, of the Convention, and, pursuant to rule 108 of its rules of procedure (CAT/C/3/Rev.4), requested the State party not to deport the complainant to Ethiopia while the case was under consideration.

1.3 On 27 May 2009, the State party transmitted its observations on the merits of the case.

#### **The facts as submitted by the complainant**

2.1 The complainant is an Ethiopian national who claims he had to leave his country of origin to go to Switzerland for political reasons on 7 November 2003. On 19 November 2003, he applied for asylum. On 15 November 2004, the Federal Office for Refugees (ODR, which has since been replaced by the Federal Office for Migration) rejected his application. The Federal Office for Refugees did not find credible the complainant's claims that he had been arrested by security officers and detained for six months in 2003 for being a member of Oromo Neetsaanet Gymbaar, and that he was wanted for the same reason. On 27 January 2005, the Swiss Asylum Review Board dismissed his appeal against the decision of the Federal Office for Refugees.

2.2 Despite this negative ruling and the concomitant order to leave Switzerland, the complainant remained in Switzerland. It was while living there that he became politically active, and he claims to be a founding member of the opposition party Kinijit/CUDP Switzerland (Coalition for Unity and Democracy Party). He adds that he holds a key position in the party, as one of its representatives in the canton of Zurich. The complainant

stresses that CUDP members in Ethiopia are the victims of regular clampdowns and persecution by the authorities. He also says that he has been involved in organizing many demonstrations and meetings of the Ethiopian opposition in Switzerland and that many photographs of him at such demonstrations have been published on political websites or in newspapers.

2.3 On 29 November 2006, the complainant made a second application for asylum, this time on the basis of his political activities in Switzerland. He was questioned by the Federal Office for Migration (ODM) on 10 December 2008 about the new grounds for his asylum application. On 17 December 2008, the Federal Office for Migration rejected this application and ordered him to leave Switzerland. The complainant appealed against this decision to the Federal Administrative Tribunal, which dismissed his appeal on 12 February 2009. The complainant was given until 24 March 2009 to leave Switzerland. In its decision, the Federal Administrative Tribunal basically found that the complainant's political activities, including those as a CUDP cantonal representative, left him in no danger of being seen as a threat to the regime in place. Echoing the conclusions of the Federal Office for Migration, the Tribunal considered that the Ethiopian regime only monitored and recorded the political activities of its "hard-core" opponents, which did not include the complainant. It considered that in his role as a CUDP cantonal representative he attended and helped organize only a limited number of demonstrations. According to the Tribunal, many Ethiopians in Switzerland are CUDP cantonal representatives, and the Ethiopian authorities are aware that asylum-seekers step up their political activities deliberately when their asylum application is turned down. Moreover, the Tribunal saw no evidence that the Ethiopian authorities had opened any proceedings against the complainant on account of his political activities in Switzerland. In conclusion, the Tribunal found that the complainant did not meet the conditions to be granted refugee status, and that he was not at risk of being subjected to torture if returned.

2.4 The complainant, however, maintains that his role in planning and organizing such events for CUDP, and his role as a founder member of that party, shows that he is highly placed in the opposition movement, which leaves him particularly vulnerable to repression by the Ethiopian security forces. He stresses that the Federal Administrative Tribunal was wrong to attribute so little weight to his position as a CUDP cantonal representative, pointing out that this organization is not represented in every canton and that he is therefore one of a minority of opponents in that position. He also points out that when he was interviewed on 10 December 2008 about the new grounds for his asylum application, he was only briefly questioned and the Federal Office for Migration did not properly check the nature and scope of his political activities. He repeats that the political activities of the Ethiopian community in exile are meticulously monitored and recorded, and affirms that in the circumstances he would be at risk of arrest and torture if returned to Ethiopia.

### **The complaint**

3. The complainant claims that his deportation from Switzerland to Ethiopia would be a violation of article 3 of the Convention, as there are substantial grounds for believing that he would be in danger of being subjected to torture on his return.

### **State party's observations on the merits**

4.1 On 27 May 2009, the State party submitted its observations on the merits of the complaint. It states that the complainant has not established that he personally faced a real and foreseeable risk of torture if returned to Ethiopia. Referring to the Committee's general

comment No. 1 (1997),<sup>a</sup> the State party notes that the opposition has had more seats in Parliament since the elections in Ethiopia in May and August 2005. Although arbitrary arrests and detention, particularly of members of opposition parties, are still common, and despite the fact that Ethiopia does not have an independent justice system, merely being a supporter or member of an opposition party does not in itself entail a risk of persecution. It is different for persons who hold key high-profile positions in an opposition party. The State party takes the view that members of the Oromo Liberation Front or the Ogaden National Liberation Front are at risk of persecution, but that other opposition groups such as the Coalition for Unity and Democracy (CUD), also known abroad as Kinijit or CUDP, should be considered on a case-by-case basis.

4.2 As regards surveillance of political activities carried out in exile, the State party is of the view that Ethiopian diplomatic and consular missions abroad do not have the resources to systematically monitor the political activities of the opposition. Therefore only active or important representatives of opposition movements are at risk of being identified and registered, and thus of being persecuted if returned. The same applies to organizations or activists who advocate or engage in violent action. According to the State party, the Ethiopian authorities focus their attention above all on individuals who fit a certain profile because of their political activism as holders of particular posts, and so represent a danger to the current regime. The State party adds that the Ethiopian authorities are aware that many failed asylum-seekers, like the complainant, engage in political activities when their asylum application is definitively turned down.

4.3 In the specific case of the complainant, the State party notes that he does not claim to have been tortured, arrested or detained by the Ethiopian authorities. No criminal proceedings have been taken out against him. With reference to the conclusions of the former Federal Office for Refugees (now the Federal Office for Migration) and the Swiss Asylum Review Board, the State party adds that the complainant has not credibly demonstrated that he was politically active in Ethiopia. As for his political activities in Switzerland since his arrival in 2003, his involvement in organizing CUDP demonstrations against the current Ethiopian Government and his membership of Kinijit/CUDP, these are the kind of activities engaged in by most politically active Ethiopians in Switzerland. His role as a cantonal representative of the party does not entail greater responsibility. As he was not known to the authorities before he left Ethiopia, these authorities have no reason to monitor and record his current activities in Switzerland.

4.4 The State party disputes the complainant's claim that his political activities were not carefully scrutinized in his interview with the Federal Office for Migration on 10 December 2008. In accordance with the applicable procedure, he took cognizance of and agreed with the statements of his representatives and said he had nothing to add to those statements. Moreover, the procedure requires that he then be asked about his political activities since his last written statement, and after this the complainant must again confirm that he has nothing new to add. According to the State party, under this procedure, both the Federal Office for Migration and the Federal Administrative Tribunal rightly concluded, after a detailed examination of the case, that the complainant ran no risk of being tortured or subjected to inhuman or degrading treatment if returned.

---

<sup>a</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.* The State party also refers to communications No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, and No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998.

### **Complainant's comments on the State party's submission**

5.1 On 22 June 2009, the complainant reiterated that he would be at risk of being tortured if returned to Ethiopia, since the Ethiopian authorities closely monitored and recorded the activities of political opponents abroad. According to the complainant, the Federal Administrative Tribunal itself acknowledged, in its decision in his case, that political opponents abroad were under surveillance.<sup>b</sup> He reiterates that he has an unmistakable political profile and adds that he mentioned in his first asylum application that he had been a member of Oromo Neetsaanet Gymbaar (ONEG) for several years in Ethiopia.

5.2 The complainant points out that worldwide demonstrations against the current Ethiopian regime had been held in January, March and May 2009. The Swiss section of CUDP had been involved in organizing these activities, in partnership with the Kinijit international movement. He adds that the Swiss section of CUDP is part of a global movement of opposition to the current Ethiopian regime. This raises its profile and makes it an organization seen as a threat by the regime.

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

#### *Consideration of admissibility*

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 In the absence of any other obstacle to the admissibility of the communication, the Committee proceeds to its consideration on the merits.

#### *Consideration of the merits*

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered this complaint in the light of all information made available to it by the parties.

7.2 The issue before the Committee is whether the removal of the complainant to Ethiopia would constitute a violation of 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 would be in danger of being subjected to torture.

7.3 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Ethiopia, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned.

7.4 The Committee recalls its general comment No. 1 on the implementation of article 3, that the risk of torture must be assessed on grounds that go beyond mere theory or

---

<sup>b</sup> Without giving a reference, the complainant also mentions another decision of the Federal Administrative Tribunal in which he says the Tribunal granted refugee status to an Ethiopian national who worked for the Ethiopian Human Rights Council before leaving the country and who had also been an active CUDP cantonal representative. Refugee status did not appear to have been granted to this individual solely on the basis of his political activities in Switzerland.



suspicion. While the risk does not have to meet the test of being highly probable, the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he faces a “foreseeable, real and personal” risk.<sup>c</sup> Moreover, the Committee specifies in its general comment that it is pertinent to know if the complainant engaged in political activity within or outside the State concerned which would appear to make him “particularly vulnerable” to the risk of being tortured.<sup>d</sup>

7.5 In assessing the risk of torture in the present case, and even though these claims were not submitted to the Committee, it should be noted that the complainant told judicial bodies of the State party that he had been arrested by security officers and detained for six months for being a member of Oromo Neetsaanet Gymbaar. He also says that he was subsequently wanted by the police. He does not say he was tortured during his detention or at any other time. He has told the Committee that he is personally at risk of being tortured in Ethiopia if returned there because of his political activities since he arrived in the State party, particularly his political activities in Kinijit/CUDP, for which he is a representative of the canton of Zurich. He says that he helps organize demonstrations by that movement against the current Ethiopian regime, that he takes part in them and that many photographs showing him at such demonstrations have been published on political websites or in newspapers. For this reason, the complainant believes it highly likely that he has attracted the attention of the Ethiopian authorities who monitor the activities of political opponents abroad, and that they see him as a threat to internal security in Ethiopia.

7.6 The Committee has a duty to take account of the actual human rights situation in Ethiopia, having noted that it continues to give grounds for concern in some respects, as witnessed by reports on the arbitrary detention and repression of members of opposition parties and human rights defenders.<sup>e</sup> However, the Committee recalls that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be *personally* at risk. In this respect, the Committee notes that various authorities in the State party did examine the facts and evidence produced by the complainant in his second asylum application, and which he submitted to the Committee.

7.7 While under the terms of its general comment the Committee is free to assess the facts on the basis of the full set of circumstances in every case, it recalls that it is not a judicial or appellate body, and that it must give considerable weight to findings of fact that are made by organs of the State party concerned.<sup>f</sup> In the present case, the Committee has noted the State party’s analysis that merely being a supporter or member of an opposition party does not in itself entail a risk of persecution, with the exception of two specific parties, the Oromo Liberation Front and the Ogaden National Liberation Front. The Committee has also noted the State party’s argument, to which it attaches the necessary weight, that the profile of each complainant must be considered on a case-by-case basis in the light of the full set of circumstances in order to establish that he would be particularly at risk of persecution or torture if returned.

---

<sup>c</sup> See the Committee’s general comment No. 1 and communication No. 203/2002, *A.R. v. The Netherlands*, decision adopted on 14 November 2003, para. 7.3.

<sup>d</sup> General comment No. 1, para. 8 (e).

<sup>e</sup> See, for example, the compilation prepared by the Office of the United Nations High Commissioner for Human Rights for the universal periodic review of Ethiopia (A/HRC/WG.6/6/ETH/2), para. 23 ff.

<sup>f</sup> General comment No. 1, para. 9.

7.8 The Committee notes that the State party has acknowledged and taken into account the fact that the Ethiopian authorities may be monitoring the activities of opponents in exile. However, it has established that the decisive factor in assessing the risk of torture on return is whether the person occupies a position of particular responsibility in a movement opposing the regime and thus poses a threat to it. The Committee also attaches the necessary weight to the State party's argument that, in view of the actual activities of a [CUDP] cantonal representative, simply holding this position does not mean that the person concerned can be considered a threat to the Government of Ethiopia, so that it is unlikely that the complainant's activities will have attracted the attention of the authorities.

