

## SENEGAL

### Follow-up - Jurisprudence Action by Treaty Bodies

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

COMMITTEE AGAINST TORTURE

Thirty seventh session

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

Held at the Palais Wilson, Geneva,

on Wednesday, 22 November 2006, at 3 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

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

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

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5. The information provided in document CAT/C/37/R.2 on the Suleymane Guengueng and others v. Senegal case was not complete. Since the decision of the African Union (AU) that Hissène Habré, the former President of Chad, should be brought to justice in a Senegalese court, in November 2006 the Government of Senegal had enacted legislation amending provisions of the Code of Criminal Procedure relating to universal jurisdiction and judicial cooperation. He therefore proposed that a letter should be sent to the State party expressing satisfaction at the enactment of the legislation and the hope that it would be implemented swiftly. The letter should also recall the decisions of the Committee and the African Union (AU) and request information as to when they would be followed up.

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22. Mr. WANG Xuexian, referring to communication No. 181/2001: Suleymane Guengueng and others v. Senegal, noted that Mr. Mariño Menéndez had said that he would seek further information from Senegal. However, he would also like Mr. Mariño Menéndez to provide more detailed information on the relevant decision of the Committee of Eminent African Jurists and draft legislation.

23. Mr. MARIÑO MENÉNDEZ said that no official information had been received from the State party, and that while it appeared to be reliable, the information provided by Amnesty International was not sufficiently explicit. He would ask the State party to inform the Committee of any measures, in particular legislative measures, that had been adopted. Once that information had been received, it would be dealt with in the normal manner.

**CAT, A/62/44 (2007)**

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

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

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|---|---|
| <b>State party</b>                                | <b>SENEGAL</b>  |
| Case  | Suleyman Guengueng and others, 181/2001   |
| Nationality and country of removal if applicable  | N/A   |
| Views adopted on                                  | 17 May 2006   |
| Issues and violations found                       | Failure to prosecute - articles 5, paragraph 2, and 7.  |
| Interim measures granted and State party response | N/A   |
| Remedy recommended                                | In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee requests the State party to inform it, within 90 days of the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.  |
| Due date for State party response                 | 16 August 2006  |
| Date of reply                                     | 8 March 2007 (had previously responded on 18 August and 28 September 2006).   |
| State party response                              | 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.

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. Habré of the charges against him. It stated that its judicial authorities were looking into 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 response

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 affaire.

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:

1. The new legislation does not include the crime of torture but only of genocide, crimes against humanity and war crimes.
2. 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.
3. 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.

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

COMMITTEE AGAINST TORTURE

Thirty-eighth session

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

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

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ORGANIZATIONAL AND OTHER MATTERS (agenda item 3)

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

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

2. Mr. SCHMIDT, Petitions Unit, introducing the report, said that it dealt with follow-up activities since the end of the Committee's previous session, 24 November 2006. The cases C. T. and K. M. v. Sweden, Losizkaja v. Switzerland and El Rgeig v. Switzerland should not pose problems because the States parties concerned had applied the Committee's recommendations. With regard to the cases Falcón Riós v. Canada, Suleymane Guengueng and others v. Senegal, Thabti v. Tunisia, Abdelli v. Tunisia and Ltaeif v. Tunisia, the Committee could decide on further follow-up measures. Finally, the document contained a list of States parties that had not replied to the Committee's requests for information. The Committee could thus decide to seek authorization to conduct a follow-up mission to a country which had not discharged its obligations if it felt that the situation called for it.

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6. [Mr. MARIÑO MENÉNDEZ,] As far as the Suleymane Guengueng and others v. Senegal case was concerned, the State party had indicated on 7 March 2007 that new legislation had been adopted and that the judicial authorities were henceforth competent to try Mr. Hissen Habré. However, the complainants had called the Committee's attention to the fact that the new legislation did not contemplate the crime of torture but rather genocide, crimes against humanity and war crimes. The Committee should therefore transmit to the State party a copy of the letter of 24 April 2007 from the complainants in order to elicit its observations, and remind the Senegalese authorities that it was incumbent on them to take necessary steps to discharge their obligations under article 5 of the Convention.

