

## TUNISIA

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

CAT A/59/44 (2004)

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

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#### D. Follow-up activities

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270. *M'Barek v. Tunisia*, case No. 60/1996, decision adopted on 10 November 1999. The case concerned the failure to investigate allegations of torture in circumstances where the cause of death of the victim was unclear. The Committee found violations of articles 12 and 13 of the Convention and recommended that the State party inform it within 90 days of the steps taken in response to its observations. In a letter dated 15 April 2002, the State party challenged the decision and the facts as interpreted in the Committee's decision.

271. *Thabti v. Tunisia*, case No. 187/2001, *Abdelli v. Tunisia*, case No. 188/2001, *Ltaief v. Tunisia*, case No. 189/2001, decisions adopted on 14 November 2003. The cases concerned the torture allegedly inflicted on the complainants. The Committee found violations of articles 12 and 13 of the Convention and recommended that the State party conduct an investigation into the allegations and inform it within 90 days of the steps taken.

272. In its response dated 26 March 2004, the State party challenged the Committee's decision and reiterated the arguments presented during the examination of the complaint. It alleged that the complaint was an abuse of process, that the authors failed to exhaust domestic remedies and that the motives of the NGO representing the authors were not bona fide. Furthermore, the State party requested that the Committee "reconsider" the complaint.

**CAT, A/60/44 (2005)**

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

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**D. Follow-up activities**

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

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

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

## Report on follow-up to individual complaints to the<sup>1</sup> Committee against Torture

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

Case	Date of adoption	Nationality of complainant and country of removal if applicable	Article of Covenant violated	Interim measures granted and State party's response	Remedy	Follow-up	Further action
...							
No. 60/1996 <i>M'Barek v. Tunisia</i>	10 Nov. 2004	Tunisian	12 and 13	None	The Committee requests the State party to inform it within 90 days of the steps taken in response to the Committee's observations.	Ongoing  See first follow-up report (CAT/C/32/FU/1). On 15 April 2002, the State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Rapporteur should arrange to meet with a representative of the State party.	Arrange meeting with State party
...							

No. 187/2001 <i>Thabti, Dhaou</i>	14 Nov. 2003	Tunisian	12 and 13	None	The Committee urges the State party to	Ongoing	Meeting with State
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<p><i>Belgacem v. Tunisia</i></p> <p>No. 188/2001 <i>Abdelli, Imed v. Tunisia</i></p> <p>No. 189/2001 <i>Ltaief Bouabdallah v. Tunisia</i></p>					<p>conduct an investigation into the complainant's allegations of torture and ill-treatment and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to its observations</p>	<p>See first follow-up report (CAT/C/32/FU/1). On 16 March 2004, the State party challenged the Committee's decision. At the thirty-third session the Committee requested the Special Rapporteur to meet with a representative of the State party.</p>	<p>party to be arranged</p>
<p>...</p>							

<sup>1</sup> The present report reflects information up to the end of the thirty-fourth session

**CAT, A/61/44 (2006)**

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

...

**D. Follow-up activities**

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

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

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

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

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<b>State party</b>	<b>TUNISIA</b>
Case	M'Barek, 60/1996
Nationality and country of removal if applicable	Tunisian
Views adopted on	10 November 2004
Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	The Committee requests the State party to inform it within 90 days of the steps taken in response to the Committee's observations.
Due date for State party response	22 February 2000
Date of reply	15 April 2002
State party response	Ongoing See first follow-up report (CAT/C/32/FU/1). The State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party.
Author's response	None
Consultations with State party	See note below on the consultations with the Tunisian Ambassador on 25 November 2005
Case	Thabti, Abdelli, Ltaief, 187/2001, 188/2001 and 189/2001
Nationality and country of removal if	Tunisian

applicable

Views adopted on 20 November 2003

Issues and violations found Failure to investigate - articles 12 and 13

Interim measures granted and State party response None

Remedy recommended 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

Due date for State party response 23 February 2004

Date of reply 16 March 2004 and 26 April 2006

State party response Ongoing  
See first follow-up report (CAT/C/32/FU/1). On 16 March 2004, the State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special 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 referred to one of the authors' (189/2001) requests of 31 May 2005, to "withdraw" his complaint, which it submits calls into question the real motives of the authors of all three complaints (187/2001, 188/2001 and 189/2001). It reiterates its previous arguments and submits that the withdrawal of the complaint corroborates its arguments that the complaint is an abuse of process, that the authors failed to exhaust domestic remedies, and that the motives of the NGO representing the authors are not bona fide.

