



**United Nations**

# **Report of the Committee against Torture**

**Forty-third session  
(2-20 November 2009)**

**Forty-fourth session  
(26 April-14 May 2010)**

**General Assembly**

**Official Records**

**Sixty-fifth Session**

**Supplement No. 44**

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*Note*

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

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

1. As at 14 May 2010, the closing date of the forty-fourth session of the Committee against Torture (hereinafter referred to as “the Committee”), there were 146 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”). The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.

2. The list of States which have signed, ratified or acceded to the Convention is contained in annex I to the present report. The list of States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention is provided in annex II. The States parties that have made declarations provided for in articles 21 and 22 of the Convention are listed in annex III.

3. The text of the declarations, reservations or objections made by States parties with respect to the Convention may be found on the United Nations website (<http://treaties.un.org/>).

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

4. The Committee against Torture has held two sessions since the adoption of its last annual report. The forty-third session (896th to 925th meetings) was held at the United Nations Office at Geneva from 2 to 20 November 2009, and the forty-fourth session (926th to 953rd meetings) was held from 26 April to 14 May 2010. An account of the deliberations of the Committee at these two sessions is contained in the relevant summary records (CAT/C/SR.896-953).

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

5. The twelfth meeting of the States parties to the Convention against Torture, which took place in Geneva on 13 October 2009, held elections to replace five members whose term of office expired on 31 December 2009. The list of members with their term of office appears in annex IV to the present report.

### **D. Solemn declaration by the newly elected member**

6. At the 926th meeting, on 26 April 2010, Mr. Alessio Bruni made the solemn declaration upon assuming his duties, in accordance with rule 14 of the rules of procedure.

### **E. Election of officers**

7. At the forty-fourth session, on 26 April 2010, the Committee elected Mr. Claudio Grossman as Chairperson, Ms. Essadia Belmir, Ms. Felice Gaer and Mr. Xuexian Wang as Vice-Chairpersons and Ms. Nora Sveaass as Rapporteur.

## **F. Agendas**

8. At its 896th meeting, on 2 November 2009, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/43/1) as the agenda of its forty-third session.

9. At its 926th meeting, on 26 April 2010, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/44/1) as the agenda of its forty-fourth session.

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

10. During the period under consideration, Committee members participated in different meetings organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR): the ninth inter-committee meeting, held from 29 June to 1 July 2009, was attended by Ms. Gaer, Mr. Fernando Mariño and Mr. Grossman; the latter also participated in the twenty-first meeting of chairpersons held on 2 and 3 July 2009. The tenth inter-committee meeting, held from 30 November to 2 December 2009, was attended by Ms. Gaer and Mr. Wang.

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

11. Further to the invitation to the Chairperson of the Committee to present an oral report on the work of the Committee and to engage in an interactive dialogue with the General Assembly at its sixty-fourth session under the sub-item entitled "Implementation of human rights instruments" (General Assembly resolution 63/166, para. 27), the Chairperson of the Committee presented an oral report to the General Assembly at its sixty-fourth session on 20 October 2009. The oral report may be found on the OHCHR website (<http://www2.ohchr.org/english/bodies/cat/index.htm>).

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

12. As at 14 May 2010, there were 50 States parties to the Optional Protocol (see annex V to the present report). As required by the Optional Protocol to the Convention, on 17 November 2009, a joint meeting was held between the members of the Committee and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter "the Subcommittee on Prevention"). Both the Committee and the Subcommittee on Prevention (membership of the Subcommittee on Prevention is included in annex VI) agreed on modalities for cooperation, such as the mutual sharing of information, taking into account confidentiality requirements.

13. The informal contact group consisting of members of the Committee and the Subcommittee on Prevention continued to facilitate the communication between both treaty bodies. A further meeting was held between the Committee and the Subcommittee on Prevention on 11 May 2010 where the latter submitted its third public annual report to the Committee (CAT/C/44/2). The Committee decided to include it in the present annual report (see annex VII) and to transmit it to the General Assembly.

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

14. A joint statement with the Subcommittee on Prevention, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture was adopted to be issued on 26 June 2009, the United Nations International Day in Support of Victims of Torture (see annex VIII to the present report).

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

15. At its forty-fourth session, on 27 April 2010, the Committee held an informal meeting with representatives of 39 States parties to the Convention. The Committee and the States parties discussed the following issues: the methods of work of the Committee; the harmonization of working methods between treaty bodies; the new optional reporting procedure of the Committee, which consists of lists of issues to be transmitted prior to the submission of periodic reports; general comments; and the need for additional meeting time as well as resources for the Committee.

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

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

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

17. Similarly, the Committee has since 2005 met with the national human rights institutions (NHRIs) of the countries it has considered. Meetings with each NHRI that attends take place, in private, usually on the day before consideration of the State party report.

18. The Committee expresses its appreciation for the information it receives from these institutions, and looks forward to continuing to benefit from the information it derives from these bodies, which has enhanced its understanding of the issues before the Committee.

19. At its forty-fourth session, the Committee decided that, due to the lack of meeting time, the Country Rapporteurs, together with any other member wishing to attend, would meet with the representatives of the NHRI before the consideration of the report of the State party concerned outside the plenary of the Committee.

## **N. Rules of procedure**

20. At its forty-third and forty-fourth sessions, the Committee continued the revision of its rules of procedure (CAT/C/3/Rev.4), amended previously at its thirteenth (November 1996), fifteenth (November 1997) and twenty-eighth (May 2002) sessions, in order to update these rules, especially with regard to the decisions taken by the meetings of chairpersons of human rights treaty bodies and the inter-committee meetings, and to bring

them in line with new methods of work that the Committee is implementing as well as to include the adoption of new procedures.

21. At its forty-fourth session, the Committee completed a first reading of its amended rules of procedure. A new amended draft will be prepared by the rapporteurs, Mr. Mariño and Ms. Sveaass, for the Committee to discuss at its next session.

#### **O. Reporting guidelines for treaty-specific documents**

22. At its forty-third and forty-fourth sessions, the Committee continued the revision of its treaty-specific reporting guidelines, in the light of the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document (as contained in HRI/GEN/2/Rev.5).

#### **P. Decision of the Committee to request approval from the General Assembly for additional meeting time in 2011 and 2012**

23. At its forty-second session, the Committee decided to request the General Assembly to provide appropriate financial support to enable it to meet for an additional session of four weeks in 2010 and in 2011, in addition to the two regular three-week sessions per year (A/64/44, paras. 20 to 22); the General Assembly did not approve the request.

24. At its forty-fourth session, the Committee decided to request the General Assembly to provide appropriate financial support to enable it to meet for an additional week per each session in 2011 and 2012, i.e. one additional week of sessional meetings in May and in November 2011 and in May and November 2012, in a total of four weeks, bringing its sessions to four weeks each (see annex IX to the present report).

25. The decision to request additional meeting time was taken due to the current insufficient meeting time for the Committee to undertake its mandated functions considering:

- (a) The backlog of 96 individual complaints pending before the Committee;
- (b) The backlog of 22 State party reports pending before the Committee;
- (c) The decision to consolidate the new optional reporting procedure (A/64/44, para. 27) adopted by the Committee (A/62/44, paras. 23 and 24), which has substantially increased the Committee's workload with regard to the preparation of lists of issues prior to reporting;
- (d) The perspective of a substantial increase of submissions of States parties reports in 2011 and 2012, due to the high level of acceptance of the new optional reporting procedure by States parties (see paras. 35-37 of the present report), which require that these reports be considered within the shortest possible period of time after their receipt.

26. Pursuant to rule 25 of its rules of procedure, the Committee made this request with the acknowledgement of the programme budget implications arising from its decision (see annex X to the present report).

#### **Q. Informal working groups**

27. At its forty-fourth session, in order to prepare proposals to improve its methods of work, the Committee decided to establish the following informal working groups:

- (a) Reporting and examination of reports, which will be composed of Ms. Gaer, Ms. Kleopas, Ms. Sveaass and Mr. Wang;
- (b) Individual communications, which will be composed of Mr. Bruni, Mr. Grossman and Mr. Mariño;
- (c) Right to reparation, which will be composed of Ms. Gaer, Mr. Gaye, Mr. Grossman and Ms. Sveaass;
- (d) Evaluation of facts and evidence, which will be composed of Ms. Gaer, Mr. Gallegos, Mr. Grossman and Mr. Mariño.

## **R. Examination of reports**

28. At its forty-third session, the Committee decided that States parties' reports will be scheduled for examination according to the following order of priority: initial reports, reports presented under the optional reporting procedure, long overdue periodic reports and date of submission of periodic reports. If deemed necessary, the Committee may decide to prioritize a report over others.

29. At its forty-fourth session, the Committee decided to reduce the number of States parties' reports examined to six per session. Considering the continued increase in the complexity of issues discussed during the dialogue with representatives of States parties, the Committee also decided, in order to further improve the quality of the dialogue, to increase it to five hours per report.

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

30. During the period covered by the present report, 16 reports from States parties under article 19 of the Convention were submitted to the Secretary-General. Initial reports were submitted by Ethiopia, Ghana, Ireland, Mongolia and Turkmenistan. Second periodic reports were submitted by Cambodia, Cuba and Kuwait. Third periodic reports were submitted by Armenia, Tunisia and Turkey. A combined third and fourth periodic report was submitted by Sri Lanka. Fourth periodic reports were submitted by Belarus, Bulgaria and Ecuador. A combined second to fifth periodic report was submitted by Bosnia and Herzegovina. A combined fourth and fifth periodic report was submitted by Monaco. A fifth periodic report was submitted by Germany.

31. As at 14 May 2010, the Committee had received a total of 237 reports and there were 229 overdue reports (see annex XI to the present report).

### **A. Invitation to submit periodic reports**

32. At its forty-first session, the Committee decided to invite States parties, in the last paragraph of the concluding observations, to submit their next periodic reports within a four-year period from the adoption of the concluding observations, and to indicate the due date of the next report in the same paragraph. It also decided not to request consolidated reports when inviting States parties to submit their next periodic report.

### **B. Optional reporting procedure**

33. At its thirty-eighth session, in May 2007 (see A/62/44, para. 23), the Committee adopted a new procedure on a trial basis which includes the preparation and adoption of a list of issues to be transmitted to States parties prior to the submission of a State party's periodic report and the State party's replies to this list of issues would constitute the State party's report under article 19 of the Convention. The Committee was of the view that this procedure would assist States parties in preparing focused reports, would guide the preparation and content of the reports, would facilitate reporting by States parties and would strengthen their capacity to fulfil their reporting obligations in a timely and effective manner. However, this new procedure requires that these reports are considered within the shortest possible period of time after being received by the Committee otherwise the added value of the procedure will be defeated as new lists of issues would have to be adopted and transmitted by the Committee to States parties to update the information they provided.

34. At its forty-second session, in May 2009 (see A/64/44, para. 27), the Committee decided to continue, on a regular basis, with this procedure. As at 14 May 2010 and since the adoption of this new reporting procedure, the Committee has adopted and transmitted to States parties lists of issues prior to reporting for reports due in 2009, 2010 and 2011; in total, 39 such lists have been transmitted.

35. For reports due in 2009, the Committee adopted, and transmitted in 2008, lists of issues prior to reporting with regard to 11 States parties: Bosnia and Herzegovina, Cambodia, Czech Republic, Democratic Republic of the Congo, Ecuador, Greece, Kuwait, Monaco, Peru, South Africa and Turkey. Out of these States parties, nine have formally or informally accepted this new reporting procedure (Bosnia and Herzegovina, Cambodia, Czech Republic, Ecuador, Greece, Kuwait, Monaco, Peru and Turkey) and six have submitted their report under this procedure (Bosnia and Herzegovina, Cambodia, Ecuador,

Kuwait, Monaco and Turkey). These reports have already been scheduled for the two coming sessions of the Committee, in November 2010 and May 2011, considering that they must be examined within the shortest possible period of time after their receipt.

36. For reports due in 2010, the Committee adopted, and transmitted in 2009, lists of issues prior to reporting with regard to nine States parties: Brazil, Finland, Hungary, Kyrgyzstan, Libyan Arab Jamahiriya, Mauritius, Mexico, Russian Federation and Saudi Arabia. Out of these nine States parties, eight have accepted this new reporting procedure (Brazil, Finland, Hungary, Kyrgyzstan, Libyan Arab Jamahiriya, Mauritius, Mexico and Russian Federation). These reports have to be submitted by 30 September 2010.

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

38. The Committee will adopt in 2010 and transmit in 2011 lists of issues prior to reporting with regard to all States parties that have reports due in 2012.

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

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

40. At its forty-first session, the Committee decided to send reminders to all State parties whose initial reports were three or more years overdue and, following these reminders, six of them submitted an initial report to the Committee: Ethiopia, Ghana, Ireland, Mongolia, the Syrian Arab Republic and Turkmenistan.

41. At its forty-fourth session, the Committee decided to send reminders to all State parties whose initial reports were three or more years overdue: Antigua and Barbuda, Bangladesh, Botswana, Burkina Faso, Cape Verde, the Republic of the Congo, Côte d'Ivoire, Djibouti, Gabon, Equatorial Guinea, Guinea, Holy See, Lebanon, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Niger, Nigeria, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Somalia, Swaziland, and Timor-Leste.

42. The Committee drew the attention of these States parties to the fact that delays in reporting seriously hamper the implementation of the Convention in the States parties and the Committee in carrying out its function of monitoring such implementation. The Committee requested information on the progress made by these States parties regarding the fulfilment of their reporting obligations and on any obstacles that they might be facing in that respect. It also informed them that, according to rule 65 of its rules of procedure, the Committee might proceed with a review of the implementation of the Convention in the State party in the absence of a report, and that such review would be carried out on the basis

of information that may be available to the Committee, including sources from outside the United Nations.



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

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

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

Azerbaijan	Third periodic report	CAT/C/AZE/3	CAT/C/AZE/CO/3
Colombia	Fourth periodic report	CAT/C/COL/4	CAT/C/COL/CO/4
El Salvador	Second periodic report	CAT/C/SLV/2	CAT/C/SLV/CO/2
Republic of Moldova	Second periodic report	CAT/C/MDA/2	CAT/C/MDA/CO/2
Slovakia	Second periodic report	CAT/C/SVK/2	CAT/C/SVK/CO/2
Spain	Fifth periodic report	CAT/C/ESP/5	CAT/C/ESP/CO/5
Yemen	Second periodic report	CAT/C/YEM/2	CAT/C/YEM/CO/2*

\* Provisional concluding observations due to the fact that the State party did not send a delegation to meet with the Committee.

44. The following reports were before the Committee at its forty-fourth session and it adopted the following concluding observations:

Austria	Fourth and fifth periodic reports	CAT/C/AUT/4-5	CAT/C/AUT/CO/4-5
Cameroon	Fourth periodic report	CAT/C/CMR/4	CAT/C/CMR/CO/4
France	Fourth to sixth periodic reports	CAT/C/FRA/4-6	CAT/C/FRA/CO/4-6
Jordan	Second periodic report	CAT/C/JOR/2	CAT/C/JOR/CO/2
Liechtenstein	Third periodic report	CAT/C/LIE/3 and Corr.1	CAT/C/LIE/CO/3
Switzerland	Sixth periodic report	CAT/C/CHE/6	CAT/C/CHE/CO/6
Syrian Arab Republic	Initial report	CAT/C/SYR/1	CAT/C/SYR/CO/1
Yemen	Second periodic report	CAT/C/YEM/2	CAT/C/YEM/CO/2/Rev.1*

\* Final concluding observations.

45. In accordance with rule 66 of the rules of procedure of the Committee, representatives of each reporting State were invited to attend the meetings of the Committee when their report was examined. All of the States parties whose reports were considered,

except Yemen at the forty-third session, sent representatives to participate in the examination of their respective reports. The Committee expressed its appreciation for this in its concluding observations.

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

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

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

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

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

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

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

### **50. Azerbaijan**

(1) The Committee considered the third periodic report of Azerbaijan (CAT/C/AZE/3) at its 907th and 909th meetings (CAT/C/SR.907 and CAT/C/SR.909), held on 9 and 10 November 2009, and adopted, at its 920th meeting, held on 18 November 2009 (CAT/C/SR.920), the concluding observations as set out below.

#### **A. Introduction**

(2) The Committee welcomes the submission of the third periodic report of Azerbaijan and the written responses to the list of issues (CAT/C/AZE/Q/3) submitted by the State party.

(3) The Committee notes with appreciation the extensive dialogue with the high-level delegation sent by the State party and the replies to the questions raised during the dialogue. It welcomes the State party's constructive attitude towards implementation of its recommendations, as shown by the adoption of numerous legal and policy reforms.

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

(4) The Committee welcomes the recent legislative and other measures taken by the State party since the consideration of its previous report, namely:

(a) Adoption of the Fight against Human Trafficking Law in 2005, the amendment of the Criminal Code (2005) and the creation of a relief fund for victims of human trafficking;

(b) Adoption of a presidential order on the Modernization of Judiciary on 19 January 2006 and application of the Amendments, dated 19 January 2006, establishing regional courts of appeal which address legal assistance to individuals, as well as the adoption of a State programme on development of the Azerbaijani justice system for 2009–2013, which, inter alia, envisages improvements for convicted persons;

(c) The ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2009;

(d) The ratification of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, in 2009.

(5) The Committee also notes with satisfaction the following developments:

(a) Adoption of a national plan of action for the protection of human rights, on 28 December 2006;

(b) Launching of a prison reform programme in 2006;

(c) Establishment of a public committee to monitor penitentiary institutions;

(d) Establishment of the Council of State support for non-governmental organizations under the President's administration, in 2007, and allocation of additional resources to NGOs;

(e) The efforts made in order to improve the conditions of detention of prisoners and the measures taken resulting in the substantial reduction of the rate of mortality from tuberculosis in prisons since 1995.

(6) The Committee welcomes the commitment of the State party delegation to make public reports on the findings of the three visits since 2005 of the European Committee for the Prevention of Torture to Azerbaijan.

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

#### **Overarching considerations regarding implementation**

(7) Despite the Committee's requests for specific statistical information in the list of issues and the oral dialogue with the State party, the Committee regrets that it was not provided. The absence of comprehensive or disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement personnel, as well as concerning detention conditions, abuse by public officials, and domestic and sexual violence severely hampers the identification of possible patterns of abuse requiring attention (arts. 2 and 19).

**The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, disaggregated by gender, age, geographical region and type and location of place of deprivation of liberty, as well as information on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, detention conditions, abuse by public officials, administrative detention, and domestic and sexual violence, and outcomes of all such complaints and cases. The State party should provide the Committee with the above-mentioned detailed information, including on the number of complaints of torture that have been submitted since 2003.**

#### **Definition of torture**

(8) The Committee welcomes the commitment by the State party to amend article 133 of the Criminal Code in order to bring the definition of torture into full compliance with the definition provided in article 1 of the Convention. The Committee reiterates its concern that the definition of torture in article 133 of the current Criminal Code omits references to the purposes of torture set forth in the Convention, such as "for any reasons of discrimination of any kind", and lacks provisions defining as an offence torture inflicted with the consent or acquiescence of a public official or other person performing official functions (arts. 1 and 4).

**Bearing in mind the obligation of the State party to bring its legislation into conformity with article 1 of the Convention, the State party should fulfil its commitment made during the interactive dialogue with the Committee to bring its definition of torture fully into conformity with the Convention, so as to ensure that all public officials and others responsible for torture under article 133 of the Criminal Code may be prosecuted.**

#### **Torture and ill-treatment**

(9) The Committee remains concerned about the numerous continued allegations of use of torture and ill-treatment of suspects and other detainees, which reportedly commonly takes place between the moment of apprehension and formal registration at remand centres. The Committee is also deeply concerned about allegations that authorities are reluctant to initiate criminal proceedings for alleged acts of torture or ill-treatment, and notes with concern that officials who have allegedly committed acts of torture or ill-treatment are not charged with these crimes, but rather charged with “excess of authority”, “negligence” and “minor, serious or serious harm to health out of imprudence”. The Committee is concerned that such practices contribute to a culture of impunity among law enforcement officials, and is particularly concerned that, despite numerous allegations of torture and ill-treatment by law enforcement officials, not a single case against an official has been initiated under article 133, part 3, of the Criminal Code. The Committee values the fact that the Government has prosecuted 161 cases of domestic violence under article 133 since 2001, but notes that there were no prosecutions under this article against persons acting under colour of authority (arts. 2, 15 and 16).

**The State party should take all necessary measures to ensure that, in practice, all allegations of torture are subjected to prompt, impartial and effective investigation and, as appropriate, prosecute and if responsibility is found, punish accordingly.**

#### **Ombudsman’s office**

(10) The Committee regrets the lack of information provided on the number of allegations or complaints of specific acts of torture or ill-treatment that were received and investigated by the Ombudsman’s office, as well as information on the number of investigations into torture or ill-treatment that this mechanism has initiated on its own accord. Notwithstanding the “A” rating received by the Ombudsman’s office from the body that oversees implementation of the Paris Principles, the Committee is deeply concerned at the information from the State party that the Ombudsman’s office is not permitted by its founding documents to monitor all State organs. The Committee is concerned that the Ombudsman lacks the requisite degree of independence to be the national institution responsible for investigating complaints of torture and other human rights violations, as well as to serve as the national prevention mechanism under the Optional Protocol to the Convention against Torture (arts. 2, 11 and 16).

**The State party should take effective measures to ensure that the Ombudsman’s office is in practice a functioning, independent body, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), annexed to General Assembly resolution 48/134, especially with regard to its independence. The State party should inform the Committee on all cases of torture or ill-treatment investigated by the Ombudsman and the outcomes of such investigations.**

#### **Insufficient basic legal safeguards**

(11) Notwithstanding the State party’s efforts to improve the system of registration of detainees, the Committee notes with concern the allegations of widespread and routine use of torture or ill-treatment of detainees in police custody, including before their official

registration and during pretrial detention. The Committee is also concerned over the inadequate legal safeguards for detainees, which include, inter alia, restricted access to independent doctors and public defenders and failure to notify detainees of their rights at the time of detention, including their rights to contact family members, as alleged in the cases of Emin Milli and Adnan Hajizade, and Kamil Saddredinov. The Committee is also concerned at the shortage of public defenders in the State party, and at allegations that the quality of legal aid is low as a result of inadequate resources. In addition, the Committee notes with concern allegations that suspects are purposefully detained for delayed periods as witnesses and are thus denied basic legal safeguards, and only later have their status changed to that of a suspect. The Committee further regrets the lack of information provided with regard to the mechanism or legal provision through which detainees may request a medical examination by an independent doctor, and remains concerned at allegations that access to medical care is frequently denied, in practice, as was reportedly the case for detainee Mahir Mutfayev, who suffered second- and third-degree burns and was not granted access to medical attention until 11 to 12 hours after the incident, and Novruzali Mammadov (arts. 2 and 16).

**The State party should take prompt and effective measures to ensure that individuals are registered from the actual moment of deprivation of liberty, and that they are not subjected to acts in breach of the Convention when they are under custody, but not yet registered as detainees. A central registration system for all detainees should be improved in accord with the recommendations of the European Committee for the Prevention of Torture. The State party should ensure that suspects are brought before a judge as soon as possible, calculated from the actual moment of deprivation of liberty, so as to determine the legality of their detention. The systematic use of audio and video equipment in police stations and detention facilities should be implemented, particularly in interrogation rooms and for all interrogation of minors.**

The State party should also take effective measures to ensure that in practice, all detainees in all detention and remand centres are guaranteed, inter alia, immediate access to independent legal counsel and an independent medical examination. Additionally, steps should be taken to establish and clarify the procedure in place by which detainees, their legal counsel or a judge may demand such an examination. The State party should also continue to take measures to address the shortage of public defenders, including by ensuring that public defenders are adequately paid for their work.

#### **Independent monitoring of places of detention**

(12) The Committee particularly welcomes the establishment of the public committee, consisting of representatives of non-governmental organizations, that has been mandated to monitor penitentiary institutions. Notwithstanding the State party's insistence that such visits are unrestricted, the Committee is concerned, however, that the Public Committee is unable to make unannounced visits to detention facilities because, under the order of the Minister for Justice of 25 April 2006, visits are subject to internal disciplinary regulations which, in practice, reportedly require 24 hours notice prior to visits. It is also concerned that the one-year term of the public committee members unduly limits the application of the expertise developed by these monitors. The Committee is also concerned that the public committee is not granted access to pretrial detention centres and the remand centre under the Ministry of National Security (arts. 2, 11 and 16).

**The State party should guarantee that the public committee has an unrestricted right to conduct unimpeded and unannounced visits to all places of detention in the country, including pretrial detention facilities and the remand centre under the Ministry of National Security.**

**Conditions in places of deprivation of liberty and deaths in custody**

(13) The Committee welcomes the efforts made by the State party to improve conditions in penitentiary institutions and remand facilities, including the significant improvements in the conditions of detention for persons serving life sentences, increasing the number of visits, telephone calls and amount of monthly allowance, and establishing medical units. The Committee also welcomes the construction of new prisons in Shaki, Ganja, Lenkaran, Nakhchivan and other regions, as well as construction of remand centres, such as the one in Baku, in order to improve the conditions for detainees. Nevertheless, the Committee remains concerned at the number of deaths and suicides committed by inmates and at the alleged restrictions on independent forensic examination into the causes of such deaths. It is also concerned at allegations of the State party's use of prolonged solitary confinement (art. 11).

**The State party should promptly, thoroughly and impartially investigate all incidents of death in custody and prosecute those found responsible for any deaths. The State party should provide information to the Committee on any cases of death resulting from torture, ill-treatment or wilful negligence leading to any of these deaths.**

**Families of victims should be provided with adequate compensation and rehabilitation.**

**The State party should limit the use of solitary confinement as a measure of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review. The State party should also identify reasons leading prisoners to committing suicide, provide appropriate remedies and review the legislation in this regard. It should allow independent forensic examinations and accept their findings as evidence in criminal and civil cases.**

(14) The Committee remains concerned that the remand centre of the Ministry of National Security continues to operate and is being used for detention of convicted persons (art. 11).

**The Committee reiterates its previous recommendation that the State party should transfer the remand centre of the Ministry of National Security to the authority of the Ministry of Justice, or discontinue its use.**

**Involuntary placement in psychiatric institutions**

(15) The Committee is concerned about numerous reports of forced confinement in psychiatric hospitals in Nakhchivan, of persons for reasons other than medical (arts. 11 and 16).

**The State party should take measures to ensure that no one is involuntarily placed in psychiatric institutions for reasons other than medical. Where hospitalization is required for medical reasons, the State party should ensure that it is decided only upon the advice of independent psychiatric experts and that such decisions can be appealed.**

(16) The Committee is concerned about poor conditions in psychiatric institutions outside Baku. It also notes with concern the absence of an independent body to monitor conditions in psychiatric institutions (arts. 11 and 16).

**The State party should establish an independent monitoring and inspection system for such facilities. It should improve the living conditions for patients in psychiatric institutions, and ensure that all places where mental health patients are held for involuntary treatment are regularly visited by independent monitoring bodies to guarantee the proper implementation of the safeguards set out to secure their rights.**

### **Independence of the judiciary**

(17) The Committee notes with satisfaction the significant improvement in the judicial system. It also welcomes the President's decree of 17 August 2006 increasing the number of judges in the State party by half, as well as other reforms in the process of selection of judges. Nevertheless, the Committee remains concerned at the lack of independence of the judiciary with regard to the executive branch and its susceptibility to political pressure (art. 14).

**The Committee reiterates its previous recommendation that the State party should guarantee the full independence and impartiality of the judiciary in accordance with the Basic Principles on the Independence of the Judiciary.**

(18) While recalling the decision by the plenum of the Supreme Court of 10 March 2000, instructing all courts not to accept evidence obtained by the use of torture, abuse or physical or psychological coercion, the Committee notes with concern that the State party could not name a single incident when a court refused to accept evidence obtained through unlawful methods. The Committee is concerned at allegations that, on the contrary, in several cases courts relied on statements that were allegedly made under duress (art. 14).

**The State party should take immediate steps to ensure that, in practice, evidence obtained by torture may not be invoked as evidence in any proceedings. The State party should review cases of convictions based solely on confessions, recognizing that many of these may have been based upon evidence obtained through torture or ill-treatment, and, as appropriate, provide prompt and impartial investigations and take appropriate remedial measures. The State party should establish a mechanism to ensure that any persons convicted on the basis of coerced evidence or as a result of torture or ill-treatment are afforded a new trial and adequate remedy, reparation and/or compensation.**

### **Domestic violence**

(19) The Committee notes with satisfaction the awareness-raising campaigns on domestic violence and the adoption of a declaration on combating violence against women, including domestic violence. However, it remains concerned that there continue to be allegations of widespread domestic violence not only against women, but also against children, and that the adoption of the draft law on domestic violence has been delayed. It is also concerned at the lack of safe shelters for victims of domestic violence. The Committee also regrets the lack of statistical information on the overall complaints of domestic violence reported and the number of investigations, convictions and punishments meted out (arts. 2 and 16).

**The State party should ensure protection of women and children by speedily enacting the draft law on domestic violence and taking measures to prevent in practice such violence. The State party should provide for the protection of victims, access to medical, social and legal services, temporary accommodation, and compensation and rehabilitation. Perpetrators should also be punished in accordance with the gravity of their crimes.**

**The State party should compile information on the number of cases of domestic violence that have been reported, the number of such complaints that have been promptly, impartially and independently investigated, the number of investigations that led to trials and the outcomes of the trials, including the punishment meted out and the compensation provided to victims.**

### **Trafficking**

(20) While noting with satisfaction the adoption of legislative and policy measures taken regarding trafficking in human beings, the Committee remains concerned at the prevalence of the phenomenon in Azerbaijan (arts. 2, 10, 12 and 16).