7.9 The Committee also notes that, although the complainant says that he was arrested and detained in 2003 and was subsequently wanted by the police, he does not claim to have been subjected to any threats, intimidation or other form of pressure from the Ethiopian authorities. He has not reported that any judicial proceedings were opened against him, or produced any evidence, such as an arrest warrant or wanted notice, to support his claims that he was wanted and thus would be subjected to treatment in violation of article 3 of the Convention if returned. Reaffirming that it is normally for the complainant to present an arguable case,<sup>g</sup> the Committee is of the view that, on the basis of all the information submitted to it, the complainant has not provided sufficient evidence to allow it to consider that his return to Ethiopia would put him at a real, present and personal risk of being subjected to torture, as required under article 3 of the Convention.

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, therefore concludes that the return of the complainant to Ethiopia would not constitute a breach of article 3 of the Convention.

---

<sup>g</sup> See communications No. 298/2006, *C.A.R.M. et al. v. Canada*, decision adopted 18 May 2007, para. 8.10; No. 256/2004, *M.Z. v. Sweden*, decision adopted 12 May 2006, para. 9.3; No. 214/2002, *M.A.K. v. Germany*, decision adopted 12 May 2004, para. 13.5; and No. 150/1999, *S.L. v. Sweden*, Views adopted 11 May 2001, para. 6.3.

## Communication No. 379/2009: *Bakatu-Bia v. Sweden*

*Submitted by:* Sylvie Bakatu-Bia (represented by counsel,  
Emma Persson)

*Alleged victim:* The complainant

*State party:* Sweden

*Date of complaint:* 26 March 2009 (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 June 2011,*

*Having concluded* its consideration of complaint No. 379/2009, submitted to the Committee against Torture by Sylvie Bakatu-Bia 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 against Torture**

1.1 The complainant is Sylvie Bakatu-Bia, born on 22 May 1984 in the Democratic Republic of the Congo. She is currently in Sweden, awaiting deportation to the Democratic Republic of the Congo. She claims that her return to the Democratic Republic of the Congo would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee requested the State party under rule 114 (former rule 108), paragraph 1, of the Committee's rules of procedure (CAT/C/3/Rev.5), not to expel the complainant to the Democratic Republic of the Congo while her complaint was under consideration by the Committee. The State party acceded to this request, and on 27 March 2009 decided to stay the enforcement of the expulsion order.

#### **The facts as presented by the complainant**

2.1 The complainant was born and raised in the village of Tshilenge in Mbuji-Mayi in the Democratic Republic of the Congo. She has two daughters. The last years before she left the Democratic Republic of the Congo and fled to Sweden, she had lived and worked in Lubumbashi in the southern part of the Democratic Republic of the Congo. She has worked as a secretary in the parish of Nouvelle Cité de David, a Christian protestant radical parish. Her partner was supposed to be the next pastor. The pastor was a strong opponent of the regime, and openly criticized the authorities in several sermons. The complainant, who was his secretary, shared his political views. Due to the tense situation in the region, the parish was particularly observed by the military forces, who wanted the pastor to help them spread their political message. As the pastor refused to do this, he was arrested several times. The pastor's second and third arrests happened on 3 August 2004 and on 23 or 24 December 2004, respectively. During his last one-day detention he was allegedly severely tortured

and, as a consequence of the torture endured, he died shortly after his release. After the death of the pastor, the surveillance of the parish increased. The security forces were aware of the complainant's activity as secretary to the pastor and also that she shared his opinions and political beliefs. She feared for her life and security but, due to her strong faith and commitment to the parish, she decided to stay in Lubumbashi.

2.2 On 30 September 2005, the complainant and her partner were arrested by the security forces. No grounds for the arrest were given. They were taken to different prisons, and this was the last time she saw her partner. Meanwhile, their two children and the complainant's sister were left in the house. Some members of the security forces remained in their house as well and the complainant believes they looted her house and took, *inter alia*, her identity documents.

2.3 The complainant does not know the name of the prison where she was imprisoned. During her detention, which lasted from 30 September 2005 until 22 February 2006, she was tortured, beaten on her legs and her back and repeatedly raped, sometimes several times a day. The torture suffered has permanently marked her and as a result, she is now in constant distress.

2.4 On 22 February 2006, the complainant managed to escape from prison with the help of friends from the parish who bribed the prison personnel. Immediately after her escape, she fled to Kinshasa where she met a nun who helped her leave the country.<sup>a</sup> Therefore, she could not return home to look for her two children who had been left behind when she was arrested. According to the complainant, their whereabouts remain unknown.

2.5 The complainant allegedly<sup>b</sup> arrived in Sweden on 27 February 2006 and applied for asylum the same day. Her request for asylum<sup>c</sup> was rejected by the Migration Board on 11 July 2007. The Board stated that the complainant had failed to prove her Congolese identity, although it acknowledged that she speaks the language of the region from which she claims to originate. The Board held that the general situation in the Democratic Republic of the Congo does not constitute grounds for asylum. As for the individual circumstances of the complainant, the Board questioned her trustworthiness, indicating that she failed to adduce any documents proving her identity. It referred to the fact that the complainant, unlike the pastor, held no leading position within the parish, and also found improbable the allegations in relation to her detention and her account of how she travelled to Sweden.

2.6 The complainant appealed to the Migration Court. On that occasion, the author supplemented her initial asylum application with two documents: the medical report submitted previously to the Migration Board (see footnote 3); and a document produced by a parish in Kiruna (northern part of Sweden) confirming the complainant's strong religious and political convictions. On 25 March 2008, the complainant submitted a medical report issued by a psychotherapist working at the Swedish Red Cross treatment center in Luleå, who concluded that, according to the complainant, she showed signs of depression due to the trauma she experienced in her home country. On 20 May 2008, she submitted another medical report from the same psychotherapist who referred, according to the complainant, both to her fear of returning to the Democratic Republic of the Congo and to the fact that

---

<sup>a</sup> The complainant did not pay for the trip and does not specifically mention who paid for it. She travelled to Sweden on fake documents and claims that it was the nun who carried all travel documents.

<sup>b</sup> The complainant claims to have arrived to Sweden on 27 February 2006.

<sup>c</sup> In order to substantiate her claim regarding the physical and mental health problems she experiences, the complainant submitted to the Migration Board a report issued by a district medical officer from Sweden documenting, according to the complainant, her back troubles and the pain in her legs.

she suffers from sleeping problems, is still being affected by the rapes to which she was subjected, and consumes large quantities of alcohol to allay her anxiety. On 23 May 2008, the appeal was rejected by the Migration Court. The complainant then appealed to the Migration Court of Appeal, which rejected the appeal on 10 July 2008. On 25 February 2009, the complainant filed an application to the Migration Board claiming that her relationship to a Swedish citizen is another impediment to the enforcement of the expulsion order. On 27 February 2009, the Migration Board decided not to grant the complainant a residence permit under Chapter 12, Section 18, of the 2005 Aliens Act.<sup>d</sup> This decision is non-appealable.

### **The complaint**

3. The complainant claims that her forcible deportation to the Democratic Republic of the Congo would amount to a violation by Sweden of article 3 of the Convention. She maintains that she would be arrested and tortured upon return to the Democratic Republic of the Congo due to her religious and political beliefs and because she has criticized the regime and is connected to the now well-known deceased pastor Albert Lukusa. The complainant submits that she faces a personal risk of torture if she were to return to the Democratic Republic of the Congo, and that her claim is sufficiently substantiated by the information she provided on her arrest and subsequent detention, torture and ill-treatment, as well as by evidence on the existence of a consistent pattern of gross, flagrant, and mass violations of human rights in the Democratic Republic of the Congo.<sup>e</sup>

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

4.1 On 25 September 2009, the State party provided its observations on the admissibility and the merits of the complaint. It submits that the complainant applied for asylum on 27 February 2006, the same day she allegedly arrived in Sweden. She carried neither a travel nor an identity document. The Swedish Migration Board held the first interview with the complainant on 1 March 2006. During the interview, the complainant stated that she was born in Tshilenge in the province of Mbuji-Mayi. She is not married, but lived together with a man with whom she has two children, born in 2002 and 2004. She was active in a protestant church in the Democratic Republic of the Congo. She and her partner were arrested as a result of critical remarks against the regime made by the pastor, Albert Lusaka. During the detention, she was tortured, beaten on her legs and back and raped a number of times. Persons from the parish bribed the prison staff and organized her escape in February 2006. She was not able to return home to look for her children who were left behind when she was arrested. She travelled by train to Kinshasa, where she received a plane ticket and

<sup>d</sup> Chapter 12 ("Impediments to the enforcement of refusal of entry and expulsion"), Section 18 states: "If, in a case concerning the enforcement of a refusal-of-entry or expulsion order that has become final and non-appealable, new circumstances come to light that mean that (1) there is an impediment to enforcement under Section 1, 2 or 3, (2) there is reason to assume that the intended country of return will not be willing to accept the alien or (3) there are medical or other special grounds why the order should not be enforced, the Swedish Migration Board may grant a permanent residence permit if the impediment is of a lasting nature. If there is only a temporary impediment to enforcement, the Board may grant a temporary residence permit. The Swedish Migration Board may also order a stay of enforcement."

<sup>e</sup> The complainant refers to international sources that report the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the Democratic Republic of the Congo: Human Rights Report 2008. Democratic Republic of the Congo (United States Department of State, 25 February 2009); Special Report on Sexual Violence in the Democratic Republic of the Congo (The Institute for War and Peace Reporting, October 2008); Human Rights Watch Report "We Will Crush You" (25 November 2008); World Report 2009 (Human Rights Watch, 2009).

travel documents from a person within the parish who had visited her during her imprisonment. She claimed that she was unaware of the whereabouts of her partner and her children. She stated that she was neither in possession of any identity documents nor in a position to obtain such documents, since her house had been destroyed. She had no one in the Democratic Republic of the Congo who could help her obtain new identification documents. Asked about her health, the complainant stated that she experienced a lot of stress, back and stomach pain, sleeping difficulties and nightmares.

4.2 On 7 March 2006, during the second interview, the complainant explained that she had never received a passport, and she could not submit any identity documents as the only document she had was kept in her house in the Democratic Republic of the Congo which was looted by the security forces. She added that no one could verify her identity, either in Sweden or in the Democratic Republic of the Congo.<sup>f</sup> She claimed that the nun with whom she traveled to Sweden was carrying all the necessary documents. They lacked a common language and thus the possibility to communicate. She also submitted that she was the assistant of the pastor of the parish and her partner was supposed to take the parish over from the pastor. She had not been politically active and she had had no problems with the authorities, except for her arrest. She claimed that she was wanted in the Democratic Republic of the Congo and, because of her escape from prison, she would be imprisoned and subjected to ill-treatment upon return. According to the language analysis conducted by the migration authorities, it was highly probable that the complainant had her language background in the Democratic Republic of the Congo, more specifically in the regions Kasai Oriental and Kasai Occidental. Furthermore, it was likely that she had been socialized in Kinshasa.

4.3 The State party further submits that on 22 September 2006, the complainant's counsel provided additional information and corrections to what had been stated by the complainant during the interviews. The complainant doubted that her identity documents were still in her house, since it was looted after her arrest and maintained that she would have to return to the Democratic Republic of the Congo in order to apply for new identity documents. She was not able to get in touch with anyone who could prove her identity, since the whereabouts of her family were unknown. With regard to her home address, the complainant indicated that she resided in Tshilenge, but that during the last three years she had lived in Lubumbashi together with her family, including one of her sisters. Her parents and the rest of her siblings live in the village of Mushenge. She left Tshilenge because she was offered a position as the assistant of a well-known pastor in Lubumbashi. She reiterated the information about the pastor's activity, his detention and alleged torture, as well as his subsequent death shortly after his release. Counsel further reiterated the information regarding the complainant's abduction, her detention and ill-treatment in custody, including battery, torture and rape, and reconfirmed the circumstances of the complainant's escape from prison.