Author's response One of the authors (189/2001) sent a letter, dated 31 May 2005, to the Secretariat requesting that his case be "withdrawn", and enclosing a letter in which he renounces his refugee status in Switzerland.

## Consultations with State party

On 25 November 2005, the Special Rapporteur on follow-up met with the Tunisian Ambassador in connection with Case Nos. 187/2001, 188/2001 and 189/2001. The Special Rapporteur explained the follow-up procedure. The Ambassador referred to a letter dated 31 May 2005 which was sent to OHCHR from one of the authors, Mr. Ltaief Bouabdallah, the author of case No. 189/2001. In this letter, the author said that he wanted to “withdraw” his complaint and attached a letter renouncing his refugee status in Switzerland. The Ambassador stated that the author had contacted the Embassy to be issued a passport and is in the process of exhausting domestic remedies in Tunisia. He remains a resident in Switzerland which has allowed him to stay despite having renounced his refugee status. As to the other two cases, the Special 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 Special 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 case Nos. 187/2001 and 188/2001, to the State party and update the Committee on any subsequent follow-up action taken.

**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>TUNISIA</b>
Case	M'Barek, 60/1996
Nationality and country of removal if applicable	Tunisian
Views adopted on	10 November 2004
Issues and violations found	Failure to investigate - articles 12 and 13.
Interim measures granted and State party response	None
Remedy recommended	The Committee requests the State party to inform it within 90 days of the steps taken in response to the Committee's observations.
Due date for State party response	22 February 2000
Date of reply	15 April 2002
State party response	See first follow-up report (CAT/C/32/FU/1). The State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party.
Complainant's response	None
Consultations with State party	See note below on the consultations with the Tunisian Ambassador on 25 November 2005.

Case	Thabti, Abdelli, Ltaief, 187/2001, 188/2001 and 189/2001
Nationality and country of removal if applicable	Tunisian
Views adopted on	20 November 2003
Issues and violations found	Failure to investigate - articles 12 and 13.
Interim measures granted and State party response	None
Remedy recommended	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.
Due date for State party response	23 February 2004
Date of reply	16 March 2004 and 26 April 2006
State party response	<p>See first follow-up report (CAT/C/32/FU/1). On 16 March 2004, the State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party. This meeting was arranged, a summary of which is set out below.</p> <p>On 26 April 2006, the State party sent a further response. It referred to one of the complainant's (189/2001) requests of 31 May 2005, to "withdraw" his complaint, which it submitted called into question the real motives of the complainants of all three complaints (187/2001, 188/2001 and 189/2001). It reiterated its previous arguments and submitted that the withdrawal of the complaint corroborated its 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.</p>
Complainant's response	One of the complainants (189/2001) sent a letter,

dated 31 May 2005, to the Secretariat requesting that his case be “withdrawn”, and enclosing a letter in which he renounced his refugee status in Switzerland.

On 8 August 2006, the letter from the author of 31 May 2005 was sent to the complainants of case Nos. 187/2001 and 188/2001 for comments. On 12 December 2006, both complainants responded expressing 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 Special Rapporteur on follow-up met with the Tunisian Ambassador in connection with case Nos. 187/2001, 188/2001 and 189/2001. The Special Rapporteur explained the follow-up procedure. The Ambassador referred to a letter dated 31 May 2005 which was sent to OHCHR from one of the complainants, Mr. Ltaief Bouabdallah (case No. 189/2001). In this letter, the complainant said that he wanted to “withdraw” his complaint and attached a letter renouncing his refugee status in Switzerland. The Ambassador stated that the complainant had contacted the Embassy in order to be issued with a passport and is in the process of exhausting domestic remedies

in Tunisia. He remains a resident in Switzerland which has allowed him to stay despite having renounced his refugee status. As to the other two cases, the Special 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 Special 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 case Nos. 187/2001 and 188/2001, to the State party and update the Committee on any subsequent follow-up action taken.