**The State party should ensure that legislation on trafficking is fully enforced and should continue its efforts to investigate, prosecute, convict and punish persons found responsible, including Government officials complicit in trafficking.**

#### **Violence against journalists and human rights defenders**

(21) The Committee is concerned about allegations of continuous pressure on the media, particularly at reports of harassment and beatings of journalists and human rights defenders that have not been investigated. The Committee is also concerned at allegations of restraints to due process in the recent conviction of individuals who had allegedly expressed opinions in non-conventional media (arts. 2, 10, 12 and 16).

**The State party should fully guarantee and protect the right of freedom of opinion and expression of journalists and media representatives, and introduce legal mechanisms and practical measures to that effect. The State party should conduct prompt and impartial investigation into allegations of violence against journalists and human rights defenders, and prosecute and punish perpetrators. The Committee refers to its general comment No. 2 (CAT/C/GC/2, para. 21), that the State party should ensure the protection of members of groups especially at risk of ill-treatment, including by prosecuting and punishing all acts of violence and abuses against such individuals and ensuring implementation of positive measures of prevention and protection.**

#### **Non-refoulement**

(22) The Committee is concerned at cases of extraordinary rendition, such as the rendition of Chechens to the Russian Federation, based on bilateral extradition agreements, and Kurds to Turkey, where they may face a real risk of torture. The Committee regrets the lack of data provided on asylum applications and refugees, the number of expulsions, refoulement and extradition cases, as well as on the number of cases subjected to judicial administrative review. The Committee also regrets the absence of information on diplomatic assurances and any post-return monitoring procedure established for such cases (art. 3).

**The State party should ensure that no person is expelled, returned or extradited to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture, and that persons whose applications for asylum have been rejected can lodge an effective appeal with suspensive effect. The State party should compile and provide the Committee with detailed statistical data, disaggregated by country of origin, on the number of persons who have requested asylum or refugee status, and the outcomes of these applications, as well as the number of expulsions, deportations or extraditions that have taken place and the countries where individuals were returned to. The State party should take all measures to ensure that individuals who may face a risk of torture in their countries of origin are not returned, extradited or deported to these countries. The State party should avoid the systematic use of diplomatic assurances, and should provide detailed information on the content of any such agreements and the minimum standards of guarantee they provide.**

#### **Training**

(23) The Committee notes with appreciation the training courses on human rights and prohibition of ill-treatment introduced in the curricula of mandatory courses for prison staff, including medical staff, as well as the publication of manuals on prohibition of torture and



the translation of the manual “Human rights and prisons” into Azerbaijani. However, the Committee regrets the limited information on monitoring and evaluation of these training programmes and the lack of available information on the impact of the training conducted for all relevant officials, including law enforcement officials, prison staff and border guards, and how effective the training programmes have been in reducing incidents of torture and ill-treatment (art. 10).

**The State party should further develop educational programmes to ensure that all officials, including law enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All relevant medical personnel should receive specific training on how to identify signs of torture and ill-treatment. The Committee recommends that the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) become an integral part of the training provided to all personnel involved in the detention or imprisonment of persons, as well as to all personnel involved in the investigation and documentation of torture. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of such training and educational programmes on the reduction of cases of torture, violence and ill-treatment.**

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

(24) While welcoming the information provided by the State party that victims of torture have a legal right to obtain compensation, the Committee is nevertheless concerned at the lack of examples of cases in which individuals have received such compensation (art. 14).

**The Committee reiterates its previous recommendation, that the State party should provide redress and compensation, including rehabilitation to victims in practice, and provide examples of such cases to the Committee.**

#### **Minors**

(25) The Committee is concerned about the reported cases of ill-treatment and torture used to obtain incriminating confessions and testimonies from minors and that no effective investigation has been conducted in respect of such allegations (arts. 2, 11 and 16).

**The State party should ensure that minors have a lawyer and a trusted adult present at every phase of a proceeding, including during questioning by a police officer, whether or not the minor has been deprived of liberty. The State party should halt all practices involving abuse of minors in places of detention, punish perpetrators and ban the holding of under-age detainees with adult detainees.**

#### **Violence in the armed forces**

(26) The Committee is concerned at the reported prevalence of violence and ill-treatment of conscripts in the army, commonly called *Dedovshchina* (hazing or bullying), which has reportedly led to serious injuries, and of a large number of unexplained deaths of conscripts, including suicides (arts. 2 and 16).

**The State party should initiate prompt and effective investigations into every case of non-field related deaths, including suicides, of soldiers in the armed services, and should prosecute and punish any perpetrators of actions leading to these deaths and take measures to prevent such incidents in the future.**

(27) The State party is encouraged to consider becoming a party to the International Convention for the Protection of All Persons from Enforced Disappearance and to the Rome Statute of the International Criminal Court.

(28) The State party is encouraged to disseminate widely its reports submitted to the Committee, its replies to the list of issues, the summary records of meetings and the conclusions and recommendations of the Committee, in all appropriate languages, through official websites, the media and non-governmental organizations.

(29) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies (HRI/GEN/2/Rev.5).

(30) The Committee requests the State party to provide, within a year, information on its response to the Committee's recommendations contained in paragraphs 9, 11, 12 and 26 above.

(31) The State party is invited to submit its next periodic report, which will be the fourth report, by 20 November 2013.

#### **51. Colombia**

(1) The Committee against Torture considered the fourth periodic report of Colombia (CAT/C/COL/4) at its 908th and 911th meetings (CAT/C/SR.908 and 911), held on 10 and 11 November 2009, and adopted, at its 925th meeting (CAT/C/SR.925), the following concluding observations.

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

(2) The Committee welcomes the fourth periodic report of Colombia, appreciates the sincere and open dialogue with the delegation of the State party and is grateful for the written replies to the list of issues (CAT/C/COL/Q/4/Add.1), which facilitated the discussions between the delegation and members of the Committee. The Committee also expresses its gratitude for the information supplied to the Committee in 2006 (CAT/C/COL/CO/3/Add.1) and in 2007 (CAT/C/COL/CO/3/Add.2) concerning the implementation of the previous recommendations.

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

(3) The Committee notes with appreciation that, during the period since it considered the third periodic report, the State party has ratified the following instruments:

(a) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (ratified on 23 January 2007);

(b) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (ratified on 25 May 2005);

(c) Inter-American Convention on Forced Disappearance of Persons (ratified on 12 April 2005);

(d) ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182) (ratified on 28 January 2005);

(e) United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (ratified on 4 August 2004);

(f) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (ratified on 11 November 2003).

(4) The Committee welcomes the continued cooperation of the State party with the Office of the United Nations High Commissioner for Human Rights (OHCHR) since the establishment of an office in the country in 1997.

(5) The Committee considers as positive the State party's cooperation with the special rapporteurs, special representatives and working groups of the Human Rights Council and the numerous visits carried out by these human rights mechanisms.

(6) The Committee welcomes the jurisprudence of the Constitutional Court and its extensive references to international human rights standards.

(7) The Committee considers it positive that the jurisdiction of the International Criminal Court has been accepted without qualification by the State party since 2009.

(8) The Committee expresses its satisfaction at the absence of the death penalty in the State party.

(9) The Committee notes with satisfaction the efforts being made by the State party to reform legislation, policies and procedures with the aim of ensuring better protection of the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including:

(a) The human rights certification criterion for promotion in the security services, adopted by the Ministry of Defence in November 2008;

(b) The adoption of the National Plan for the Search for Disappeared Persons in 2007;

(c) The Policy to Combat Impunity (CONPES 3411 of 2006);

(d) The organization of training courses on the Istanbul and Minnesota Protocols, with advice from the Office of the United Nations High Commissioner for Human Rights and the United Nations Office on Drugs and Crime;

(e) The establishment of a special investigation group within the National Human Rights and International Humanitarian Law Unit in the Office of the Public Prosecutor of the Nation on the topic of torture.

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

#### **Definition of torture**

(10) The Committee notes that the Criminal Code includes a definition of the crime of torture. However, it is concerned that, in practice, a charge relating to crimes of torture does not clearly identify torture as a specific and separate offence, given that it is subsumed under aggravating circumstances relating to other offences regarded as more serious by judicial officials. The Committee is also concerned about the possibility of erroneous definitions that assimilate the crime of torture to other less serious criminal offences such as that of personal injury, which does not require proof of the offender's intention. The Committee is concerned that these practices result in a serious under-recording of cases of torture and entail impunity for the said crimes (arts. 1, 2 and 4 of the Convention).

**The State party should adopt the necessary measures to ensure that crimes of torture are prosecuted as a separate offence and that the charge corresponds to the serious nature of the crime, and should not allow cases of torture to be subsumed under other related offences. Similarly, there is a need to ensure that acts of torture are not defined in terms of a less serious offence, such as the infliction of personal injury. The Committee recommends strengthening the training of prosecutors to ensure that torture is prosecuted in a manner consistent with the State party's international obligations.**

#### **Complaints of torture and impunity**

(11) While there has been an overall reduction in the number of complaints of torture since the last periodic review in 2004, the Committee is concerned that the incidence of

torture in the State party remains high and shows specific patterns that point to widespread practice. The Committee notes that, while illegal armed groups are to a large extent responsible for such violence, there are persistent complaints about the participation or acquiescence of agents of the State in these acts. The Committee is particularly concerned at reports indicating an increased number of cases in which direct involvement by agents of the State is alleged. It also expresses grave concern at the persistence of serious violations linked to torture, such as extrajudicial execution, forced disappearance, forced displacement, sexual violation and the recruitment of children in the context of armed conflict, and at the vulnerable situation of certain groups such as women, children, ethnic minorities, displaced persons, the prison population and LGBT persons (art. 2 of the Convention).

(12) Despite the initiatives of the State party to counter impunity, the Committee finds it to be prevalent in the State party. The Committee expresses serious concern at the lack of reliable information on cases of torture and the stage of proceedings they have reached. It is also concerned at the absence of criminal investigations by the Office of the Public Prosecutor of the Nation, the fact that few cases have come to trial and that not all the cases concerned have been referred to the Human Rights and International Humanitarian Law Unit. It is a matter of concern to the Committee that cases of torture continue to be investigated only by administrative, disciplinary or military, rather than criminal jurisdictions. The Committee is concerned at the discrepancies between the figures provided by the different entities of the State party concerning the number of cases of torture and that the lack of a centralized system for compiling data on cases of torture makes it difficult to be certain how many cases are reported, investigated and punished (arts. 2, 4 and 12 of the Convention).

**The Committee calls on the State party to comply with its obligations under the Convention and to investigate and punish acts of torture with appropriate penalties which take into account their grave nature. The Committee underlines the responsibility of the State party for ensuring that investigations are undertaken by the competent authorities, that the investigation is carried out promptly and impartially and that these crimes are punished with appropriate penalties which take into account their grave nature. The Committee urges the State party to allocate additional resources to the Human Rights and International Humanitarian Law Unit in order to speed up its work and underlines the importance of the cases concerned being assigned to that Unit. The Committee recommends that the State party establish a centralized system making it possible to identify all cases of torture and the stage reached in investigating them.**

#### **Independence of the Office of the Public Prosecutor**

(13) The Committee expresses its desire to see the independence of the Public Prosecutor of the Nation strengthened and respected. It is also concerned that prosecutors attached to the Office of the Public Prosecutor are placed within military facilities, since this could compromise their independent functioning (arts. 2 and 12 of the Convention).

**The Committee urges the State party to ensure that the Public Prosecutor is appointed on the basis of criteria that guarantee the selection of a professional capable of acting in total and full independence. The Committee also recommends that the practice of placing prosecutors within military facilities be discontinued.**

#### **Demobilization and de facto amnesty**

(14) The Committee is seriously concerned at the lack of an appropriate legal framework for establishing the criminal liability of demobilized members of illegal armed groups, including approximately 30,000 paramilitaries. The legal rights granted by Act No. 975 of 2005 (Justice and Peace Act) and Decree 128 of 2003 do not conform to the principle of the

proportionality of the sentence and the lack of convictions points to a de facto amnesty in contravention of international human rights obligations. The Committee is seriously concerned that, despite the systematic violence highlighted in *versión libre* accounts and the statement in Act No. 975 of 2005 that “the provisions of this Act shall be applied in accordance with constitutional norms and the international treaties ratified by Colombia”, there has to date been no conviction for serious human rights violations. The Committee points out that the adoption of Act No. 1312 of July 2009 on the application of the principle of opportuneness leads to impunity if the waiver of prosecution is applied without regard to human rights standards, and represents a violation of the victim’s right to full redress (arts. 2, 4, 12 and 13 of the Convention).

**The Committee urges the State party to comply with its obligations under the Convention and other international instruments, including the Rome Statute of the International Criminal Court, and investigate and punish crimes of torture with appropriate penalties which take into account their grave nature. In this regard, it points out to the State party, with reference to its general comment No. 2, adopted in 2007 (CAT/C/GC/2), that the Committee considers that amnesties or other impediments which preclude or indicate unwillingness to ensure prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment may violate the principle of non-derogability.**

#### **Acquiescence and complicity with illegal armed groups**

(15) The Committee is concerned at the widespread complicity of public servants and elected representatives with illegal armed groups, as evidenced by the high number of prosecutions for collusion with these crimes. It expresses great concern that Supreme Court judges have been threatened and have had to have recourse to the Inter-American Human Rights System for interim measures of protection. The Committee also expresses its dismay that Supreme Court judges have been harassed, placed under surveillance and have had their telephone calls tapped by intelligence agents of the Administrative Department of Security (DAS) (art. 2 of the Convention).

**The Committee notes the efforts of the State party to prosecute public servants and elected representatives for complicity with illegal armed groups and urges the State party to guarantee fully the integrity and security of persons working in agencies concerned with the administration of justice. The Committee urges the State party to take immediate steps to discontinue the harassment and surveillance of judges by intelligence agents (the DAS) and to punish those responsible for threatening the independence of the judiciary.**

#### **Military justice and extrajudicial executions**

(16) The Committee is seriously concerned at the widespread pattern of extrajudicial executions of civilians, subsequently described by the security forces as deaths in combat (“false positives”). The Committee reiterates its concern that the military justice system continues to assume jurisdiction in cases of gross human rights violations, including extrajudicial executions carried out by the security forces, thereby undermining the impartiality of those investigations (arts. 2, 12 and 13 of Convention).

**The State party should put an immediate stop to these crimes and comply fully with its obligation to ensure that gross human rights violations are investigated impartially under the ordinary court system, and that the perpetrators are punished. The gravity and nature of the crimes clearly show that they fall outside military jurisdiction. The Committee underlines the responsibility of the High Council of the Judiciary for resolving conflicts of jurisdiction. The Committee also emphasizes the importance of ensuring that initial investigations, the collection of evidence and the recovery of corpses are the responsibility of the civil authorities.**

**Forced disappearances**

(17) The Committee expresses its serious concern at the widespread practice of forced disappearances (28,000 officially recognized in the National Registry of Disappeared Persons) and the number of corpses recovered from mass graves – 2,778 to date according to the State party's figures. The Committee notes that the graves have been discovered mainly on the basis of statements by demobilized paramilitaries and that the vast majority of victims were tortured before being executed, as evidenced by the corpses found bound and dismembered. The Committee regards as positive the adoption in 2007 of the National Plan for the Search for Disappeared Persons, but is concerned at the slow pace of implementation and the lack of institutional coordination with the Office of the Public Prosecutor. The Committee regrets that the Executive has opposed a bill aimed at clarifying forced disappearances and identifying corpses in mass graves (art. 2 of the Convention).

**The Committee urges the State party to take effective steps and allocate sufficient resources to implement the National Plan for the Search for Disappeared Persons, ensuring that victims' families and organizations are suitably involved and that there is proper institutional coordination among all the competent authorities. The Committee recommends that support be given to legislative initiatives to promote clarification of forced disappearances, the rights of victims and early identification of corpses in mass graves. The Committee invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.**

**Prevention of acts of torture**

(18) The Committee acknowledges the efforts made by the State party to prevent gross human rights violations through the introduction of the Early Warning System (SAT) and the presence of community defenders in highly vulnerable population groups. It is, however, concerned that the human and financial resources allocated to these initiatives are insufficient and that the Inter-Institutional Early Warning Committee (CIAT), responsible for issuing early warnings, does not seem to act promptly and adequately (art. 2 of the Convention).

**The Committee recommends that the State party strengthen the Early Warning System in order to prevent displacement and other gross human rights violations, ensuring that it is allocated sufficient human and financial resources, that warnings are issued in good time, and that the civil authorities at the departmental, municipal and other levels participate in the coordination of preventive measures. Given their valuable role in preventing violations, the Committee recommends that the State party allocate more resources to community defenders attached to the Ombudsman's Office and extend the scope of the programme.**

**Extradition**

(19) The Committee is concerned that the extradition of paramilitary leaders to the United States of America to answer charges of drug trafficking has produced a situation that hampers investigations into their responsibility for gross human rights violations. The lack of an effective legal framework for guaranteeing the obligations entered into under the Convention hinders victims' access to justice, the truth and redress and contravenes the State's responsibility to investigate, try and punish crimes of torture (arts. 6 and 9 of the Convention).

**The State party should ensure that extraditions do not hamper the efforts required to investigate, try and punish gross human rights violations. The State party should take steps to ensure that extradited persons cooperate in investigations in Colombia into gross human rights violations. The State party should ensure that future extraditions**

**take place within a legal framework that recognizes the obligations imposed by the Convention.**

#### **Arbitrary detentions**

(20) The Committee is concerned about the high incidence of arbitrary arrests, and in particular the use of preventive administrative detention by the police and mass arrests by the police and the army. The Committee notes that arrest warrants are frequently insufficiently substantiated by evidence and that arrests are used as a means of stigmatizing certain groups such as community leaders, youth, indigenous people, Afro-Colombians and peasants (art. 2 of the Convention).

**The Committee recommends that the State party take steps to eradicate preventive administrative detention and mass arrests, and act on the recommendations made by the Working Group on Arbitrary Detention following its mission to Colombia in 2008 (A/HRC/10/21/Add.3).**

#### **Conditions in detention**

(21) The Committee remains concerned about conditions in detention in the light of persistent overcrowding and continuing complaints of torture and other cruel, inhuman or degrading treatment in prisons and places of temporary detention. The Committee is concerned that prolonged solitary confinement is used as a form of punishment. It has received reports of inhuman or degrading treatment in the Valledupar high- and medium-security prison and the Bellavista prison in Medellín. The Committee is concerned that complaints about cases of torture and inhuman treatment tend to be dealt with through disciplinary proceedings alone, and that it has rarely been possible to carry out investigations. The Committee is also concerned about the military nature of the prisons and the scant availability of mental health services for prisoners (arts. 11 and 16 of the Convention).

**The State party should adopt effective measures to improve material conditions in prisons, reduce the current overcrowding and properly meet the basic needs of all persons deprived of their liberty. The use of solitary confinement should be reviewed and restricted. Complaints of torture and other cruel, inhuman or degrading treatment in prisons and places of temporary detention should be promptly and impartially investigated and brought to the attention of the criminal courts.**

#### **Optional Protocol**

(22) The Committee takes note of the State party's decision to reject ratification of the Optional Protocol to the Convention and its claim that this role is already performed by the human rights committees constituted by the Office of the Ombudsman and prisoners, on the grounds that the internal regulations (resolution No. 5927/2007) of the National Penitentiary and Prison Agency (INPEC) provide a mechanism to guarantee the human rights of prisoners by means of a consultative and decision-making process within the committees of each prison, in which prisoners and the offices of the Public Prosecutor and the Ombudsman participate directly. Although the Committee notes that the initiative to set up human rights committees in prisons is a positive development, it is concerned that such mechanisms are supervised by INPEC and do not constitute an independent preventive mechanism as provided for by the Optional Protocol (art. 2 of the Convention).

**The Committee recommends that the State party ratify the Optional Protocol to the Convention as soon as possible, the better to prevent violations of the Convention.**

#### **Human rights defenders**

(23) The Committee reiterates its concern about the stigmatization of human rights defenders and their families, the high incidence of threats, the frequent attacks on their

safety and the lack of effective protection measures. The Committee is concerned that they have been placed under surveillance and have had their telephones tapped by Administrative Department for Security (DAS) agents, as have other actors in civil society such as trade unionists, non-governmental organizations and journalists (art. 2 of the Convention).

**The Committee urges the State party to put an immediate end to the harassment by DAS agents of human rights defenders and other civil society actors upholding human rights, and to punish those responsible for practices stigmatizing human rights defenders. The State party should ensure that effective protection is made available for human rights defenders and others whenever they have been threatened on account of their activities.**

#### **Witness protection**

(24) The Committee is concerned about the frequent threats made against witnesses in cases involving torture and other cruel, inhuman or degrading treatment. The Committee is particularly concerned about the harassment and murders of witnesses and victims who have taken part in trials held under Act No. 975 of 2005. In spite of the protection programmes in place, the Committee considers that the State party has not fully complied with its duty to ensure the safety and integrity of witnesses and victims (art. 13 of the Convention).

**The Committee urges the State party to adopt effective measures to guarantee the safety and integrity of witnesses and victims and to strengthen protection programmes with additional resources. The Committee urges the State party to pay special attention to the protection and interim measures issued by the Inter-American Human Rights System and to take immediate and effective measures to ensure compliance with them.**

#### **Full redress**

(25) The Committee is concerned about the lack of redress available for victims of torture and other cruel, inhuman or degrading treatment. It notes that to date there are 250,000 victims of the armed conflict and that Act No. 975 of 2005 and Decree No. 1290 of 2008 make provision for redress for the victims of violations committed by illegal armed groups. Article 42 of Act No. 975 of 2005 assigns liability for redress to armed groups that have been convicted by the courts, a provision so far rendered inoperative by the lack of any convictions. The Committee acknowledges the efforts made by the State party to establish a programme to provide individual administrative redress via Decree No. 1290 of 2008; it notes, however, that in spite of the references to the “State’s subsidiary or residual responsibility”, the programme is based on the principle of solidarity rather than on the State’s duty to guarantee rights. Given that the State party is responsible for violations committed with the consent or complicity of, or through omission by, agents of the State, the Committee is seriously concerned that the responsibility of the State is not clearly defined and that current legislation may lead to discrimination among victims (art. 14 of the Convention).

**The State party should fully guarantee the right of victims of torture and other cruel, inhuman or degrading treatment to redress and ensure that this right is established without discrimination in national legislation, and is enforced in practice. Implementation of this right must be pursued taking into account the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International**



**Humanitarian Law<sup>1</sup> and take into account the five elements of that right; restitution, compensation, rehabilitation, satisfaction and guaranteed non-repetition. Particular attention should be paid to gender issues and to victims who are children, Afro-Colombians or indigenous people. Resources should be specifically assigned to provide psychological and social care.**

#### **Restitution**

(26) The Committee is concerned about the threats against victims of forced displacement who have asked for the return of their land. It notes that those mainly affected are peasants, Afro-Colombians and indigenous people. The Committee is concerned that land belonging to displaced persons has been seized by illegal armed groups and in some cases sold to third parties for monocultivation and exploitation of natural resources (art. 14 of the Convention).

**The Committee urges the State party to adopt effective measures to ensure the return of land to victims of displacement and to respect the land ownership of peasants, Afro-Colombians and indigenous people.**

#### **Right to truth**

(27) The Committee is concerned that the mechanisms established by Act No. 975 of 2005 fail fully to guarantee the right to truth, in spite of the references made thereto by the Act, and that this right is in practice restricted to procedural truth. While acknowledging the work carried out by the National Commission for Compensation and Reconciliation, the Committee notes that the Commission is mainly made up of States bodies (art. 14 of the Convention).

**The Committee recommends that the State party adopt effective measures to guarantee the right to truth and that it consider establishing an autonomous, independent truth commission.**

#### **Sexual violence**

(28) The Committee is concerned about the high incidence of sexual violence and about its use as a weapon of war. It regrets the failure to take all necessary measures to ensure compliance with Constitutional Court order 092 of 2008, and the lack of information on the relevant investigations. It expresses concern about the rapes reportedly carried out by the security forces, noting the lack of firm action, and the absence of investigations to identify the perpetrators. It is also concerned about the failure of the mechanisms established by Act No. 975 of 2005 to reflect crimes involving sexual violence and by the fact that they are not always documented in forensic reports, despite the instructions that have been issued (arts. 2 and 16 of the Convention).

**The State party should adopt effective and urgent measures to eradicate sexual violence, particularly when used as a weapon of war. In particular, the State party should comply with Constitutional Court order 092 of 2008 and investigate the relevant cases. Sexual violence reportedly committed by the security forces should be investigated, tried and firmly punished. Measures should be implemented to ensure the full and systematic application of the instructions requiring signs of torture or sexual violence to be documented in forensic reports.**

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<sup>1</sup> General Assembly resolution 60/147, annex.

**Child soldiers**

(29) The Committee is concerned about the continued recruitment and use of children by illegal armed groups. The Committee recognizes the efforts made by the State party through the establishment, in December 2007, of the Intersectoral Commission to prevent the unlawful recruitment of children and adolescents by illegal organized groups; it notes that according to the State party, it has been possible to break the grip of such groups on some 3,800 children. The Committee does, however, regret the lack of information on the criminal liability of persons responsible for recruiting children. It is concerned that such children are not given sufficient support to ensure their physical and mental rehabilitation and recuperation, that different levels of protection are offered depending on whether the children are demobilized from guerrilla or other illegal armed groups, and that when children are taken captive by the security forces, they are not always handed over to the civil authorities within the 36-hour legal deadline. The Committee is also concerned that the security forces use children for intelligence purposes, occupy schools in areas of conflict and organize “military days” in schools throughout the country (arts. 2 and 16 of the Convention).

**The State party should strengthen measures to prevent the recruitment of children, provide proper support to ensure their physical and mental rehabilitation and recuperation and prosecute through the criminal courts those who have recruited them. The security forces should refrain from jeopardizing the neutrality of schools and comply with standards relating to the return to the civil authorities of children who have broken away from illegal armed groups or been captured. The Committee recommends that the State party extend its full cooperation to the Special Representative of the Secretary-General for Children and Armed Conflict in order to progress with the implementation of Security Council resolution 1612.**

**Non-refoulement**

(30) The Committee notes that Decree No. 2450 of 2002 “which lays down procedures for establishing refugee status” contains provisions that do not fully comply with the obligations laid down in article 3 of the Convention and in the 1951 Convention relating to the Status of Refugees. The Committee nevertheless takes note that approval of a new decree on this matter, which includes the principle of non-refoulement, is pending (art. 3 of the Convention).

**The State party should expedite the adoption of new legislation that includes the principle of non-refoulement. In order to ensure that the guarantee of non-refoulement is implemented in practice, training on this obligation should be given to immigration officials and the police.**

(31) The Committee invites the State party to submit the core document in conformity with the requirements for a common core document laid down in the harmonized guidelines on reporting under the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.6, chapter I.

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

(33) The Committee requests that the State party provide information, within one year, on the measures taken in pursuance of the Committee’s recommendations as set forth in paragraphs 12 to 17 above.

(34) The Committee recommends that the State party take all appropriate steps to implement these recommendations, including conveying them to the members of the Government and Parliament so that they may be considered and the necessary measures taken.

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

(36) The Committee requests the State party to include in its next periodic report detailed information on the steps it has taken to comply with the recommendations contained in these concluding observations.

(37) The Committee invites the State party to submit its fifth periodic report by 20 November 2013 at the latest.

## **52. El Salvador**

(1) The Committee considered the second periodic report of El Salvador (CAT/C/SLV/2) at its 902nd and 904th meetings (CAT/C/SR.902 and 904), held on 5 and 6 November 2009, and adopted, at its 920th and 921st meetings (CAT/C/SR.920 and 921), held on 18 November 2009, the following concluding observations.

### **A. Introduction**

(2) The Committee welcomes the second periodic report of El Salvador, prepared in accordance with the general directives concerning the form and content of periodic reports. However, the Committee regrets that the report was submitted six years late. The Committee appreciates the constructive dialogue established with the representatives of the State party, and expresses its gratitude for the replies provided in response to the questions and concerns raised by the Committee.

### **B. Positive aspects**

(3) The Committee notes with appreciation that, during the period since it considered the initial report, the State party has ratified the following international instruments:

(a) Convention on the Rights of Persons with Disabilities and its Optional Protocol (ratified on 13 December 2006 and 14 December 2007 respectively);

(b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (ratified on 17 May 2004);

(c) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (ratified on 18 April 2002).

(4) The Committee appreciates the invitations extended by the State party to various components of the special procedures, including the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on violence against women, its causes and consequences.

(5) The Committee notes with satisfaction that the State party has eliminated the death penalty. However, it recommends that the State party should also eliminate it for certain military offences stipulated in military legislation during a state of international war.

(6) The Committee notes with appreciation the adoption of the Special Act on the Protection of Victims and Witnesses in May 2006.

(7) The Committee welcomes:

(a) The establishment of the Salvadoran Institute for the Development of Children and Adolescents through the amendment of the Act on the Salvadoran Institute for the Comprehensive Development of Children and Adolescents in July 2006;

(b) The establishment of the Commission on Refugee Status Determination in July 2002;

(c) The establishment in June 2000 of a Human Rights Unit within the National Civil Police, composed of three departments: promotion, protection and administration.