4.4 On 31 October 2006, during the third interview, the complainant stated that, due to health problems, she was unable to attend a meeting with the Red Cross concerning the whereabouts of her family. In response to the question about her being socialized in Kinshasa, the complainant maintained that she had not resided there but had only been there in connection with her journey to Sweden. She further claimed that she would be at risk even if she were to relocate to Kinshasa or to another part of the Democratic Republic of the Congo. She maintained that she was wanted by authorities and would be detained upon

---

<sup>f</sup> However, the complainant gave the following information about her family to the Migration Board: her father and mother were still alive, and she has three brothers and one sister with whom she previously lived in Tshilenge. She has no relatives in Sweden.

return. The State party submits that, according to medical reports provided by the complainant, she was in good health, apart from complaints of back pain.

4.5 In a submission dated 17 November 2006, counsel informed the Migration Board that the complainant had worked with people from Kinshasa and had moved around the Democratic Republic of the Congo, this having an impact on her pronunciation. She worked closely with the pastor and therefore became the next target after his death. Counsel also stated that the general situation of women in the Democratic Republic of the Congo makes it impossible for the complainant to relocate internally, and maintained that medical reports corroborate the complainant's allegations of ill-treatment in detention.

4.6 The Migration Board rejected the complainant's asylum request on 11 July 2007 on grounds that she had not provided any information to prove her identity or her activity in the parish. It also recalled that, according to her statements, the complainant had not been persecuted or convicted of any crime. The Migration Board had therefore found that she failed to substantiate her allegation that she ran the risk of persecution due to her religious and political beliefs. The complainant's story about travel documents and travel itinerary was not deemed credible. The Board concluded that the circumstances of the complainant's case were not exceptionally distressing so as to justify the granting of a residence permit.

4.7 The complainant appealed against the decision of the Migration Board, claiming that her identity could be verified through the language analysis conducted by the migration authorities. She also recalled that arbitrary arrests, rapes and torture are common in the Democratic Republic of the Congo. The complainant further held that, according to the country information that the Migration Board had obtained from the Swedish embassy in the Democratic Republic of the Congo, it is possible to bribe guards at the airport of Kinshasa in order to leave the country. The Migration Board requested the Migration Court of Stockholm to dismiss the complainant's appeal, arguing that the complainant had not been politically active in the Democratic Republic of the Congo and held no prominent position within the parish, which made it improbable that she would be of interest to the authorities upon her return.

4.8 On 3 October 2007, the complainant supplemented her appeal with two documents: a medical report in support of her claim that she suffered from health problems as a consequence of the abuse allegedly suffered by her in the Democratic Republic of the Congo, and a letter from a Swedish parish which testified to her religious conviction. On 26 February 2008, the Migration Court rejected the complainant's request for an oral hearing.

4.9 On 25 March 2008, the complainant submitted a report issued by a psychotherapist working for the Red Cross, dated 14 March 2008, indicating that she suffered from sleeping problems caused by her possible return to the Democratic Republic of the Congo and that she was still affected by the violations to which she was subjected in her home country. In a submission to the Migration Court, the Migration Board contested the relevance of the medical report and maintained that the complainant failed to substantiate the claim that she ran the risk of persecution due to her alleged connection with the parish. She had not proved her membership in the parish or that she had been politically active, or that the members of the parish were particularly exposed to the risk of being subjected to ill-treatment.

4.10 The complainant's appeal was rejected by the Migration Court on 23 May 2008. The Court concluded that the complainant failed to provide sufficient documentary evidence in support of her claims. The Court also found her story about the escape from prison and travel to Sweden vague and improbable. The complainant failed to substantiate her claim of being a refugee or a person otherwise in need of protection pursuant to chapter 4, sections 1 and 2, of the Aliens Act. Furthermore, after having considered the complainant's state of health and the length of her stay in Sweden, the Court concluded that the circumstances

were not of such nature as to amount to exceptionally distressing circumstances which would require the granting of a residence permit under Chapter 5, Section 6, of the Aliens Act. On 2 June 2008, the complainant appealed against the judgment of the Migration Court. The Migration Court of Appeal denied leave to appeal on 25 July 2008.

4.11 With regard to the admissibility of the complaint, the State party acknowledges that all available domestic remedies have been exhausted. Nevertheless, it maintains that the complainant's allegation that she will be subjected to treatment contrary to the Convention fails to substantiate the claim for purposes of admissibility. The complaint is manifestly unfounded and is therefore inadmissible under article 22, paragraph 2, of the Convention and rule 113 (b) (former rule 107 (b)) of the Committee's rules of procedure (CAT/C/3/Rev.5).

4.12 On the merits, the State party submits that, should the communication be declared admissible, when considering whether the forced return of the complainant to the Democratic Republic of the Congo would violate the obligation of Sweden under article 3 of the Convention, the Committee must take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights; however the existence of such a pattern 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. For a violation of article 3 to exist, additional grounds must be shown in that the individual concerned would be personally at risk. The State party further submits that the obligation of non-refoulement is directly linked with the definition of torture as laid down in article 1 of the Convention, and recalls the Committee's jurisprudence to the effect that the 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.

4.13 With respect to the human rights situation in the Democratic Republic of the Congo, the State party notes that the Democratic Republic of the Congo has ratified several major human rights instruments, including the Convention against Torture, and has also recognized the competence of the Human Rights Committee to receive and consider individual complaints. Despite this, the Democratic Republic of the Congo is not able to fulfil many of its obligations under the human rights instruments. The State party points out, by reference to the "Country of Origin Information Report–The Democratic Republic of the Congo",<sup>g</sup> that numerous human rights abuses are being committed in the country. Serious violations, including arbitrary executions, rape and torture, are committed mostly by the army, police and intelligence services. It also notes the difficult situation of women who are subjected to systematic rape, sexual slavery and other forms of sexual violence with full impunity. While the State party concedes that human rights abuses are still commonly reported in the country, they happen mostly in areas not controlled by the Government, primarily in the eastern parts of the country, including North and South Kivu provinces, the Iruru District of Orientale Province and northern Katanga Province. It further submits that the circumstances referred to above do not in themselves suffice to establish that the forced return of the complainant would entail a violation of article 3 of the Convention. The complainant does not come from any of the areas where the Migration Court has held that there is an ongoing internal armed conflict or severe conflict and would not be forced to return to any of those areas. Furthermore, the language analysis indicated

---

<sup>g</sup> Home Office of the United Kingdom of Great Britain and Northern Ireland, Border and Immigration Agency, "Country of Origin Information Report – The Democratic Republic of the Congo", 30 June 2009. Available from <http://tna.europarchive.org/20100413151426/rds.homeoffice.gov.uk/rds/pdfs09/drcongo-010709.doc>.



that the complainant has some kind of connection to Kinshasa. Therefore, the State party considers that a forced deportation of the complainant would only violate article 3 if she could show that she would be personally at risk of being subjected to treatment contrary to the said provision.

4.14 The State party submits, with reference to the Committee's jurisprudence, that for the purposes of article 3, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is to be returned. It also recalls that, according to the general comment No. 1,<sup>h</sup> it is for the complainant to present an arguable case, i.e. to collect and present evidence in support of his or her account of events. The State party further states that the Swedish migration authorities apply the same kind of test when considering an application for asylum under the Aliens Act as the Committee will apply when examining a complaint under the Convention. It notes that the national authority conducting the asylum interview is in a very good position to assess the information submitted by an asylum-seeker and to evaluate the credibility of his or her claims. In the present case, it is noteworthy that the Migration Board made its decision after having held three interviews with the complainant and gathered sufficient information, which ensured that it had a solid basis for its assessment of the complainant's need for protection in Sweden. Therefore, as concerns the merits of the complaint, the State party relies on the decisions of the Migration Board and the Migration Court and on the reasoning set out therein.

4.15 The State party maintains that the complainant's statement as to the reasons why she left the Democratic Republic of the Congo and applied for asylum in Sweden is not credible, accordingly her claim under article 3 is not substantiated. It contends that no documents have been adduced to prove the complainant's identity. She stated during one of the interviews that no one in Sweden or the Democratic Republic of the Congo can verify her identity, her argument being in contradiction with the information provided by the complainant's counsel on 22 September 2006, namely that the complainant's parents and siblings still reside in the Democratic Republic of the Congo in the village of Mushenge, in the Kasai Occidental province. If that were the case, it would be possible for the complainant to obtain new identification documents with the assistance of her relatives or, at least, contact them in order to verify her identity, but she has made no such attempts. The State party holds that the fact that the complainant has not exhausted all possibilities to prove or at least to try to verify her identity weakens the general credibility of her submission. She also has not submitted any document to prove her membership in the parish, and it seems very unlikely that she would be unable to obtain such documentation, considering her claim that she was active in the parish and the members of it arranged her escape from prison and paid for her travel to Sweden.

4.16 With reference to the e-mail correspondence between the complainant's counsel and the Swedish embassy in Kinshasa, the State party submits that the embassy confirmed that a man named Albert Lukusa used to be the pastor of the parish of Nouvelle Cité de David in Lubumbashi, before passing away in 2004. However, it recalls that the complainant informed the Migration Board that the pastor's name was Albert Lusaka (and not Lukusa). This is also the name that the complainant's counsel referred to during the third interview and in the submission of 7 September 2007 to the Migration Court. Thus, the State party finds it unlikely that a person who has worked closely with the pastor would be mistaken about his name. Furthermore, the complainant's statements that she grew up in Mbuji-Mayi in the central part of the Democratic Republic of the Congo, and lived in Lubumbashi in the

---

<sup>h</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.*

southern part of the country before coming to Sweden contradict the conclusion of the language analysis, according to which she has been socialized in Kinshasa, i.e. in the eastern part of the Democratic Republic of the Congo. In respect to the medical reports adduced by the complainant, indicating that she suffers from back pain, shows signs of depression and sought medical aid due to traumatic experiences in her home country, the State party submits that her allegations that these health problems are a consequence of the ill-treatment she endured in her country are based solely on her own word. The fact that the medical reports only contain a very general description of her symptoms makes them inconclusive when it comes to determining the cause of her health problems, thus providing insufficient information in order to conclude that the complainant's symptoms are due to physical abuse or any other treatment contrary to article 3 of the Convention.

4.17 As to the complainant's allegations that she worked for a pastor who was a strong opponent of the regime in the Democratic Republic of the Congo, the State party submits that she failed to provide an adequate explanation as to why the authorities directed their attention towards her after the alleged persecution of the pastor. This allegation does not seem probable in the light of the complainant's statement that she was not politically active. Moreover, the State party considers it unlikely that a mere affiliation to a parish with a politically active pastor would lead to the consequences described by the complainant, especially since she stated that she had never held a prominent position within the parish.

4.18 The State party also contends that the complainant initially omitted certain important circumstances about her escape from prison. During the interviews of 1 and 7 March 2006, she stated that members of her parish had helped her to escape by bribing prison guards. It was not until the written submission by her counsel that the allegation that she had received help from an acquaintance who did not belong to the parish came to light. The fact that the complainant failed to provide such essential information during the initial interviews weakens the credibility of her allegations. The State party further submits that the complainant's description of her escape is vague and improbable. She has not provided any information that would explain her acquaintance's incentives for helping her escape or how he had learned that she was imprisoned and at which facility. Neither had she provided any information as to the identity of the other man who was waiting in the car used to drive her from the prison. The State party also finds unlikely the fact that the complainant did not know the name of the prison where she was allegedly imprisoned for several months.