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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.

...

8. [Mr. MARIÑO MENÉNDEZ] In regard to Thabti v. Tunisia, Abdelli v. Tunisia and Ltaeif v. Tunisia, he recalled that the Committee, in its decision of 20 November 2006, had requested the State party, in keeping with its obligations under articles 12 and 13 of the Convention, to conduct an investigation of the allegations of torture and ill-treatment contained in those three complaints. Tunisia had informed the Committee that one of the complainants having "withdrawn" his complaint, follow-up action as to that complainant should be discontinued, and that there was serious reason for doubt regarding the real motives of the complainants in the other two cases. Moreover, regarding those two cases, the State party was of the view that domestic remedies had not been exhausted. Having learned from counsel for the complainants that the withdrawal of one complainant had been the result of pressures, the Rapporteur proposed that the Committee proceed step by step, first asking the Tunisian authorities to present their observations on the information provided by the complainants within a specific time-frame. The State party should also be reminded of its obligation to proceed with an investigation into the acts of torture alleged. Absent a timely response from the State party, the Committee might authorize the Rapporteur to proceed to a new exchange of views with the Permanent Representative of Tunisia to the United Nations Office at Geneva. If the State party took no action, the Committee could conclude that there had been a breach of articles 12 and 13

of the Convention and ask the State party to take steps to make reparation.

...

10. Mr. SCHMIDT, Petitions Unit, said that, since Sweden had provided no follow-up information for over a year, the Committee could indeed ask the State party, based on the information it had provided in the Alzery case, whether it intended to follow up on the Committee's decision in the same manner in the Agiza case. With regard to the Thabti v. Tunisia, Abdelli v. Tunisia and Ltaief v. Tunisia cases, the Committee might wish to remind the Permanent Representative of Tunisia that, contrary to the commitment he had made at his first meeting of 25 November 2005 with the Committee's Rapporteur on follow-up to communications, no updated information had been provided to the Committee regarding inquiries by the Tunisian authorities into the acts of torture alleged.

11. The CHAIRPERSON, speaking as a member of the Committee, endorsed the suggestions of the Rapporteur and Mr. Schmidt concerning the Agiza case. He noted, however, that beyond a certain point follow-up action became pointless, especially when the risk of being exposed to acts of torture has disappeared. Concerning the Committee's position towards Tunisia, it should be pointed out to the State party that the withdrawal of his complaint by Mr. Ltaief did not in any way call into question the Committee's observations. Regarding the Thabti and Abdelli cases, the Committee should write to the State party requesting information on its follow-up to the Committee's decision, but it should at all costs avoid re-opening with the Tunisian authorities the issue of admissibility of the complaints, since the Committee had already taken a decision on the merits.

12. Mr. MARIÑO MENÉNDEZ said that his views on the Thabti, Abdelli and Ltaief cases would be along the same lines as the concerns expressed by the Chairperson, since he would propose that the Committee ask the State party to provide its comments on the observations of the complainants regarding the withdrawal of Mr Ltaief's complaint and to inform the Committee of measures taken to discharge the State party's obligations under articles 12 and 13 of the Convention within a specific time, failing which the Committee might request that reparations be made.

...

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.

...

**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.

...

23. Mr. MARIÑO MENÉNDEZ said that the Committee had received no response from the State party (Tunisia) concerning its decision in the case of Ali Ben Salem v. Tunisia (communication No. 269/2005). In the meantime, the complainant had appeared in court, but it was not clear whether the proceedings constituted part of the remedy recommended by the Committee; moreover, the complainant had been subjected to further ill-treatment. He suggested that the Committee should seek clarification from the State party on those matters; the paragraph in the report on further action taken or required should be amended accordingly.