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

15. It was so decided.

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

COMMITTEE AGAINST TORTURE  
Fortieth session

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

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

1. The CHAIRPERSON invited the Committee to resume its consideration of the report on follow-up activities (CAT/C/40/R.1) relating to the Committee's decisions on individual complaints submitted under article 22 of the Convention.

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14. Mr. MARIÑO MENÉNDEZ, referring to further action taken or required in the case of Suleymane Guengueng et al.v. Senegal (communication No. 181/2001), said that a meeting would be held shortly with representatives of the State party to seek information concerning the donors' meeting with European countries. He proposed that the Committee should defer its consideration of the case pending the outcome of that meeting with the State representatives.

15. The CHAIRPERSON said he took it that the Committee agreed to the proposal by Mr. Mariño Menéndez.

16. It was so decided.

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

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

CAT, A/63/44 (2008)

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

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### D. Follow up activities

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

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

...

97. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing:... *Suleymane Guengueng and others v. Senegal* (No. 181/2001);...

98. During the thirty ninth and fortieth sessions, the Special Rapporteur on follow up to decisions presented new follow up information that had been received since the last annual report with respect to the following cases:... *Suleymane Guengueng and others v. Senegal* (No. 181/2001);...

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

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

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| <b>State party</b>                                   | <b>SENEGAL</b>   |
| <b>Case</b>  | <b>Suleyman Guengueng and others,<br/>181/2001</b>   |
| Nationality and country of removal<br>if applicable  | N/A  |
| Views adopted on                                     | 17 May 2006  |
| Issues and violations found                          | Failure to prosecute - articles 5, paragraph 2,<br>and 7   |
| Interim measures granted and State party<br>response | N/A  |
| Remedy recommended                                   | In pursuance of rule 112, paragraph 5, of its<br>rules of procedure, the Committee requests the<br>State party to inform it, within 90 days of the<br>date of the transmittal of this decision, of the<br>steps it has taken in response to the views<br>expressed above.  |
| Due date for State party response                    | 16 August 2006   |
| Date of reply  | 17 June 2008 (had previously responded<br>on 18 August, 28 September 2006,<br>8 March 2007 and 31 July 2007)   |
| State party response                                 | On 18 August 2006, the State party denied<br>that it had violated the Convention, and<br>reiterated its arguments on the merits,<br>including its argument on article 5 that under<br>the Convention a State party is not obliged to<br>meet its obligations within a particular time.<br>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.

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. Habré of the charges against him. It stated that its judicial authorities were looking into 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.

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.

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 francs CFA (equivalent to around 43,000 USD) 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 francs CFA (equivalent to 2,400 USD) 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 foreseen to reinforce the human resources of the Tribunal in Dakar which will try Mr. Habré, as well as the designation of the necessary judges.

#### Complainant's response

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 affaire.

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:

1. The new legislation does not include the crime of torture but only of genocide, crimes against humanity and war crimes.
2. 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.
3. 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.

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 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 Special Rapporteur

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 other countries, 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.

#### Further action taken/required

During the thirty-ninth session, the Special Rapporteur on follow-up 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 Special 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

underway.

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.

Committee's decision

The Committee considers the follow-up dialogue ongoing.

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

COMMITTEE AGAINST TORTURE

Forty-first session

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

Held at the Palais Wilson, Geneva,

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

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

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

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

2. Mr. MARIÑO MENÉNDEZ (Special Rapporteur on Follow-up), introducing the report, said that it contained follow-up information submitted since the Committee's fortieth session...

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8. Mr. WANG Xuexian (Vice-Chairperson) took the Chair.

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Communication No. 181/2001: Suleymane Guengueng and others v. Senegal

15. Mr. MARIÑO MENÉNDEZ, summarizing the replies received from Senegal, drew attention to the follow-up action proposed in the report. If members were of the view that the Committee should meet with a representative of the Senegalese mission or that it should take some other action to exert pressure on the State party, he would not object. It certainly was not the Committee's responsibility to secure the necessary funds for Senegal to hold the proceedings in question. At most, the Committee could informally suggest that States that had promised to provide financial aid should fulfil their promises.