4.19 The State party disputes the author's account of the manner in which she left the Democratic Republic of the Congo, considering it improbable in view of the control measures implemented at Kinshasa airport. It also finds unlikely that the complainant was assisted by a nun whose identity is unknown and with whom she lacked a common language, as well as that this nun carried all the necessary travel documents.

4.20 With regard to the complainant's allegation that she was unaware of the whereabouts of her family, the State party submits that she made limited efforts to locate them. The complainant's counsel indicated that the author has been in contact with the Red Cross, but she was unable to attend a scheduled meeting due to health problems. However, the State party maintains that the medical report submitted by the complainant does not suggest that her state of health prevented her from travelling or attending meetings. The fact that a group within the Red Cross was helping the complainant to locate her family was confirmed in a letter from a psychotherapist of the Red Cross, this being the only indication that the complainant attempted to find her family, although she had been living in Sweden for more than two years. In addition, her claim that her house had been looted is based only on her speculation. That is why it may not be excluded that her partner and her children can be found in the Democratic Republic of the Congo today. There is no information that the Democratic Republic of the Congo authorities have tried to locate the complainant at her parents' place in Mushenge. The complainant has not substantiated her claim that she lacks

a social network in the Democratic Republic of the Congo. Even if in fact she is unable to locate her partner and children, she still has the possibility to return to the Democratic Republic of the Congo and relocate to Mushenge.

4.21 The State party further points out that, although incidents in the past should be taken into account when making the assessment pursuant to article 3 of the Convention, the deciding factor is whether there are substantial grounds for believing that the complainant would be subjected to any treatment contrary to the Convention upon return to her home country. In this respect, the State party recalls that, according to her own submissions, the complainant has not been convicted of any crime in the Democratic Republic of the Congo. This makes it improbable that she would still be of interest to the authorities upon her return to the Democratic Republic of the Congo, in view of the fact that she left the country in 2006.

4.22 In conclusion, the State party submits that the evidence and circumstances invoked by the complainant do not suffice to show that the alleged risk of torture fulfils the requirements of being foreseeable, real and personal, and thus her return would not constitute a violation of article 3 of the Convention. The complainant has failed to substantiate her allegations and the complaint should be declared inadmissible as being manifestly unfounded. Should the Committee consider that the complaint is admissible, the State party contends that it reveals no violation of the Convention.

#### **Complainant's comments on the State party's observations**

5.1 By letter of 15 February 2010, the complainant submitted her comments on the State party's observations. She contends that the existence of the parish of Nouvelle Cité de David, as well as of a pastor named Albert Lukusa, now deceased, was attested to by the Swedish embassy in Kinshasa. The embassy also confirmed that in the Democratic Republic of the Congo a person cannot obtain identity documents without a personal appearance. As to the State party's contention that the complaint should be declared inadmissible for lack of substantiation, the author maintains that she adduced written evidence in support of her allegations, including two medical reports issued by a psychotherapist who concluded that she shows signs of depression due to the abuses endured in her home country, suffers from sleeping difficulties and is still affected by the repeated rapes she endured during her imprisonment. The psychotherapist also indicated that the complainant fears for her life if she were to return to the Democratic Republic of the Congo, and started to consume large quantities of alcohol in order to allay her anxiety. The complainant maintains that her claim is supported by written evidence and the general information on the human rights situation in the Democratic Republic of the Congo, and recalls the information submitted by the State party on the human rights abuses that are being committed in the Democratic Republic of the Congo. She claims that there is a risk of torture upon return to the Democratic Republic of the Congo that goes beyond mere theory or suspicion. The risk must be considered highly probable, taking into account that she was already imprisoned and exposed to torture and other forms of ill-treatment. She further submits that the burden of proof for establishing a breach of article 3 of the Convention is initially on the complainant, but recalls that, if the author has provided a certain level of detail and information, the burden of proof may then shift to the State party. She was exposed to torture by persons acting in an official capacity due to her religious/political beliefs and because the pastor with whom she worked openly criticized the authorities and the regime.

5.2 The complainant questions the State party's statement that the migration authorities apply the same kind of test as the Committee when considering an application for asylum under the Aliens Act, claiming that the authorities' assessment is characterized by the

refugee status determination in accordance with the Refugee Convention, not the Convention against Torture.

5.3 With respect to the State party's questioning of her credibility and the fact that no documents were provided to prove her identity, the complainant submits that, according to article 196 of the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees published by the Office of the United Nations High Commissioner for Refugees (hereinafter the UNHCR Handbook), the cases when an asylum-seeker can provide evidence for all his/her statements will be the exception rather than the rule.<sup>i</sup> In most cases when a person is fleeing from persecution, she very frequently arrives in another country without any personal documents, i.e. identity card. The author submits that she had never had a passport, but the identity card she had was most likely taken by the security forces at the time of her arrest. She refers to the conclusion of the language analysis, according to which her mother tongue is Tchilouba and she has a level of French typical of the less educated in the Democratic Republic of the Congo. Therefore it is likely that she originates from the region from which she claims to be. She also recalls that a person who is not in the Democratic Republic of the Congo cannot obtain identity documents without a personal appearance, as confirmed by the Swedish embassy in Kinshasa. The author affirms that she has not been able to make contact with her family, although she tried to locate them with the assistance of the Red Cross, without success.

5.4 As to the error in spelling the name of the pastor, the complainant affirms that it is attributable to the counsel and the interpreter. She also explains that her medical reports were issued by a psychotherapist who treated her for more than half a year and they support her allegations of having been imprisoned and subjected to torture and ill-treatment. The author further claims that, although she does not consider herself to have been politically active per se, she feels a well-founded fear of persecution due to her religious/political beliefs and the fact that the pastor had criticized the regime. As to the details surrounding her escape, the author maintains that she was helped by people from the parish, i.e. by Douglas M. whom she knew through the parish and her friends there.

5.5 The complainant claims that, although she did not commit any criminal act, she criticized the regime and was therefore imprisoned and subjected to torture. Upon return to the Democratic Republic of the Congo, she will be punished and again imprisoned for her religious/political beliefs and for having escaped from prison. She maintains that her return to the Democratic Republic of the Congo would amount to a violation by Sweden of article 3 of the Convention.

---

<sup>i</sup> UNHCR document HCR/IP/4/Eng/REV.1, para. 196: "It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt."

### **Additional observations by the State party**

6.1 In its submission of 23 April 2010, the State party refutes the author's argument that the migration authorities' assessment of whether an expulsion would violate article 3 of the Convention is made on the basis of the same assessment as when determining refugee status, and points out that the examination under the Aliens Act is the same as the one made under article 3 of the Convention and actually goes further, as the alien is also protected from being sent to a country where he or she would risk the death penalty or inhuman treatment or punishment, which is not covered by the prohibition of non-refoulement in article 3 of the Convention.

6.2 As regards the complainant's claim that she has adduced written evidence in support of her claims, the State party recalls that the complainant has not submitted any documents to substantiate her alleged membership of the parish. Furthermore, the medical evidence does not prove the alleged cause of her health problems, i.e. that these are due to the ill-treatment suffered in the Democratic Republic of the Congo. Therefore, no conclusion as to the causes of her health problems can be drawn from these medical reports.

6.3 The complainant's argument that she is unable to provide a document proving her identity since her identity card was confiscated by the security forces of the Democratic Republic of the Congo appears speculative insofar as it is based solely on her own assumption. She has not taken any initiative to prove her identity and made limited efforts to contact her family. She failed to provide any evidence in support of her claim that the contacts with the Red Cross led to no results. All these facts weaken the credibility of her submission.

6.4 The State party recalls that the complainant had made changes regarding the spelling of the pastor's name several times. Initially, the complainant indicated his name as being "Albert Lusaka". In a later submission, the counsel referred to him as "Albert Lukusa". However, during the third interview, counsel informed the Board that the spelling in the written submission was inaccurate and the pastor's name was in fact Albert Lusaka, as indicated initially by the complainant herself. The Swedish embassy in Kinshasa clarified that the pastor's surname was Lukusa, while counsel in her e-mail to the embassy referred to the pastor as "Lusaka". In view of these inconsistencies, the State party considers that it is justified to question the veracity of the complainant's allegation that she has worked with the pastor. The State party concludes that the complainant's return to the Democratic Republic of the Congo would not constitute a violation of article 3 of the Convention.

### **Additional comments by the complainant**

7.1 In a submission dated 9 June 2010, the author insists on her claim that the assessment made by the migration authorities is different from the assessment of the Committee under article 3 of the Convention. She further submits that she has done everything in her power to get in touch with her family, albeit unsuccessfully.

7.2 As to the State party's argument that she failed to provide any evidence from her home country, the complainant, with reference to paragraph 196 of the UNHCR Handbook,<sup>j</sup> recalls that she was imprisoned and after her escape she left the Democratic Republic of the Congo illegally and in haste. She arrived in Sweden with only the barest necessities and without personal documents.

7.3 With regard to the error in the spelling of the pastor's name, the complainant reaffirms her explanation that this is a simple mistake made by counsel and the interpreter.

---

<sup>j</sup> Ibid.

She reiterates her claim that her return to the Democratic Republic of the Congo would amount to a violation of article 3 of the Convention.

#### **Further comments by the parties**

8.1 By letter of 17 August 2010, the State party refutes the complainant's argument that she has done everything in her power to contact her family in the Democratic Republic of the Congo. It points out that any attempts to locate persons through the Red Cross are recorded, even if the efforts lead to the conclusion that the whereabouts of the relatives cannot be clarified. However, the complainant has not provided any evidence to demonstrate the result of her alleged efforts to get in touch with, or locate, her family. There is nothing — excepting her vague allegation in the latest submission — to suggest that she has done something else to locate her family except turning to the Red Cross. Therefore, the State party maintains that she has not substantiated her claims that her relatives are missing and she lacks a social network in the Democratic Republic of the Congo or that it would not be possible for her to relocate to Mushenge, where her parents live, upon her return to the Democratic Republic of the Congo. It reiterates its position that the evidence and circumstances invoked by the complainant do not suffice to show that the alleged risk of torture fulfils the requirement of being foreseeable, real and personal, and, therefore, her return to the Democratic Republic of the Congo would not constitute a violation of article 3 of the Convention.

8.2 In her submission of 2 September 2010, the complainant maintains that her efforts to locate her family brought no results. She submits that she has substantiated her claim with written evidence, the risk of torture being foreseeable, real and personal. On 16 September 2010, she submitted two reports produced by the United Nations which give credible information about the extremely difficult human rights situation in the Democratic Republic of the Congo, and a copy of the Committee's decision in respect of communication No. 322/2007.<sup>k</sup> On 4 October 2010, the complainant provided information about the fate of other persons who have the same background or have been in the same situation as the complainant herself. She submits that in 2002 a Catholic priest was arrested because he criticized the regime, and was released only after the Cardinal Etshou had threatened the regime with a mass demonstration. The Cardinal died a few weeks later in Brussels, most likely he was poisoned. Another pastor from Katanga, Theodore Ngoy, was forced to flee and is now a refugee in Canada. Kotino Fernando, a pastor previously working in Kinshasa, has been sentenced to death and subsequently his sentence was commuted to 20 years' imprisonment. Therefore, she maintains that she would be arrested upon return and exposed to persecution and torture due to her previous political and religious activities in the Democratic Republic of the Congo.

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

##### *Consideration of admissibility*

9.1 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

---

<sup>k</sup> The complainant submitted the following documents: the copy of the Committee's decision in communication No. 322/2007, *Njamba and Balikosa v. Sweden*, decision adopted on 14 May 2010; second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo (A/HRC/13/63); report of the United Nations High Commissioner for Human Rights and the activities of her Office in the Democratic Republic of the Congo (A/HRC/13/64).

Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. The Committee notes the State party's acknowledgment that domestic remedies have been exhausted and therefore finds that the complainant has complied with article 22, paragraph 5 (b), of the Convention.