(8) The Committee notes with satisfaction that on 1 April 2004 the Constitutional Division of the Supreme Court found that a number of articles in the Anti-Gang Act violated the Constitution and the Convention on the Rights of the Child, as they breached the fundamental principle of equality before the law; it also found that the Act presupposed that individuals engaged in criminal activities on the basis of their personal or social circumstances rather than the actual commission of an offence, and also ruled that a child may not be tried as an adult.

(9) The Committee welcomes the willingness of the Government to institute a policy of full acknowledgement of its international obligations in the field of human rights arising from the international treaties ratified by the State party, and to recognize the right of victims of human rights violations to know the truth, to have access to justice and to obtain adequate reparation.

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

#### **Definition of torture**

(10) Despite the fact that article 297 of the Criminal Code and the Constitution provide a definition of torture, the Committee reiterates its concern, already expressed at the time of its consideration of the initial report, that the State party has still not brought the definition of the crime of torture in its domestic legislation into line with the provisions of article 1 and the requirements of article 4 of the Convention. The Committee notes with concern that the definition of torture does not include specification of the purpose of the crime, that no aggravating circumstances have been indicated, that the possibility of attempted torture is excluded, and that it does not encompass intimidation or coercion of the victim or a third person or discrimination of any kind as a motive or reason for inflicting torture. It also lacks provisions defining as an offence torture inflicted at the instigation or with the consent or acquiescence of a public official or other person performing official functions. The Committee is also concerned that domestic legislation contains no provision for the application of appropriate penalties in the light of the serious nature of the crime of torture (arts. 1 and 4).

**The State party should take the necessary steps to ensure that all acts of torture, including all the elements specified in articles 1 and 4 of the Convention, are considered to be offences in its domestic penal legislation and that, in keeping with article 4, paragraph 2, of the Convention, appropriate penalties are applied in every case in the light of the serious nature of such offences.**

#### **Allegations of torture**

(11) The Committee is concerned that allegations of serious offences, including acts of torture, committed by personnel of the National Civil Police and prison staff in the performance of their duties, continue to be received, especially in the context of strategies to combat the high level of crime. The Committee is particularly concerned that the allegations of torture which have been received include reference to vulnerable persons such as street children and young people or those from broken families. The Committee also notes with concern that some possible cases of torture have been investigated, under disciplinary rules, as abuses of power, despite their seriousness. The Committee regrets that no independent body exists which could investigate reports of ill-treatment and torture, contributing to a situation in which such offences go unpunished (arts. 2 and 12).

**The Committee recommends that the State party should expedite legislative reforms and set up an independent body to monitor the behaviour and discipline of the police forces. The State party should also guarantee that no act carried out by the police**

forces that violates the Convention will go unpunished and that the investigations into such acts will be effective, transparent and carried out under criminal law. Continuing education programmes should also be stepped up to ensure that all law enforcement personnel are fully aware of the provisions of the Convention.

#### **Impunity and absence of prompt, thorough and impartial investigations**

(12) The Committee notes with concern that widespread impunity is one of the main reasons why torture has not been eradicated. The Committee is particularly disturbed by reports of several cases in which serious accusations against the security forces, in particular National Civil Police officers and prison staff, remain at the increasingly protracted investigation stage, where those responsible have not been effectively brought to justice, and where alleged perpetrators of crimes remain in their posts. The Committee is also concerned that the State party has not established an independent body to safeguard the independence of the judiciary (arts. 12, 13 and 16).

**The Committee urges the State party to take steps to combat impunity, including:**

(a) A public declaration that the State party will not tolerate torture and that those responsible for acts of torture will be brought to justice;

(b) Prompt, thorough, impartial and effective investigation of all reports of torture and ill-treatment committed by law enforcement personnel. In particular, such investigations should not be in the hands or under the authority of the police or prison staff, but an independent body. Where there is evidence of torture and ill-treatment, the suspect should normally be suspended from duty or assigned to other tasks during the investigation, especially if there is a risk that he or she may obstruct it;

(c) Bringing the perpetrators to justice and imposition of appropriate penalties on those convicted, in order to eliminate the impunity of law enforcement personnel who are responsible for violations of the Convention;

(d) Guaranteeing the full independence of the judiciary in line with the Basic Principles on the Independence of the Judiciary (General Assembly resolution 40/146 of 13 December 1985) and establishment of an independent body to safeguard the independence of the judiciary.

#### **Public safety**

(13) The Committee notes with concern that the State party has assigned 4,000 members of the armed forces to police units known as Joint Task Forces, to undertake policing tasks, such as the prevention and suppression of common crimes linked to the number of gangs, instead of providing support to the police in its work (art. 2).

**The State party should take effective steps to support the National Civil Police and cancel programmes, even temporary ones, which authorize the army to intervene in law enforcement activities and the prevention of ordinary crime, which should be carried out exclusively by the police.**

#### **Enforced or involuntary disappearances during the armed conflict between 1980 and 1992**

(14) The Committee welcomes the as yet limited efforts of the Inter-agency Commission on the search for children who disappeared during the armed conflict and the plan to restructure the Commission and redefine its functions. It also welcomes the invitation extended by the State party to the Working Group on Enforced or Involuntary Disappearances in 2007. However, the Committee wishes to express its concern at the failure to provide full redress to the victims of enforced or involuntary disappearances

during the armed conflict between 1980 and 1992 and their families and, in general, the inadequate investigations and punishment and the lack of full redress and compensation in relation to those crimes. It also regrets the failure to search for adults who have disappeared (arts. 2, 4 and 16).

**The Committee reminds the State party that the crime of enforced disappearance is ongoing by nature and should be investigated for as long as its effects continue, until those responsible have been identified. Similarly, the Committee reiterates the recommendations of the Working Group on Enforced or Involuntary Disappearances and notes with concern that they have not been implemented in full. The Committee urges the State party to take rapid steps to ensure progress in the search for missing persons, the establishment of a programme of full redress and compensation for victims and their families and the prevention of further cases of enforced or involuntary disappearance.**

**General Amnesty (Consolidation of the Peace) Act and recommendations of the Truth Commission**

(15) The Committee notes with satisfaction the Government's statement that it will not maintain the position upheld by previous administrations of justifying the application of the Amnesty Act as necessary for the preservation of peace in the State party. It also notes that in its ruling of 26 September 2000, the Supreme Court held that, although the Amnesty Act is constitutional, judges may decide not to apply it when giving judgements on specific cases, adding that "it shall be for the judge to decide in each specific case when this exception applies, by means of an interpretation in keeping with the Constitution", and that "if the events which gave rise to the civil responsibility of a public official or employee have not been covered by an amnesty — because they involve crimes which cannot be the subject of an amnesty — or if the amnesty granted breaches the Constitution, the obligation to provide compensation may be asserted before the competent courts". However, the Committee considers that this Act violates the right to an effective remedy, since it hinders the investigation and punishment of all those responsible for human rights violations and stands in the way of the right to redress, compensation and rehabilitation of the victims. The Committee notes with concern that the State party has not implemented the recommendations made by the Truth Commission in 1993 (arts. 2, 4, 5 and 14).

**The Committee urges the State party to repeal the General Amnesty (Consolidation of the Peace) Act. In that regard, it draws the State party's attention to paragraph 5 of its general comment No. 2 on the implementation of article 2 by States parties (CAT/C/GC/2), in which the Committee considers that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability. The Committee likewise recommends that all necessary steps should be taken to guarantee that investigations of cases of torture and other cruel, inhuman or degrading treatment or punishment are carried out thoroughly, promptly and impartially, that the perpetrators are prosecuted and punished and that measures are adopted to provide redress and rehabilitation for the victims, in accordance with the provisions of the Convention.**

**The Committee notes with satisfaction the willingness of the new Government to adopt a policy of full material and moral redress for the victims of human rights violations which have occurred in the present or the recent past. The Committee nevertheless urges the State party to take prompt steps to implement the recommendations of the Truth Commission, and in particular to prosecute and punish promptly and impartially those responsible for acts of torture, ill-treatment or enforced or involuntary disappearance, to remove from their posts all officials who have been identified as alleged perpetrators of human rights violations, to create a**

**special fund to compensate victims, to construct a national monument bearing the names of all the victims, and to declare a national holiday in memory of the victims.**

#### **Pretrial detention**

(16) The Committee is concerned at the length of pretrial detention and the high number of persons thus detained because of a general increase in violence in the country, as the State party has acknowledged (art. 2).

**The State party should take prompt steps to restrict the use of pretrial detention as well as its duration, using alternative methods whenever possible and when the accused does not represent a danger to society.**

#### **Conditions of detention**

(17) The Committee notes with satisfaction the planned measures and actions to be taken by the administration of the prison system to curb violations of the human rights of the prison population. However, the Committee expresses its concern at the serious problem of overcrowding — according to information supplied by the State party, the prison population stands at 21,671 against a capacity of 9,000 — which has an adverse impact on other prison conditions. The Committee is particularly disturbed at the failure to separate accused persons from convicted prisoners, women from men and children from adults, as well as inadequate health care, hygiene, drinking water, education and visits. The Committee is also concerned by reports of the use of incommunicado detention for long periods of time.

(18) The Committee regrets the high levels of violence among prisoners and the lack of surveillance in prisons, which has led to deaths among prisoners. The Committee is also concerned that these incidents have not been promptly and impartially investigated, and that those responsible have not been punished. In view of this, the Committee is disturbed by the fact that article 45 of the Prisons Act has been amended to specify that complaints must be lodged by prisoners within a time limit of 15 days following any incident.

(19) The Committee is also particularly concerned about prison conditions for minors, who suffer from ill-treatment and inadequate access to medical services and education (arts. 11 and 16).

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

(a) **Take immediate steps to reduce overcrowding in prisons, in particular through the application of alternatives to imprisonment, and take steps to improve infrastructure, sanitary conditions and health services;**

(b) **Ensure that accused persons are kept separate from convicted prisoners, women from men and children from adults in all places of detention;**

(c) **Provide the necessary equipment, personnel and budgetary resources to ensure that prison conditions throughout the country are brought into line with minimum international standards and principles relating to prisoners' rights;**

(d) **Abolish all forms of incommunicado detention;**

(e) **Pursue the development of programmes for prisoner resocialization and reintegration;**

(f) **Take urgent steps to prevent violence among prisoners and ensure the prompt, impartial and thorough investigation of all incidents of violence in detention facilities and the punishment of those responsible. Prisoners' complaints should not have to be made within a specific time frame;**

(g) **Promptly, impartially and thoroughly investigate all allegations of ill-treatment of child prisoners and take urgent steps to prevent acts of torture and ill-treatment against child prisoners. The State party should also ensure that the deprivation of liberty is a last resort, used for the shortest time possible, and promote the use of alternatives to custodial sentences.**

**Conditions of detention under the Special Internment Regime**

(20) The Committee notes with concern the allegations concerning the transfer of detainees to the Security Centre without an official warrant and the reports of incommunicado detention. Furthermore, the Committee is concerned about the conditions of detention at the Security Centre under the Special Internment Regime, with particular reference to allegations of ill-treatment by prison staff at the time of the detainee's admission, prolonged detention in solitary confinement and restrictions on family visits, food, light and air (arts. 11 and 16).

**The Committee recommends that the State party guarantee the detainee's right to due process in accordance with the Special Internment Regime and abolish all forms of incommunicado detention. The State party should investigate promptly, impartially and thoroughly all allegations of ill-treatment. It should also take steps to improve the conditions of detention under the Special Internment Regime so that they comply with the minimal international standards and principles relating to the rights of persons deprived of their liberty.**

**Violence against women and femicide**

(21) The Committee notes the setting up of 14 Inter-Institutional Committees to implement the National Plan on Domestic Violence, the establishment of observatories on violence and the initiation in 2005 of the national research project on femicide. The Committee takes note of a draft bill on violence against women and the touring fairs aimed at educating and informing people about domestic violence. Nevertheless, it is very concerned at the prevalence of numerous forms of violence against women and girls, including sexual abuse, domestic violence and the violent deaths of women (femicide). The Committee is furthermore concerned at the absence of thorough investigations into reported cases and the impunity enjoyed by the perpetrators of such acts (arts. 12, 13 and 16).

**The State party should increase its efforts to ensure that urgent and efficient protection measures are put in place to prevent and combat violence against women and girls, including sexual abuse, domestic violence and femicide. The Committee considers that these crimes should not go unpunished and the State party should provide human and financial resources to punish the perpetrators of these acts. The State party should also organize widespread awareness-raising campaigns and training courses on violence against women and girls for officials in direct contact with the victims (law enforcement officers, judges, lawyers, social workers, etc.) as well as for the public at large.**

(22) The Committee is also concerned at reports of humiliating body inspections of women visiting places of detention, in particular at the fact that such inspections may be carried out by unqualified persons, including personnel without medical training (art. 16).

**The Committee emphasizes that inspections of women's private parts can constitute cruel or degrading treatment and that the State party should take measures to ensure that such inspections are carried out only when necessary, by trained female medical professionals and taking every care to preserve the dignity of the woman being examined.**



### **Allegations of violence or incest**

(23) The Committee is particularly concerned that, according to information received, over half the complaints involving rape or incest come from victims who were minors when the offence was committed. It is also concerned that the current Criminal Code of 1998 penalizes and punishes with imprisonment for periods ranging from 6 months to 12 years all forms of recourse to voluntary interruption of pregnancy, including in cases of rape or incest, which has resulted in serious harm to women, including death (arts. 2 and 16).

**With reference to its general comment No. 2, the Committee recommends that the State party take whatever legal or other measures are necessary to effectively prevent, investigate and punish crimes and all acts that put the health of women and girls at grave risk, by providing the required medical treatment, by strengthening family planning programmes and by offering better access to information and reproductive health services, including for adolescents.**

### **Trafficking in persons**

(24) The Committee recognizes the efforts made by the State party to deal with the trafficking of women and girls, such as the creation of a temporary shelter for women and their children who have been victims of commercial sexual and other forms of exploitation and of a shelter for girl victims of trafficking. However, the Committee is concerned about the continuous reports of cases involving the internal and cross-border trafficking of women and children for sexual and other purposes, and deplores the fact that the officials suspected of committing these acts have not been properly investigated, prosecuted and punished (arts. 2, 10 and 16).

**The State party should ensure that all allegations concerning the trafficking of persons are investigated promptly, impartially and thoroughly and that the offenders are prosecuted and punished for the crime of trafficking in persons. The State party should continue to conduct nationwide awareness-raising campaigns, provide adequate programmes of assistance, recovery and reintegration for victims of trafficking and offer training to law enforcement officers, migration officials and border police on the causes, consequences and repercussions of trafficking and other forms of exploitation. The Committee further recommends that the State party increase its efforts to establish systems and mechanisms of international, regional and bilateral cooperation with the countries of origin, transit and destination in order to prevent, investigate and punish cases of human trafficking.**

### **The principle of “non-refoulement”**

(25) The Committee regrets the complaints alleging a systematic failure to comply with the principle of “non-refoulement” and with the right of access to due process and information for refugees and potential asylum-seekers, and the failure to provide proper safeguards against persons being placed at risk when returned to their country of origin. It further regrets the inadequacy of the mechanisms enabling the immigration authorities to establish that a person runs the risk of being tortured on return to his or her country of origin. The Committee further notes with concern the allegations of discriminatory treatment of asylum-seekers by the authorities of the State party (arts. 3 and 6).

**The State party should adopt administrative and legislative measures to ensure respect for due process in the procedures for deciding on refugee status or deportation, with particular regard to the right of defence and the requirement that a representative of the Office of the United Nations High Commissioner for Refugees be present. It also recommends the introduction of training programmes on international humanitarian law applicable to refugees, with emphasis on the content and scope of**

**the principle of non-refoulement, for immigration police and administrative officials responsible for deciding on refugee status and deportation.**

#### **Office of the National Counsel for the Defence of Human Rights**

(26) The Committee welcomes the increase in the budget of the Office of the National Counsel for the Defence of Human Rights, and the improved dialogue between the Office and the current Government. However, the Committee notes that this budget is still inadequate. It regrets the allegations of interference with the work of this national human rights institution and the threats that have occurred during its investigations of some incidents (art. 2).

**The Committee reminds the State party of the importance of the work of the national human rights institution and urges the State party to protect its activities and provide adequate funding. It also recommends that it give adequate follow-up to the recommendations of the Office of the Counsel for the Defence of Human Rights and that the link between its activities, its complaints procedures and other official monitoring mechanisms should be strengthened so as to ensure that the problems encountered are effectively addressed.**

#### **Human rights defenders**

(27) The Committee is concerned about reports of acts of harassment and death threats aimed at human rights defenders, and about the fact that such acts remain unpunished (art. 2).

**The State party should adopt effective measures to combat harassment and death threats aimed at human rights defenders and prevent any further violence against them. Furthermore, the State party should ensure the prompt, thorough and effective investigation of such acts and the appropriate punishment of the perpetrators.**

#### **Training on the prohibition of torture and application of the Istanbul Protocol**

(28) The Committee notes with satisfaction the incorporation by the Public Security Academy of the study and practice of human rights, including the Convention against Torture and the Istanbul Protocol, in the basic training of police officers and the organization of training sessions on human rights for all police personnel. However, the Committee regrets the paucity of information provided on the monitoring and evaluation of existing training programmes, on the results of this training and on the usefulness of these programmes in reducing the number of cases of torture and ill-treatment. It also regrets the lack of information concerning training on the Istanbul Protocol for personnel involved in investigating, identifying and dealing with cases of torture (art. 10).

**The State party should devise and apply a method for assessing the effectiveness of training and educational programmes, as well as their impact in reducing the number of cases of torture, violence and ill-treatment. The Committee recommends that the State party intensify its efforts to ensure that all personnel involved in the investigation and identification of cases of torture are aware of the content of the Istanbul Protocol and are trained to apply it.**

#### **Redress and rehabilitation**

(29) The Committee is concerned that the State party does not have a programme for compensating and rehabilitating the victims of torture and that not all victims have the right to fair and adequate compensation (art. 14).

**The Committee reaffirms the State party's obligation to ensure that all victims of acts of torture have the legal right to fair and adequate compensation and rehabilitation.**

(30) The Committee invites the State party to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(31) The Committee further invites the State party to ratify the main United Nations human rights treaties to which it is not yet party, namely, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (signed on 25 September 2009), the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (signed on 4 April 2001), the Second Optional Protocol to the International Covenant on Civil and Political Rights, and the International Convention for the Protection of All Persons from Enforced Disappearance.

(32) The Committee notes that the Government's programme for 2009–2014, under political reform relating to human rights, includes promoting the withdrawal of reservations on the recognition of competence. Nevertheless, the Committee recommends that the State party examine the possibility of making the declarations provided for in articles 21 and 22 of the Convention.

(33) The Committee requests the State party to include in its next periodic report detailed information on the steps it has taken to comply with the recommendations contained in these concluding observations. The Committee recommends that the State party take all appropriate steps to implement these recommendations, including their transmission to members of the Government and Congress for consideration and adoption of any necessary measures.

(34) The Committee recommends that the State party disseminate widely through the media, official websites and non-governmental organizations, including in indigenous languages, the reports it submits to the Committee, together with these conclusions and recommendations.

(35) The Committee requests the State party to inform it within one year of the steps taken in pursuance of the recommendations contained in paragraphs 15, 19 and 21.

(36) The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting (HRI/GEN/2/Rev.6).

(37) The State party is invited to submit its third periodic report by 20 November 2013 at the latest.

### **53. Republic of Moldova**

(1) The Committee against Torture considered the second periodic report of the Republic of Moldova (CAT/C/MDA/2) at its 910th and 912th meetings (CAT/C/SR.910 and 912), held on 11 and 12 November 2009, and adopted, at its 922nd meeting (CAT/C/SR.922) held on 19 November 2009, the conclusions and recommendations as set out below.

#### **A. Introduction**

(2) The Committee welcomes the submission of the second periodic report of the Republic of Moldova, which, while generally following the Committee's guidelines for reporting, is submitted with a delay of almost three years, and lacks statistical and practical information on the implementation of the provisions of the Convention. The Committee also welcomes the submissions of the replies to the list of issues (CAT/C/MDA/Q/2/Add.1), in which the State party provided additional information on the measures it has taken to implement the Convention. The Committee regrets, however, that the State party has not responded in the framework of follow-up to the questions that it raised in the course of consideration of the initial report of the Republic of Moldova (CAT/C/32/Add.4), despite the reminder sent on 7 March 2006 by the Committee's

Rapporteur for follow-up with regard to the concluding observations to the Republic of Moldova (CAT/C/CR/30/7).

(3) The Committee notes with satisfaction the constructive dialogue held with the high-level delegation of the State party.

(4) The Committee also notes the State party's assertion that it cannot be held responsible for violations of human rights committed on the territory over which it "does not exercise a real jurisdiction", as is the case with the left bank of the Dniester river (HRI/CORE/1/Add.114, paras. 33–34). The Committee nonetheless reiterates that the State party has an ongoing obligation to ensure that acts of torture and other forms of ill-treatment are prohibited in all parts of its territory.

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

(5) The Committee welcomes the fact that, in the period since its consideration of the initial report, the State party has ratified or acceded to the following international and regional instruments:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2006;

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

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

(d) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2006;

(e) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in 2006;

(f) The Council of Europe Convention on Action against Trafficking in Human Beings, in 2006;

(g) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2007;

(h) The Optional Protocol to the International Covenant on Civil and Political Rights, in 2008.

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

(a) The revision of the Criminal Code and, in particular, the inclusion of article 309/1, which brings the State party's legislation into line with article 1 of the Convention against Torture with regard to the definition of torture;

(b) The inclusion in the new Code of Criminal Procedure of article 94, paragraph 1, which makes statements obtained through the use of torture inadmissible as evidence, and the inclusion of section 3/1 to article 10, which states that the burden of proof in cases of torture rests with the institution in which the detainee was held and which must disprove the act of torture;

(c) Reforms of the criminal justice system and the introduction of probation and community service and other forms of alternative punishment, leading to a decrease in the total population incarcerated and the improvement of conditions of detention;

(d) Law No. 270-XVI of December 2008 on asylum in the Republic of Moldova, which is largely in line with international and European standards;

(e) Law No. 45-XVI of March 2007 on preventing and combating domestic violence.

(7) The Committee also notes with satisfaction the following developments:

(a) Direct reference to articles 12 and 13 of the Convention by the Supreme Court of Justice in cases examined in February 2006 and March 2008;

(b) The allocation by the State party of additional resources to improve standards in places of detention, in particular with respect to access to health, activities, training and living conditions.

### **C. Main issues of concern and recommendations**

#### **Torture and ill-treatment**

(8) The Committee is concerned about the numerous and consistent allegations of widespread use of torture and other forms of ill-treatment in police custody, corroborated by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in his report (A/HRC/10/44/Add.3, para. 82). The Committee is also concerned about allegations of torture and ill-treatment being used to extract confessions or information as evidence in criminal proceedings, despite legislative and organizational changes made by the State party (arts. 2, 15 and 16).

**As a matter of urgency, the State party should take immediate steps to prevent acts of torture and ill-treatment and to announce that no forms of torture and ill-treatment will be tolerated. The State party should, in particular, publicly and unambiguously condemn practices of torture in all its forms, directing this especially to police and prison staff in positions of command responsibility, accompanied by a clear warning that any person committing such acts, as well as instigating, consenting or acquiescing in torture or other ill-treatment, will be held personally responsible before the law for such acts and subject to penalties proportional to the gravity of their crime.**

(9) The Committee is particularly concerned about the numerous, ongoing and consistent allegations of torture and other forms of ill-treatment in temporary detention facilities under the jurisdiction of the Ministry of Internal Affairs. The Committee is also concerned that, despite the State party's plan to transfer responsibility over temporary detention facilities to the Ministry of Justice in the context of implementation of the Plan of Action for Human Rights for 2004–2008, the transfer did not take place and is now made conditional upon the construction of eight new remand centres (arts. 2 and 16).

**As recommended in the previous concluding observations of the Committee (CAT/C/CR/30/7, para. 6 (i)), the State party should take immediate steps to fully transfer the responsibility for temporary detention facilities from the Ministry of Internal Affairs to the Ministry of Justice as a measure to prevent torture and ill-treatment.**

#### **Fundamental legal safeguards**

(10) The Committee is concerned about allegations that fundamental legal safeguards for persons detained by the police, such as unrestricted access to lawyers and independent doctors, are not being observed, particularly at the early stages of detention, despite existing legal guarantees of articles 64 and 167 of the Code of Criminal Procedure and the adoption

of the Law on State Legal Aid and of the Code of Offences. In addition, the Committee notes with concern that there is no system of mandatory use of registers in all police premises, and that, in practice, detainees are not always registered in police stations, depriving them of an effective safeguard against acts of torture. Furthermore, medical reports of independent doctors do not have the same evidentiary value as medical reports issued by medical service staff of the places of detention (arts. 2 and 16).

**The State party should:**

(a) **Ensure in practice that every detainee, including when detained under the administrative law, is afforded all fundamental legal safeguards during his or her detention. These include, in particular, from the actual moment of deprivation of liberty, the right to have access to a lawyer and to have an independent medical examination, to notify relatives in a timely manner and to be informed of his or her rights, including grounds for the detention. The State party should ensure that arbitrary detention does not take place, that all detained persons are brought promptly before a judge and are guaranteed the ability to challenge effectively and expeditiously the lawfulness of their detention through habeas corpus;**

(b) **Introduce a procedure of mandatory medical examination for detainees on each entry and departure from the temporary detention facilities, similar to the one established under article 251, section 1, of the Enforcement Code, for convicted persons in penitentiary institutions;**

(c) **Ensure in practice that the findings and medical reports of independent doctors whose medical opinion may be requested on the basis of article 5, paragraph (e), of the 2005 Law on the Rights and Responsibilities of Patients and/or article 251, section 4, of the Enforcement Code, are given the same evidentiary value by the State party's courts as medical reports issued by medical service staff of the places of detention;**

(d) **Adopt regulations requiring mandatory use of registers in all police premises in conformity with the relevant international agreements, particularly the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Registration should contain information on the identity of the detainee, date, time and place of the detention, the identity of the authority that detained the person, grounds for the detention, date and time of admission to the detention facility, state of health of the detainee upon admission and any changes thereto, time and place of interrogations, with names of all interrogators present, as well as the date and time of release or transfer to another detention facility. The State party should also ensure that all detainees, including minors, are included in a central register that functions effectively.**

**Independence of the judiciary**

(11) The Committee remains concerned at the dysfunction of the judiciary in general and of the criminal justice system in particular, firstly, because of the lack of independence of the judiciary, and secondly, because of the lack of security of tenure for judges (arts. 2, 15 and 16).

**The State party should take effective and efficient measures to ensure the independence of the judiciary in accordance with the Basic Principles on the Independence of the Judiciary, if necessary by recourse to international cooperation.**

### **Pretrial detention**

(12) The Committee expresses its concern at the system of pretrial detention, in which lengthy periods are set by reference to the penalty for the offence of which the person stands accused (arts. 2, 11 and 16).

**The State party should take appropriate measures to ensure that its pretrial detention policy is appropriate to the unconvicted status of persons in detention, meets international standards, inter alia, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and that such detention is used as an exceptional measure for a limited period of time. Furthermore, the Committee encourages the State party to apply non-custodial measures as an alternative to pretrial detention.**

### **Parliamentary advocates and national preventive mechanism**

(13) The Committee notes with concern that serious legislative and logistic constraints impede effective functioning of the national preventive mechanism established under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee is particularly concerned about the lack of clarity as to what constitutes the national preventive mechanism (arts. 2, 11 and 16).

**The State party should clarify what constitutes the national preventive mechanism, and strengthen the independence and capacity of parliamentary advocates and the national preventive mechanism, including its consultative council, to carry out regular and unannounced visits to all places of detention. In particular, the State party should:**

(a) Clarify the legal provisions in relation to the rights of members of the national preventive mechanism to conduct regular and unannounced visits to all places of detention, without restriction, and to ensure that all members of the consultative council enjoy equal status as part of the national preventive mechanism, to enable it to fulfil its role effectively as a torture-prevention mechanism;

(b) Provide the national preventive mechanism as a whole, including the consultative council, with adequate support and resources, including logistic and secretarial support;

(c) Provide training and take relevant measures to ensure that all persons conducting visits under the Optional Protocol to the Convention are able to fulfil their role in documenting treatment of individuals in detention;

(d) Ensure that all persons involved in the administration of places of detention are aware of the rights of all members of the national preventive mechanism to have unhindered and unaccompanied access to all areas in all places where persons are deprived of their liberty, without any form of prior notice; these powers should include the possibility for the national preventive mechanism to examine, on demand, detention-related registries, including medical registries, taking due account of the rights of the persons concerned;

(e) Initiate disciplinary proceedings against officers who interfere with the free access of all persons conducting visits under the Optional Protocol to the Convention to all places where people are deprived of their liberty, or otherwise deny them private and confidential access to detainees, restrict their ability to review and copy registries and other relevant documents, or otherwise interfere with the performance of their duties;

(f) Ensure that, as a rule, and unless there are compelling human rights reasons to the contrary, the report and recommendations of each individual visit of

the national preventive mechanism are made public and posted on the Internet website of the Centre for Human Rights of Moldova shortly after the visit, following measures to ensure rights of personal security of person and privacy for detainees, and following collegial approval within the national preventive mechanism as a whole;

(g) Develop other measures to ensure public awareness of torture and other forms of ill-treatment in detention facilities in the Republic of Moldova.

#### **Appropriate penalties for acts of torture in the Criminal Code**

(14) While acknowledging the efforts made by the State party to enact article 309/1 of the Criminal Code, incorporating a definition of torture that contains all the elements of article 1 of the Convention and makes it a specific criminal offence, the Committee is concerned about the inadequacy of the penalties applicable to torture and the frequent use of suspended sentences for persons found guilty of having committed acts of torture. The Committee is also concerned about the low rates of convictions and disciplinary measures imposed on law enforcement officers in the light of numerous allegations of torture and other acts of cruel and inhuman or degrading treatment, as well as the lack of public information about such cases (art. 4).