24. Ms. SVEAASS said that since the complainant had been subjected to further ill-treatment, the last paragraph reflecting the Committee's Decision seemed rather weak.

25. Mr. KOVALEV and the CHAIRPERSON also expressed concern about the last paragraph.

26. Mr. MARIÑO MENÉNDEZ proposed that the paragraph should indicate the need to pursue follow-up procedures with a view to eliciting a response from the State party on the provision of the recommended remedy.

27. The CHAIRPERSON said he took it that the Committee wished the paragraphs referring to further action taken or required and the Committee's Decision to be amended along the lines proposed by Mr. Mariño Menéndez.

28. 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

...

### D. Follow up activities

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

94. During its thirty fourth session, the Committee, through its Special Rapporteur on follow up to decisions, decided that in cases in which it had found violations of the Convention, including Decisions made by the Committee prior to the establishment of the follow up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the Decisions. To date, the following countries have not yet responded to these requests:... Tunisia (with respect to *Ali Ben Salem*, No. 269/2005).

...

96. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure:... *Ltaief v. Tunisia* (No. 189/2001)...

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:... *Thabti v. Tunisia* (No. 187/2001); *Abdelli v. Tunisia* (No. 188/2001); *M'Barek v. Tunisia* (No. 60/1996);...

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:... *Ali Ben Salem v. Tunisia* (No. 269/2005);...

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**

...

<b>State party</b>	<b>TUNISIA</b>
<b>Case</b>	<b>M'Barek, 60/1996</b>
Nationality and country of removal if applicable	Tunisian
Views adopted on	10 November 2004
Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	The Committee requests the State party to inform it within 90 days of the steps taken in response to the Committee's observations.
Due date for State party response	22 February 2000
Date of reply	15 April 2002
State party response	See first follow-up report (CAT/C/32/FU/1). The State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party.
Complainant's response	None
Consultations with State party	See note below on the consultations with the Tunisian Ambassador on 25 November 2005.
<b>Cases</b>	<b>Thabti, Abdelli, Ltaief, 187/2001, 188/2001</b>

Nationality and country of removal if applicable	<b>and 189/2001</b> Tunisian
Views adopted on	20 November 2003
Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	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.
Due date for State party response	23 February 2004
Date of reply	16 March 2004 and 26 April 2006
State party response	<p>See first follow-up report (CAT/C/32/FU/1). On 16 March 2004, the State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party. This meeting was arranged, a summary of which is set out below.</p> <p>On 26 April 2006, the State party sent a further response. It referred to one of the complainant's (189/2001) requests of 31 May 2005, to "withdraw" his complaint, which it submitted called into question the real motives of the complainants of all three complaints (187/2001, 188/2001 and 189/2001). It reiterated its previous arguments and submitted that the withdrawal of the complaint corroborated its 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</p>

bona fide.

#### Complainant's response

One of the complainants (189/2001) sent a letter, dated 31 May 2005, to the Secretariat requesting that his case be "withdrawn", and enclosing a letter in which he renounced his refugee status in Switzerland.

On 8 August 2006, the letter from the author of 31 May 2005 was sent to the complainants of case Nos. 187/2001 and 188/2001 for comments. On 12 December 2006, both complainants responded expressing 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 Special Rapporteur on follow-up met with the Tunisian Ambassador in connection with case Nos. 187/2001, 188/2001 and 189/2001. The Special Rapporteur explained the follow-up procedure. The Ambassador referred to a

letter dated 31 May 2005 which was sent to OHCHR from one of the complainants, Mr. Ltaief Bouabdallah (case No. 189/2001). In this letter, the complainant said that he wanted to “withdraw” his complaint and attached a letter renouncing his refugee status in Switzerland. The Ambassador stated that the complainant had contacted the Embassy in order to be issued with a passport and is in the process of exhausting domestic remedies in Tunisia. He remains a resident in Switzerland which has allowed him to stay despite having renounced his refugee status. As to the other two cases, the Special 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 Special 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 case Nos. 187/2001 and 188/2001, to the State party and update the Committee on any subsequent follow-up action taken.