9.3 The State party submits that the communication is inadmissible under article 22, paragraph 2, of the Convention, on the basis that it fails to rise to the basic level of substantiation required for purposes of admissibility. The Committee is of the opinion that the arguments before it raise substantive issues which should be dealt with on the merits and not on admissibility considerations alone.

9.4 Accordingly, the Committee finds the communication admissible and proceeds to its consideration on the merits.

#### *Consideration of the merits*

10.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

10.2 The issue before the Committee is whether the complainants' removal to the Democratic Republic of the Congo would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return (*refouler*) a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

10.3 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture upon return, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the Democratic Republic of the Congo. The aim of such an analysis is to determine whether the complainant runs a real personal risk of being subjected to torture in the country to which she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on 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 flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.<sup>1</sup>

10.4 The Committee recalls its general comment No. 1 on article 3,<sup>m</sup> which states that the Committee is 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. The risk need not be highly probable, but it must be foreseeable, real and personal, and present, as confirmed by the Committee in its previous decisions.<sup>n</sup> The

<sup>1</sup> Communication No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3.

<sup>m</sup> See footnote h above.

<sup>n</sup> See, inter alia, communications No. 103/1998, *S.M.R. and M.M.R. v. Sweden*, Views adopted on 5 May 1999, para. 9.7; No. 203/2002, *A.R. v. The Netherlands*, decision adopted on 14 November 2003,

Committee recalls that, while it gives considerable weight to the findings of fact of the State party's bodies, it is entitled to freely assess the facts of each case, taking into account the circumstances.

10.5 The Committee notes that the State party has questioned the complainant's credibility, including the claims related to her involvement in political activity within the parish, and considered her account of facts as not plausible. It further notes the author's claim that she has been imprisoned and subjected to torture and rape in the past, and that her allegations are corroborated by the medical reports provided.

10.6 The Committee observes that, according to the second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo (2010)<sup>o</sup> and the report of the United Nations High Commissioner for Human Rights and the activities of her Office in the Democratic Republic of the Congo (2010)<sup>p</sup> on the general human rights situation in the Democratic Republic of the Congo, serious human rights violations, including violence against women, rape and gang rape by armed forces, rebel groups and civilians, continued to take place throughout the country and not only in areas affected by armed conflict. Furthermore, in a recent report, the High Commissioner for Human Rights stressed that sexual violence in the Democratic Republic of the Congo remains a matter of serious concern, particularly in conflict-torn areas, and despite efforts by authorities to combat it, this phenomenon is still widespread and particularly affects thousands of women and children.<sup>q</sup> The Committee also notes that the Secretary-General in his report of 17 January 2011, while acknowledging a number of positive developments in the Democratic Republic of the Congo, expressed his concern about the high levels of insecurity, violence and human rights abuses faced by the population.<sup>r</sup>

10.7 Thus, in the light of the foregoing information, the Committee considers that the precarious human rights situation in the Democratic Republic of the Congo, as documented in recent United Nations reports, makes it impossible for the Committee to identify particular areas of the country which could be considered safe for the complainant in her current and evolving situation.<sup>s</sup>

10.8 Accordingly, the Committee, after having taken into account all the factors relevant for its assessment under article 3 of the Convention, and considering that the complainant's account of events is consistent with the Committee's knowledge about the present human rights situation in the Democratic Republic of the Congo, is of the view that, in the prevailing circumstances, substantial grounds exist for believing that the complainant is at risk of being subjected to torture if returned to the Democratic Republic of the Congo.<sup>t</sup>

11. 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's removal to the Democratic Republic of the Congo would constitute a violation of article 3 of the Convention.

---

para. 7.3; No. 256/2004, *M.Z. v. Sweden*, decision adopted on 12 May 2006, para. 9.3; *Njamba and Balikosa v. Sweden* (footnote a above), para. 9.4.

<sup>o</sup> A/HRC/13/63.

<sup>p</sup> A/HRC/13/64.

<sup>q</sup> A/HRC/16/27.

<sup>r</sup> Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (S/2011/20).

<sup>s</sup> *Njamba and Balikosa v. Sweden* (footnote a above), para. 9.5.

<sup>t</sup> *Ibid.*, para. 9.6.



12. In conformity with rule 118 (former rule 112), paragraph 5, of its rules of procedure (CAT/C/3/Rev.5), the Committee wishes to be informed, within 90 days, on the steps taken by the State party to respond to this decision.

**Communication No. 419/2010: *Ktiti v. Morocco***

*Submitted by:* Yousri Ktiti (represented by Action by Christians for the Abolition of Torture ACAT-France)

*Alleged victim:* Djamel Ktiti (brother of the claimant)

*State party:* Morocco

*Date of complaint:* 14 April 2010 (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 26 May 2011,

*Having concluded* its consideration of complaint No. 419/2010, submitted to the Committee against Torture by Yousri Ktiti on behalf of his brother Djamel Ktiti 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 against Torture**

1.1 The complainant is Yousri Ktiti, a French national born on 17 December 1982. He is submitting the complaint on behalf of his brother, Djamel Ktiti, a French national born on 29 June 1974 and currently being detained at the civilian prison of Salé in Rabat, awaiting extradition to Algeria. The complainant alleges that his brother's return to Algeria by Morocco would be a violation of the State party's obligations under article 3 of the Convention. He is represented by Action by Christians for the Abolition of Torture (ACAT-France).

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention on 19 April 2010. At the same time, pursuant to rule 108, paragraph 1, of its rules of procedure (CAT/C/3/Rev.4), the Committee urged the State party not to proceed with the expulsion to Algeria of the complainant's brother while his complaint was under consideration.

**The facts as submitted by the complainant**

2.1 The complainant's brother, Djamel Ktiti, was arrested on 14 August 2009 in the port of Tangiers, Morocco, by the Moroccan police, following a request by the International Criminal Police Organization (Interpol) pursuant to an international arrest warrant issued by the Algerian judiciary on 19 April 2009.<sup>a</sup> The arrest warrant was issued after a certain

---

<sup>a</sup> The arrest warrant was issued by the investigating judge from the second chamber of the specialized jurisdiction at the Court of Constantine, Algeria, on the charge of "forming an organized gang for the unlawful export of narcotics", an act punishable under articles 17 and 19 of the Code for the

M.K., arrested on 7 August 2008 in Algeria for possession of cannabis resin, had mentioned the name Djamel Ktiti during interrogation. According to M.K.'s brother, who had visited him in prison, M.K. had been tortured and ill-treated while in police custody in order to extract a confession and learn the names of possible accomplices involved in marijuana trafficking between Algeria and France, where M.K. has his permanent home. It was then that he gave, among others, the name of Djamel Ktiti who lives in the same neighbourhood as him in the city of Saint Etienne, France.

2.2 According to statements by M.K.'s family, he was beaten at the Algerian border, then held captive naked in a cell for two days, where he was tortured. His torturers beat him round the head and on the rest of his body. He was also electrocuted. He was tied to a chair, suffocated and forced to swallow water in an attempt to drown him. He was then sodomized with a bottle. When his family visited him in prison, they say he had a black eye, his brow and lips were split and he was covered in bruises (on his arms, legs and back). The purpose of the torture was to force him to confess to the acts of which he was accused and to reveal the names of his accomplices. During a telephone conversation with ACAT in April 2010, M.K.'s family confirmed that he had been savagely tortured following his arrest, but did not wish to put it in writing for fear of reprisals against him by the Algerian authorities, since he had not yet been tried.

2.3 Following his arrest, Djamel Ktiti was held in police custody until 15 August 2009, then brought before the Crown Prosecutor of the court of first instance in Tangiers, who informed him that he had been arrested under an international arrest warrant issued by Algeria. The Prosecutor then ordered pretrial detention at Tangiers prison pending his transfer to the Salé prison where Djamel Ktiti remains in custody. On 7 October 2009, the Supreme Court of Morocco handed down decision No. 913/1, authorizing Djamel Ktiti's extradition to Algeria. On 14 January 2010, his lawyers appealed against the decision before the same court, on grounds of irregularities in the arrest warrant, in particular numerous errors as to Djamel Ktiti's civil status. On 7 April 2010, the Supreme Court dismissed the appeal against the extradition order.

2.4 According to information obtained by the French Consulate in Algeria from the Algerian Ministry of Justice, despite Djamel Ktiti's arrest and the authorization granted by Morocco for his extradition to Algeria, the Court in Constantine had allegedly tried him in absentia on 28 January 2010 and sentenced him to life imprisonment. Despite a request by the French Consulate in Algiers, the Algerian authorities refuse to send a copy of the judgement, on the grounds that a judgement rendered in absentia can only be given to the convicted party himself.

2.5 Djamel Ktiti's family has contacted the Moroccan and French authorities on numerous occasions. They have written to the French Ministry of Justice, the Ministry of Foreign Affairs, the President of the Republic, and the Consulate and Embassy of France in Rabat. The family have also written to the King of Morocco and the Minister of Justice. Only the French Ministry of Justice has replied to the family, inviting them to write to the French consular authorities, who in turn have informed the family that intervening with the Moroccan or Algerian authorities would be seen as interfering in their domestic affairs, and as a slight against the independence of their courts. The International Federation for Human Rights (FIDH) has given the family an affidavit and ACAT has sent a letter to the Chief Justice of the Supreme Court of Morocco, warning him of the risks of torture upon return to Algeria.

---

Prevention and Punishment of the Use and Unlawful Trafficking of Narcotics and Psychotropic Substances (25 December 2004), and liable to life imprisonment.

### **The complaint**

3.1 The complainant alleges that Djamel Ktiti has been depicted by M.K. and the others arrested in the case as the leader of a drug trafficking ring dismantled by the Algerian police. He contends that as a result his brother is in danger of suffering the same, if not worse, torture than that inflicted on M.K., in violation of article 3 of the Convention.

3.2 The complainant refers to the Committee's most recent concluding observations following consideration of the periodic report of Algeria<sup>b</sup> in which the Committee "remains concerned at the many serious allegations which it has received of cases of torture and abuse inflicted on detainees by law enforcement officers". He adds that the torture and abuse inflicted on M.K. following his arrest demonstrate the legitimacy of this concern, and repeats that F.K., brother of M.K., saw for himself the traces of torture and abuse endured by his brother when he visited him in prison.

3.3 The complainant also contends that, since the Supreme Court dismissed the appeal against the 7 April 2010 extradition order, all domestic remedies have been exhausted in Morocco.

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

4.1 On 8 September 2010, the State party submitted its observations on the admissibility and merits of the complaint. After presenting the facts of the case, the State party emphasized that the detention of Djamel Ktiti on 14 August 2009 by the Moroccan judicial authorities resulted from an international arrest warrant issued on 19 April 2009 by the Algerian judicial authorities on charges of forming an organized gang for the unlawful export of narcotics, which was transmitted by Interpol to the various police stations in the country, including that of Rabat. On 7 September 2008, after searching a car driven by M.K., Algerian customs and border police found 110 kilograms of drugs, carefully hidden in the trunk of a car that had been embarking for Marseille. During interrogation, M.K. stated that the operation had been planned in Saint Etienne by Djamel Ktiti and B.Z., who had left Algeria the day before his arrest. M.K. added that other operations had been carried out previously.

4.2 The State party notes that, pursuant to the mutual legal assistance agreement that it signed with Algeria on 15 March 1963, and in response to the official request by the Algerian authorities for Djamel Ktiti's extradition, he was brought before the criminal division of the Supreme Court of Morocco on 20 September 2009. At the hearing, he was counselled by an attorney who submitted a written report further supported by an oral pleading. During the entire examination process of his case before the Supreme Court, Djamel Ktiti benefited from all the guarantees laid out in the Code of Criminal Procedure. On 7 October 2009, the criminal division of the Supreme Court handed down decision No. 913/1 authorizing the extradition of Djamel Ktiti to Algeria, after ensuring that the request met, in substance and form, all the conditions set by the aforementioned mutual legal assistance agreement and the Moroccan Code of Criminal Procedure. In exercising his right to a defence, Djamel Ktiti requested a review of the extradition order via his attorney on 8 February 2010. This appeal was dismissed by the criminal division of the Supreme Court on 7 April 2010 (judgement No. 1/366), after ensuring that the decision was justified and did not violate any relevant legislation.