**The State party should ensure that torture is punishable by adequate penalties which take into account its grave nature, as set out in article 4, paragraph 2, of the Convention, and that statistics on convictions and disciplinary measures are regularly published and made available to the general public. The Committee considers that by doing so, the State party will directly advance the Convention's overarching aim of preventing torture by, inter alia, alerting everyone, including perpetrators, victims and the public, to the special gravity of the crime of torture and by improving the deterrent effect of prohibition itself.**

#### **Excessive use of force by law enforcement officers**

(15) The Committee is concerned about credible reports on the excessive use of force by law enforcement officers, with particular reference to the post-election demonstrations in April 2009. The Committee is particularly concerned about reports of arbitrary arrest, failed crowd control methods, including beatings, and torture and ill-treatment of persons detained in connection with post-election demonstrations (arts. 2, 10, 11, 12, 13, 14 and 16).

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

(a) Promptly, impartially and effectively investigate all complaints and allegations of misconduct by law enforcement officers during the post-election demonstrations in April 2009 by establishing an independent, impartial and credible body that should comply with relevant international standards in this area, particularly the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, the findings of which should be made public;

(b) Ensure that law enforcement officers found responsible for acts of torture and ill-treatment of protestors and detainees, including those in positions of command responsibility, are prosecuted and, if found guilty, convicted with appropriate penalties. In connection with prima facie cases of torture and ill-treatment, implicated officers should as a rule be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might interfere with or impede the investigation;

(c) Ensure that an official apology is given and adequate compensation is provided to all victims of torture and other forms of ill-treatment that took place in connection with the post-election demonstrations in April 2009, irrespective of the



**outcome of criminal prosecutions against the perpetrators, and that adequate medical and psychological rehabilitation is given to victims.**

(16) The Committee is concerned at reports that police and other law enforcement officers wore masks and did not carry identification badges during the post-election demonstrations of 7 April 2009, and that people were apprehended by officers in plain clothes, making identification impossible when complaints of torture or ill-treatment were presented (arts. 12 and 13).

**The State party should enact and enforce legislation that requires all law enforcement officers on duty, including riot police and members of the special forces, to wear identification, and provide all law enforcement officers with uniforms that include appropriate visible identification to ensure individual accountability and protection against acts of torture and ill-treatment.**

#### **Training**

(17) The Committee notes the wide range of educational programmes for police officers, criminal investigation officers and prosecutors, staff of penitentiary institutions, staff of legal departments and other State officials working in the field of human rights currently in place, but regrets the lack of information on training on the employment of non-violent means, crowd control and the use of force and firearms, as well as on any training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, to detect and document the physical and psychological sequelae of torture. The Committee also notes with concern the lack of programmes to assess the impact of the trainings conducted and their effectiveness in reducing incidents of torture, violence and ill-treatment (art. 10).

**The State party should:**

(a) **Ensure that all law enforcement officers are adequately equipped and trained to employ non-violent means and only resort to the use of force and firearms when strictly necessary and proportionate to the specific situation. In this respect, the State party's authorities should conduct a thorough review of current policing practices, including the training and deployment of law enforcement officials in crowd control and the regulations on the use of force and firearms by law enforcement officials. In particular, the State party should consider the adoption of a manual on the use of force in conformity with the relevant international agreements, such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;**

(b) **Also ensure that all relevant and, especially, medical personnel receive specific training on how to identify signs of torture and ill-treatment, and that the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) of 1999 becomes an integral part of this training;**

(c) **Develop and implement a methodology to assess the effectiveness and impact of all training/educational programmes on the reduction of cases of torture, violence and ill-treatment.**

#### **Conditions of detention**

(18) The Committee welcomes the amendment in December 2008 of the Criminal Code, which reduced minimum and maximum penalties, prompted a general review of penalties and reoffending, and provided for alternatives to detention, thus contributing to the reduction in the total prison population in the State party. The Committee also welcomes the reconstruction, repairs and maintenance work carried out in a number of penitentiary institutions starting from 2007. Despite the State party's efforts to improve the conditions

of detention, the Committee remains concerned at overcrowding in certain facilities and that conditions remain harsh, with insufficient ventilation and lighting, poor sanitation and hygiene facilities and inadequate access to health care. The Committee is concerned about reports of inter-prisoner violence, including sexual violence and intimidation, in places of detention (art. 10).

**The State party should:**

**(a) Take the measures necessary to alleviate the overcrowding of penitentiary institutions through, inter alia, the application of alternative measures to imprisonment and initiating at its own initiative a review of sentences with a view to bringing them into compliance with the December 2008 amendments of the Criminal Code. The State party should continue to make available the material, human and budgetary resources necessary to ensure that the conditions of detention in the country are in conformity with minimum international standards;**

**(b) Take prompt and effective measures to protect detainees from inter-prisoner violence. The State party should also establish and promote an effective mechanism for receiving complaints of sexual violence, including in custodial facilities, and ensure that law enforcement personnel are trained on the absolute prohibition of sexual violence and rape in custody, as a form of torture, as well as on receiving such type of complaints.**

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

(19) The Committee is concerned:

(a) At the limited number of investigations carried out by the State party in view of the high number of alleged acts of torture and ill-treatment by law enforcement agencies reported, and at the very limited number of prosecutions and convictions in those cases;

(b) That the dual nature and responsibilities of the prosecution authorities for prosecution and oversight of the proper conduct of investigations are a major barrier to the impartial investigation of allegations of torture and other forms of ill-treatment by police;

(c) At the absence of an independent authority with no connection to the law enforcement agency investigating or prosecuting the criminal case against the alleged victim of torture and ill-treatment that could investigate promptly and thoroughly all allegations of torture and ill-treatment by police ex-officio;

(d) At the State party's acknowledgement that the complaints committee established under article 177 of the Enforcement Code is not empowered to monitor inmates' treatment for the use of torture or inhuman or degrading treatment by penitentiary institution staff (CAT/C/MDA/Q/2/Add.1, para. 254);

(e) At the State party's acknowledgement that frequently investigations fail to confirm that the alleged victims in the criminal cases have been subjected to ill-treatment by police officers, and that, in such instances, the prosecutor's office halts the criminal prosecution on the ground of lack of evidence that an offence has been committed (CAT/C/MDA/Q/2/Add.1, para. 46). Notwithstanding that documenting physical signs of torture may become more difficult with the passage of time, the Committee is concerned at information that cases may not be investigated in a sufficient manner on the grounds that the prosecutor's office is unable to establish evidence that a crime of torture has been committed;

(f) At the reports of intimidation and reprisals against those who report acts of torture or ill-treatment, including doctors and lawyers. The Committee notes with particular concern that, in June 2006, the general prosecutor's office sent a letter to the College of Lawyers with a recommendation to examine activities of certain young lawyers who were

“damaging Moldova’s image” by sending “unverified information on torture” to international organizations “in violation of the national procedures for human rights” (arts. 11–13).

**The State party should strengthen its measures to ensure prompt, impartial and effective investigation into all allegations of torture and ill-treatment committed by law enforcement, security, military and prison officials, including those in positions of command responsibility. In particular:**

**(a) Such investigations should not be undertaken by or under the authority of the Prosecutor General’s office or any other law enforcement agency, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should, as a rule, be subject to suspension or reassignment during the process of investigation, to avoid any risk that he or she might interfere with or impede the investigation or continue to perpetrate acts in violation of the Convention;**

**(b) Investigate acts of torture and ill-treatment, prosecute the alleged perpetrators and, if found guilty, convict them with appropriate penalties;**

**(c) Amend the Code of Criminal Procedure to specify a time frame within which action should be taken to open a criminal investigation into any credible allegation of torture and ill-treatment, and clarify that the individual and cumulative physical and mental impact of treatment or punishment should be considered;**

**(d) Effective measures should be taken to ensure that those who report acts of torture or ill-treatment, including doctors and lawyers, are protected from intimidation and possible reprisals for making such reports. In particular, the letter of June 2006 sent by the Prosecutor’s Office to the College of Lawyers should be publicly renounced as a matter of urgency and necessary safeguards should be introduced to prevent similar abuses from occurring in the future.**

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

(20) The Committee notes that, while the 1998 Law on Procedure for Compensation for Damage Caused by Unlawful Actions of Criminal Prosecution Bodies, Prosecutor’s Offices and the Courts and article 1405 of the Civil Code contain provisions regarding the right to compensation for victims, there is no explicit law that provides for full redress, including forms of psychosocial treatment and rehabilitation. The Committee regrets the lack of centralized statistics on the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases (CAT/C/MDA/Q/2/Add.1, paras. 294–295), and information on other forms of assistance, including medical or psychosocial rehabilitation, provided to victims of torture and ill-treatment. The Committee also regrets the lack of information on the measures taken by the State party to execute the judgements rendered by the European Court of Human Rights with a finding of a violation of article 3 of the European Convention on Human Rights against the Republic of Moldova, and on compensation given to the victims (art. 14).

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

**(a) Strengthen its efforts to provide redress and compensation to victims of torture and ill-treatment, including the means for as full rehabilitation as possible and to develop health and rehabilitation services for them;**

**(b) Take measures to execute judgements rendered by the European Court of Human Rights with a finding of a violation of article 3 of the European Convention on Human Rights against the Republic of Moldova;**

**(c) Provide in its next periodic report information on any reparation programmes, including treatment of trauma and other forms of rehabilitation**

**provided to victims of torture and ill-treatment, and on the allocation of adequate resources to ensure the effective functioning of such programmes. The State party is encouraged to adopt the necessary legislation, establish a domestic fund for victims of torture and allocate sufficient financial sources for its effective functioning.**

#### **Coerced confessions**

(21) While noting that article 94, paragraph 1, of the code of criminal procedure prohibits the admissibility of evidence obtained through torture, the Committee is concerned at reports of several cases of confessions obtained under torture and ill-treatment and at the lack of information on any officials who may have been prosecuted and punished for extracting such confessions (art. 15).

**The State party should take the steps necessary to ensure inadmissibility in court of confessions obtained under torture and ill-treatment in all cases in line with domestic legislation and the provisions of article 15 of the Convention. In particular, it should improve methods of criminal investigation to end practices whereby confession is relied on as the primary and central element of proof in criminal prosecution, in some cases in the absence of any other evidence. The Committee requests the State party to submit information on the application of the provisions prohibiting admissibility of evidence obtained under duress and whether any officials have been prosecuted and punished for extracting such confessions.**

#### **Trafficking in persons**

(22) The Committee welcomes the variety of legislative, policy and other measures, including the adoption in October 2005 of Law No. 241-XVI on Preventing and Combating Trafficking in Persons and the establishment of the Rehabilitation Centre for Victims of Trafficking in Human Beings. However, the Committee expresses its concern at persistent reports that the State party continues to be a country of origin and transit for trafficking in persons, particularly women and children (arts. 2, 10, 12 and 16).

**The State party should continue to strengthen its efforts to combat trafficking in women and children and take effective measures to prosecute and punish the alleged perpetrators, including by applying strictly relevant legislation, raising awareness of the problem and training law enforcement personnel and other relevant groups. The State party should also broaden the implementation of measures to assist the social reintegration of victims and to provide genuine access to health care and counselling.**

#### **Domestic violence**

(23) While noting various measures taken by the State party, including the decision of 25 September 2009 by a court in Anenii Noi to issue a protection order in favour of the victim in a case involving domestic violence, the Committee remains concerned about the persistence of violence against women and children, including domestic violence, the rarity of intervention measures by the judiciary, the limited number and capacity of shelters for victims of domestic violence, and at reports that domestic violence is deemed to warrant the intervention of the police only in cases where it has resulted in serious injury (arts. 2, 13 and 16).

**The State party should enforce the Law on Preventing and Combating Domestic Violence and provide support for victims through the establishment of additional shelters, the provision of free counselling services and such other measures as may be necessary for the protection of victims. The Committee urges the State party to address impunity in this area, to take appropriate preventive measures and to provide training on the handling of domestic violence to all professionals involved in such cases, including police officers, prosecutors, judges and social workers, with emphasis on the gender aspects of domestic violence. The State party should also provide**

information, in its next report, on the incidence of domestic violence, on the measures taken to address it, including the use of restraining orders, and on the impact, if any, of such measures.

#### **Forcible detention of persons with tuberculosis**

(24) The Committee notes with concern that, under a regulation promulgated in August 2009, persons with tuberculosis may be subjected to forcible detention if deemed to have “avoided treatment”. In particular, the regulation is unclear as to what constitutes the avoidance of treatment and fails to provide for, inter alia, adequate safeguards in the areas of regular access to legal counsel, upon request, as well as procedural rights, in particular with regard to regular review of the reasons for detention or for maintaining continued detention, privacy, family and correspondence, confidentiality, data protection, non-discrimination and non-stigmatization (art. 16).

**The State party should urgently review the regulation on forcible detention of persons with tuberculosis and related policies, and bring them into compliance with the Convention, in particular guaranteeing independent regular review of detention measures, patient confidentiality and privacy, as well as non-discrimination in their application.**

#### **Violence in the armed forces**

(25) While the Committee acknowledges the progress made by the State party in decreasing the number of cases of hazing (*dedovshchina*) in the armed forces and the measures taken to prevent such phenomena, it remains concerned at the persistence of cases of torture and other cruel, inhuman or degrading treatment or punishment in the armed forces (arts. 2 and 16).

**The State party should:**

(a) **Take effective measures to eradicate hazing in the armed forces; reinforce the measures of prevention and ensure prompt, impartial and effective investigation and prosecution of such abuses; and report publicly on the results of such prosecutions;**

(b) **Guarantee the rehabilitation of victims, including through appropriate medical and psychological assistance.**

#### **Psychiatric facilities**

(26) The Committee is concerned about the treatment of psychiatric patients, including the lack of legal safeguards and the poor living conditions in places where persons are held for involuntary treatment, as well as about the lack of independent monitoring of such places of deprivation of liberty (arts. 11 and 16).

**The State party should improve the living conditions for patients in psychiatric institutions and ensure that all places where mental health patients are held for involuntary treatment are regularly visited by independent monitoring entities to guarantee the proper implementation of the safeguards set out to secure their rights, and that alternative forms of treatment are developed.**

#### **Minorities and marginalized groups**

(27) The Committee notes with concern reports of violence and hatred towards minorities, especially Roma, and other vulnerable groups in the Republic of Moldova, including alleged recent manifestations of hate speech and intolerance against homosexuals (art. 16).

The Committee recalls in the light of its general comment No. 2 on the implementation of article 2 (CAT/C/GC/2, 2008) that the special protection of minorities or marginalized individuals or groups especially at risk is part of the State party's obligation to prevent torture or ill-treatment. In this respect, the State party should:

(a) Incorporate in its Criminal Code an offence to punish hate crimes as acts of intolerance and incitation to hatred and violence based on sexual orientation. Moreover, the State party should continue to be vigilant in ensuring that relevant existing legal and administrative measures are strictly observed and that training curricula and administrative directives constantly communicate to staff the message that incitation to hatred and violence will not be tolerated and will be sanctioned accordingly;

(b) Provide detailed information and statistics on the number and type of hate crimes, as well as on the administrative and judicial measures taken to investigate and prosecute such crimes and the sentences imposed.

#### **Data collection**

(28) The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, sentence, ethnicity, age and sex, on the number of persons deprived of liberty; on the complaints relating to torture and ill-treatment allegedly committed by law enforcement officials; on the related investigations, prosecutions and penal or disciplinary sanctions; and on pretrial detainees and convicted prisoners. The Committee also requests information on the compensation and rehabilitation provided to the victims.

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

(30) The Committee recommends that the State party also consider becoming a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. The State party is also encouraged to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities and the Rome Statute of the International Criminal Court.

(31) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies (HRI/GEN/2/Rev.5).

(32) The State party is encouraged to disseminate widely the reports it has submitted to the Committee, its replies to the list of issues, the summary records of meetings and the conclusions and recommendations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

(33) The Committee requests the State party to provide, within one year, information in response to the Committee's recommendations contained in paragraphs 13, 15, 16, 20 and 24 above.

(34) The State party is invited to submit its next periodic report, which will be the third, by 20 November 2013 at the latest.

#### **54. Slovakia**

(1) The Committee against Torture considered the second periodic report of Slovakia (CAT/C/SVK/2) at its 899th and 901st meetings (CAT/C/SR.899 and 901) held on 3 and 4

November 2009, and adopted, at its 916th meeting (CAT/C/SR.916), held on 16 November 2009, the concluding observations as set out below.

#### **A. Introduction**

(2) The Committee welcomes the submission of the second periodic report of Slovakia, which covered the period from 1 January 2001 to 31 December 2006 and was in compliance with the reporting guidelines, as well as the replies to the list of issues (CAT/C/SVK/Q/2/Add.1), which provided additional information on the measures taken by the State party to implement the Convention. The Committee also notes with satisfaction the constructive dialogue held with the high-level delegation of the State party.

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

(3) The Committee notes with appreciation:

- (a) That international treaties take precedence over the laws of Slovakia;
  - (b) The ratification of the optional protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2004, and on the involvement of children in armed conflict, in 2006;
  - (c) The ratification of the Rome Statute of the International Criminal Court, on 11 April 2002;
  - (d) The reviews of legislation aimed at improving the fulfilment of the State party's commitments under the Convention, such as the new Criminal Code No. 300/2005, the new Criminal Procedure Code No. 301/2005, Act No. 475/2005 on the Execution of Custodial Sentences and Act No. 221/2006 on the Execution of Remand in Custody;
  - (e) The creation of the Public Defender of Rights (Ombudsman's Office), in 2001.
- (4) The Committee also welcomes the decision by the Constitutional Court on 26 June 2008 not to send Mr. Mustapha Labsi to Algeria on the ground that he might be in danger of being subject to torture.

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

##### **Definition of torture**

(5) While noting the broad definition of torture in the Slovak Criminal Code, the Committee is concerned that this definition does not include the purpose of discrimination, nor that instigation, consent or acquiescence of a public official or other person acting in an official capacity are elements of the definition (art. 1).

**The State party should bring its definition of torture into line with article 1 of the Convention by including the element of discrimination and by criminalizing instigation, consent and acquiescence of a public official or other person acting in an official capacity.**

##### **Fundamental safeguards**

(6) The Committee is concerned that persons in police custody may exercise their right to contact a member of their family and have access to an independent medical doctor and to legal counsel only "as soon as practical", not from the outset of their detention (art. 2).

**The State party should ensure that persons in police custody can exercise their right to contact a member of their family and have access to an independent medical doctor, if possible of their choice, and to legal counsel from the outset of their deprivation of liberty.**

**Independence of the judiciary**

(7) The Committee is concerned that judges are appointed by the President of Slovakia on the basis of a proposal by the Judiciary Council, as some of the members of the Judiciary Council are appointed and dismissed by the President of the Republic and the Government (art. 2).

**The State party should guarantee the full independence of the Judiciary Council in order to ensure the independence of the judiciary. In this respect, the Committee recalls the Basic Principles on the Independence of the Judiciary adopted in Milan in 1985 and endorsed by the General Assembly in its resolutions 40/32 and 40/146.**

**Non-refoulement and risk of torture**

(8) The Committee is concerned that, according to section 13 of the asylum law, persons considered to be a threat to national security or a danger to the community are not protected by the principle of non-refoulement, which may expose them to a risk of torture or other cruel, inhuman or degrading treatment or punishment. It is also concerned at the very low rate of successful asylum applications (art. 3).

**The State party should adopt urgently the measures, especially legal ones, necessary to ensure protection of the rights of all asylum-seekers and persons seeking refugee status. Furthermore, the State party should apply the non-refoulement principle without any discrimination or exception.**

**Complaints, investigations, prosecutions and convictions**

(9) While noting that the Inspection Service Office is managed by the Minister of the Interior and allegedly independent of the police, the Committee is concerned that alleged unlawful acts committed by the police, including torture and ill-treatment, are investigated by police officers of the Inspection Service Office. In this respect, the Committee is concerned that very few complaints against police officers are accepted and investigated and lead to prosecution and convictions (arts. 12 and 13).

**The State party should further strengthen the independence of the Inspection Service Office by, inter alia, including independent experts drawn from outside the police so as to ensure that allegations of torture and other cruel, inhuman or degrading treatment or punishment are promptly, impartially, thoroughly and effectively investigated.**

**Independent monitoring**

(10) The Committee regrets the lack of information on whether there is an independent body in the State party that has the right to, inter alia, undertake unannounced visits to all places of deprivation of liberty, including police stations and pretrial detention facilities (arts. 2, 11 and 16)

**The State party should ensure that fully independent monitoring, including unannounced visits, of all places of deprivation of liberty takes place on a regular basis. It should also ensure that any mechanism established for this purpose, at the local or national level, has an appropriate mandate and adequate resources.**

**Training**

(11) The Committee notes the State party's efforts with respect to training of law enforcement officers. However, it is concerned at the effectiveness of this training in the light of the high number of alleged cases of harassment and ill-treatment during both arrest and police custody, particularly of Roma suspects. It is also concerned that training programmes for medical personnel for the identification and documentation of cases of torture in accordance with the Istanbul Protocol may be inadequate (arts. 10 and 11).



**The State party should:**

(a) Include in its training modules on rules, instructions and methods of interrogation information on all provisions of the Convention, especially on the absolute prohibition of torture;

(b) Ensure that personnel involved in the treatment of detainees are trained on how to identify signs of torture and cruel, inhuman or degrading treatment, in accordance with the Istanbul Protocol, and strengthen the training on the Istanbul Protocol for all professionals involved in the investigation and documentation of cases of torture;

(c) Regularly evaluate the training provided to its law enforcement officials.

#### **Juvenile justice**

(12) The Committee is concerned about the conditions of detention for juveniles, such as solitary confinement for periods up to 10 days, and the placement of juvenile detainees in pretrial detention together with adults (arts. 11 and 16).

**In line with the concluding observations of the Committee on the Rights of the Child of 2007 (CRC/C/SVK/CO/2, para. 68), the Committee recommends that the State party:**

(a) Implement the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) adopted in 1985, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), adopted in 1990;

(b) Ensure that juveniles are held in detention only as a last resort and in strict compliance with the law, and ensure regular review of the conditions of detention of juveniles;

(c) Set up a training programme for judges to specialize in juveniles, including on the application of non-custodial measures;

(d) If necessary, seek technical assistance and other cooperation from the Interagency Panel on Juvenile Justice.

#### **Allegations of torture and ill-treatment in police custody**

(13) The Committee is concerned about significant allegations of ill-treatment of detainees by law enforcement officers, including slaps, punches, kicks or blows with hard objects, as well as of the death of a man in 2001 after brutal police questioning. It is also concerned about the practice of handcuffing detainees for extended periods to fixtures in corridors or offices (arts. 12 and 16).

**The State party should take appropriate measures to ensure that all allegations of torture or cruel, inhuman or degrading treatment are promptly and impartially investigated, perpetrators duly prosecuted and, if found guilty, convicted to penalties taking into account the grave nature of their acts, and that the victims are adequately compensated, including their full rehabilitation. It should also end the practice of handcuffing detainees for extended periods and any other ill-treatment of suspects while they are in detention.**

#### **Sterilizations of Roma women**

(14) The Committee is deeply concerned about allegations of continued involuntary sterilization of Roma women.

**The State party should:**

(a) Take urgent measures to investigate promptly, impartially, thoroughly and effectively all allegations of involuntary sterilization of Roma women, prosecute and punish the perpetrators and provide the victims with fair and adequate compensation;

(b) Effectively enforce the Health-care Act (2004) by issuing guidelines and conducting training of public officials, including on the criminal liability of medical personnel conducting sterilizations without free, full and informed consent, and on how to obtain such consent from women undergoing sterilization.

**The Roma minority**

(15) The Committee is concerned about reports of mistreatment of Roma by police officers during arrest and while in custody. It is also concerned about the high percentage of Roma children in schools for children with mental disabilities. It is further concerned about discrimination against the Roma minority, which has led to violations of the rights protected under the Convention (arts. 10 and 16).

**In the light of its general comment No. 2 on the implementation of article 2 (CAT/C/GC/2), the Committee recalls that the special protection of certain minorities or marginalized individuals or groups especially at risk is part of the State party's obligations under the Convention. In this respect, the State party should:**

(a) Strengthen its efforts to combat ill-treatment of Roma detainees by ensuring the exercise of their legal rights from the outset of detention;

(b) Enforce the School Act No 245/2008 by ensuring that Roma children are admitted to mainstream education, unless a proper assessment concludes that the child has a mental disability and the child's legal guardian has requested placement in a special school. In particular, it should decouple the term "socially disadvantaged" from the term "mental disability".

**Redress and compensation, including rehabilitation**

(16) The Committee regrets the lack of implementation of the rights of victims of torture and ill-treatment to redress and compensation, including rehabilitation. The Committee also regrets the lack of available information regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases, as well as the lack of information about other forms of assistance, including medical or psychosocial rehabilitation, provided to the victims (art. 14).

**The State party should ensure that victims of torture and ill-treatment are entitled to redress and compensation, including rehabilitation, so that victims of torture and other cruel, inhuman or degrading treatment or punishment may be provided with fair and adequate compensation, including the means for as full rehabilitation as possible. It should also collect data on the number of victims who have received compensation and other forms of assistance.**

**Violence against women and children**

(17) The Committee is concerned about the insufficient measures taken to protect women and children against violence. In this regard, it shares the concern of the Committee on the Elimination of Discrimination against Women (CEDAW/C/SVK/CO/4, para. 20) about the high rate of violence against women and girls, including feminicides in the context of domestic violence (art. 16).

**The State party should:**

(a) Strengthen its efforts to ensure that urgent and efficient protection measures are put in place, and investigate promptly and impartially all allegations of violence against women and girls, including feminicides in the context of domestic violence, and prosecute and punish the perpetrators;

(b) Provide shelters and counselling services for women victims of violence in sufficient numbers and with adequate standards;

(c) Conduct broader awareness-raising campaigns and training on domestic violence for officials (judges, prosecutors, lawyers, law enforcement agencies and social workers) and the public at large;

(d) Increase cooperation with non-governmental organizations working to protect women and girls from violence.

**Corporal punishment**

(18) The Committee is concerned that prohibition of corporal punishment is not explicitly stipulated in the act on the family, and that corporal punishment is widely accepted in society (art. 16).

**The State party should explicitly prohibit corporal punishment in the family. It should also ensure that legislation prohibiting corporal punishment is strictly enforced and that awareness-raising and educational campaigns are conducted to that effect.**

**Trafficking in persons**

(19) The Committee is concerned about reports of cross-border trafficking in women for sexual and other exploitative purposes, and of Roma children trafficked abroad, especially for forced begging. The Committee is also concerned by internal trafficking of Roma women and children. The Committee regrets the lack of statistics on these issues, the low number of prosecutions and the frequent use of suspended sentences for perpetrators. The Committee is further concerned that reintegration and rehabilitation services are insufficient for victims of trafficking (art. 16).

**The State party should:**

(a) Investigate promptly and impartially all allegations of human trafficking, especially of women and children, prosecute the alleged perpetrators and punish those found guilty with appropriate penalties;

(b) Intensify its efforts to provide reintegration and rehabilitation services to victims;

(c) Conduct nationwide awareness-raising campaigns and conduct training for law enforcement officials, migration officials and border police on the causes, consequences and incidence of human trafficking.

**Psychiatric facilities**

(20) The Committee is concerned about the ill-treatment of psychiatric patients, including the use of net-beds, as well as at the lack of independent monitoring of such places of deprivation of liberty (arts. 11 and 16).

**The State party should improve the living conditions for patients in psychiatric institutions and ensure that all places where mental-health patients are held for involuntary treatment are regularly visited by independent monitoring bodies to guarantee the proper implementation of the safeguards laid down to secure their rights, and that alternative forms of treatment are developed.**

**Data collection**

(21) The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, sentence, ethnicity, age and sex, on the number of persons deprived of liberty; on the complaints relating to torture and ill-treatment allegedly committed by law enforcement officials; on the related investigations, prosecutions and penal or disciplinary sanctions; and on pretrial detainees and convicted prisoners. The Committee also requests information on the compensation and rehabilitation provided to victims.

(22) The Committee encourages the State party to ratify the Optional Protocol to the Convention against Torture.

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

(24) The State party is encouraged to disseminate widely the reports it has submitted to the Committee and the concluding observations and summary records of the Committee through official websites, to the media and non-governmental organizations.

(25) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies (HRI/GEN/2/Rev.5).

(26) The Committee requests the State party to provide, within one year, information in response to the Committee's recommendations contained in paragraphs 8, 13, 14 and 15 above.

(27) The State party is invited to submit its next periodic report, which will be the third, by 20 November 2013 at the latest.

**55. Spain**

(1) The Committee against Torture considered the fifth periodic report of Spain (CAT/C/ESP/5) at its 913th and 914th meetings, held on 12 and 13 November 2009 (CAT/C/SR.913 and 914), and adopted the following conclusions and recommendations at its 923rd meeting (CAT/C/SR.923).

**A. Introduction**

(2) The Committee welcomes the fifth periodic report of Spain, submitted in accordance with the Committee's guidelines, and the replies to the list of issues. The Committee also notes with satisfaction the constructive efforts made by the multisectoral delegation to provide information and additional explanations during the discussion of the report.