Committee’s decision

The Committee accepted the complainant’s request to “withdraw” his case No. 189/2001 and decided not to examine this case any further under the follow-up procedure.

**Case**

**Ali Ben Salem, 269/2005**

Nationality and country of removal if applicable

N/A

Views adopted on	7 November 2007
Issues and violations found	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
Remedy recommended	Urges 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 Views, including the grant of compensation to the complainant.
Due date for State party response	26 February 2008
Date of reply	None
State party response	None
Complainant's response	<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</p>

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.

Committee's decision

The Committee considers the follow-up dialogue ongoing.

It informed the State party of its disappointment that it had not yet received information on the implementation of its decision. In addition, it expressed its disappointment at the new allegations, inter alia, that the complainant has again been subjected to ill-treatment and harassment by the State party authorities.

...

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

COMMITTEE AGAINST TORTURE

Forty-first session

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

Held at the Palais Wilson, Geneva,  
on Friday, 14 November 2008, at 3 p.m.

...

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

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

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

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

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

4. It was so decided.

...

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.

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

...

### D. Follow-up activities

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

90. During its thirty fourth session, the Committee, through its Special Rapporteur on follow up to decisions, decided that in cases in which it had found violations of the Convention, including decisions made by the Committee prior to the establishment of the follow up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the decisions. To date, the following countries have not yet responded to these requests: ... Tunisia (with respect to *Ali Ben Salem*, No. 269/2005).

...

92. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure: ... *Ltaief v. Tunisia* (No. 189/2001). ...

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: ... *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); ...

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: ... *M'Barek v. Tunisia* (No. 60/1996); *Saadia Ali v. Tunisia* (No. 291/2006).

95. Represented below is a comprehensive report of replies received with regard to all 48 cases in which the Committee has found violations of the Convention to date and in 1 case in

which although the Committee did not find a violation of the Convention it did make a recommendation.

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

...

<b>State party</b>	<b>TUNISIA</b>
<b>Case</b>	<b>M'Barek, 60/1996</b>
Nationality and country of removal if applicable	Tunisian
Views adopted on	10 November 2004
Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	The Committee requests the State party to inform it within 90 days of the steps taken in response to the Committee's observations.
Due date for State party response	22 February 2000
Date of reply	15 April 2002
State party response	<p>See first follow-up report (CAT/C/32/FU/1). The State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party.</p> <p>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</p>

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 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 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 response

On 27 November 2008, the complainant informed the Committee inter alia 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 on Follow-up to Views to pursue the question of implementation of this decision with the State party.

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.

Consultations with State party

On 13 May 2009, the Rapporteur on follow-up to decisions 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, *Ali 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 Nos. 188/2001 and 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.

Further action taken or required

During the forty-second session, the Committee decided to request the State party to have the complainant's body exhumed.

Committee's decision

The follow-up dialogue is ongoing.

**Cases** **Thabti, Abdelli, Ltaief, 187/2001, 188/2001 and 189/2001**

Nationality and country of removal if applicable Tunisian

Views adopted on 20 November 2003

Issues and violations found Failure to investigate - articles 12 and 13

Interim measures granted and State party response None

Remedy recommended 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.

Due date for State party response 23 February 2004

Date of reply 16 March 2004 and 26 April 2006

State party response See first follow-up report (CAT/C/32/FU/1). On 16 March 2004, the State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special 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 referred to one of the complainant's (189/2001) requests of 31 May 2005, to "withdraw" his complaint, which it submitted called into question the real motives of the complainants of all three complaints (187/2001, 188/2001 and 189/2001). It reiterated its previous arguments and submitted that the withdrawal of the complaint corroborated its 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.

One of the complainants (189/2001) sent a letter,

Complainant's response

dated 31 May 2005, to the Secretariat requesting that his case be "withdrawn", and enclosing a letter in which he renounced his refugee status in Switzerland.