---

<sup>b</sup> CAT/C/DZA/CO/3, 26 May 2008, para. 10.

### **Complainant's comments on the State party's observations**

5.1 On 14 November 2010, the complainant noted that the State party had not addressed in its observations the complaint's two key points, namely the application for suspension of extradition (temporary measures required by the Committee under rule 108, paragraph 1, of its rules of procedure, CAT/C/3/Rev.4) and the risk of torture should the State party extradite his brother to Algeria.

5.2 The complainant stresses that on numerous occasions since submitting his communication to the Committee he has, through his counsel, written multiple letters to the Moroccan authorities, including the King of Morocco, the Prime Minister, the Minister of Justice, the Minister for Foreign Affairs, the private secretary of the Minister of Justice, and the Office of Criminal Affairs and Pardons, asking for the confirmation of their intention to suspend his brother's extradition. He has not received any replies to his queries.

5.3 The complainant also states that his brother remains in detention at the Salé prison in Rabat, and notes that the Moroccan authorities appear to have decided to suspend his extradition de facto. He adds that in a letter sent to ACAT-France on 23 August 2010, the Counsellor for International Legal and Judicial Affairs within the executive office of the French Ministry of Foreign Affairs claims that the Ministry was told by the Moroccan authorities that they intended to wait for the Committee's decision on the merits of the case before extraditing Djamel Ktiti.

5.4 The complainant reiterates that Djamel Ktiti is at serious risk of being tortured if he is extradited to Algeria and reasserts that the State party has not addressed that issue.

### **Additional observations by the complainant**

6.1 On 14 November 2010, the complainant requested that the Committee give his communication priority, stressing that the Moroccan authorities appear to have tacitly agreed to suspend the extradition of Djamel Ktiti until the Committee takes a decision on the merits of the case. Djamel Ktiti has been detained since 14 August 2009, or more than 15 months. His continued detention without charge is intrinsically linked to the ongoing process before the Committee.

6.2 The complainant further stresses that all the requests for provisional release submitted by his lawyers have been dismissed or simply never examined. Officials in the Office of Criminal Affairs and Pardons at the Ministry of Justice who have been contacted by his lawyers and ACAT-France have said that they could not examine a request for provisional release given that extradition has already been authorized by the criminal division of the Supreme Court of Morocco in its decision of 7 April 2010.

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

#### *Consideration of admissibility*

7.1 Before considering any complaint contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention.

7.2 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.

7.3 The Committee also notes that all domestic remedies have been exhausted, in accordance with article 22, paragraph 5 (b), and that the State party has not contested the admissibility of the communication.

7.4 Although the complainant has not invoked article 15 of the Convention, the Committee believes that the communication also raises questions covered by that provision.

7.5 The Committee therefore finds the communication admissible, in that it raises questions with regard to articles 3 and 15 of the Convention, and proceeds to its consideration of the merits.

*Consideration of the merits*

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

8.2 The issue before the Committee is whether Djamel Ktiti's extradition to Algeria would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 Regarding the complainant's article 3 allegations, the Committee must take account of all considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of return. However, the aim of such an analysis is to determine whether Djamel Ktiti runs a *personal* risk of being subjected to torture in Algeria. Consequently the existence in the country of a pattern of gross, flagrant or mass violations of human rights does not as such constitute sufficient grounds for determining that he would be in danger of being subjected to torture on extradition to that country; additional grounds must exist to indicate that the individual concerned would be personally at risk.

8.4 The Committee refers to its general comment No. 1 (1997) on article 3,<sup>c</sup> which states that, in light of the obligation to determine whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he to be expelled, returned or extradited, the Committee must assess the risk of torture on the basis of elements beyond mere theory or suspicion. However, it is not necessary to demonstrate that the risk is highly probable, although it must be personal and real. In previous decisions, the Committee has ruled that the risk of torture must be foreseeable, real and personal.

8.5 The Committee recalls that when it considered the third periodic report of Algeria, submitted in accordance with article 19 of the Convention, it was concerned at the many serious allegations which it had received of cases of torture and ill-treatment inflicted on detainees by law-enforcement officers.<sup>d</sup>

8.6 In the case in question, the Committee has taken note of the complainant's allegations that M.K. underwent severe torture while in police custody in Algeria, leading him to name Djamel Ktiti as the leader of the drug-trafficking ring in question; it further notes that, on the basis of this confession obtained under torture, the Court of Constantine sentenced Djamel Ktiti in absentia to life imprisonment, but that the sentence was never made public; and that Algeria then requested the State party to extradite the complainant to Algeria under an international arrest warrant. The Committee also observes that, according to the indictment of 7 October 2009 issued by the Assize Court of Constantine against M.K., Djamel Ktiti and four other co-accused, M.K. claimed to have made the statements

---

<sup>c</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.*

<sup>d</sup> CAT/C/DZA/CO/3, para. 10.

under torture. The State party has not contested any of these allegations, nor has it provided any information concerning them in the comments it submitted to the Committee.

8.7 The Committee confirms that it is within the purview of the courts of the States parties to the Convention to assess the facts and evidence in a case. The appeal courts of States parties are responsible for reviewing the conduct of a trial, unless it can be established that the evidence was assessed in a patently arbitrary manner or one that amounted to a miscarriage of justice. The Committee notes in this case that, despite the complainant's allegations highlighting the potential risks, the Supreme Court of Morocco did nothing to assess those risks but was content to base its decision to extradite on statements which, according to the complainant, were obtained under torture. In view of this evidence, which, furthermore, has not been refuted by the State party, the Committee concludes that the complainant's extradition to Algeria would violate article 3 of the Convention.

8.8 Regarding article 15, the Committee considers that it is central to the case and closely linked to the questions raised under article 3 of the Convention. The Committee recalls that the general nature of its provisions derives from the absolute nature of the prohibition of torture and therefore implies an obligation for each State party to ascertain whether or not statements included in an extradition procedure under its jurisdiction were made under torture.<sup>e</sup> In this case, the Committee notes that the statements made by M.K., on which the extradition request was based, were allegedly obtained under torture; that the results of such physical abuse were verified by M.K.'s brother; and that the indictment issued on 7 October 2009 by the Assize Court of Constantine against M.K. states that M.K. claimed to have confessed under torture. The Committee notes that the State party has neither refuted any of these allegations nor included any information on this question in its observations to the Committee. The Committee considers that the State party was under an obligation to verify the content of the author's allegations that the statements made by M.K. had been obtained under torture, and that by not verifying them, and by using them as evidence in the extradition proceedings, the State party violated its obligations under article 15 of the Convention. The Committee thus concludes that the evidence submitted to it discloses a violation of article 15 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 State party would be in violation of article 3 of the Convention if the complainant was extradited to Algeria. It further concludes that the facts brought to its attention constitute a breach of article 15 of the Convention.

10. Pursuant to rule 118, paragraph 5, of its rules of procedure (CAT/C/3/Rev.5), the Committee requests that the State party inform it, within 90 days of the date of transmission of the present decision, of the measures taken in response to this decision. It adds that because Djamel Ktiti has been in detention for 21 months despite no charges having been laid against him, the State party is obliged to release him or to try him should charges be brought against him. Referring to its most recent concluding observations, the Committee once again urges the State party to review its legislation in order to incorporate a provision prohibiting any statement obtained under torture from being invoked as evidence in any proceedings, in conformity with article 15 of the Convention.<sup>f</sup>

<sup>e</sup> See communication No. 193/2001, *P.E. v. France*, decision adopted on 21 November 2002, para. 6.3.

<sup>f</sup> CAT/C/CR/31/2, 5 February 2004, para. 6 (h).

## B. Decisions on admissibility

### Communication No. 395/2009: *H.E-M. v. Canada*

*Submitted by:* H.E-M. (represented by counsel, Marie-Hélène Giroux)

*Alleged victim:* The complainant

*State party:* Canada

*Date of complaint:* 17 August 2009 (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 23 May 2011,*

*Having concluded* its consideration of complaint No. 395/2009, submitted on behalf of H.E-M. 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 on admissibility

1.1 The complainant is H.E-M., born in 1966, a Lebanese national residing in Canada. He claims that his deportation to Lebanon would constitute a violation by Canada of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel, Marie-Hélène Giroux.

1.2 On 24 August 2009, the Committee, at the complainant's request, and through its Rapporteur on new complaints and interim measures, requested the State party to refrain from deporting the complainant to Lebanon while his complaint was under consideration.

### Factual background

2.1 The complainant played an important role within the Lebanese "Shia" party; his brother, H.E-M., was a prominent party leader. In 1989, in the town of Bourj-el-Barajneh (south-western part of Lebanon) the complainant and his brother were fired at by Hizbullah forces. Several months later, members of the Syrian army went to the family home and threatened the complainant's family. Following this incident, the complainant's brother left Lebanon to settle in Canada. The complainant, for his part, fled the region for Beirut. In 1993, tensions with the Syrian army intensified. The complainant's brother, who was in Canada, called him and asked him to collect information on the Syrian army's activities in West Beirut. That November, the complainant was arrested by members of the Syrian army and detained in Ramlet-el-Baida (Beirut) for seven days. He was severely beaten in detention. In July 1994, the complainant's brother returned to Lebanon for a family visit; a week after his arrival, he was arrested by the Syrian army. The complainant's brother was detained at Adra in the Syrian Arab Republic for more than two years. Following this incident, and aware that he too was being sought by the Syrian army, the complainant went into hiding for two years with one of his sisters in the southern part of the country. In April 1996, the complainant left the country with his brother's two children in order to seek



asylum in Canada. On 18 December 1998, Canada granted him refugee status; on 8 December 2000, he obtained permanent resident status in Canada.

2.2 On 15 November 2007, the complainant was sentenced to two years' imprisonment for aggravated assault following a knife attack on his ex-wife. On 13 December 2007, while serving his prison sentence, the complainant was sentenced to 30 additional days' imprisonment for harassing his ex-wife by mobile phone.

2.3 On 19 June 2008, the Canada Border Services Agency (CBSA) informed the complainant of its intention to request an Opinion from the Canadian Minister of Citizenship, Immigration and Multiculturalism as to whether the complainant posed a danger to the Canadian public under article 115 (2) (a) of the Immigration and Refugee Protection Act.<sup>a</sup> On 20 March 2009, the Minister rendered a Danger Opinion in respect of the complainant. This Danger Opinion assessed his propensity to violence, citing violent incidents against his ex-wife during the course of their marriage, as well as allegations of threats against his brother in 1998 (which had not led to a conviction), and three discipline offences committed by the complainant while in prison. Such convictions and behaviour, the Opinion claimed, would allow a host country to deny refugee status protection under article 33, paragraph 2, of the Convention relating to the Status of Refugees. With regard to the risk of torture which the complainant would allegedly be running in the event of his deportation to Lebanon, the Opinion notes that the situation in Lebanon has changed since the complainant was first granted refugee status. Hizbullah is reportedly now the protective force for Shiite Muslims in the country (the complainant being Shiite) and the Syrian forces withdrew from Lebanon in 2005. Since then they have no longer controlled Lebanese territory. Based on the above, the Opinion weighs the danger that the complainant poses to the Canadian public against the risk to which he would be exposed in the event of his deportation to Lebanon, and concludes in favour of the complainant's deportation to Lebanon and of withdrawal of his permanent resident status.

2.4 The complainant's application for leave and judicial review was denied by the Federal Court on 7 July 2009 on the grounds of failure to submit his case file. On 13 August 2009, the complainant was informed that CBSA would be authorized to proceed with his deportation as from 17 August 2009. Since 13 March 2009, the complainant has been held by the immigration services in pretrial detention pending his deportation.