**B. Positive aspects**

(3) The Committee welcomes the ratification of the following international instruments:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (4 April 2006);

(b) International Convention for the Protection of All Persons from Enforced Disappearance (24 September 2009);

(c) Convention on the Rights of Persons with Disabilities, and its Optional Protocol (3 December 2007);

(d) Council of Europe Convention on Action against Trafficking in Human Beings (2 April 2009).

(4) The Committee notes with satisfaction the efforts being made by the State party to amend its legislation, policies and procedures in order to ensure greater protection of human rights, particularly the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and in particular:

(a) The adoption of the Historical Memory Act (Act No. 52/2007) on 26 December, which acknowledges and broadens rights, and establishes measures, for those who suffered persecution or violence during the Civil War and the period of dictatorship, including the right to obtain a declaration of redress;

(b) The amendment of article 154 of the Civil Code, explicitly resolving any uncertainties or loopholes that may provide an excuse for using any form of violence or physical punishment against children;

(c) The joint instruction in December 2005, issued by the General Secretary of State and the Police Commissioner-General, together with an information booklet on asylum procedures to be distributed to all persons who arrive in Spain in an irregular manner by sea and are detained in the migrant detention centres in the Canary Islands and Andalucía;

(d) Supreme Court ruling 829/2006, which acquitted Mr. Hamed Abderrahaman Ahmed of the offence of terrorism, on the grounds that the charges relied on interrogations conducted while Mr. Ahmed was detained in Guantanamo, which constituted a “limbo within the legal community as defined by numerous treaties and conventions signed by the international community”;

(e) The adoption of the Human Rights Plan by decision of the Council of Ministers of 12 December 2008;

(f) The adoption of the Plan to Combat Trafficking for the Purposes of Sexual Exploitation, on 12 December 2008, and its follow-up by means of the establishment and development of the Spanish Forum against Trafficking;

(g) The fact that the death penalty has been completely banned since 1995 (the year in which the death penalty in wartime was abolished) and that, in addition, the State party participates actively in international forums to promote a global moratorium on the application of capital punishment.

(5) The Committee notes with satisfaction that the State party has issued invitations to various special procedures mechanisms, including the recent invitation to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

(6) The Committee appreciates the fact that Spain has not created a parallel justice system to combat terrorism, and notes that the State party has repeatedly acknowledged that the prohibition of torture is absolute and that exceptional circumstances can never be invoked in order to justify torture.

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

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

(7) The Committee notes with satisfaction the amendment of article 174 of the Criminal Code by Organization Act No. 15/2003, which adds the following text to the definition of torture: “... or for any reason based on discrimination of any kind”, which complies with a former recommendation by the Committee. However, notwithstanding the explanation provided by the delegation of the State party, the Committee considers that two important

additional elements should be explicitly added to the definition in article 174 of the Criminal Code, to bring this fully into line with article 1 of the Convention: that the act of torture can also be committed by any “other person acting in an official capacity” and that the purposes of torture may include “intimidating or coercing him or a third person” (art. 1).

**The Committee encourages the State party to further align the definition of torture contained in article 174 of the Criminal Code with article 1 of the Convention.**

(8) The Committee notes that, under article 174 of the Criminal Code, a person guilty of torture “shall be liable to a term of two to six years’ imprisonment if the infringement was a serious one, and a term of one to three years’ imprisonment if it was not”, which does not appear to be in line with article 4, paragraph 2, of the Convention, under which States parties are obliged to punish all acts of torture by appropriate penalties which take into account their grave nature (arts. 1 and 4).

**The State party should punish all acts of torture by appropriate penalties which take into account their grave nature, in line with article 4, paragraph 2, of the Convention. In addition, the State party should ensure that in all cases all acts of torture are considered to be of a grave nature, since that is intrinsic and inherent in the very concept of torture.**

#### **Fundamental safeguards**

(9) The Committee is concerned at information received from various sources that statements made by detainees held at police stations may be used during proceedings, under certain conditions, and following a change in the case law of the Supreme Court. The Committee takes note, in this regard, of the information provided in paragraph 21 of the State party’s replies to the list of issues, in which it is clearly stated that “according to the Spanish legal system, only evidence given in the court oral proceedings, in the presence of the accused and an attorney of his or her choice, may be taken into account for the purpose of deciding a guilty or not-guilty verdict” (arts. 2 and 15).

**The State party — as the State party itself noted in its replies to the list of issues — should ensure respect for the principle that in all cases the crucial stage for giving evidence to be weighed up must be the oral proceedings. This general principle is all the more valid as a safeguard of the principle contained in article 15 of the Convention — that any statement made as a result of torture shall not be invoked as evidence — in those cases in which, regrettably, detainees are interrogated in police stations without the presence of a lawyer of their choice, or where the lawyer is prevented from speaking to the detainee in private (as is the case with the regime of incommunicado detention).**

(10) The Committee notes that under Measure 96 of the Human Rights Plan, in order to better guarantee the detainee’s rights, the Government proposes to amend article 520, paragraph 4, of the Criminal Procedure Act so as to reduce the current maximum time limit of eight hours for ensuring the right to legal counsel. Nevertheless, the Committee notes with concern that the right to apply for habeas corpus is not explicitly provided for in the list of rights set out in article 520 of the Criminal Procedure Act (art. 2).

**The State party should promptly amend article 520, paragraph 4, of the Criminal Procedure Act, in order to make the right to legal counsel more effective. Furthermore, the Committee — sharing the concern of the Ombudsman in this regard — encourages the State party to carry out a further amendment to article 520 of the Criminal Procedure Act, to ensure that at the crucial stage of detention, when detainees are read their rights, these rights include the right to ask to be brought immediately before a judge.**

(11) The Committee takes note of instruction No. 12/2007 issued by the Secretariat of State for Security, concerning conduct required of the members of the State security forces to guarantee the rights of persons detained or in police custody. While this is in principle a positive step, the Committee considers that the normative status of this instruction to strengthen guarantees is insufficient (art. 2).

**The State party should regulate these matters, which concern fundamental rights such as the right to liberty and to physical integrity, by means of an appropriate regulation, and not merely a decision communicated by a Secretariat of State to its staff.**

#### **Incommunicado detention**

(12) The Committee takes note of the steps taken to improve the guarantees of individuals held in incommunicado detention, particularly: (a) the so-called “Garzón Protocol”, which provides for visits by a doctor trusted by the detainee (even though this Protocol has not been applied uniformly); (b) Measure 97 (c) of the Human Rights Plan, which stipulates that an individual held in incommunicado detention may be examined by another doctor affiliated with the public health system, freely appointed by the future national mechanism for the prevention of torture, as well as by a forensic doctor; and (c) Measure 97 (b) which — in accordance with various recommendations by international human rights bodies — provides that the State party shall adopt the necessary legal and technical measures to record, using video-recording or other audiovisual equipment, the entire period that individuals spend in incommunicado detention in police stations. The Committee is also pleased to note the commitment made in Measure 97 (a) to expressly forbid the use of incommunicado detention for minors. Nonetheless, the Committee must reiterate its concern — shared by all relevant regional and international human rights bodies — that the system of incommunicado detention used by the State party for offences involving terrorists or armed gangs, which may last for up to 13 days, undermines the guarantees of the rule of law in respect of ill-treatment and acts of torture. The Committee is especially concerned about the restrictions that incommunicado detention places on the access to and exercise of the fundamental rights and guarantees universally applied to persons deprived of their liberty (art. 2).

**The State party must review incommunicado detention with a view to its abolition, and ensure that all persons deprived of their liberty have access to the following fundamental rights of detainees:**

- (a) To consult a lawyer of their choice;
- (b) To be examined by a doctor of their choice;
- (c) To have a family member or person of their choice notified of their arrest and current place of detention;
- (d) To meet privately with a lawyer (a right which is currently restricted even in the case of a court-appointed lawyer).

**The State party should also implement and strengthen the measures provided for in Measure 97 of the Human Rights Plan; in this respect, it is especially important that the video surveillance system covers all police stations nationwide and is installed in cells and interrogation rooms and is not limited to public areas.**

#### **Non-refoulement**

(13) The Committee takes note of the State party’s position that diplomatic guarantees do not contravene the provisions of article 3 of the Convention — if, for example, additional supervisory mechanisms are established which are expressly accepted and observed by the country concerned. In this regard, the Committee wishes to reiterate its previously stated position, that under no circumstances must diplomatic guarantees be used as a safeguard

against torture or ill-treatment where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return (art. 3).

**If the State party resorts to diplomatic guarantees in any situation other than those excluded under article 3 of the Convention, it must provide in its next report to the Committee information on the number of cases of extradition or expulsion that have been subject to the receipt of diplomatic assurances or guarantees since the consideration of this report; the State party's minimum requirements for such assurances or guarantees; follow-up action taken subsequently in such cases; and the enforceability of the assurances or guarantees given.**

(14) The Committee takes note of the information provided by the delegation on the allegations that some Spanish airports had been used since 2002 for the transfer of prisoners under the "extraordinary rendition" programme, and also of the State party's condemnation of the use of such methods and its commitment to investigate and shed light on the allegations (arts. 3 and 12).

**The Committee urges the State party to continue to cooperate in the investigations being carried out in this respect by the judicial authorities and to provide the Committee with all relevant information in its next periodic report.**

(15) The Committee welcomes the adoption, in October 2009, of the Act on the Right of Asylum and Subsidiary Protection, which aims to achieve a common European asylum system that ensures the highest level of protection for refugees and persecuted people. However, it is concerned about the possible use, as grounds for rejecting asylum applications, of the new Act's clause on exceptions to the prohibition of refoulement contained in article 33, paragraph 2, of the 1951 Convention relating to the Status of Refugees. The Committee is particularly concerned that, under this Act, applications can be rejected under accelerated procedures, even at the border itself, without a proper assessment of each application and of every possible ground for inclusion having been carried out beforehand (art. 3).

**The State party must review the application of the exclusion clauses in the new Act to ensure that in no case may the principle of non-refoulement contained in article 3 of the Convention be infringed.**

(16) The Committee takes note of the bilateral agreements on the assisted return of minors that Spain has signed with Morocco and Senegal. However, the Committee is concerned about the absence of safeguards ensuring the identification of children who may need international protection and may therefore be entitled to use the asylum procedure, in the implementation of these agreements (art. 3).

**The State party must ensure that the bilateral agreements on the assisted return of minors signed by Spain contain appropriate safeguards to ensure protection against the repatriation of child victims of trafficking, prostitution and pornography, as well as those who have been involved in conflict or who have fled their country because of a well-founded fear of persecution. The Committee wishes to emphasize that children should be returned to their country of origin only if it is in their best interests.**

#### **Jurisdiction over acts of torture**

(17) The Committee recognizes that the State party's courts have pioneered the application of universal jurisdiction over international crimes, including torture. In this connection, the Committee takes note of a recent legislative amendment, Organization Act No. 1/2009 of 3 November, which establishes conditions for the exercise of such jurisdiction (arts. 5 and 7).



The State party must ensure that this reform will not impede the exercise of its jurisdiction over all acts of torture in accordance with articles 5 and 7 of the Convention and in particular the principle of *aut dedere aut judicare* enshrined in those articles.

#### **Training**

(18) The Committee notes that Measure 103 of the Human Rights Plan provides for the organization of initial and continuing training courses and seminars on the conduct required of all members of the State security forces to guarantee the rights of persons who are detained or held in police custody. The Committee also notes that courses on human rights and the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) are to be included in a continuing education plan as from 2010 (art. 10).

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

(a) **Continue preparing and implementing training programmes to ensure that all civil servants, including law enforcement officials and prison officers, are fully aware of the provisions of the Convention and its Optional Protocol, and that abuse or violations will never be tolerated;**

(b) **Ensure that all relevant staff receive specific training on how to recognize signs of torture and ill-treatment;**

(c) **Develop and apply a method for assessing the effectiveness and impact of those training programmes in reducing the number of cases of torture and ill-treatment.**

#### **Detention conditions**

(19) While it welcomes the Suicide Prevention Programme established under instruction No. 14/2005 issued by the Directorate-General of Correctional Institutions, which, according to information received, has helped to lower the number of suicides, the Committee still considers the number of suicides and violent deaths both in police custody and in prisons to be high (art. 11).

**The State party should continue its efforts to reduce the number of suicides and violent deaths in all places of detention. The Committee also urges the State party to investigate promptly, thoroughly and impartially all deaths of detainees and provide, where appropriate, adequate compensation to the families of the victims.**

(20) The Committee regrets the scant information provided on measures taken to address the serious concerns expressed by the Ombudsman in his 2009 report on conditions in the centres for minors with behavioural or social problems. In particular, the Committee is concerned about allegations that solitary confinement is practised in many of these centres and that drugs are administered without adequate safeguards (arts. 11 and 12).

**The State party should take the necessary steps to ensure humane and dignified conditions in the centres for minors with behavioural or social problems. The State party should also thoroughly investigate all allegations of abuse or ill-treatment committed in these centres.**

#### **Amnesty Act and the non-applicability of the statute of limitations**

(21) While it takes note of the State party's comment that the Convention against Torture entered into force on 26 June 1987, whereas the Amnesty Act of 1977 refers to events that occurred before the adoption of that Act, the Committee wishes to reiterate that, bearing in mind the long-established *jus cogens* prohibition of torture, the prosecution of acts of torture should not be constrained by the principle of legality or the statute of limitation. The

Committee has received various interpretations of article 1, paragraph (c), of the Amnesty Act — which stipulates that amnesty shall not apply to acts that “entailed serious harm to the life or inviolability of persons” — to the effect that this article itself would in any case exclude torture from the offences subject to amnesty (arts. 12, 13 and 14).

**The State party should ensure that acts of torture, which also include enforced disappearances, are not offences subject to amnesty. In this connection, the Committee encourages the State party to continue to step up its efforts to help the families of victims to find out what happened to the missing persons, to identify them and to have their remains exhumed, if possible. Moreover, the Committee reiterates that, under article 14 of the Convention, the State party must ensure that the victim of an act of torture obtains redress and has an enforceable right to compensation.**

(22) The Committee is concerned that the offence of torture, which is specifically provided for in article 174 of the Criminal Code, may be subject to a statute of limitations after 15 years, while the only case in which it is not subject to a statute of limitations is when it is classed as a crime against humanity, that is, when it is committed as part of a generalized or systematic attack against the civilian population or part thereof (Criminal Code, art. 607 bis) (arts. 1, 4 and 12).

**The State party should ensure that torture is never subject to a statute of limitations.**

#### **Data on torture and abuse**

(23) The Committee notes that Measure 102 of the Human Rights Plan provides for the compilation of current data on cases that may have involved violation or infringement of the human rights of persons in police custody. However, the Committee notes that it is currently impossible to provide data on complaints filed during police custody and detention. The Committee welcomes the additional written information provided on this point by the State party, but notes that data on cases of torture may be available but are somewhat imprecise and contradictory, in particular concerning the results of investigations into torture, judicial convictions and penalties imposed (arts. 2, 12 and 13).

**The State party should implement Measure 102 of the Human Rights Plan as soon as possible, and ensure that clear and reliable data are compiled on acts of torture and abuse in police custody and in other places of detention. These data must also cover follow-up to allegations of torture and abuse, including the results of investigations held and any judicial convictions and criminal or disciplinary sanctions imposed.**

#### **Violence against women**

(24) The Committee welcomes measures taken by the State party to combat gender-based violence, such as Organization Act No. 1/2004 of 28 December on comprehensive protection measures against gender-based violence. However, the Committee remains concerned at reports of an unacceptable number of acts of violence against women, including domestic violence, which sometimes result in murder. In the Committee’s view, the extent of this problem in the State party calls for a response that goes beyond legislative provisions and action plans and requires a coordinated, ongoing effort to change the perception of women in society and dispel associated stereotypes (art. 16).

**The Committee urges the State party to step up its efforts to make combating violence against women a priority in its political agenda. The Committee further recommends that public awareness-raising campaigns on all forms of violence against women should be broadened.**

(25) The Committee is concerned about the particularly vulnerable situation of migrant women in an irregular situation who are victims of gender-based violence, given that current legislation requires the police to investigate the status of migrant women who report

acts of violence and abuse. In this respect, the Committee notes the existence of a bill to amend Organization Act No. 4/2000 of 11 January on the rights, freedoms and social integration of foreigners in Spain, which aims to encourage foreign women to report instances of gender-based violence and make it possible for foreign women who report such violence to be exempted from administrative liability in respect of their irregular situation (arts. 13 and 16).

**The State party should speed up the adoption of the bill to amend Organization Act No. 4/2000, in order to enable foreign women in an irregular situation who are recognized to be victims of gender-based violence to request and obtain a residence or work permit given their exceptional circumstances.**

#### **Racial violence**

(26) The Committee takes note of the State party's efforts to combat racism and xenophobia, including the adoption of legislation on the subject and the Strategic Plan for Citizenship and Integration (2007–2010). However, the Committee is concerned about information indicating a higher frequency of acts of intolerance and incidents of racial violence against migrants and persons of different ethnic or religious backgrounds and about allegations that the authorities' responses to these acts are not always timely or adequate (arts. 13–16).

**The State party should step up its efforts to thoroughly investigate all acts of racial violence and punish those responsible appropriately. Legislative, investigative and judicial responses to such heinous acts should be accompanied by an expansion of public awareness-raising campaigns.**

#### **Tasers**

(27) The Committee notes that the State security forces do not use tasers, but is concerned about information indicating that local police forces do (arts. 2 and 16).

**The State party should consider the possibility of putting a stop to the use of tasers by local police forces since, by reason of their effects on the physical and mental state of persons they are used on, they may infringe articles 2 and 16 of the Convention.**

#### **Trafficking in persons**

(28) The Committee welcomes the adoption of the Plan to Combat Trafficking for the Purposes of Sexual Exploitation (see paragraph 4 (f) above). However, the Committee notes that the plan focuses more on prevention of the offence than on human rights and the protection of victims. The Committee is further concerned that the Criminal Code contains no criminal offence specifically addressing human trafficking for the purposes of sexual exploitation (art. 16).

**The Committee urges the State party to finalize the draft Criminal Code so as to include a section specifically addressing human trafficking for the purposes of sexual and labour exploitation. The State party should further ensure that the Plan to Combat Trafficking recognizes the possibility that victims of trafficking may need international protection. In this respect, the State party should:**

- (a) Establish a national mechanism to identify all victims;
- (b) Take the necessary measures to ensure access to the asylum procedure for foreign women victims of trafficking, or at risk of being trafficked, who can show a need for international protection.

**Optional Protocol and the national preventive mechanism**

(29) The Committee notes that Organization Act No. 1/2009 established that the Ombudsman would act as the national mechanism for the prevention of torture, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It further notes that the same Act provides for the creation of an Advisory Board to provide technical and legal cooperation in the exercise of the functions of the national preventive mechanism; and that the Board would be chaired by the deputy to whom the Ombudsman delegates the functions established in this provision (art. 2).

**The State party should ensure that the Ombudsman has sufficient human, material and financial resources to discharge his prevention mandate throughout the country independently and effectively. The State party should further ensure that the Advisory Board has a clear jurisdiction and role and that the relationship between the national preventive mechanism and the Board is clearly defined. The Committee encourages the State party to have members of the Board selected through a process that is public and transparent and to include on the Board recognized experts in various areas pertaining to the prevention of torture, including representatives of civil society.**

(30) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

(31) The Committee invites the State party to submit a core document in accordance with the requirements for the preparation of a common core document established in the harmonized guidelines for the submission of reports approved by the international human rights treaties bodies (HRI/GEN/2/Rev.6).

(32) The State party is urged to ensure wide circulation of the report submitted to the Committee and of the Committee's concluding observations through official websites, the media and non-governmental organizations.

(33) The Committee requests the State party to provide information, within one year, in response to the Committee's recommendations in paragraphs 10, 12, 20, 23 and 25 of the present document.

(34) The State party is invited to submit its sixth periodic report by 20 November 2013.

**56. Yemen**

(1) The Committee against Torture considered the second periodic report of Yemen (CAT/C/YEM/2) at its 898th meeting (CAT/C/SR.898), held on 3 November 2009, and adopted, at its 917th meeting (CAT/C/SR.917), the provisional concluding observations as set out below.

**A. Introduction**

(2) The Committee welcomes the submission of the second periodic report of Yemen, which, while generally following the Committee's guidelines for reporting, lacks statistical and practical information on the implementation of the provisions of the Convention and relevant domestic legislation. The Committee also regrets the delay in the submission of the report, and that the State party has not submitted written responses to its list of issues (CAT/C/YEM/Q/2), nor has it responded to the letter of 21 April 2006, in which the Committee's Rapporteur for follow-up to concluding observations requested further information on Yemen (CAT/C/CR/31/4 and Add.1).

(3) The Committee regrets the absence of a delegation from the State party able to enter into a dialogue with it, and notes that, owing to the absence of representatives from the State party, the examination of the report took place in accordance with rule 66, paragraph 2 (b) of its rules of procedure. The Committee invites the State party to submit written responses and comments to the present provisional concluding observations and urges the State party, in the future, to comply fully with its obligations under article 19 of the Convention.

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

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

(a) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, in 2009;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2007;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2004.

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

(a) The State party's signature of several memorandums of understanding with the United Nations High Commissioner for Refugees in 2004, 2005 and 2007, including its commitment to prepare a refugee law and to promote it;

(b) The various human rights education and training activities and the State party's openness to international cooperation.

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

##### **Implementation of the Convention**

(6) The Committee notes with concern that the conclusions and recommendations it addressed to Yemen in 2003 have not been sufficiently taken into consideration. The Committee stresses the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. In its view, cultural and religious specificities may be taken into consideration in order to develop adequate means to ensure respect for universal human rights, but they cannot jeopardize the implementation of all provisions of the Convention or negate the rule of law. In this respect, the Committee notes with concern the establishment, in 2008, of a commission to protect virtue and fight vice and the lack of information on the mandate and jurisdiction of this commission, existing appeal procedures, and whether it is subject to review by ordinary judicial authorities (art. 2).

**The State party should implement in good faith all recommendations addressed to it by the Committee and find ways to ensure that its religious principles and laws are compatible with human rights and its obligations under the Convention. In this respect, the Committee draws the attention of the State party to its general comment No. 2 on the implementation of article 2. The State party is requested to provide information on the mandate of the new virtue and vice commission, its appeal procedures and whether it exercises a precise jurisdiction in full conformity with the**

requirements of the Convention or is subject to review by ordinary judicial authorities.

#### **Definition of torture**

(7) While noting that the Constitution of Yemen prohibits torture, the Committee reiterates its concern at the lack of a comprehensive definition of torture in the domestic law as set out in article 1 of the Convention (CAT/C/CR/31/4, para. 6 (a)). The Committee is concerned that the current definition in the Constitution prohibits torture only as a means of coercing a confession during arrest, investigation, detention and imprisonment, and that punishment is limited to individuals who order or carry out acts of torture and does not extend to individuals who are otherwise complicit in such acts. The Committee is also concerned that, while the Constitution provides that crimes involving physical or psychological torture should not be subject to a statute of limitations, the criminal procedure law may include a statute of limitations (arts. 1 and 4).

**The State party should incorporate the crime of torture into domestic law and adopt a definition of torture that covers all of the elements contained in article 1 of the Convention. By naming and defining the offence of torture in accordance with the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture by, inter alia, alerting everyone, including perpetrators, victims and the public to the special gravity of the crime of torture, and by improving the deterrent effect of the prohibition itself. The State party is requested to clarify to the Committee whether acts of torture are subject to a statute of limitations; if so, the State party should review its rules and provisions on the statute of limitations and bring them into line fully with the Constitution and the State party's obligations under the Convention.**

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

(8) The Committee is deeply concerned at the numerous allegations, corroborated by a number of Yemeni and international sources, of a widespread practice of torture and ill-treatment of detainees in Yemeni prisons, including State security prisons run by the Public Security Department, the national security authority and the Department of Anti-Terrorism under the Ministry of the Interior. The Committee is further concerned that such allegations are seldom investigated and prosecuted, and that there appears to be a climate of impunity for perpetrators of acts of torture. In this respect, the Committee expresses its concern at article 26 of the code of criminal procedure, which appear to provide that criminal lawsuits may not be filed against a law enforcement officer or a public employee for any crime committed while carrying out his job or caused thereby, except with the permission of the General Prosecutor, a delegated public attorney or heads of prosecution, and at the lack of information on the application of this provision (arts. 2, 4, 12 and 16).

**As a matter of urgency, the State party should take immediate steps to prevent acts of torture and ill-treatment throughout the country and to announce a policy of eradication of torture and ill-treatment by State officials.**

**The State party should ensure that all allegations of torture and ill-treatment are investigated promptly, effectively and impartially, and that the perpetrators are prosecuted and convicted in accordance with the gravity of the acts, as required by article 4 of the Convention.**

**The State party is requested to clarify to the Committee whether article 26 of the code of criminal procedure is still in force and, if so, how the provision is applied in practice.**

### **Fundamental legal safeguards**

(9) The Committee remains seriously concerned at the State party's failure in practice to afford all detainees, including detainees held in State security prisons, with all fundamental legal safeguards from the very outset of their detention. Such safeguards comprise the right to have prompt access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, and to appear before a judge within a time limit in accordance with international standards. In this respect, the Committee is concerned at the statement in the State report (para. 203) that "persons in pretrial detention may meet with their relatives and lawyers, provided they obtain a written authorization from the body/entity that issued the detention order". The Committee is also concerned at the lack of a central register for all persons held in detention, including minors (arts. 2, 11 and 12).

**The State party should take effective measures promptly to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention; these include, in particular, the rights to have prompt access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards. The State party should also ensure that all detainees, including minors, are included in a central register that functions effectively.**

**The State party is requested to inform the Committee of the requirements to obtain written authorization for persons in pretrial detention to meet with their relatives and lawyers, as well as the conditions under which such authorization may be refused.**

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

(10) While noting that the Department of Public Prosecutions (the Prosecutor-General) has overall responsibility for overseeing and inspecting prisons and that prosecutor's offices are established in central prisons in the different governorates following decree No. 91 of 1995, the Committee is concerned at the lack of systematic and effective monitoring and inspection of all places of deprivation of liberty, especially places of detention, including regular and unannounced visits to such places by national and international monitors. In this respect, the Committee expresses its concern at the proliferation of places of detention, including political security, national security and military prisons, as well as private detention facilities run by tribal leaders, and at the apparent absence of control by the Prosecutor-General over such prisons and detention centres. As a consequence, detainees are allegedly deprived of fundamental legal safeguards, including an oversight mechanism with regard to their treatment and review procedures with respect to their detention (arts. 11 and 16).

**The Committee calls upon the State party to establish a national system to monitor and inspect all places of detention and to follow up on the outcome on such systematic monitoring. It should also ensure that forensic doctors trained in detecting signs of torture are present during these visits. The Committee requests the State party to clarify whether the Political Security Department, the National Security authority and the Department of Anti-Terrorism under the Ministry of the Interior are under the control of the civil authorities, and whether the Prosecutor-General has access to the said detention centres, military prisons and private detention facilities. The State party should formally prohibit all detention facilities that do not come under State authority.**

**Anti-terrorism measures**

(11) The Committee acknowledges the difficulties that the State party faces in its prolonged fight against terrorism. However, recalling the absolute prohibition of torture, the Committee is concerned at reports of grave violations of the Convention committed in the context of the State party's fight against terrorism. Such violations include cases of extrajudicial killing, enforced disappearance, arbitrary arrest, indefinite detention without charge or trial, torture and ill-treatment, and deportation of non-citizens to countries where they are in danger of being subjected to torture or ill-treatment. The Committee is also concerned at the content of the draft anti-terrorism and the money laundering and terrorism funding laws, including the reportedly broad definition of terrorism and the absence of legal/judicial procedures pertaining to the delivery, arrest or detention of individuals (arts. 2 and 16).

**The State party should take all necessary measures to ensure that its legislative, administrative and other anti-terrorism measures are compatible with the provisions of the Convention, especially with article 2, paragraph 2. The Committee recalls that no exceptional circumstances whatsoever can be invoked as a justification for torture and, in accordance with relevant Security Council resolutions, especially resolution 1624 (2005), anti-terrorism measures must be implemented with full respect for international human rights law, especially the Convention. The State party is requested to provide information on the content and status of the draft anti-terrorism and the money laundering and terrorism funding laws.**

**Incommunicado detention**

(12) The Committee reiterates its concern at substantiated reports of the frequent practice of incommunicado detention by Political Security Department officials, including detention for prolonged periods without judicial process (CAT/C/CR/31/4, para. 6 (c)), and is concerned that other security agencies reportedly also engage in such practices. The Committee is also concerned at the lack of information on the exact number and location of places of detention in the State party (arts. 2 and 11).

**The State party should take all appropriate measures to abolish incommunicado detention and ensure that all persons held incommunicado are released, or charged and tried under due process. The State party should submit information on the exact number and location of places of detention used by the Political Security Department and other security forces, and the number of persons deprived of liberty in such facilities. The State party should also provide an update on the case of four nationals of Cameroon — Mouafo Ludo, Pengou Pierpe, Mechoup Baudelaire and Ouafu Zacharie — who have been detained incommunicado and without legal process in Sana'a since 1995.**

**Enforced disappearances and arbitrary arrests and detention**

(13) The Committee expresses its concern at reports of enforced disappearance and of the widespread practice of mass arrests without a warrant and arbitrary and prolonged detention without charges and judicial process. The Committee is also concerned at the wide array of security forces and agencies in Yemen empowered to arrest and detain, and at the lack of clarification as to whether such powers are prescribed by the relevant legislation, including the Criminal Procedure Law. The Committee stresses that arrests without a warrant and the lack of judicial oversight on the legality of detention can facilitate torture and ill-treatment (arts. 2 and 11).