On 8 August 2006, the letter from the author of 31 May 2005 was sent to the complainants of case Nos. 187/2001 and 188/2001 for comments. On 12 December 2006, both complainants responded expressing 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 Special Rapporteur on follow-up met with the Tunisian Ambassador in connection with case Nos. 187/2001, 188/2001 and 189/2001. The Special Rapporteur explained the follow-up procedure. The Ambassador referred to a letter dated 31 May 2005 which was sent to OHCHR from one of the complainants, Mr. Ltaief Bouabdallah (case No. 189/2001). In this letter, the complainant said that he wanted to "withdraw" his complaint and attached a letter renouncing his refugee status in Switzerland. The Ambassador stated that the complainant had

contacted the Embassy in order to be issued with a passport and is in the process of exhausting domestic remedies in Tunisia. He remains a resident in Switzerland which has allowed him to stay despite having renounced his refugee status. As to the other two cases, the Special 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 Special 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 case Nos. 187/2001 and 188/2001, to the State party and update the Committee on any subsequent follow-up action taken.

Committee's decision

The Committee accepted the complainant's request to "withdraw" his case No. 189/2001 and decided not to examine this case any further under the follow-up procedure.

**Case**

**Ali Ben Salem, 269/2005**

Nationality and country of removal if applicable

N/A

Views adopted on

7 November 2007

Issues and violations found

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

Remedy recommended

Urges 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 Views, including the grant of compensation to the complainant.

Due date for State party response

26 February 2008

Date of reply

None

State party response

None

Complainant's response

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.

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.

See note on the consultations held during the

Consultations with State party forty-second session with the permanent representative and the Rapporteur on follow-up.

Committee's decision The Committee considers the follow-up dialogue ongoing.

It informed the State party of its disappointment that it had not yet received information on the implementation of its decision. In addition, it expressed its disappointment at the new allegations, inter alia, that the complainant has again been subjected to ill-treatment and harassment by the State party authorities.

**Case Saadia Ali, 291/2006**

Nationality and country of removal if applicable N/A

Views adopted on 21 November 2008

Issues and violations found Torture, prompt and impartial investigation, right to complaint, failure to redress complaint - articles 1, 12, 13 and 14

Interim measures granted and State party response N/A

Remedy recommended The Committee urges 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 Views, including the grant of compensation to the complainant.

Due date for State party response 24 February 2009

Date of reply 26 February 2009

State party response 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 provides a full set of transcripts in Arabic for the Committee's consideration.

In addition, the State party informed the Committee that on 6 February 2009, the judge "d'instruction" dismissed the complainant's complaint for the following reasons:

1. All of the police allegedly involved denied assaulting the complainant.
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.
3. All of the witnesses stated that she had not suffered ill-treatment.
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 response

Awaiting response.

Consultations with State party

See note on the consultations held during the forty-second session with the permanent representative and the Rapporteur on follow-up.

Committee's decision

The dialogue is ongoing.

...

CAT, A/65/44 (2010)

...

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

...

### 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); *Urta Guridi v. Spain* (No. 212/2002); *Agiza v. Sweden* (No. 233/2003); *Thabti v. Tunisia* (No. 187/2001); *Abdelli v. Tunisia* (No. 188/2001); *M'Barek v. Tunisia* (No. 60/1996); *Saadia Ali v. Tunisia* (No. 291/2006); *Chipana v. Venezuela* (No. 110/1998); *Pelit v. Azerbaijan* (No. 281/2005); *Bachan Singh Sogi v. Canada* (No. 297/2006); *Tebourski v. France* (No. 300/2006); and *Besim Osmani v. Republic of Serbia* (No. 261/2005).

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

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

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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**

...

<b>State party</b>	<b>Tunisia</b>
<b>Case</b>	<i>M'Barek, 60/1996</i>
<b>Nationality and country of removal if applicable</b>	Tunisian
<b>Views adopted on</b>	10 November 1999
<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 response</b>	See first follow-up report. <sup>16</sup> The State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Rapporteur for follow-up of decisions on complaints should arrange to meet with a representative of the State

party.