### **The complaint**

3.1 The complainant argues that his deportation would constitute a violation by Canada of article 3 of the Convention. Given that the State party granted him refugee status in 1998, it must be aware of the risks to which he would be exposed in the event of his deportation to Lebanon. As a well-known member of the Shia party opposing the Hizbullah political movement, he alleges that he would be subjected to torture and degrading treatment; members of the Shia party, he argues, are victims of systematic, serious and flagrant violations of their rights. The complainant adds that the Secretary-General of the United Nations stressed in one of his reports<sup>b</sup> that Hizbullah's maintenance of a paramilitary capacity posed a key challenge to the Government of Lebanon. The Lebanese security forces are thus unable to contain Hizbullah and are not in a position to prevent violations against the complainant.

3.2 The complainant claims that the expulsion order is disproportionate to his crime, and that it contradicts the expert opinion that there is only a moderate risk of his reoffending.

---

<sup>a</sup> IRPA.

<sup>b</sup> Press release SC/9653, 7 May 2009.

He also submits that his crime was an isolated incident committed in a state of inebriation and depression in the wake of his marriage break-up.

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

4.1 In a note dated 14 December 2009, the State party contests the admissibility of the complaint on the grounds that it is incompatible with the Convention, that it is insufficiently substantiated and that domestic remedies have not been exhausted. With regard to the merits, the State party denies any violation of article 3 of the Convention.

4.2 The State party recalls that the complainant, who obtained refugee status in 1998 and permanent resident status in Canada in 2000, was found guilty of aggravated assault and sentenced to two years' imprisonment on top of the 25 months already spent in pretrial detention. As a consequence of this conviction, CBSA issued a criminal inadmissibility report in respect of the complainant and transmitted his case to the Immigration Division of the Immigration and Refugee Board for investigation. On 25 April 2008, following a hearing at which the complainant was given the opportunity to speak, the Immigration Division determined that in accordance with domestic legislation,<sup>c</sup> the complainant should be effectively prohibited from Canadian territory owing to serious crime, and issued an expulsion order against him. As a result of this expulsion order, the complainant lost his permanent resident status in Canada. He appealed against the decision before the Immigration Appeal Division, but his appeal was rejected on the grounds of lack of jurisdiction.

4.3 When CBSA apprised the complainant of its intention to seek an Opinion from the Minister of Citizenship, Immigration and Multiculturalism regarding the danger the complainant might pose to the Canadian public, the complainant was told that he could, within the next 15 days, submit written comments and documentary evidence concerning the risks he would run if deported to Lebanon. The complainant refused to acknowledge receipt of this letter. On 8 August 2008, the complainant's counsel asked CBSA to extend the deadline for submitting written comments. This extension was refused since the request had already been transferred to the Minister. Counsel was, however, told that she could submit comments directly to the Minister. On 11 February 2009, CBSA provided the complainant with another opportunity to submit comments, but the complainant did not do so. Thus, at the time of issuance of the Minister's Opinion, on 20 March 2009, the complainant had still not submitted his comments on the risk to which he would be exposed if deported to Lebanon. The Minister accordingly based his Opinion on the information at his disposal and concluded that there was no risk of violation of article 3 of the Convention. Based on several documentary sources, the Minister's Opinion determined that since the end of the civil war in Lebanon in 1990, Hizbullah had not posed any danger to the civilian population, particularly to the Shiite community.<sup>d</sup> The State party stresses that the complainant's case is not that of an individual forced to return for reasons of criminality *despite* the genuine dangers to which he would probably be exposed; it is the case of an individual who, according to the Canadian authorities' investigations, runs no risk of torture if returned to his country of origin.

4.4 On 22 April 2009, the complainant applied to the Federal Court of Canada for leave and judicial review of the Minister's Opinion. On 7 July 2009, this application was rejected

---

<sup>c</sup> IRPA, para. 36 (1) (a).

<sup>d</sup> These documentary sources included a report of the Integrated Regional Information Network (IRIN) of 17 December 2008, the United States Department of State report for 2008, a report of the International Crisis Group dated 15 May 2008 and a report on Lebanon of the Immigration and Refugee Board of Canada, of 31 October 2007.

owing to the complainant's failure to deposit his case file. On 12 August 2009, the complainant appealed against the order of 7 July 2009, alleging negligence on the part of his lawyers. On 17 August 2009, the Federal Court rejected his appeal, after hearing the complainant's counsel. The grounds for the rejection were based on the argument that negligence on the part of his lawyers could not justify quashing a Federal Court decision.

4.5 The State party maintains that the complainant's communication before the Committee is inadmissible insofar as it is incompatible with the Convention on three counts: the risks alleged by the complainant do not constitute torture within the meaning of article 1; the communication is not sufficiently substantiated; and the complainant, owing to lack of diligence, has failed to exhaust the available domestic remedies. On the first count, the State party recalls that torture, as defined by article 1 of the Convention, requires that suffering be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>e</sup> However, in the State party's opinion, there is nothing to suggest that the complainant runs any risks at the hands of the Lebanese authorities. It submits, further, that the communication is insufficiently substantiated for the purposes of admissibility, since it fails to adduce evidence of a personal risk. None of the documents submitted by the complainant make it possible to identify the "Shia party" to which he refers. No mention is made of the nature of the complainant's alleged involvement in such a party, nor is any explanation provided as to why, as a Shiite, he would have anything to fear from Hizbullah, itself a Shiite party. None of the documents submitted by the complainant refer to any dispute between Hizbullah and a party by the name of "Shia", or to any persecution of Shiites by Hizbullah.

4.6 The State party contends that the complainant seeks to substantiate his allegations based primarily on the fact of his being granted refugee status by Canada in 1998. However, refugee status was granted to the complainant on the basis of claims totally different from those put forward in his communication before the Committee. In particular, his application for asylum of 1996 makes no mention of any "Shia party" or of any political affiliation on the part of the complainant. On the contrary, in the request he implied that his family was in fact uninvolved in politics and that it was precisely his brother's refusal to become involved that had led to Hizbullah's attack in the first place. The request also suggested that the complainant was not personally targeted, but that he risked injury because he was in his brother's vicinity. Moreover, the only risk alleged by the complainant in his 1996 asylum application was that of persecution by the Syrian forces. Even if the complainant had refused to join Hizbullah during the civil war, there is nothing to suggest, more than 10 years later, that this continues to constitute a threat to his safety. Even the evidence submitted by the complainant in his communication to the Committee indicates that Hizbullah does not forcibly recruit and is not prone to reprisals. This same evidence indicates that the protection provided by the State is usually adequate, particularly outside the southern part of the country.

4.7 Recalling the Committee's jurisprudence, as well as its general comment No. 1 (1997),<sup>f</sup> the State party stresses, further, that it is the responsibility of the complainant to establish a prima facie case for the purpose of admissibility of his communication under article 22 of the Convention. The State party maintains that in this case, these conditions have not been met.

4.8 The State party also submits that the complainant has failed to exhaust the domestic remedies available and that he has not diligently pursued the available remedies. The

<sup>e</sup> Communication No. 291/2006, *Ali v. Tunisia*, decision adopted on 21 November 2008, para. 15.4.

<sup>f</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX.

complainant was given several opportunities and several months in which to submit his allegations to the Minister for Citizenship, Immigration and Multiculturalism of Canada as part of the latter's investigation of the danger the complainant posed to the Canadian public and the risks to which he might be exposed in Lebanon. However, the complainant submitted no written comment in the context of that investigation. The complainant did not, moreover, pursue his application for leave and judicial review with due diligence, omitting to submit to the Federal Court the case file in support of his application. The State party stresses that pursuant to the Committee's own jurisprudence, mere negligence on the part of counsel cannot constitute justification for failure to exhaust domestic remedies.<sup>8</sup>

4.9 Besides its comments on admissibility, and on the same grounds, the State party maintains that the complainant's communication should be dismissed on the merits, claiming that it fails to constitute a violation of article 3 of the Convention.

### **Complainant's comments**

5.1 In counsel's reply, dated 23 December 2009, to the State party's observations on the admissibility and merits of the application, counsel maintains that the complainant continues to this day to run a risk if deported. Despite the official withdrawal of Syrian forces from Lebanon, Hizbullah's importance and influence has continued to grow, especially since the end of the recent conflict with Israel in 2006. The risk to the complainant has thus not diminished, since it was his refusal to become involved with the militias, Hizbullah included, which was the cause of his injuries in 1989. Despite the participation of sections of Hizbullah in the Government of Lebanon, the acts committed by this militia against individuals who oppose it are no less violent or arbitrary today. Counsel refers to several cases of unlawful detention by Hizbullah forces reported in the United States Department of State report for 2008. Counsel cites three cases respectively involving a member of the French Socialist Party, some Brazilian journalists and five employees belonging to a company carrying out a study in Beirut's southern neighbourhoods.

5.2 Counsel adds that Hizbullah's current participation in the Government of Lebanon means that the State party cannot exclude the possibility that the complainant, if detained in Lebanon, may be subjected to practices prohibited under article 1 of the Convention, since such practices may be perpetrated by State officials belonging to Hizbullah or inflicted at their instigation.

5.3 With regard to the exhaustion of domestic remedies, counsel notes that the complainant acted with due diligence, and that it was his lawyer who omitted to submit the applicant's case file to the Federal Court in the context of his application for leave and judicial review.

5.4 On 29 January 2010, counsel sent the Committee a copy of her application for criminal assessment of the complainant for the purposes of determining the danger he posed to the public. This assessment finds a reduced risk of reoffending owing to encouraging factors connected with the complainant's family context and his lack of previous criminal convictions. The report mentions the fact that the complainant would be willing to undergo clinical therapy aimed at further reducing the danger he poses.

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

6.1 Before considering a claim submitted 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, as it is required to do under article 22,

---

<sup>8</sup> Communication No. 307/2006, *E.Y. v. Canada*, decision adopted on 4 November 2009, para. 9.4.

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 (b), of the Convention, the Committee must ascertain that the complainant has exhausted all available domestic remedies; this shall not be the rule if the application of remedies has been unreasonably prolonged or would be unlikely to bring the alleged victim effective relief.

6.3 The Committee notes that in the State party's opinion, the communication should be ruled inadmissible on the grounds that the complainant was given numerous opportunities to submit evidence that he was personally at risk of torture if he returned to Lebanon, and that at no stage of the appeal did he submit any written comments; also, that he subsequently did not pursue his application for leave and judicial review with due diligence, omitting to submit to the Federal Court a case file in support of his application. The Committee notes that in the State party's opinion, the complainant cannot use his lawyer's negligence as a pretext for eschewing his responsibility to exhaust domestic remedies. The Committee takes note, also, of the complainant's argument that he did act with due diligence, but that it was his lawyer who omitted to submit the file to the Federal Court, and that he cannot consequently be blamed for this negligence.

6.4 The Committee recalls its consistent jurisprudence whereby errors made by a lawyer privately hired by the complainant cannot normally be imputed to the State party.<sup>h</sup> The Committee notes, moreover, that the complainant was on several occasions during the domestic procedures requested to provide proof that he continued to be personally at risk of torture in the event of his expulsion to Lebanon; that the complainant has never availed himself of such opportunities, nor explained his failure to do so. Thus, without being required to address the other claims made by the parties, the Committee concludes that the complainant has not availed himself of opportunities to exhaust all domestic remedies, remedies which are now closed as a result of the prescription of remedies in domestic law.

6.5 The Committee is thus of the opinion that domestic remedies have not been exhausted as required by article 22, paragraph 5 (b) of the Convention.

7. The Committee against Torture consequently decides:

- (a) That the communication is inadmissible;
- (b) That this decision shall be communicated to the State party and to the complainant.