**The State party should take all necessary measures to counter enforced disappearances and the practice of mass arrest without a warrant and arbitrary detention without charges and judicial process. The State party should clarify to the**



Committee whether the powers of the various security forces and agencies to arrest and detain are prescribed by the relevant legislation, including the Criminal Procedure Law; it should minimize the number of security forces and agencies with such powers. Furthermore, the State party should take all appropriate steps to ensure the application of relevant legislation, to reduce further the duration of detention before charges are brought, and develop and implement alternatives to the deprivation of liberty, including probation, mediation, community service or suspended sentences. The State party is requested to provide detailed information on any investigations into the many reported cases of detention during the “Bani Hashish events” of May 2008.

#### **Hostage-taking of relatives**

(14) The Committee expresses its great concern at the reported practice of holding relatives of alleged criminals, including children and elderly, as hostages, sometimes for years at a time, to compel the alleged criminals to surrender themselves to the police; it also emphasizes that such practice is a violation of the Convention. In this respect, the Committee notes with particular concern the case of Mohammed Al-Baadani, who was abducted in 2001, at age 14, by a tribal chief because of his father’s failure to pay back debts, and who reportedly remains in a State prison without a set trial date (arts. 12 and 16).

**The State party should, as a matter of priority, discontinue its practice of holding relatives of alleged criminals as hostages, and punish the perpetrators. The State party should also provide an update on the case of Mohammed Al-Baadani.**

#### **Allegations of extrajudicial killings**

(15) The Committee expresses its great concern at allegations of extrajudicial killings by security forces and other serious human rights violations in different parts of the country, in particular the northern Sa’ada province and in the south (arts. 2, 12 and 16).

**The State party should take effective steps to investigate promptly and impartially all allegations of involvement of members of law enforcement and security agencies in extrajudicial killings and other serious human rights violations in different parts of the country, in particular the northern Sa’ada province and in the south.**

#### **Complaints and prompt and impartial investigations**

(16) The Committee remains concerned at the apparent failure to investigate promptly and impartially the numerous allegations of torture and ill-treatment and to prosecute alleged offenders. The Committee is particularly concerned at the lack of clarity of which authority has the overall responsibility for reviewing individual complaints of torture and ill-treatment by law enforcement, security, military and prison officials, and for initiating investigations in such cases. The Committee also regrets the lack of information, including statistics, on the number of complaints of torture and ill-treatment and results of all the proceedings, at both the penal and disciplinary levels, and their outcomes (arts. 11, 12 and 16).

**The State party should strengthen its measures to ensure prompt, thorough, impartial and effective investigation into all allegations of torture and ill-treatment committed by law enforcement, security, military and prison officials. In particular, such investigations should not be undertaken by or under the authority of the police or military, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should as a rule be subject to suspension or reassignment during the process of investigation, to avoid any risk that he or she might impede the investigation or continue any reported impermissible actions in breach of the Convention.**

**The State party should prosecute the perpetrators and impose appropriate sentences on those convicted in order to ensure that State officials who are responsible for violations prohibited by the Convention are held accountable.**

**The Committee requests the State party to provide information, including statistics, on the number of complaints of torture and ill-treatment and results of all the proceedings, at both the penal and disciplinary levels, and their outcomes. This information should be disaggregated by sex, age and ethnicity of the individual bringing the complaints, and indicate which authority undertook the investigation.**

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

(17) The Committee expresses its concern at the reported lack of efficiency and independence of the judiciary, despite the existence of constitutional guarantees and the measures taken to reform the judicial branch, including in the context of the national strategy for the modernization and development of the judiciary (2005–2015). It is particularly concerned that this may impede the initiation of investigation and prosecution of cases of torture and ill-treatment. In this respect, the Committee is concerned at reports of interference by the executive and lack of security of tenure of judges. While noting that article 150 of the Constitution of Yemen prohibits without exception the establishment of special courts, the Committee is also concerned at the establishment by Republican Decree of 1999 of the Specialized Criminal Court and at reports that international norms of fair trial are not upheld by this Court (arts. 2, 12 and 13).

**The State party should take the necessary measures to establish and ensure the full independence and impartiality of the judiciary in the performance of its duties in conformity with international standards, notably the Basic Principles on the Independence of the Judiciary. In this respect, the State party should ensure that the judiciary is free from any interference, in particular from the executive branch, in law as in practice. The State party should also strengthen the role of judges and prosecutors with regard to the initiation of investigation and prosecution of cases of torture and ill-treatment and the legality of detention, including by providing adequate training on the State party's obligations under the Convention to judges and prosecutors.**

**The State party is requested to submit detailed information on existing legal guarantees ensuring the security of tenure of judges and their application. In particular, information should be provided on the procedure for the appointment of judges, the duration of their mandate, the constitutional or legislative rules governing their irremovability and the way in which they may be dismissed from office.**

**Furthermore, the State party should dissolve the Specialized Criminal Court, as the trials before this exceptional court violate basic principles for the holding of a fair trial.**

#### **Criminal sanctions**

(18) The Committee remains concerned that certain criminal sanctions (or *hadd* penalties) such as floggings, beatings and even amputation of limbs are still prescribed by law and practised in the State party, in violation of the Convention. The Committee is also concerned at reports that courts across the country impose sentences of flogging almost daily for alleged alcohol and sexual offences, and that such floggings are carried out immediately, in public, without appeal. It is also concerned at the wide discretionary powers of judges to impose these sanctions and that they may be imposed in a discriminatory way against different groups, including women (arts. 1 and 16).

**The State party should put an end immediately to such practices and modify its legislation accordingly, especially with regard to the discriminatory effects of such**

**criminal sanctions on different groups, including women, in order to ensure its full compatibility with the Convention.**

#### **Internally displaced persons**

(19) The Committee is seriously concerned at the high number of internally displaced persons in the northern Sa'ada province, and at the fact that the State party has reportedly not taken sufficient steps to ensure the protection of persons affected by the conflict in the north, in particular the internally displaced persons currently confined to camps (arts. 12 and 16).

**The State party should take all necessary measures to ensure the protection of persons affected by the conflict in the northern Sa'ada province, particularly internally displaced persons currently confined to camps.**

#### **Human rights defenders, political activists, journalists and other individuals at risk**

(20) The Committee notes with concern allegations, including in conjunction with recent events in the region of Sa'ada, indicating that many Government opponents, including human rights defenders, political activists and journalists, have been subjected to arbitrary detention and arrest, incommunicado detentions lasting anything from several days to several months, denied access to lawyers and the possibility of challenging the legality of their detention before the courts. The Committee regrets the lack of information provided on any investigations into such allegations (arts. 2, 12 and 16).

**The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from intimidation or violence as a result of their activities and exercise of human rights guarantees, to ensure the prompt, impartial and effective investigation of such acts, and to prosecute and punish perpetrators with penalties appropriate to the nature of those acts. The State party should provide information on any investigation into recent events in the region of Sa'ada, as well as the outcome of such investigations.**

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

(21) The Committee is deeply concerned at reported cases of imposition of the death penalty on children of between 15 and 18 years of age. The Committee also expresses concern at the conditions of detention of convicted prisoners on death row, which may amount to cruel, inhuman or degrading treatment, in particular owing to the excessive length of time on death row. The Committee is further concerned at the lack of information in the State report on the number of persons executed in the reporting period and for which offences, as well as the number of persons currently on death row, disaggregated by sex, age, ethnicity and offence (art. 16).

**The Committee recommends that the State party consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty. In the meantime, the State party should review its policy with regard to the imposition of the death penalty, and in particular take the measures necessary to ensure that the death penalty is not imposed on children. Furthermore, the State party should ensure that its legislation provides for the possibility of the commutation of death sentences, especially where there have been delays in their implementation. The State party should ensure that all persons on death row are afforded the protection provided by the Convention and are treated humanely.**

**The Committee requests the State party to provide information, in detail, on the precise number of people executed in the reporting period, for which offences and whether any children have been sentenced to death and executed. The State party**

**should also indicate the current number of people on death row, disaggregated by sex, age, ethnicity and offence.**

#### **Non-refoulement**

(22) The Committee remains concerned at numerous cases of forced return of foreign nationals, including to Egypt, Eritrea and Saudi Arabia, without the individuals being able to oppose it by means of an effective remedy, which may be in breach of the obligations imposed by article 3 of the Convention. The Committee also regrets the lack of information on measures taken by the State party to ensure that those foreign nationals did not run a real risk of being subjected to torture or inhuman or degrading treatment in the country of destination, or that they would not be subsequently deported to another country where they might run a real risk of being subjected to such torture or ill-treatment, as well as the lack of any follow-up measures taken by the State party in this respect (art. 3).

**Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or ill-treatment. The State party should ensure that it complies fully with article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by its competent authorities and guaranteed fair treatment at all stages of proceedings, including an opportunity for effective, independent and impartial review of decisions on expulsion, return or extradition.**

**When determining the applicability of its non-refoulement obligations under article 3 of the Convention, the State party should examine thoroughly the merits of each individual case, ensure that adequate judicial mechanisms for the review of the decision are in place and ensure effective post-return monitoring arrangements. Such assessment should also be applied with regard to individuals who may constitute a security threat.**

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

(23) The Committee notes that, while the State party is considering the establishment of an independent national human rights institution, such an institution has not yet been created. The Committee also notes that the Human Rights Ministry has a mandate to receive complaints, but regrets the lack of information on how the complaints received by the Ministry are dealt with, as well as on investigations, prosecutions and criminal and/or administrative punishments of perpetrators (arts. 2, 11 and 12).

**The State party should, as a priority, continue to work towards establishing a national human rights institution in accordance with the Principles relating to the status and functioning of national institutions for protection and promotion of human rights (the Paris Principles) adopted by the General Assembly in its resolution 48/134. The State party is also requested to provide information, including statistical data, on the complaints received by the Human Rights Ministry and on any investigation, prosecution and criminal and/or administrative punishment of perpetrators.**

#### **The situation of women in detention**

(24) The Committee expresses its serious concern at information that prisons' conditions are not suitable for women, that there are no female guards in female prisons, with the exception of the Hajjah detention centre or specific health care for women prisoners, including for pregnant women and for their children. Women in detention are frequently harassed, humiliated and ill-treated by male guards, and there are allegations of sexual violence, including rape, against women in detention. The Committee reiterates its concern with regard to the situation of women who have served their prison sentence but who remain in prison for prolonged periods, owing to the refusal of their guardian or family to

receive them home upon completion of their sentences or because they are unable to pay the “blood money” they have been convicted to pay (CAT/C/CR/31/4, para. 6 (h)). The Committee is also concerned that the majority of women in prison have been sentenced for prostitution, adultery, alcoholism, unlawful or indecent behaviour, in a private or public setting, as well as for violating restrictions of movement imposed by family traditions and Yemeni laws; the Committee also notes with concern that such sentences are applied in a discriminatory way against women (arts. 11 and 16).

**The State party should take effective measures to prevent sexual violence against women in detention, including by reviewing current policies and procedures for the custody and treatment of detainees, ensuring separation of female detainees from males, enforcing regulations calling for female inmates to be guarded by officers of the same gender, and monitoring and documenting incidents of sexual violence in detention.**

The State party should also take effective measures to ensure that detainees who have allegedly been sexually victimized are able to report the abuse without being subjected to punitive measures by staff, protect detainees who report sexual abuse from retaliation by the perpetrator(s); promptly, effectively and impartially investigate and prosecute all instances of sexual abuse in custody; and provide access to confidential medical and mental health care for victims of sexual abuse in detention, as well as access to redress, including compensation and rehabilitation, as appropriate. The State party is requested to provide data, disaggregated by sex, age and ethnicity of the victims of sexual abuse, and information on investigation, prosecution and punishment of perpetrators.

Furthermore, the State party should ensure that women prisoners have access to adequate health facilities and provide rehabilitation programmes to reintegrate them into the community, notwithstanding the refusal of the guardian or family to receive them. In this respect, the State party is requested to inform the Committee of any steps taken to establish “half-way homes” for these women, as recommended by the Committee in its previous concluding observations (CAT/C/CR/31/4, para. 7 (k)).

#### **Children in detention**

(25) The Committee remains deeply concerned at the continued practice of detention of children, including children as young as 7 or 8 years of age; it is also concerned at reports that children are often not separated from adults in detention facilities and that they are frequently abused. The Committee also remains concerned at the very low minimum age of criminal responsibility (7 years) and other shortcomings in the juvenile justice system (arts. 11 and 16).

**The State party should, as a matter of urgency, raise the minimum age of criminal responsibility in order to bring it into line with generally accepted international standards. The State party should also take all measures necessary to significantly reduce the number of children in detention and ensure that persons below 18 years of age are not detained with adults; that alternative measures to deprivation of liberty, such as probation, community service or suspended sentences, are available; that professionals in the area of recovery and social reintegration of children are properly trained; and that deprivation of liberty is used only as a measure of last resort, for the shortest possible time and in appropriate conditions. In this respect, the Committee reiterates the recommendations made by the Committee on the Rights of the Child (CRC/C/15/Add.267, paras. 76 and 77). The Committee requests the State party to provide statistics on the number of children in detention, disaggregated by sex, age and ethnicity.**

### **Training**

(26) The Committee takes note of the detailed information included in the State report on training and awareness-raising programmes. However, it is concerned at the lack of information on any awareness-raising and training programmes for members of the Political Security Department, the National Security authority and the Ministry of the Interior, as well as on any training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, to detect and document physical and psychological sequelae of torture. The Committee also regrets the lack of information on monitoring and evaluation of the impact of its training programmes in reducing incidents of torture and ill-treatment (art. 10).

**The State party should further develop and strengthen educational programmes to ensure that all officials, including law enforcement, security, military and prison officials, are fully aware of the provisions of the Convention, that reported breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. In this respect, the State party is requested to provide information on any awareness-raising and training programmes in place for members of the Political Security Department, the National Security authority and the Ministry of the Interior. Furthermore, all relevant personnel should receive specific training on how to identify signs of torture and ill-treatment; such training should include the use of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), which should be provided to physicians and utilized effectively. In addition, the State party should assess the effectiveness and impact of such training/educational programmes.**

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

(27) The Committee reiterates its concern at the lack of information on modalities of compensation for and rehabilitation of victims of torture and ill-treatment by the State party (CAT/C/CR/31/4, para. 6 (g)), as well as on the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases. The Committee also regrets the lack of information on treatment and social rehabilitation services and other forms of assistance, including medical and psychosocial rehabilitation, provided to victims (art. 14).

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

### **Coerced confessions**

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

**The State party should take the steps necessary to ensure that confessions obtained under torture or duress are inadmissible in court in all cases in line with domestic legislation and the provisions of article 15 of the Convention. The Committee requests the State party to submit information on the application of the provisions prohibiting admissibility of evidence obtained under duress, and whether any officials have been prosecuted and punished for extracting such confessions.**

#### **Domestic violence**

(29) The Committee notes the reference in the State report to the adoption of the Protection against Domestic Violence Act No. 6 of 2008 (CAT/C/YEM/2, paras. 132–146), but regrets the very limited information on its content and implementation. The Committee notes with concern that violence against women and children, including domestic violence, remains prevalent in Yemen. It is also concerned that women reportedly experience difficulties in filing complaints and seeking redress with regard to such violence. The Committee is also concerned that article 232 of the Penal Code provides that a man, or any male relative, who kills his wife, or a female member of the family suspected of adultery is not prosecuted with murder but a less serious crime. It also expresses its concern at the lack of data, including statistics on complaints, prosecutions and sentences, relating to homicides committed against women by their husbands or male relatives and to domestic violence (arts. 1, 2, 12 and 16).

**The State party should strengthen its efforts to prevent, combat and punish violence against women and children, including domestic violence. The State party is encouraged to participate directly in rehabilitation and legal assistance programmes and to conduct broader awareness campaigns for officials (judges, law officers, law enforcement agents and welfare workers) who are in direct contact with victims. The Committee also recommends that the State party establish clear procedures for filing complaints on violence against women, and establish female sections in police stations and prosecutor's offices to deal with such complaints and investigations.**

**The State party should repeal article 232 of the Penal Code to ensure that homicides committed against women by their husbands or male relatives are prosecuted and punished in the same way as any other murders. The State party should also strengthen its efforts in respect of research and data collection on the extent of domestic violence and homicides committed against women by their husbands or male relatives; it is also requested to provide the Committee with statistical data on complaints, prosecutions and sentences in this respect.**

#### **Trafficking**

(30) The Committee expresses its concern at reports of trafficking in women and children for sexual and other exploitative purposes, including reports of trafficking of children out of Yemen, mostly to Saudi Arabia. The Committee is also concerned at the general lack of information on the extent of trafficking in the State party, including the number of complaints, investigations, prosecutions and convictions of perpetrators of trafficking, as well as on the concrete measures taken to prevent and combat such phenomena (arts. 1, 2, 12 and 16).

**The State party should increase its efforts to prevent and combat trafficking of women and children and cooperate closely with the authorities of Saudi Arabia in respect of cases of combating trafficking in children. The State party should provide protection for victims and ensure their access to medical, social, rehabilitative and legal services, including counselling services, as appropriate. The State party should also create adequate conditions for victims to exercise their right to make complaints, conduct prompt, impartial and effective investigations into all allegations of trafficking, and ensure that perpetrators are brought to justice and punished with**

penalties appropriate to the nature of their crimes. The State party is requested to provide information on measures taken to provide assistance to the victims of trafficking as well as statistical data on the number of complaints, investigations, prosecutions and convictions relating to trafficking.

#### **Early marriages**

(31) The Committee is seriously concerned at the amendment to Personal Status Law No. 20 of 1992 by Law No. 24 of 1999, which legalized the marriage of girls under 15 years of age with the consent of their guardian. The Committee expresses its concern at the “legality” of such early marriages of girls, some as young as 8 years of age, and underlines the fact that this amounts to violence against them as well as inhuman or degrading treatment, and is thus in breach of the Convention (arts. 1, 2 and 16).

**The State party should take urgent legislative measures to raise the minimum age of marriage for girls, in line with article 1 of the Convention on the Rights of the Child, which defines a child as being below the age of 18, and the provision on child marriage in article 16, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination against Women; it should also stipulate that child marriages have no legal effect. The Committee also urges the State party to enforce the requirement to register all marriages in order to monitor their legality and the strict prohibition of early marriages and to prosecute the perpetrators violating such provisions, in line with the recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/YEM/CO/6, para. 31) and the universal periodic review (A/HRC/12/13).**

#### **Data collection**

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

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

#### **Cooperation with United Nations human rights mechanisms**

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

(34) Noting the commitment made by the State party in the context of the universal periodic review (A/HRC/12/13, para. 93 (4)), the Committee recommends that the State party consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible.

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



(36) With reference to its previous concluding observations (CAT/C/CR/31/44 (d)), the Committee recommends that the State party consider ratifying the Rome Statute of the International Criminal Court.

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

(38) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies (HRI/GEN/2/Rev.6).

(39) The State party is encouraged to disseminate widely the reports submitted to the Committee and the present provisional concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(40) The Committee requests the State party to provide replies and comments to the issues raised in the present provisional concluding observations, including the Committee's requests for information, by 15 February 2010. Pursuant to rule 66, paragraph 2 (b) of its rules of procedure, the Committee will review the present provisional concluding observations in the light of the replies and comments provided by the State party, and adopt its final concluding observations at its next session.

## 57. **Austria**

(1) The Committee against Torture considered the fourth and fifth combined periodic reports of Austria (CAT/C/AUT/4-5) at its 940th and 942nd meetings, held on 5 and 6 May 2010 (CAT/C/SR.940 and 942), and adopted the following conclusions and recommendations at its 950th meeting (CAT/C/SR.950).

### **A. Introduction**

(2) The Committee welcomes the timely submission of the fourth and fifth combined periodic report of Austria and the replies to the list of issues. However, it regrets that the report does not follow the Committee's reporting guidelines.

(3) The Committee appreciates the constructive efforts made by the high-level delegation to provide information and additional explanations during the discussion of the report.

### **B. Positive aspects**

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

(a) Convention on the Rights of Persons with Disabilities and its Optional Protocol (26 September 2008);

(b) Council of Europe Convention on Action against Trafficking in Human Beings (12 October 2006);

(c) European Convention on the Compensation of Victims of Violent Crimes (30 August 2006).

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

(a) The entry into force, on 1 January 2008, of the Criminal Procedure Reform Act and the amendments to the Code of Criminal Procedure. In particular, the Committee welcomes the provisions regarding:

- (i) The prohibition of evidence obtained by means of torture or cruel, inhuman, or degrading treatment, or other unlawful interrogation methods;
- (ii) The obligation of courts to report cases in which evidence was allegedly extracted by such unlawful means immediately and ex officio to the public prosecutor;
- (iii) The express reference to the right of the defendant to remain silent;
- (iv) The right to contact a lawyer prior to the interrogation;
- (v) The right of the defendant to be assisted by an interpreter;
- (vi) The right of the defendant to inspect the police files concerning the case;

(b) The entry into force in June 2009 of the Second Violence Protection Act, which amends the Crimes Victims Act expanding the range of services and support available to crime victims, including victims of gender-based violence.

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

(a) The adoption of a firm and principled position against the use of diplomatic assurances to facilitate the transfer of persons to a country where they may be at risk of torture or other inhuman or degrading punishment;

(b) The adoption of a two national action plans against human trafficking for the periods 2007-2009 and 2009-2011;

(c) The establishment of the Coordination Committee to Protect Children from Sexual Exploitation to continuously coordinate and evaluate the implementation of the State party's international commitments to combat sexual abuse of children;

(d) The publication in March 2010 of the Report on the visit to Austria carried out in February 2009 by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the State party's response to it.

(7) The Committee appreciates the fact that the State party has issued a standing invitation to the special procedures mechanisms of the Human Rights Council.

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

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

(8) While noting that the State party is preparing an amendment to the Criminal Code for the inclusion of a definition of torture, the Committee remains concerned that the State party has still not incorporated into domestic law the crime of torture as defined in article 1 of the Convention (arts. 1 and 4).

**The Committee reiterates its previous recommendation (A/54/44, para. 50 (a) and CAT/C/AUT/CO/3, para. 6) that the State party should proceed to incorporate into domestic law the crime of torture and adopt a definition of torture that covers all the elements contained in article 1 of the Convention. The State party should also ensure that these offences are punishable by appropriate penalties which take into account their grave nature, as set out in article 4, paragraph 2, of the Convention.**

### **Fundamental safeguards**

(9) The Committee is concerned at the restrictions placed by the State party on the exercise of the right of an arrested or detained person to communicate with counsel and have counsel present during interrogations. In this respect, it notes with concern that, pursuant to section 59 (1) of the amended Code of Criminal Procedure, police officers can monitor contacts between the arrested or detained person and counsel and exclude the presence of counsel during interrogations if “it appears necessary to prevent interference in ongoing investigations or corruption of evidence”. In such a case, an audio or visual recording of the interrogation must be made if possible (section 164, para. 2, of the Code of Criminal Procedure). The Committee is also concerned at the content of paragraph 24 of Internal Instruction (*Erlass*) Ref. BMI-EE1500/0007-II/2/a/2009 issued by the Federal Ministry of Interior on 30 January 2009, which would seem to infer that there is no obligation on the part of the police to delay questioning to allow the lawyer to arrive at the place of interrogation (arts. 2 and 11).

**The Committee reiterates its recommendation (CAT/C/AUT/CO/3, para. 11) that the State party should take all necessary legal and administrative safeguards to ensure that suspects are guaranteed the right of confidential access to a lawyer, including during detention, and to legal aid from the moment of the arrest and irrespective of the nature of their alleged crime. The State party should also extend the use of audio and video equipment to all police stations and detention facilities, not only in interrogation rooms but also in cells and corridors.**

**The State party should promptly amend paragraph 24 of the above-mentioned internal instruction to avoid situations that would deprive detainees of the right to an effective defence at a critical stage in the proceedings and expose them to the risk of torture or ill-treatment.**

### **Juvenile offenders**

(10) The Committee notes that, under section 164, paragraph 2, of the amended Code of Criminal Procedure, juvenile offenders cannot be interrogated in the absence of counsel. Nevertheless, the Committee received information alleging that juvenile offenders, some as young as 14, had been subjected to police questioning, sometimes for prolonged periods, and requested to sign statements without the benefit of the presence of either a trusted person or a lawyer (arts. 2 and 11).

**The State party should take the necessary measures to ensure the proper functioning of the juvenile justice system in compliance with international standards and to guarantee that minors are always heard in the presence of a legal representative.**

### **Legal aid**

(11) The Committee takes notes of the legal aid programme initiated by the Federal Ministry of Justice and the Federal Bar Association. However, the Committee remains concerned about reports regarding the persistence of shortcomings in the implementation in practice of the right of access to a lawyer during police custody, particularly with regard to the confidentiality of communications with counsel (art. 2).

**The Committee reiterates its recommendation (CAT/C/AUT/CO/3, para. 12) that the State party should consider establishing a fully-fledged and properly funded system of legal aid. In this connection, the Committee recalls the recommendations made in 2004 and 2009 by the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Committee also recommends that the State party should take the necessary measures to provide an effective free legal aid system, in particular for indigent criminal suspects.**

**Composition of police force and correction system**

(12) While welcoming the measures taken by the State party to improve the representation of female and minority ethnic police officers, which will have beneficial impacts in policing including in matters of gender-based violence and any act based on discrimination, the Committee is concerned that the representation of women and ethnic minority communities in the police force and correction system remains very low (art. 2).

**The State party should continue its efforts to diversify the composition of its police force and correction services and to extend recruitment drives amongst ethnic minority communities throughout the country. The Committee invites the State party to provide in its next periodic report information on the measures taken to improve such representation as well as detailed statistical information on the compositions of the police force and correction system.**

**Non-refoulement and access to a fair and prompt asylum procedure**

(13) The Committee welcomes the amendments introduced to the Asylum Law following Constitutional Court ruling G151/02 of 12 December 2002, which addressed the concerns expressed by the Committee in its previous concluding observations (CAT/C/AUT/CO/3). The Committee is concerned that under article 12 (a) of the revised Asylum Law, persons basing their repeat applications for international protection on new grounds cannot be granted a stay of their expulsion if they lodge their application within two days prior to the date set for deportation and may, consequently, be at risk of refoulement. Furthermore, persons whose first asylum application was not found admissible according to the Dublin II Regulation are, in case of repeat application, now excluded from de facto protection against removal (*faktischer Abschiebeschutz*), a residence permit for asylum-seekers during the admission procedure which does not allow removal from Austria. The Committee notes with concern that in both situations asylum-seekers are not afforded an effective remedy. The Committee is further concerned by the information provided by the State party that an appeal of a decision denying asylum based on a procedural issue, as opposed to subject matter, does not have automatic suspensive effect (art. 3) (see letter dated 15 November 2008 from the Rapporteur for follow-up to concluding observations).

**The State party should take the necessary measures to ensure that individuals under its jurisdiction are guaranteed fair treatment at all stages of the proceedings, including an opportunity for effective, independent and impartial review of decisions on expulsion, return or deportation.**

(14) The Committee notes that the legal provisions regarding the basic needs of asylum-seekers, including health assistance, contained in the amended Federal Care Act (2005) and the Agreement on Basic Support (2004), have now been adopted by all Länder, as recommended by this Committee in its previous concluding observations (CAT/C/AUT/CO/3, para. 17). However, the Committee is concerned about reports on extensive statutory grounds for withdrawal and cessation of care provisions, such as filing a subsequent application within six months of a negative decision in a preceding procedure (art. 16).

**The State party should take effective measures to ensure that needy asylum-seekers are not left without adequate reception conditions, including accommodation and health assistance, and that adequate social support is provided to them throughout their asylum proceedings.**

**Training**

(15) The Committee notes the information provided by the State party on training programmes for judges, prosecutors, police officers and other law enforcement officials. However, the Committee regrets the limited information on monitoring and evaluation of

these training programmes and the lack of available information on the impact of the training conducted and how effective they have been in reducing incidents of torture and ill-treatment (art. 10).

**The State party should:**

**Continue preparing and implementing training programmes to ensure that judges, prosecutors, law enforcement officials and prison officers are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted;**

**Ensure that all relevant personnel receive specific training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);**

**Develop and implement a methodology to assess the effectiveness and impact of such training and educational programmes on the reduction of cases of torture and ill-treatment.**

**Conditions of detention**

(16) The Committee is concerned at the detention policy applied to asylum-seekers, including reports that they are held in police detention centres for criminal and administrative offenders (*Polizeianhaltezentrum – PAZ*), in some cases confined in their cells for 23 hours a day, only allowed visits under closed conditions and without access to qualified medical care or legal aid. In this respect, the Committee regrets the change in the legislative framework resulting from the last reform of the Asylum Law and Aliens Police Act, which entered into force on 1 January 2006. Under the new article 76, paragraph 2a, of the Aliens Police Act, detention of asylum-seekers whose claims have not been finally decided or were only rejected on procedural grounds has, in certain circumstances, become mandatory, where found necessary to achieve expulsion (art. 11).

**In line with the concerns expressed by other relevant international and regional human rights bodies, the State party should:**

**(a) Ensure that detention of asylum-seekers is used only in exceptional circumstances or as a measure of last resort;**

**(b) Consider alternatives to detention and end the practice of detaining asylum-seekers in police holding centres;**

**(c) Take immediate and effective measures to ensure that asylum-seekers who are detained pending deportation are held in detention centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal status;**

**(d) Ensure that asylum-seekers have full access to free and qualified legal counselling, adequate medical services, occupational activities and the right to receive visits.**

(17) While noting the measures taken by the State party to improve living conditions in detention centres, including various legislative measures (the so-called “*Haftenlastungspaket*”) to reduce the waiting period for conditional release and the grounds for detention on remand, the Committee is concerned that there is continuing overcrowding in places of detention, in particular Josefstadt and Simmerig II prisons in Vienna, as well as understaffing problems. The Committee is also concerned about the reintroduction in June 2009 of the use of electro-muscular disruption devices, “Tasers”, in the penal service (arts. 2, 11 and 16).