**Complainant's  
comments**

On 27 November 2008, the complainant informed the Committee *inter alia* 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 of decisions on complaints to pursue the question of implementation of this decision with the State party.

**State party  
response**

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 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  
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  
State party**

On 13 May 2009, the Rapporteur for follow-up of 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, *Ali 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 case Nos. 188/2001 and 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.

**Further action  
taken/ or required**

During the forty-second session, the Committee decided to request the State party to have the complainant's body exhumed.

During the 43rd 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.

**Committee's  
decision**

The follow-up dialogue is ongoing

<sup>16</sup> [Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 44 (A/59/44), chap. V], para. 270.

<b>Cases</b>	<i>Thabti, Abdelli, Ltaief, 187/2001, 188/2001 and 189/2001</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 response</b>	See first follow-up report. <sup>17</sup> On 16 March 2004, the State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party. This meeting was arranged, a summary of which is set out below.
<b>Complainant's comments</b>	One of the complainants (189/2001) sent a letter, dated 31 May 2005, to the Secretariat requesting that his case be "withdrawn", and enclosing a letter in which he renounced his refugee status in Switzerland.
<b>State party response</b>	On 26 April 2006, the State party sent a further response. It referred to one of the complainant's (189/2001) requests of 31 May 2005, to "withdraw" his complaint, which it submitted called into question the real motives of the complainants of all three complaints (187/2001, 188/2001 and 189/2001). It reiterated its previous arguments and submitted that the withdrawal of the complaint corroborated its 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.

**Complainant's  
comments**

On 8 August 2006, the letter from the author of 31 May 2005 was sent to the complainants of case Nos. 187/2001 and 188/2001 for comments. On 12 December 2006, both complainants responded expressing 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 of decisions on complaints met with the Tunisian Ambassador in connection with case Nos. 187/2001, 188/2001 and 189/2001. The Rapporteur explained the follow-up procedure. The Ambassador referred to a letter dated 31 May 2005 which was sent to OHCHR from one of the complainants, Mr. Ltaief Bouabdallah (case No. 189/2001). In this letter, the complainant said that he wanted to "withdraw" his complaint and attached a letter renouncing his refugee status in Switzerland. The Ambassador stated that the complainant had contacted the Embassy in order to be issued with a passport and is in the process of exhausting domestic remedies in Tunisia. He remains a resident in Switzerland which has allowed him to stay despite having renounced his refugee status. As to the other two cases, 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 case Nos. 187/2001 and 188/2001, to the State party and update the Committee on any subsequent follow-up action taken.

**Committee's decision**

The Committee accepted the complainant's request to "withdraw" his case No. 189/2001 and decided not to examine this case any further under the follow-up procedure. With respect to cases No. 187/2001 and No. 188/2001, the Committee considers the dialogue ongoing.

<sup>17</sup> [Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 44 (A/59/44), chap. V], paras. 271-272

<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>	Urges 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 Views, including the grant of compensation to the complainant.
<b>Due date for State party response</b>	26 February 2008

**Date of reply** None

**State party response** None

**Complainant's comments** 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.

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.

**Consultations with State party** The consultations were held during the forty-second session with the permanent representative and the Rapporteur for follow-up of decisions on complaints.

**Committee's decision** The Committee considers the follow-up dialogue ongoing. It informed the State party of its disappointment that it had not yet received information on the implementation of its decision. In addition, it expressed its disappointment at the new allegations, inter alia, that the complainant has again been subjected to ill-treatment and harassment by the State party authorities.

<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 urges 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 Views, 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 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 provides 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</li> </ol>

prior to her arrest and this would not in any case constitute ill-treatment.

3. All of the witnesses stated that she had not suffered ill-treatment.
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.

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.

**Consultations with State party**

The Rapporteur for follow-up of 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 110, para. 2 of the Committee's rules of procedure).

During the 43rd 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.

**Committee's decision**

The dialogue is ongoing

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