---

<sup>h</sup> Communications No. 284/2006, *R.S.A.N. v. Canada*, decision adopted on 17 November 2006, para. 6.4; *E.Y. v. Canada*, para. 9.4.

**Communication No. 399/2009: F.M-M. v. Switzerland**

*Submitted by:* F.M-M. (represented by counsel, Bureau de conseil pour les Africains francophones de la Suisse (Office of Counsel for French-speaking Africans in Switzerland) (BUCOFRAS))

*Alleged victim:* The complainant

*State party:* Switzerland

*Date of complaint:* 9 September 2009 (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 26 May 2011,*

*Having concluded* its consideration of complaint No. 399/2009, submitted to the Committee against Torture by F.M-M. 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 communication, his counsel and the State party,

*Adopts* the following:

**Decision on admissibility**

1.1 The complainant is F.M-M., a national of the Congo born in 1977 who currently resides in Switzerland. He claims that his forced repatriation to the Republic of the Congo would amount to a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by the Bureau de conseil pour les Africains francophones de la Suisse (BUCOFRAS).

1.2 On 18 September 2009, at the request of the complainant, the Committee, through its Special Rapporteur on New Complaints and Interim Measures, requested the State party not to deport the complainant to the Republic of the Congo pending the Committee's consideration of his complaint.

**Factual background**

2.1 Since 1995 the complainant has been an active member of the Pan-African Union for Social Democracy (UPADS) led by former Congolese President Pascal Lissouba. As part of his duties as an activist, the complainant played an important role in his party's campaign as a propagandist in the Lekoumou region in the run-up to the 1997 elections. Following Sassou-Nguesso's victory over Pascal Lissouba, who was forced into exile along with other members of his party, the complainant joined the Conseil national de la résistance (National Resistance Council) (CNR) and fought in Dolisie and other parts of the country at the behest of Pascal Lissouba. Due to the armed conflict that broke out that year, the complainant was not able to return to Brazzaville. Fearing for his life, he eventually left the rebellion and moved to Pointe-Noire, where he found out that his name was on the list of rebels wanted by the Government of Sassou-Nguesso. Given the settling of scores that was taking place against Lissouba partisans and UPADS, the complainant left the Congo in fear for his life and headed to Angola, and later South Africa, with the intention of joining

Pascal Lissouba in England. In 2003 he was apprehended while in transit at Zurich airport for possession of a false passport.

2.2 The complainant filed a request for asylum on 25 September 2003, which the Federal Office for Refugees (ODM) refused on 11 May 2004, saying that his statements were not credible, particularly regarding the date of the elections, the continuous presence of UPADS in the Congo after Pascal Lissouba's departure, and the period during which the complainant was said to have taken part in the fighting. ODM also deemed his military identity card to be a fake because it did not carry an official stamp. An order for removal from Switzerland was issued. On 23 April 2004 the complainant appealed the ODM decision to the Swiss Asylum Review Commission. By a decision dated 1 July 2004, ODM argued that his appeal should be rejected, noting that it was bound to fail from the outset as it did not contain any new elements or evidence.

2.3 On 26 August 2009, the Federal Administrative Tribunal rejected the complainant's appeal, highlighting the inconsistencies and implausibilities in his account that were noted in the initial ruling, the inauthenticity of the evidence submitted, and the fact that, even if that evidence (particularly a wanted notice from 2001) was authentic, it did not support the complainant's claims of persecution because the complainant was wanted for vandalism, which was not covered by article 3 of the Federal Asylum Act.<sup>a</sup> The Tribunal added that, even if the complainant had in fact fought with the opposition rebels, his fear of being sought by the Congolese authorities would no longer be justifiable, given the recent political changes in the Congo, in particular the peace accord that had been signed on 17 March 2003 between the two parties and the amnesty law adopted by the National Assembly in August 2003, which applied to all offences committed by all warring parties since January 2000. Despite the absolute majority won by Sassou-Nguesso in the latest National Assembly elections held in 2007, the opposition still won 11 seats, 10 of them taken by former President Lissouba's UPADS, which was the main opposition party, and which had nominated an official candidate in the presidential elections of 12 July 2009. Thus, according to the Tribunal, the complainant would not be exposed to persecution in the Congo, and his fears no longer seemed founded. While the Tribunal rejected his appeal, it allowed him until 28 September 2009 to leave Switzerland.

2.4 Since his arrival in Switzerland, the complainant has maintained close ties with UPADS and with former President Lissouba's family and entourage. He is one of the founding members of the Cercle d'études pour le retour de la démocratie au Congo (Discussion group for a return to democracy in the Congo) (CERDEC), an association that the main opposition parties in exile have recently created from abroad. He is well known in Congolese circles in Switzerland, including among Sassou-Nguesso's supporters. Several of the complainant's family members have been subjected to harassment by State agents. The complainant himself has received so many anonymous phone threats that his counsel is preparing to file a complaint against persons unknown with the authorities in Zurich.

2.5 On 9 September 2009, when the complainant submitted his complaint to the Committee, he included an original copy of a search and arrest warrant signed by the chief examining magistrate of the Dolisie regional court. The complainant is wanted for illegally wearing a military uniform and possession of a weapon of war.

2.6 In a letter dated 18 December 2009, counsel submitted to the Committee additional evidence that the complainant would be at personal risk if he were to return to the Congo. This evidence is an original copy of the Congolese newspaper *Maintenant* dated 19

---

<sup>a</sup> Switzerland's law on asylum.

November 2009 which includes an account of the harassment by Congolese authorities of certain members of the complainant's family.

### **The complaint**

3.1 The complainant maintains that his forced return to the Congo would constitute a violation by the State party of article 3 of the Convention, as there is good reason to believe that he would be at risk of serious harm such as that described in article 1, paragraph 1, of the Convention, due to his continued allegiance to former President Lissouba, now in exile, and his involvement in CERDEC, which was recently established in Switzerland (he is one of the founders of the Swiss branch of the organization).

3.2 The complainant notes that all CERDEC sympathizers and individuals close to the Lissouba family would be at risk of torture and ill-treatment for the purpose of obtaining information and confessions if they were to return to the country. Despite the amnesty signed by the Government in Brazzaville, flagrant human rights violations still occur against members of the opposition who support democracy and social justice. Furthermore, the complainant asserts that new reasons to fear for his safety have emerged since he arrived in Switzerland, in particular a search and arrest warrant issued by the Dolisie Court of Appeal, as well as a warrant for his arrest from the Dolisie regional court. According to the complainant, this evidence establishes a serious and concrete personal risk of psychological and physical torture if he should return to the Congo, particularly given his relationship with the Lissouba family and opposition leader MOUNGOUNGA NGUILA, and the fact that he was a rebel soldier.

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

4.1 In a memo dated 13 November 2009, the State party contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies, in accordance with article 22, paragraph 5 (b), and rule 107, paragraph (e), of the Committee's rules of procedure (CAT/C/3/Rev.4).

4.2 The State party points out that the complainant appealed the rejection of his request for asylum by the Federal Office for Migration (ODM) on 23 April 2004. On 26 April 2009 the Federal Administrative Tribunal upheld the ODM decision, primarily in view of the lack of credibility of the complainant's claims. It also found that, regardless of the issue of credibility, the complainant's fear of future persecution was no longer founded, given the changes that had taken place in his country of origin since his departure.

4.3 The State party emphasizes, however, that in his complaint to the Committee, the complainant asserts that after he left the Congo he became active in CERDEC, an association founded in Paris by members of the opposition in exile, and that he started a Swiss branch. As a result of his activism, particularly as secretary of the Swiss branch of CERDEC, he claimed to have become known in Congolese circles in Switzerland, which led, he says, to the harassment of his close relatives in Brazzaville by Congolese authorities. He claimed to have received threatening phone calls, for which he planned to file a complaint against persons unknown with the Zurich police. The complainant also asserts his close ties to Pascal Lissouba's family and claims that he was the subject of a search and arrest warrant issued on 6 September 2004 for illegally wearing a military uniform and possession of a weapon of war.

4.4 The State party highlights the fact that none of these claims were presented to ODM or to the Federal Administrative Tribunal, and they were thus not examined by those authorities. As new facts, they could constitute grounds for an application under the extraordinary procedure to the authority of first instance (reconsideration) or to the appeal court (review), or even for a fresh asylum procedure (second application for asylum). The



State party points to the Committee's case law,<sup>b</sup> according to which the State party should have the opportunity to examine new evidence before the matter is referred to the Committee in a communication under article 22 of the Convention. The State party therefore asks the Committee to declare the complaint inadmissible on grounds of non-exhaustion of domestic remedies in conformity with article 22, paragraph 5 (b), of the Convention.

### **Complainant's comments**

5.1 In a reply dated 23 February 2010 to the State party's observations on the admissibility of the complaint, counsel insists on the fact that important evidence justifying the complainant's fears in the event of being returned to his country of origin — evidence that was submitted to the national courts — was not taken into account by the courts, in violation of article 3 of the Convention. The complainant further notes that the entry into force of the removal order puts him at risk of refoulement. According to article 112 of the Federal Asylum Act, an application under a special remedy does not suspend the enforcement of removal unless the authority decides otherwise.<sup>c</sup> There is thus no guarantee that the complainant will not be sent back to his country before the extraordinary procedure is completed. The complainant therefore asks the Committee to find the communication admissible.

### **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.

6.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee must ascertain whether the complainant has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of those remedies has been unreasonably prolonged, or that it is unlikely to bring effective relief to the alleged victim.

6.3 The Committee notes that, in the State party's view, the complaint should be declared inadmissible under article 22, paragraph 5 (b), of the Convention because the main facts that the complainant submitted to the Committee were never presented to the national judicial authorities. These facts are that the complainant became actively involved in CERDEC in Switzerland, which led to him becoming known in Congolese circles in Switzerland and consequently to the harassment of his close relatives in Brazzaville by Congolese authorities, and that the complainant himself also received threatening phone calls and planned to file a complaint against persons unknown with the Zurich police. The State party also points out that the search and arrest warrant issued by the Congolese authorities on 6 September 2004 was never submitted to ODM or to the Federal Administrative Tribunal.

6.4 The Committee takes note of the complainant's argument that the State party's courts have already violated article 3 of the Convention by wrongly rejecting the evidence provided by the complainant during the asylum procedure, and that consequently the State party should not be allowed to hide behind the argument that this new evidence was not

---

<sup>b</sup> Communication No. 24/1995, *A.E. v. Switzerland*, decision on admissibility of 2 May 1995, para. 4.

<sup>c</sup> Article 112 states: "The filing of extraordinary legal remedies does not suspend enforcement of removal, unless the authority responsible for handling the case decides otherwise."

brought to the attention of ODM and the Federal Administrative Tribunal. The Committee notes that, according to the complainant, going back to the national courts to submit the new evidence would not lead to a stay of removal unless the authority decides otherwise.

6.5 The Committee recalls its case law,<sup>d</sup> according to which the State party must have the opportunity to examine new evidence covered by article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment before it is considered by the Committee as a communication under article 22 of the Convention. In this instance, the national courts have not been able to consider new and important evidence, namely proof of the complainant's political activity within CERDEC in Switzerland and the resulting threats made against him and his family, and a copy of an arrest warrant dated 6 September 2004 for illegally wearing a military uniform and possession of a weapon of war. The complainant has failed to provide any valid reason for not submitting this evidence, which he knows to exist, to the national authorities during national proceedings. The Committee is therefore of the view that the conditions set forth in article 22, paragraph 5 (b), of the Convention have not been met and that the complaint is therefore inadmissible. The Committee also notes that, in addition to the extraordinary procedure, the complainant also has the right to file a new request for asylum on the basis of the new evidence.

7. Accordingly, the Committee decides:

- (a) That the communication is inadmissible;
- (b) That this decision shall be communicated to the State party and to the complainant.

---

<sup>d</sup> *A.E. v. Switzerland*, para. 4.