The State party should strengthen its efforts to alleviate the overcrowding of penitentiary institutions, including through the application of alternative measures to imprisonment and the establishment of additional prison facilities as needed. The State party should also take appropriate measures to increase the overall staffing levels and the number of female prison officers.

The Committee reiterates its concern that the use of electro-muscular disruption devices can result in severe pain amounting to torture and in certain cases can even be lethal. The State party should consider relinquishing the use of electro-muscular disruption devices to restrain persons in custody, as this leads to breaches of the Convention.

(18) While it takes note of the Suicide Prevention Programme established by the Federal Ministry of Justice in December 2007, the Committee finds the number of suicides and other sudden deaths in detention centres to appear to be high (art. 11).

The State party should increase its efforts to prevent suicides and other sudden deaths in all places of detention. The Committee urges the State party to investigate promptly, thoroughly and impartially all deaths of detainees, assessing the health care received by inmates as well as any possible liability of prison personnel, and provide, where appropriate, adequate compensation to the families of the victims.

Furthermore, information on independent investigation of cases of suicide and other sudden deaths, along with any guidelines for suicide prevention adopted in this regard, should be included in the next periodic report.

#### **Prompt, thorough and impartial investigations**

(19) The Committee regrets the insufficient statistical data on allegations of torture and ill-treatment provided by the State party as well as the lack of information on the results of the investigations undertaken in respect of those allegations. The Committee notes with concern that almost half of the incidents occurred in 2009 concerned foreigners. In this regard, the Committee continues to be concerned about the high level of impunity in cases of police brutality, including that perceived to be racially-motivated. Until January 2010, allegations of torture and ill-treatment were investigated by the Bureau for Internal Affairs (BIA), a special unit within the Federal Ministry of Interior, which informs the competent public prosecutor about the outcome of the internal inquiry. Although the Bureau of Internal Affairs provided a copy of its reports to the Human Rights Advisory Board, the members of this national human rights institution were not mandated to carry any investigative work. Since the entry into force of the Federal Act on the Establishment and Organization of the Federal Bureau of Anti-Corruption on 1 January 2010, BIA was transformed into the Federal Bureau of Anti-Corruption (BAK) that, according to the information provided by the delegation, is “an independent body outside the traditional law enforcement structures and conducts independent investigation in close cooperation with the public prosecutors” (arts. 12–13).

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

**Take appropriate measures to ensure that all allegations of torture or cruel, inhuman or degrading treatment are promptly and impartially investigated, perpetrators duly prosecuted and, if found guilty, convicted to penalties taking into account the grave nature of their acts, and that the victims are adequately compensated, including their full rehabilitation;**

**Strengthen and expand the mandate of the Austrian Ombudsperson Board, to include protection and promotion of all human rights in accordance with the Paris Principles;**

**Ensure that clear and reliable data are compiled on acts of torture and abuse in police custody and in other places of detention;**

**The State party should provide the Committee with further information on the mandate of the new Federal Bureau of Anti-Corruption and the procedures established to carry out independent investigation into all allegations of torture and ill-treatment committed by law enforcement officials. The State party should also provide the Committee with information on cases of torture and ill-treatment where the aggravating circumstances as stated in section 33 of the Criminal Code, including racism and xenophobia, have been invoked in the determination of sanctions for such crimes.**

(20) The Committee continues to be deeply concerned about the lenient sentences imposed by Austrian courts in cases of torture or other ill-treatment by law enforcement officials. The Committee is particularly concerned about the case of Cheibani Wague, a Mauritanian national, who died on 16 July 2003 in Vienna while being restrained during his arrest by police officers and a medical emergency team. In November 2009, the ambulance doctor and one of the police officers received both a seven month suspended sentence, which was reduced to four months on appeal in the case of the police officer. The Committee expresses also its concern at the case of Mike B., a black American teacher who was beaten up in February 2009 by undercover police officers in the Vienna underground (arts. 11 and 16).

**The State party should:**

**Ensure prompt, thorough and impartial investigations into allegations of torture and ill-treatment, prosecute and punish perpetrators and provide effective remedies and rehabilitation to the victims;**

**Ensure that sentences for torture and ill-treatment are commensurate with the grave nature of the offence;**

**Inform the Committee on the results of any investigation undertaken in respect of the case of Mike B., as well as on prosecutions and convictions thereof.**

**Redress and compensation, including rehabilitation**

(21) While noting the information provided by the State party that victims of torture or ill-treatment have a legal right to obtain compensation, the Committee is nevertheless concerned at the difficulties that certain victims face obtaining redress and adequate compensation. The Committee is particularly concerned about the case of Mr. Bakary Jassay, a Gambian national, who was abused and severely injured by policemen in Vienna on 7 April 2006, and who has not yet received any compensation, not even the € 3,000 awarded by the court for the damages resulted from the pain and suffering. The Committee also regrets the lack of statistical data or examples of cases in which individuals have received such compensation (art. 14).

**The State party should provide redress and compensation, including rehabilitation to victims in practice, and provide information on such cases to the Committee.**

**The State party should provide the Committee with relevant statistical data and examples of cases in which individuals have received such compensation in its next periodic report.**

(22) The Committee is concerned about reports of alleged lack of privacy and humiliating circumstances amounting to degrading treatment during medical examinations at the Vienna Communal Health Office, where registered sex workers are required to undergo weekly medical checkups, including gynaecological exams, and to take regular blood tests for sexually transmitted diseases (art. 16).

**The State party should ensure that these medical examinations are carried out in an environment where privacy is safeguarded and in taking the greatest care to preserve the dignity of women being examined.**

#### **Trafficking**

(23) While it notes the new programmes that the State party has adopted to combat human trafficking and sexual exploitation of women and children, the Committee expresses its concern at persistent reports of trafficking of women and children for sexual and other exploitative purposes and the lack of information on prosecutions and sentences in matters of trafficking (art. 16).

**The State party should increase its efforts to combat trafficking in women and children and take effective measures to prosecute and punish trafficking in persons and further strengthen international cooperation with countries of origin, transit and destination so as to further curb this phenomenon.**

#### **Domestic violence**

(24) The Committee is concerned about highly publicized cases of domestic violence, including children occurred in the State party during the period under review (art. 16).

**The State party should increase its efforts to ensure that urgent and efficient protection measures are put in place to prevent, combat and punish perpetrators of violence against women and children, including domestic violence and sexual abuse, and conduct widespread awareness-raising campaigns and training on violence against women and girls for officials (judges, lawyers, law enforcement agents and social workers) who are in direct contact with the victims, as well as for the public at large.**

#### **Use of net beds in psychiatric facilities**

(25) Notwithstanding the explanation offered by the delegation, the Committee is concerned at the continuing use of net beds as a measure of restraint in psychiatric and social welfare establishments (art. 16).

**The State party should immediately cease the use of net beds as it constitutes a violation of article 16 of the Convention.**

#### **Data collection**

(26) The Committee expresses its concern at the fact that for numerous areas covered by the Convention, the State party was unable to supply statistics, or appropriately disaggregate those in its possession, such as alleged cases of sexual violence in prisons; alleged abuse committed by law enforcement officials against asylum-seekers; cases of appeal for a stay of extradition based on possible refoulement rejected by the Independent Federal Asylum Senate (now, the new Asylum Court); and, the number of applicants who have been deported or extradited while awaiting a decision on an appeal of a decision denying asylum based on a procedural issue.

**The State party should establish an effective system to gather all statistical data disaggregated by sex, age and authenticity, relevant to the monitoring of the implementation of the Convention at the national level, including complaints, investigations, prosecutions, convictions of cases of torture and ill-treatment, trafficking and domestic and sexual violence, as well as compensation and rehabilitation provided to the victims.**

(27) The Committee also recommends that the State party include in its next periodic report information concerning compliance with its obligations under the Convention by Austrian armed forces deployed abroad.



(28) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet party, namely, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Protection of the Rights of Migrant Workers and Members of Their Families; and, the International Convention for the Protection of All Persons from Enforced Disappearance.

(29) The Committee invites the State party to submit a core document in accordance with the requirements for the preparation of a common core document established in the harmonized guidelines for the submission of reports approved by the international human rights treaties bodies (HRI/GEN/2/Rev.6).

(30) The State party is urged to ensure wide circulation of the report submitted to the Committee and of the Committee's concluding observations through official websites, the media and non-governmental organizations.

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

(32) The State party is invited to submit its sixth periodic report by 14 May 2014.

#### **58. Cameroon**

(1) The Committee against Torture considered the fourth periodic report of Cameroon (CAT/C/CMR/4) at its 930th and 944th meetings (CAT/C/SR.930 and 944) held on 28 April and 7 May 2010, and adopted, at its 950th and 951st meetings (CAT/C/SR.950 and 951), held on 12 May 2010, the concluding observations as set out below.

#### **A. Introduction**

(2) The Committee welcomes the submission of the fourth periodic report of Cameroon, which was in compliance with the reporting guidelines, as well as the replies to the list of issues (CAT/C/CMR/Q/4 and Add.1). However, it regrets that the State party has not replied to the letter of 17 February 2006, in which the Rapporteur responsible for following up the Committee's concluding observations regarding Cameroon (CAT/C/CR/31/6) requested additional information.

(3) The Committee expresses its appreciation for the constructive dialogue held with the high-level delegation of the State party, and thanks it for the written replies to the questions raised by Committee members.

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

(4) The Committee notes with satisfaction that, under article 45 of the Constitution of 1972, as revised on 18 January 1996, international treaties and agreements ratified by the State party, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention"), take precedence over domestic legislation.

(5) The Committee notes with satisfaction the legislative and institutional advances made by the State party since the consideration of the third periodic report (CAT/C/34/Add.17), particularly:

(a) Decree No. 2004/320 of 8 December 2004 on the organization of the Government and the transfer of prison administration to the Ministry of Justice;

(b) Decree No. 2005/122 of 15 April 2005 on the organization of the Ministry of Justice and the creation of the Directorate for Human Rights and International Cooperation;

(c) Act No. 2005/006 of 27 July 2005 on the status of refugees;

- (d) Act No. 2005/007 of 27 July 2005 on the Code of Criminal Procedure;
- (e) Act No. 2005/015 of 29 December 2005 on combating smuggling and trafficking in children.
- (6) The Committee welcomes the ratification by the State party, on 18 May 2004, of the United Nations Convention against Transnational Organized Crime and two of its three protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Air and Sea.
- (7) The Committee notes with satisfaction the ratification, on 28 March 2009, of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.
- (8) The Committee welcomes the fact that the State party has agreed to host the United Nations Subregional Centre for Human Rights and Democracy in Central Africa and its unwavering support for the Centre's activities.
- (9) The Committee notes with satisfaction the State party's cooperation with the European Union in the context of the Programme to Improve Detention Conditions and Respect of Human Rights.

### **C. Main areas of concern and recommendations**

#### **Definition of torture and appropriate penalties**

(10) The Committee has noted that article 132 bis of the Criminal Code contains a definition of torture but regrets that, in spite of repeated requests, the State party has not provided it with a copy of the text. The Committee is therefore unable to assess whether or not the State party fully incorporated the definition of torture under articles 1 and 4 of the Convention. Moreover, the Committee notes with concern that domestic legislation does not provide for the imposition of sentences that take into account the seriousness of the offence (arts. 1 and 4).

**The State party should provide the Committee with the necessary information for it to assess whether or not the State party has incorporated into its Criminal Code a definition of torture that complies with articles 1 and 4 of the Convention. The Committee emphasizes that the definition of torture should set out clearly the purpose of the offence, provide for aggravating circumstances, include the attempt to commit torture as well as acts intended to intimidate or coerce the victim or a third person, and refer to discrimination of any kind as a motive or reason for inflicting torture. The definition should also criminalize torture inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The State party should also ensure that the provisions criminalizing acts of torture and making them punishable by criminal penalties are proportional to the seriousness of the acts committed.**

#### **Fundamental legal safeguards**

(11) The Committee takes note of the provisions in articles 37 and 116 of the Code of Criminal Procedure, under which persons who have been arrested are provided every reasonable facility to contact family members, obtain legal advice and consult a physician. Nevertheless, the Committee is concerned by information it has received indicating that, in practice, detainees, from the time of their arrest, rarely benefit from the guarantees provided for in the Code of Criminal Procedure. In addition, the Committee is deeply concerned by the fact that police custody, limited to 48 hours and renewable once with the authorization of the State prosecutor, is not observed in practice and that arrests are not registered

immediately. It is especially concerned by credible allegations that law enforcement officials use extensions of police custody to extort money (arts. 2 and 11).

**The State party should, without delay, implement measures to ensure that all basic guarantees are applied to all suspects from the moment of their arrest, in particular the rights to: access to a lawyer; to be examined by an independent physician; to contact a relative or friend; to be informed of one's rights from the moment of detention, including the right to be informed of the charges; and to be brought promptly before a judge. Furthermore, the authorities should systematically and regularly update detention registers, which should contain the name of every detainee, the identity of arresting officials, the date of the detainee's admission and release, and all other information required for such registers.**

#### **Accessible complaints mechanism and legal aid**

(12) The Committee is concerned by allegations that victims and especially women victims of torture or cruel, inhuman or degrading treatment have difficulty accessing justice. It is also concerned that legal assistance is available only to accused persons who face a life sentence or capital punishment (arts. 2 and 11).

**The State party should take steps to facilitate access to justice for all victims of torture or cruel, inhuman or degrading treatment and make legal aid available to all those persons who need it, regardless of the sentences they face.**

#### **Habeas corpus**

(13) The Committee notes the provisions in the Code of Criminal Procedure on habeas corpus and compensation for improper pretrial detention. However, it is concerned that a writ of habeas corpus must be accompanied by an order of release from the State prosecutor. It is also concerned that a claims commission set up under article 237 of the Code of Criminal Procedure is still not working (art. 2).

**The State party should revise its Code of Criminal Procedure to allow anyone with a writ of habeas corpus to be released immediately. The State party should also activate the claims commission without delay.**

#### **Pretrial detention**

(14) In spite of the State party's explanations, the Committee remains deeply concerned by the high number of persons held in pretrial detention – 14,265 compared with 8,931 convicted prisoners in 2009. It is also concerned that the maximum period of pretrial detention provided for under article 221 of the Code of Criminal Procedure, 12 months in the case of ordinary offences and 18 months for serious offences, is not observed (art. 2).

**The State party should take urgent steps to reduce the period of pretrial detention, in particular by ensuring that the maximum detention periods provided for under pretrial detention legislation are observed and by applying the principle that pretrial detention should be viewed as an exceptional measure.**

#### **Prison conditions**

(15) While taking note of projects initiated by the State party, with support from the international community, and the State party's commitment, made at the time of its universal periodic review (A/HRC/11/21/Add.1, recommendation 76 [14, 21 and 33]), to improve prison conditions, the Committee remains deeply perturbed by the deplorable living conditions in places of detention. The Committee has received reports of prison overcrowding; violence among prisoners; corruption (such as the renting of prison cells and sale of medical equipment); the lack of hygiene and adequate food; health risks and inadequate health care; the violation of the right to receive visits; and reports that some

persons awaiting trial have been held in prison for a period longer than the sentence they face. It is also concerned by the use of civil imprisonment, in conformity with article 564 of the Code of Criminal Procedure, which means that persons, including minors, who have completed their sentences may be held in detention for a further period of from 20 days to 5 years, depending on how much money they owe. The Committee is also concerned by reports that there is no systematic separation of minors from adults, of persons in pretrial detention from convicts, or between men and women, and that female prisoners can be guarded by male staff (arts. 2, 11 and 16).

**The State party should take urgent steps to bring conditions in all places of detention, including gendarmerie and police stations, into line with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173) and, in particular:**

(a) **Reduce prison overcrowding by favouring non-custodial penalties in its policy on crime, including probation, suspended sentences, community service, along with avenues of out-of-court dispute settlement, such as mediation. Similarly, it should increase judicial and non-judicial staff. As for children in conflict with the law, the State party should ensure that imprisonment is used only as a last resort;**

(b) **Improve the quality of food and health care provided to prisoners;**

(c) **Take appropriate measures to put an end, once and for all, to alleged corruption and ransom demands in prisons;**

(d) **Strengthen judicial supervision of prison conditions;**

(e) **Revise the provisions of the Code of Criminal Procedure on civil imprisonment and devise other means to allow detainees to pay off their debts;**

(f) **Reorganize prisons so that persons awaiting trial are detained separately from convicted prisoners, improve detention conditions for minors, ensuring that they are always detained separately from adults, and further develop alternative detention centres for minors away from prisons;**

(g) **Take measures to ensure that female prisoners are separated from male prisoners and guarded by female staff only;**

(h) **Provide a detailed report on the results achieved and/or difficulties encountered in the development of the programme to improve prison conditions by Cameroon and the European Development Fund between December 2006 and December 2010.**

(16) The Committee is deeply concerned about the high number of deaths in custody. Statistics provided by the State party show that 178 prisoners died between January and October 2008, and that in 38 of those cases no cause of death was specified. It is equally concerned by reports of excessive use of armed force by the security forces during escape attempts by prisoners (arts. 2, 11 and 16).

**The State party should take urgent measures to prevent violence between and against prisoners, as well as deaths in custody. It should ensure that all cases of violence and death in custody are the subject of immediate, impartial, thorough and, where appropriate, forensic medical investigation, and that the persons responsible are brought to justice and convicted. It should be made easier for prisoners to lodge complaints.**

(17) While welcoming the State party's study aimed at a review of Decree No. 92/52 of 27 March 1992, the Committee is concerned about the use in prisons of chains and solitary

confinement as disciplinary measures, which may constitute cruel, inhuman or degrading treatment (arts. 11 and 16).

**The Committee encourages the State party to repeal the decree on disciplinary measures in prison and to find methods consistent with the Convention for handling prisoners who pose a security risk.**

#### **Journalists and human rights defenders**

(18) The Committee is concerned about allegations that journalists and human rights defenders are the subject of harassment, arbitrary arrest, torture, cruel, inhuman or degrading treatment, and death threats, and that such acts go unpunished. Although taking note of the detailed information supplied by the State party and, in particular, of the administrative investigation into the death in custody, on 22 April 2010, of the journalist Mr. Germain Cyrille Ngota (also known as Bibi Ngota) the Committee is concerned about the high number of journalists and human rights defenders who have been imprisoned and about allegations of torture and cruel, inhuman or degrading treatment. It is also concerned about reports that the security forces put down demonstrations by journalists who were protesting over the circumstances of the death in custody of a journalist (arts. 2, 11, 12 and 16).

**The State party should take effective measures to put an end to the harassment, arbitrary arrest, torture, cruel, inhuman or degrading treatment, and death threats to which journalists and human rights defenders are exposed, and to prevent further acts of violence. In addition, it should ensure that a thorough and effective inquiry is carried out quickly and that the perpetrators of such acts are duly punished. Moreover, the Committee joins the United Nations Educational, Scientific and Cultural Organization (UNESCO) in its call for a thorough forensic medical investigation into the death of the journalist Mr. Ngota in Kondengui prison.**

#### **Events of February 2008**

(19) The Committee takes note of the investigations into the events of February 2008 and of the report drawn up in 2009, although it has not received a copy. It also notes the administrative inquiry made into allegations of human rights violations, especially the right to life, by security forces, which concluded that they had acted in self-defence. However, the Committee is concerned about credible reports from a variety of sources alleging that the security forces have carried out, against adults and children, extrajudicial killings, arbitrary detention, acts of torture and cruel, inhuman or degrading treatment, and violations of the right to a fair trial. It is also concerned about the lack of thorough individual, impartial and forensic medical investigations of alleged extrajudicial killings and acts of torture and cruel, inhuman or degrading treatment by the security forces (arts. 2, 11, 12 and 16).

**The Committee recommends that a full, thorough and independent inquiry be opened into the events of February 2008. The State party should also publish the report on the inquiries it has carried out and submit a copy of it to the Committee for appraisal. At the same time, the State party should promptly begin thorough, impartial and forensic medical investigations into allegations of extrajudicial killings, acts of torture and cruel, inhuman or degrading treatment by the security forces and ensure that the perpetrators are brought to justice and sentenced appropriately.**

#### **Impunity**

(20) While welcoming the information transmitted by the State party on the prosecution of members of the security forces for violations of the Convention, the Committee remains seriously concerned about:

(a) Credible allegations that investigations and prosecutions relating to acts of torture and cruel, inhuman or degrading treatment are not carried out systematically and that perpetrators who are convicted receive light sentences that are not proportional to the seriousness of their crimes;

(b) The fact that prior authorization from the Ministry of Defence is required to prosecute gendarmes and military personnel for offences committed in military barracks or while on active duty;

(c) The lack of measures to protect complainants and witnesses against ill-treatment and intimidation after they lodge complaints or give evidence, which means that only a limited number of complaints are lodged for acts of torture or cruel, inhuman or degrading treatment;

(d) Article 30, paragraph 2, of the Code of Criminal Procedure, under which “the officer, judicial police officer or law enforcement officer who carries out the arrest requests that the person to be arrested accompany him or her and, if the person refuses, uses whatever force is necessary in proportion to the resistance met”;

(e) The lack of exhaustive statistics on the number of investigations and prosecutions of law enforcement officers for acts of torture or cruel, inhuman or degrading treatment (arts. 2, 12, 13 and 16).

**The State party should demonstrate its firm commitment to eliminating the persistent problem of torture and impunity and:**

**(a) Publicly and unambiguously condemn the use of all forms of torture, addressing in particular law enforcement officers, the armed forces and prison staff, and including in its statements clear warnings that any person committing or participating in such acts or acting as an accomplice shall be held personally responsible before the law and shall be liable to criminal penalties;**

**(b) Take immediate steps to ensure that, in practice, all allegations of torture and ill-treatment are the subject of prompt, impartial and effective investigations and that those responsible — law enforcement officers and others — are prosecuted and punished without the need for prior authorization from their superiors or from the Ministry of Defence. Investigations should be conducted by a fully independent body;**

**(c) Ensure that, in cases of alleged torture, suspects are suspended from duty immediately for the duration of the investigation, particularly if there is a risk that they might otherwise be in a position to obstruct the investigation;**

**(d) Ensure that, in practice, complainants and witnesses are protected from any ill-treatment and acts of intimidation related to their complaint or testimony;**

**(e) Revise article 30, paragraph 2, of the Code of Criminal Procedure and ensure that any act of torture and cruel, inhuman or degrading treatment is met with prosecution and the appropriate convictions;**

**(f) Compile relevant and comprehensive statistics as soon as possible on complaints, inquiries, legal proceedings, convictions and sentences passed in cases of torture or cruel, inhuman or degrading treatment.**

#### **Constitutional Council**

(21) The Committee notes with satisfaction the establishment on 21 April 2004 of the Constitutional Council as the body regulating State institutions. However, it notes with concern that this institution has yet to start work, as its members have not been appointed. It

also notes that doubts remain over whether members of the Constitutional Council may renew their terms of office (art. 2).

**The State party should expedite the process of appointing members to the Constitutional Council and ensure that this institution begins its work as soon as possible. It should consider reviewing Acts Nos. 2004/004 and 2004/005 of 21 April 2004 concerning the organization and functioning of the Constitutional Council and establishing the status of its members in order to remove any doubts over the renewal of council members' terms of office.**

**Body for monitoring law enforcement agencies or "Police des Polices"**

(22) While noting the establishment in 2005 of a Special Police Oversight Division, the so-called "Police des Polices", attached to the Department for National Security, the Committee remains concerned about this institution's lack of independence and objectivity. It is concerned that inquiries into allegations of unlawful acts, including torture or cruel, inhuman or degrading treatment, committed by the police, are carried out by police officials of the Special Police Oversight Division. In this regard, the Committee is concerned that only a few complaints against police officials are admitted, give rise to prompt, impartial and exhaustive investigations, and lead to prosecutions and convictions (arts. 2, 12, 13 and 16).

**The State party should establish a body that is independent of the police and ensure that allegations of torture and other cruel, inhuman or degrading treatment or punishment are the subject of prompt, impartial, thorough and effective investigations.**

**Military justice**

(23) The Committee takes note of Act No. 2008/015 on the organization of military justice. However, it is concerned about the degree to which military justice applies to civilians, in cases of offences under legislation on combat weapons, defence, robbery with firearms and all related offences (art. 2).

**The Committee recalls the conventional jurisdiction of military justice, which should be confined to crimes committed in the context of military service, and recommends that the State party review its legislation in order to exclude offences by civilians, including those that contravene legislation on military weapons and side arms, armed robbery and all related offences, from the jurisdiction of military justice.**

**Terminating criminal prosecutions in the "social interest" or for "public order"**

(24) The Committee notes with concern that the current Code of Criminal Procedure contains a provision under which the Ministry of Justice may terminate criminal prosecutions in the "social interest" or for "public order". While noting article 2 of Act No. 2006/022, which specifies the organization and functioning of administrative courts and contains provisions that penalize the abuse of authority, as well as the claim by the State party that this procedure has only been invoked once since it came into force in 2006, the Committee is concerned by the absence of appeals against the decision of the Ministry of Justice, as well as the lack of a definition of the terms in article 64 of the Code of Criminal Procedure (arts. 2, 12 and 13).

**The State party should review the Code of Criminal Procedure in order to ensure that all criminal proceedings lead to the acquittal or conviction of the accused. Any decision by the Ministry of Justice to terminate criminal proceedings, even in the "social interest" or for "public order", should be open to judicial appeal.**

**Acts regarding the state of emergency and the maintenance of law and order**

(25) The Committee notes with concern that Act No. 90/047 of 19 December 1990 on the state of emergency is in force. Given the guarantees in article 2, paragraph 2, of the Convention, the Committee notes with concern that the legislation on the state of emergency and Act No. 90/054 concerning the maintenance of law and order allow, under a state of emergency, for periods in police custody of two months, renewable once, and, in cases of banditry, for periods of police custody set at 15 days, also renewable (art. 2).

**The State party should ensure that international principles governing states of emergency are respected, and in particular review the need for maintaining its state of emergency legislation in the light of the criteria laid down in article 4 of the International Covenant on Civil and Political Rights, to which Cameroon has been a party since 1984. The State party should also adhere strictly to the absolute prohibition of torture, in accordance with article 2, paragraph 2, of the Convention, which states that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.**

**Systematic monitoring of places of detention**

(26) The Committee notes the adoption of Act No. 2004/016, which established the National Commission on Human Rights and Freedoms in accordance with the Paris Principles (General Assembly resolution 48/134, annex) and that the Commission has been granted “B” status by the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). Nevertheless, the Committee is surprised that the Commission participated in the consideration of the report of Cameroon as part of the State party’s delegation rather than as an independent body. In addition, the Committee notes the low number of prison visits (according to information from the State party and the Commission, the latter visited only eight prisons between 2000 and 2010) and the lack of proper follow-up on the part of the authorities approached by the Commission. The Committee also notes that some NGOs have accreditation enabling them to visit prisons, but is concerned by reported difficulties in gaining access to prisons and the low number of prison visits carried out by NGOs (arts. 2, 11 and 13).

**The State party should provide all the human and financial resources necessary to enable the National Commission on Human Rights and Freedoms to carry out its mandate, and should guarantee its independence. The Committee encourages the State party to abolish the voting rights of representatives of the Administration on the National Commission on Human Rights and Freedoms. The State party should take all appropriate steps to enable NGOs to carry out periodic, independent, unannounced and unrestricted visits to places of detention.**

**Training on the prohibition of torture**

(27) While acknowledging the State party’s significant efforts in providing human rights training to State officials, the Committee is concerned that the information, education and training provided to law enforcement officials, prison staff, army personnel, judges and prosecutors are inadequate and do not cover all the provisions of the Convention, in particular the non-derogable nature of the prohibition of torture and the prevention of cruel, inhuman or degrading treatment or punishment. The Committee also notes with concern that medical personnel working in detention facilities receive no specific and comprehensive training based on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) to detect signs of torture or cruel, inhuman or degrading treatment (arts. 10 and 15).



The State party should strengthen its training programmes for all law-enforcement and military personnel on the absolute prohibition of torture and cruel, inhuman or degrading treatment, as well as those for prosecutors and judges on the State party's obligations under the Convention. The programmes should include the inadmissibility of confessions and statements obtained as a result of torture. The State party should also ensure that all medical personnel dealing with detainees receive adequate training on detecting signs of torture or cruel, inhuman or degrading treatment, in accordance with international standards as set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

#### **Non-refoulement**

(28) The Committee welcomes Cameroon's stance on refugees but regrets that the implementing decree of Act No. 2005/006 of 27 July 2005 on the status of refugees has not yet been adopted. It is concerned about the power of officials at border crossings to turn away persons judged to be undesirable and to decide on whether or not a person may enter the State party's territory. It also regrets the lack of information on legal remedies aimed at ensuring that such persons are not in real danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment in the receiving country, or subsequently being deported to another country in which they would be in real danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment (art. 3).