16. Ms. GAER asked whether the Special Rapporteur was of the view that further action by the Committee could be helpful in the case in question. When faced with similar situations, the Human Rights Committee, for example, sometimes sent a rapporteur to the capital of the State party concerned in order to speak to officials directly. Such visits could have a greater impact than sending a letter.

17. Mr. MARIÑO MENÉNDEZ said that, while there was no question that a face-to-face meeting had a greater impact than a letter, he was not convinced that a meeting with the president of the Senegalese Court of Cassation would be useful. The Committee was dealing

with a high-profile case, and there were no legal impediments to commencing proceedings. The only impediment was the lack of financial resources. Consequently, he believed that the Committee should wait before considering a visit to the State party. However, he would not press that view if other members were in favour of going ahead with such action.

18. Mr. GROSSMAN said that it was important for the Committee to consider the various options available to it in its efforts to enhance the effectiveness of its follow-up mechanisms. In the current case, the Committee's counterpart was not the president of the Court of Cassation but rather the State party itself through its Minister for Foreign Affairs. Given that a mission to Senegal would be costly, another way to increase the visibility of the case was to organize a meeting in Switzerland between the Senegalese Ambassador and a four-person delegation from the Committee consisting of the Special Rapporteur, the Chairperson and two other members. In the course of such a meeting, the Committee could state that it was considering requesting authorization to hold a dialogue with the Senegalese judiciary in connection with the case.

19. Ms. SVEAASS agreed with the suggestion to request a meeting with the Senegalese Ambassador; however, the Committee should not use such an option exclusively in connection with high-profile cases, while taking a more lenient approach in other, less visible ones.

20. Ms. GAER said she was not opposed to a meeting with the Senegalese Ambassador in Geneva but had doubts about its potential effectiveness. The advantage of undertaking a mission to Dakar was that it would have a more immediate impact and would allow the Committee to speak with a number of national officials, not just one. The Committee should at least request such a mission before rejecting it as a possibility. The case had been unresolved for some time and it seemed strange that finances were being given as reasons for further delay. On the other hand, her main goal was effectiveness; thus, if members believed that it was more effective to meet with the Senegalese Ambassador, she was prepared to support that course of action.

21. Mr. MARIÑO MENÉNDEZ said that, since all the countries that had promised funds to Senegal were members of the European Union, the Committee might consider contacting a representative of the Council of the European Union to request help in encouraging those States to fulfil their promises. Alternatively, the secretariat could propose a meeting at the Senegalese Embassy, during which the Committee could present the current situation, emphasize the need to act swiftly and, at the same time, discuss the possibility of sending a mission to Dakar.

22. Mr. KOVALEV supported Ms. Gaer's suggestion. It was urgent for the Committee to take prompt action since there was a definite risk that the complainant would be expelled. A meeting with the Senegalese Ambassador would not prevent the Committee from subsequently undertaking a mission to Dakar.

23. Ms. KLEOPAS agreed with Mr. Kovalev and suggested that the Committee should establish a time limit for receiving a response from the Ambassador, after which it would proceed to request a mission to Dakar.

24. The CHAIRPERSON said there appeared to be a consensus on the proposal to organize a meeting with the Senegalese Ambassador the following week and, in the course of that meeting,

to discuss the possibility of a visit by the Committee to Senegal.

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

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

CAT, A/64/44 (2009)

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

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### D. Follow-up activities

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

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

...

93. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing: *Suleymane Guengueng and others v. Senegal* (No. 181/2001); ...

94. During the forty-first and forty-second sessions, the Special Rapporteur on follow up to decisions presented new follow up information that had been received since the last annual report with respect to the following cases: *Suleymane Guengueng and others v. Senegal* (No. 181/2001);...

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

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

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| <b>State party</b>                                | <b>SENEGAL</b>   |
| <b>Case</b>                                       | <b>Suleymane Guengueng and others, 181/2001</b>  |
| Nationality and country of removal if applicable  | N/A  |
| Views adopted on                                  | 17 May 2006  |
| Issues and violations found                       | Failure to prosecute - articles 5, paragraph 2, and 7  |
| Interim measures granted and State party response | N/A  |
| Remedy recommended                                | In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee requests the State party to inform it, within 90 days of the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.   |
| Due date for State party response                 | 16 August 2006   |
| Date of reply                                     | 17 June 2008 (had previously responded on 18 August, 28 September 2006, 8 March 2007 and 31 July 2007).  |
| State party response                              | 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.

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. Habré of the charges against him. It stated that its judicial authorities were looking into 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.

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.

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 francs CFA (equivalent to around 43,000 USD) 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 francs CFA (equivalent to 2,400 USD) 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 foreseen to reinforce the human resources of the Tribunal in

Dakar which will try Mr. Habré, as well as the designation of the necessary judges.

#### Complainant's response

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:

1. The new legislation does not include the crime of torture but only of genocide, crimes against humanity and war crimes.
2. 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.
3. 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.

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 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 Special Rapporteur 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 other countries, 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.

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 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 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.

#### Consultations with State party

During the thirty-ninth session, the Special Rapporteur on follow-up 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 Special 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.

Committee's decision

The Committee considers the follow-up dialogue ongoing.

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CAT, A/65/44 (2010)

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

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### D. Follow-up activities

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

109. During its thirty-fourth session, the Committee, through its Rapporteur for follow-up of decisions on complaints, decided that in cases in which it had found violations of the Convention, including decisions made by the Committee prior to the establishment of the follow-up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the decisions. To date, the following countries have not yet responded to these requests: Canada (with respect to *Tahir Hussain Khan*, No. 15/1994); Serbia<sup>1</sup> and Montenegro (with respect to *Dimitrov*, No. 171/2000,<sup>2</sup> *Danil Dimitrijevic*, No. 172/2000, *Nikolić, Slobodan and Ljiljana*, No. 174/2000, *Dragan Dimitrijevic*, No. 207/2002 and *Besim Osmani v. Republic of Serbia*, No. 261/2005); and Tunisia (with respect to *Ali Ben Salem*, No. 269/2005).

110. Action taken by the States parties in the following cases complied fully with the Committee's decisions and no further action will be taken under the follow-up procedure: *Halimi-Nedibi Quani v. Austria* (No. 8/1991); *M.A.K. v. Germany* (No. 214/2002);<sup>3</sup> *Hajrizi Dzemajl et al. v. Serbia and Montenegro* (No. 161/2000), *the Netherlands* (with respect to *A.J.*, No. 91/1997); *Mutombo v. Switzerland* (No. 13/1993); *Alan v. Switzerland* (No. 21/1995); *Aemei v. Switzerland* (No. 34/1995); *V.L. v. Switzerland* (No. 262/2005); *El Rgeig v. Switzerland* (No. 280/2005); *Tapia Paez v. Sweden* (No. 39/1996); *Kisoki v. Sweden* (No. 41/1996); *Tala v. Sweden* (No. 43/1996); *Avedes Hamayak Korban v. Sweden* (No. 88/1997); *Ali Falakflaki v. Sweden* (No. 89/1997); *Orhan Ayas v. Sweden* (No. 97/1997); *Halil Haydin v. Sweden* (No.

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

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

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

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

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

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<sup>1</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 the Republic of Serbia.

<sup>2</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>3</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 provided satisfactory information in this regard (see chart below).

<sup>4</sup> The State had already remedied the breach prior to consideration of the case.

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

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| <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, the Committee requests the State party to inform it, within 90 days of 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>                 | 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).   |

**State party  
response**

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.

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 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.

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On 9 October 2006, the complainants commented on the State party's

**comments**

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.

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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 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

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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  
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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  
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 of 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, 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 43rd 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.

**Committee's  
decision**

The Committee considers the follow-up dialogue ongoing.

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