**The Committee recommends that the State party adopt, as a matter of urgency, the implementing decree of Act No. 2005/006 of 27 July 2005 on the status of refugees. The State party should also revise its current procedures and practices in the area of expulsion, refoulement and extradition in order to fulfil its obligations under article 3 of the Convention.**

#### **Practices harmful to women**

(29) The Committee reiterates its previous concluding observations on the subject of harmful practices such as female genital mutilation and breast ironing in some parts of the country and among refugees in Cameroon. The State party has not taken sustained and systematic action to eliminate these practices (CAT/C/34/Add.17, para. 11 (c)) (arts. 1, 2, 10 and 16).

**The Committee recommends that the State party pass legislation to prohibit female genital mutilation and other harmful traditional practices, in particular breast ironing, no matter what the circumstances, and to ensure its effective enforcement. It also urges the State party to devise programmes to offer alternative sources of income to those who earn their living by performing female genital mutilation and other harmful traditional practices. It should also step up efforts, through information programmes, to raise awareness and educate both women and men regarding the pressing need to put an end to the practices of female genital mutilation and breast ironing.**

#### **Violence against women**

(30) The Committee is concerned about the high rate of violence against women and girls, especially the widespread domestic violence that continues to go unpunished. In addition, it reiterates its previous recommendation, in which it encouraged the State party to amend its legislation to end the exemption from punishment of rapists who marry their victims, where the victims were minors when the crime was committed (CAT/C/CR/31/6, para. 11 (d)) (arts. 1, 2, 10 and 16).

**The Committee recommends that the State party raise public awareness, through information and education programmes, of the fact that all forms of violence against**

women and girls constitute a violation of the Convention. The Committee urges the State party to ensure that violence against women and girls, including domestic violence, rape (even marital rape), and all forms of sexual abuse, is made a criminal offence, that perpetrators are prosecuted and punished and that their victims are rehabilitated, and that female victims of violence may seek immediate redress, protection and compensation. In addition, the Committee urges the State party to remove any impediments to access to justice by women and girls and recommends that legal assistance be made available to victims of violence. Moreover, the Committee reiterates its previous recommendation on the amendment of legislation that exempts from punishment rapists who marry their victims.

#### **Collection of statistical data**

(31) The Committee notes that it did receive some statistical data but regrets the lack of detailed disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and cruel, inhuman or degrading treatment attributed to members of the security forces, as well as on trafficking in persons, domestic violence and sexual violence (arts. 1, 2, 12, 13, 14 and 16).

**The State party should establish an effective system for collecting statistics to allow monitoring of the national implementation of the Convention, especially on complaints, investigations, criminal prosecutions, convictions and compensation paid in cases of torture and ill-treatment, violence among prisoners, trafficking in persons and domestic and sexual violence. The Committee realizes that the collection of personal data raises sensitive confidentiality issues, and emphasizes that appropriate measures should be taken to avoid misuse of data.**

(32) The Committee takes note of the State party's response to the recommendation made in the course of the universal periodic review that it ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and that it set up a national preventive mechanism (A/HRC/11/21/Add.1, Recommendation 76 [1]), and encourages it to take all the necessary steps to ratify it as soon as possible.

(33) The Committee encourages the State party to continue working with the Centre for Human Rights and Democracy in Central Africa, the subregional bureau of the Office of the United Nations High Commissioner for Human Rights, in order to implement the Committee's recommendations.

(34) The State party should establish effective mechanisms to collect data and generate criminal and criminology statistics and all statistics relevant to monitoring of the nationwide implementation of the Convention. The State party should thus provide in its next periodic report the following data, which will facilitate the Committee's assessment of the implementation of its obligations under the Convention:

- (a) Statistics on the capacity and population of every prison in Cameroon, including data disaggregated by gender and age group (adults/children), and differentiating between prisoners in pretrial detention and convicts;
- (b) Statistics on violence in detention centres and police and gendarmerie stations;
- (c) Statistics on complaints of alleged torture and action taken;
- (d) Statistics on corruption among law enforcement officials and penalties imposed;
- (e) Statistics on cases of extradition, expulsion or refoulement;

(f) Statistics on violence against women and children and outcomes of prosecutions initiated.

(35) The State party is encouraged to disseminate widely the reports submitted by Cameroon and the concluding observations of the Committee in the appropriate languages and by all appropriate means, including through the media and NGOs.

(36) The Committee invites the State party to update its core document of 19 June 2000 (HRI/CORE/1/Add.109) in accordance with the harmonized guidelines on reporting, approved recently by the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.6).

(37) The Committee urges the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, which it signed on 6 February 2007.

(38) The Committee requests the State party to provide it, within one year, with information on the follow-up to the Committee's recommendations in paragraphs 14, 18, 19 and 25 above.

(39) The Committee requests the State party to submit its fifth periodic report by 14 May 2014 at the latest.

#### 59. **France**

(1) The Committee against Torture considered the consolidated fourth to sixth periodic reports of France (CAT/C/FRA/4-6) at its 928th and 931st meetings, held on 27 and 28 April 2010 (CAT/C/SR.928 and 931), and adopted the following concluding observations at its 946th meeting, held on 10 May 2010 (CAT/C/SR.946).

#### **A. Introduction**

(2) The Committee welcomes the consolidated fourth to sixth periodic reports of France, which broadly comply with the guidelines on the form and content of periodic reports.

(3) The Committee appreciated the quality of France's well documented written replies to the list of issues (CAT/C/FRA/Q/4-6 and Add.1) and the additional information provided orally during the consideration of the report. The Committee also appreciated the constructive dialogue that took place with the delegation representing the State party and thanks it for its clear and straightforward answers to the questions raised by Committee members.

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

(4) The Committee takes note with satisfaction of:

(a) The State party's ratification of the Optional Protocol to the Convention and the related establishment, under the Act of 30 October 2007, of the post of Inspector-General (*Contrôleur général*) of places of deprivation of liberty, which constitutes a national preventive mechanism within the meaning of the Optional Protocol;

(b) The State party's accession, on 2 October 2007, to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

(c) The State party's ratification, on 23 September 2008, of the International Convention for the Protection of All Persons from Enforced Disappearance;

(d) The State party's ratification, on 18 February 2010, of the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

(5) The Committee also notes with satisfaction:

(a) The introduction, under the Act of 20 November 2007, of a legal remedy with automatic suspensive effect against any decision to refuse entry following an application for asylum lodged at the frontier;

(b) The adoption of the Act of 4 April 2006, which strengthens the prevention and punishment of conjugal violence and violence against children and increases the penalties for violence against women.

(6) The Committee also welcomes the construction project now under way aimed at a substantial increase in prison capacity.

(7) The Committee also notes the proactive measures taken by the State party to increase the number of convicted persons eligible for alternative sentencing, in part as a result of the introduction, under the Prisons Act of 24 November 2009, of house arrest with electronic surveillance as an alternative to pretrial detention.

(8) The Committee notes with satisfaction the Ministry of Justice action plan of 2009 to prevent suicide in prison, and would welcome regular updates on its implementation, including in the overseas territories.

(9) The Committee notes with interest the establishment of a procedure to allow the newly created Office of the Inspector-General of the National Gendarmerie to make unannounced visits to police custody facilities and to monitor the reception facilities for complainants in neighbourhood police units.

(10) The Committee welcomes the abolition, on 16 August 2007, of the “security rotation” system in prisons, whereby prisoners were subjected to repeated transfers. The Committee also notes that the matter of *Khider v. France* (European Court of Human Rights judgement of 9 July 2009) was placed on the agenda of the Committee of Ministers in March.

(11) The Committee notes with satisfaction the creation of two telephone hotlines for reporting conjugal ill-treatment and violence and abuse against children (3977 and 3919, respectively). The Committee also commends the bill to introduce a reference to psychological violence in the Criminal Code.

(12) The Committee further notes with satisfaction the State party’s announcement that it was considering legislative reform aimed eventually at divesting a person of an honour awarded if the person is suspected of having committed a violation of the Convention or any other serious violation of international law.

### **C. Subjects of concern and recommendations**

#### **Definition of torture**

(13) While the Committee recognizes that the State party’s criminal law punishes acts of torture and acts of barbarity and violence, and while it takes note of the judgements brought to its attention in which acts of torture have been penalized, the Committee remains concerned at the absence in the French Criminal Code of a definition of torture strictly in line with article 1 of the Convention (art. 1).

**The Committee reiterates its earlier recommendation (CAT/C/FRA/CO/3, para. 5) that the State party incorporate in its criminal law a definition of torture that is in strict conformity with article 1 of the Convention. Such a definition would meet on the one hand the need for clarity and predictability in criminal law, and on the other the need under the Convention to draw a distinction between acts of torture committed by or at the instigation of or with the consent or acquiescence of a public official or any other person acting in an official capacity, and acts of violence committed by non-**

**State actors. The Committee reiterates its recommendation that torture be made an imprescriptible offence.**

#### **Non-refoulement**

(14) While taking note of the information provided to the Committee by the State party to the effect that the relevant numbers have fallen since 2008, the Committee remains concerned at reports that 22 per cent of asylum applications submitted in 2009 were dealt with under the so-called priority procedure, which does not allow for an appeal with suspensive effect against an initial rejection by the French Office for the Protection of Refugees and Stateless Persons (OFPRA). An applicant may therefore be returned to a country where he is at risk of torture before the National Court on the Right of Asylum can hear his request for protection. In the absence of statistics concerning petitions lodged against removal orders on grounds of risk of torture, or for annulments of removal orders by the administrative court under article 3, the Committee is not convinced that the priority procedure offers adequate safeguards against removal where there is a risk of torture (art. 3).

**The Committee recommends that the State party introduce an appeal with suspensive effect for asylum applications conducted under the priority procedure. It also recommends that situations covered by article 3 of the Convention be submitted to a thorough risk assessment, notably by ensuring appropriate training for judges regarding the risks of torture in receiving countries and by automatically holding individual interviews in order to assess the personal risk to applicants.**

(15) The Committee notes with satisfaction that, following the entry into force of the Act of 20 November 2007, asylum-seekers at the border now have the right of appeal with suspensive effect against a decision refusing entry for the purposes of asylum, but is concerned at the very short time limit for submitting such an appeal (48 hours), at the fact that the language used for the appeal must be French and at the fact that the administrative judge may reject the appeal by court order, thereby depriving the applicant of a hearing at which he may defend his case, and of procedural guarantees such as the right to an interpreter and a lawyer (art. 3).

**The Committee recommends that any appeal relating to an asylum application submitted at the border be subject to a hearing at which the applicant threatened with removal can present his case effectively, and that the appeal be subject to all basic procedural guarantees, including the right to an interpreter and counsel.**

(16) The Committee is also concerned at the particular difficulties encountered by asylum-seekers in places of deprivation of liberty such as holding centres, who are required to submit their application within five days of being notified of their right to do so, under the Code on the Entry and Residence of Aliens and the Right of Asylum. Such a time limit is not compatible with applicants' need to submit a credible case establishing a risk in the event of return, which requires, among other things, the gathering of evidence and testimony, as well as other documentation from their country of origin (art. 3).

**Like the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to France, from 27 September to 9 October 2006, the Committee recommends that the State party allow sufficient time and provide all essential procedural guarantees for asylum applicants held in an administrative holding centre, without, however, unduly extending the holding period on that account.**

(17) Since issuing its previous observations and recommendations, the Committee remains concerned at the provisions of the Act of 10 December 2003 that introduce the concepts of "internal asylum" and "safe countries of origin", which do not guarantee

absolute protection against the risk of persons being returned to a State where they might be tortured. This is borne out by the absence of precise information regarding the documentary sources used in drawing up the list of “safe countries of origin” or how often the list is updated. Moreover, it is interesting to note that, according to OFPRA, refugee status or subsidiary protection was granted to around 35 per cent of persons from so-called “safe countries of origin” in 2008 (art. 3).

**The Committee reiterates its recommendation that the State party take appropriate measures to ensure that applications for asylum by persons from States to which the concepts of “internal asylum” or “safe country of origin” apply are examined with due consideration for the applicant’s personal situation and in full conformity with the provisions of article 3 of the Convention.**

(18) The Committee deplores the fact that it has received several documented allegations regarding the return of persons to countries where they risked being subjected to acts of torture or cruel, inhuman or degrading treatment or punishment, and from persons sent back to their country of origin who reported being arrested and subjected to ill-treatment on arrival, in some cases despite interim protection measures ordered by the Committee or the European Court of Human Rights (art. 3).

**The Committee reiterates its recommendation that the State party take the necessary steps to guarantee at all times that no person is expelled who is in danger of being subjected to torture if returned to a third State.**

#### **Universal jurisdiction**

(19) While acknowledging that any person present in French territory who is suspected of having committed acts of torture may be prosecuted and tried in the State party under the French Code of Criminal Procedure, the Committee nevertheless remains concerned about the limitations that the bill imposes on the scope of universal jurisdiction, in particular by introducing a requirement for suspects to be normally resident in France. The Committee is also concerned that the bill to bring French law into line with the Rome Statute of the International Criminal Court is still not on the National Assembly’s agenda for adoption, despite having been adopted by the Senate in June 2008 (arts. 5, 6, 7 and 13).

**The Committee reiterates its recommendation that the State party guarantee the right of victims to effective remedy against violation of the Convention, in particular by establishing its jurisdiction over any offence committed by a suspect present in its territory, in accordance with article 5 of the Convention. The Committee further recommends that the normal residence requirement for alleged perpetrators be replaced by a requirement that they be simply present in the territory, in accordance with article 6.**

#### **Training of law enforcement officers**

(20) The Committee takes note of the information provided by the State party regarding the new initial training curricula for officers and constables, and of the fact that the Prisons Act of 24 November 2009 has introduced a Code of Ethics for the prison service, but it remains concerned at the lack of information received about the content of initial and in-service training on the human rights instruments. The Committee would particularly appreciate details of training protocols and of any subsequent evaluation of the training performed (art. 10).

**The Committee would like more information concerning the State party’s evaluation of the training given to police, prison and medical officers, with reference to specific indicators. The Committee also recommends that the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) be made part of staff training.**

**The Committee would also like to receive details from the State party of any training given to the private security firms used by the State party, both in its home territory and abroad.**

(21) The Committee remains particularly concerned about the persistent allegations that it has received regarding ill-treatment by law enforcement officers of detainees and other persons in their charge (art. 16).

**The State party should take steps to ensure that all allegations of ill-treatment at the hands of law enforcement officers are promptly investigated in the course of transparent and independent inquiries, and that the perpetrators receive appropriate punishment.**

**The Committee would also appreciate information about the Note apparently circulated by the Office of the Inspector-General of the National Police in October 2008 concerning the methods used by law enforcement agencies to restrain suspects or persons against whom removal orders have been issued, which have already resulted in cases of death by asphyxiation (Mohamed Saoud in 1998 and Abdelhakim Ajimi in 2007).**

**Provisions concerning the custody and treatment of arrested, detained and imprisoned persons**

*Police custody*

(22) The Committee remains concerned about the amendments to the Act of 9 March 2004, which, under the special procedure applicable in cases of terrorism and organized crime, delay access to a lawyer until the 72nd hour of police custody. These provisions are likely to give rise to violations of the terms of article 11 of the Convention, since it is during the first few hours after an arrest that the risk of torture is greatest, particularly when a person is being held incommunicado. The Committee also remains concerned about the frequent use of pretrial detention and the duration of such detention (arts. 2 and 11).

**The Committee reiterates its previous recommendation that the State party take appropriate legislative measures to guarantee immediate access to a lawyer during police custody, in accordance with article 11 of the Convention. The Committee further recommends that steps be taken to reduce the use of pretrial detention and the duration of such detention.**

*Interrogations*

(23) While noting with satisfaction that the Act of 5 March 2007 makes video recording of questioning by the police or a judge compulsory, except in cases involving minor offences, the Committee notes that the Act does not apply to persons accused of terrorism or organized crime, failing special authorization by the Public Prosecutor or investigating judge. In addition, the law does not provide for the installation of video surveillance cameras in all areas of police stations and gendarmeries where persons may be held in custody, including passageways (arts. 11 and 16).

**The Committee recommends that the State party make video recording of interrogations of all persons questioned a standard procedure, and install video surveillance cameras throughout police stations and gendarmeries in order to extend and strengthen the protection afforded to detainees in police custody.**

*Prison conditions and criminal policy*

(24) The Committee welcomes the creation of the post of Inspector-General of places of deprivation of liberty by the Act of 30 October 2007, as well as the steps taken by the State party to address the critical problem of prison overcrowding, notably by building new

prison facilities, including in its overseas territories. The Committee also takes note of the State party's research into the possibility of wider use of alternative non-custodial measures. However, the Committee is still seriously concerned about the level of prison overcrowding, which, despite significant improvements in certain establishments, remains alarming, especially in the overseas territories. While acknowledging the information provided by the State party in relation to the Ministry of Justice Action Plan of June 2009, the Committee is also concerned about the reported suicide rate, as well as about the frequency of violent incidents among detainees (arts. 11 and 16).

**In addition to the necessary enlargement of the prison infrastructure undertaken by the State party, and in the light of the abundant recent criminal legislation aimed at introducing stricter penalties and reducing recidivism, with as a direct corollary increased use of custodial sentences, the Committee invites the State party to carry out a major review of the effects of its recent criminal policy on prison overcrowding, in the light of articles 11 and 16.**

**In particular, the Committee recommends that the State party aim for wider use of non-custodial measures as an alternative to the prison sentences handed down at present. The Committee further recommends that the State party provide details about specific action taken regularly to implement the recommendations issued by the Inspector-General of places of deprivation of liberty following visits, including in the case of detainees suffering from psychiatric disorders.**

#### *Waiting areas*

(25) While noting the efforts the State party has made to improve the conditions prevailing in waiting areas, including those at airports, by setting up a ministerial working group to deal with the problems of minors in such waiting areas, the Committee remains deeply concerned about the announcement, in connection with the bill on immigration, integration and nationality of 31 March 2010, that waiting areas will be set up at all the State party's borders for foreign nationals entering outside a border crossing point, which means that all such waiting persons will fall under a regime devoid of the procedural guarantees applicable outside such areas, notably the right to see a doctor, to speak to a lawyer, and to be assisted by an interpreter (arts. 11 and 16).

**The Committee recommends that the State party take steps to ensure that living conditions in waiting areas are in conformity with the requirements of articles 11 and 16 of the Convention, ensuring in particular that minors are shielded from acts of violence by maintaining a strict segregation between minors and adults, and rigorously applying the provisions stipulating that an ad hoc guardian must be assigned to all minors and that any removal proceedings must guarantee their safety, taking account of their vulnerability and with due respect for their person. In addition, the State party is encouraged not to extend the current waiting areas, and to pay particular attention to the implementation and follow-up of the recommendations made by the Inspector-General of places of deprivation of liberty after visits to existing waiting areas.**

#### *Suicide in custody*

(26) The Committee is deeply concerned by the fact that the State party is described as one of the countries of Europe with the highest number of suicides in prisons. Furthermore, according to the figures provided to the Committee, more than 15 per cent of the prisoners who took their own lives in 2009 were being held in disciplinary blocks at the time (art. 16).

**The Committee recommends that the State party take all necessary measures to prevent suicide in custody. In addition, it should, under the supervision of the Public**



**Prosecutor, take steps to ensure that solitary confinement remains an exceptional measure of limited duration, in line with international standards.**

*Imposition of differing detention regimes*

(27) The Committee is concerned to note that the Prison Act of 24 November 2009 appears to give the prison authorities broad discretion, under article 89, to place prisoners under different detention regimes on the basis of a classification according to subjective criteria such as a prisoner's personality or the danger he might represent. A regime of this kind can by definition lead to arbitrary treatment of prisoners in the course of their sentences. It is possible, for example, to envisage a situation in which a disciplinary punishment or denial of access to certain entitlements while in detention could, if repeated and imposed without due justification or in an arbitrary manner, constitute cruel, inhuman or degrading treatment or punishment under article 16 (art. 16).

**The Committee encourages the State party to take appropriate steps to exercise supervision over the discretionary element of the powers vested in the prison authorities, and the corresponding risk of arbitrary action. Such supervision should be exercised through regular visits by existing independent supervisory mechanisms, which should in turn immediately report to the competent judicial authorities any irregularity or practice that could be considered an arbitrary measure, particularly when the measure in question involves solitary confinement.**

**Body searches**

(28) The Committee takes note of the information submitted by the State party to the effect that the current search procedure under the Prisons Act of 24 November 2009 is more restrictive than the previous one. In the light of two judgements of the European Court of Human Rights (in *Khider v. France* and *Frérot v. France*), the Committee nevertheless remains concerned at the intrusive and humiliating nature of body searches, especially internal. The Committee is further concerned that the procedure regulating the frequency and methods of searches in prisons and detention centres is determined by the prison authorities themselves. Furthermore, the Committee is concerned at the lack of information available regarding the follow-up to *Khider v. France* and *Frérot v. France*, particularly at the lack of indicators allowing an assessment to be made of any future risk of a violation of article 16 occurring as a result of body searches (art. 16).

**The Committee recommends that the State party exercise strict supervision of body search procedures, especially full and internal searches, by ensuring that the methods used are the least intrusive and the most respectful of the physical integrity of persons, and in all cases in compliance with the terms of the Convention. The Committee further recommends the implementation of the electronic detection methods announced by the State party, and the widespread use of such mechanisms, in order to eliminate the practice of body searches altogether.**

*Secure detention*

(29) The Committee is deeply concerned about so-called secure detention (*rétention de sûreté*), established by Act No. 2008-174 of 25 February 2008 on secure detention, and the declaration of exemption from criminal responsibility for reason of mental disorder, and supplemented by Act No. 2010-242 of 10 March 2010, which seeks to reduce the risk of criminal recidivism and establishes various provisions of criminal procedure. Besides the obvious challenge to the principle of legality in criminal proceedings that this measure implies, due to the lack of objectively definable and predictable material criteria, the lack of a causal link between the offence and the possible penalty, and the fact that it can be applied retroactively, the measure, which does not appear to set a time limit on detention, is also likely to raise issues under article 16 (art. 16).

**The Committee strongly recommends that the State party consider repealing this provision, which clearly violates the fundamental principle of legality in criminal law, and may potentially conflict with article 16.**

*Use of conducted energy devices during detention*

(30) The Committee is particularly concerned by the State party's announcement of its decision to test conducted energy devices (tasers) in places of detention. The Committee notes that the Council of State, in a decision of 2 September 2009, repealed the decree of 22 September 2008 authorizing the use of tasers by municipal police officers. The Committee further notes a lack of detailed information on their use, the status of persons who have already used them, and specific precautions, such as training and supervision of staff concerned (arts. 2 and 16).

**Reiterating its concern that the use of these weapons may cause severe pain, constituting a form of torture, and in some cases may even lead to death, the Committee would welcome up-to-date information from the State party on the use of this weapon in places of detention.**

**Impartial investigation**

(31) The Committee remains concerned about the system of discretionary prosecution, which allows the State prosecutor to determine whether or not to prosecute the perpetrators of acts of torture and ill-treatment involving law enforcement officers, or even not to order an investigation, which is clearly contrary to article 12 of the Convention. The Committee further notes with concern the lack of specific, up-to-date information that would make it possible to compare the number of complaints received concerning actions by law enforcement officers that are contrary to the Convention and any ensuing criminal justice or disciplinary responses (art. 12).

**The Committee reiterates its previous recommendation (CAT/C/FRA/CO/3, para. 20) whereby compliance with the provisions of article 12 of the Convention requires a derogation from the system of discretionary prosecution, so as to oblige the competent authorities to launch impartial inquiries systematically and on their own initiative wherever there are reasonable grounds for believing that an act of torture has been committed in any territory under its jurisdiction, in order to effectively ensure that the perpetrators of such crimes do not remain unpunished.**

(32) Apart from the principle of discretionary prosecution vested in the State prosecutor, which limits the possibility of prosecution *proprio motu*, the Committee is concerned about the consequences of the Léger Report of 1 September 2009, whose findings, if ratified by Parliament, could ultimately lead to the abolition of investigating judges, which would mean that all investigations would be directed by the Public Prosecutor's Office, with direct consequences for the independence of investigations (arts. 2, 12 and 13).

**The Committee invites the State party to take all steps to ensure the independence and integrity of judicial proceedings, and of investigations by existing independent supervisory mechanisms, in particular by permitting direct referral and providing them with the means to carry out their supervisory mission independently, impartially and transparently.**

**Right of complaint**

(33) The Committee remains concerned about the way cases are referred to the National Commission on Security Ethics (CNDS), which cannot accept complaints directly from a person who has been subjected to torture or cruel, inhuman or degrading treatment, but only through a member of Parliament, the Prime Minister or the Children's Ombudsman (art. 13).

**The Committee recommends that the State party take steps to allow the National Commission on Security Ethics to accept complaints directly from anyone claiming to have been subjected to torture or cruel, inhuman or degrading treatment in any territory under its jurisdiction, in accordance with article 13 of the Convention.**

(34) The Committee is concerned about the consequences, as part of the constitutional reform of 2008, of establishing a “Defender of Rights” (*Défenseur des droits*) combining, according to the draft constituting legislation, the mandates of the Ombudsman of the Republic, the Children’s Ombudsman and the National Commission on Security Ethics. The plan also appears to include the eventual disappearance of the Inspector-General of places of deprivation of liberty, whose functions could also be incorporated into the new institution (art. 13).

**The Committee invites the State party to take all necessary measures to ensure the effective and uninterrupted functioning of the supervisory mechanism established under the Optional Protocol to the Convention (i.e. the Inspector-General of places of deprivation of liberty) and of other complementary independent bodies, which, in addition to their mediating role, have an essential part to play in monitoring rights, thereby ensuring the implementation of the Convention, each in their particular field of expertise.**

#### **Interim measures of protection**

(35) The Committee is concerned that the State party considers that it is not required to respond to requests for interim measures made by the Committee (with reference to communications Nos. 195/2002, *Brada v. France* (17 May 2005) and 300/2006, *Tebourski v. France* (1 May 2007)).

**Recalling that rule 108 of the Committee’s rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would offer asylum-seekers alleging a serious risk of torture only theoretical protection, the Committee urges the State party to review its policy in this respect, by considering requests for interim measures in good faith and in accordance with its obligations under articles 3 and 22 of the Convention.**

#### **Human trafficking**

(36) The Committee is concerned at the lack of information provided by the State party regarding the problems of human trafficking and sexual exploitation. The Committee has not yet been adequately informed regarding the prevalence of these practices, nor regarding the measures taken by the State party to combat the trafficking of women and children on its territory (arts. 2 and 16).

**The Committee recommends that the State party adopt a national plan aimed at combating the trafficking of women and children in all its forms, which would include both measures of criminal justice concerning the prosecution of traffickers and measures for the protection and rehabilitation of victims. The Committee recommends to that end that the State party strengthen its international cooperation with the countries of origin, trafficking and transit, and see to the allocation of sufficient resources for policies and programmes in this area. The Committee also recommends that the State party keep it informed of developments in this respect.**

(37) The Committee recommends that the State party include in its next periodic report data disaggregated by age, gender and ethnicity on:

(a) The number of complaints received containing allegations of torture or cruel, inhuman or degrading treatment;

(b) The corresponding number of investigations, prosecutions and convictions for acts of torture or ill-treatment that have occurred since the last report was submitted to the Committee.

(38) While taking note that defendants have the right to lodge a complaint themselves against what they consider to be libellous or defamatory complaints, the Committee would also welcome data on the specific measures taken by the State party to protect persons who report violence by law enforcement officials against acts of intimidation, particularly in the form of complaints for defamation or possible reprisals.

(39) The Committee would further welcome information concerning the implementation of the Convention in territories where its armed forces are deployed.

(40) The Committee recommends that the State party widely disseminate the Committee's conclusions and recommendations throughout its territory, in all appropriate languages, through official websites, the press and non-governmental organizations.

(41) The Committee invites the State party to update its core document dated 7 October 1996 (HRI/CORE/1/Add.17/Rev.1), following the harmonized reporting guidelines recently approved by the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.6).

(42) The Committee requests the State party to provide, within one year, information on its implementation of the Committee's recommendations contained in paragraphs 14, 21, 24, 28, 30 and 36 above.

(43) The State party is invited to submit its seventh periodic report by 14 May 2014.

#### **60. Jordan**

(1) The Committee considered the second periodic report of Jordan (CAT/C/JOR/2) at its 932nd and 934th meetings (CAT/C/SR.932 and 934), held on 29 and 30 April 2010, and adopted, at its 947th and 948th meetings (CAT/C/SR.947 and 948), the following concluding observations.

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

(2) The Committee welcomes the submission of the second periodic report of Jordan, which, while generally following the Committee's guidelines for reporting, lacks statistical and practical information on the implementation of the provisions of the Convention and relevant domestic legislation. The Committee regrets that the report was submitted 13 years late, which has prevented the Committee from conducting an ongoing analysis of the implementation of the Convention in the State party.

(3) The Committee expresses its appreciation for the extensive written responses to its list of issues (CAT/C/JOR/Q/2/Add.1), which provided important additional information, and the information about the range of Jordanian institutions that participated in the preparation of the report. The Committee also appreciates the dialogue with and the additional oral information provided by the delegation of the State party. The Committee regrets that the delegation did not include representatives of the General Intelligence Directorate who had also been involved in the preparation of the report.

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

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

(a) United Nations Convention against Transnational Organized Crime, in May 2009, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, in June 2009;

(b) Convention on the Rights of Persons with Disabilities, in March 2008;

(c) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in May 2007;

(d) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in December 2006; and

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

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

(a) The establishment, in 2003, of the National Centre for Human Rights of Jordan as an independent national human rights institution;

(b) The establishment, in 2008, of the Ombudsman's Bureau as an independent body with a mandate to receive complaints as of 1 February 2009;

(c) The adoption by the Government of Jordan, in 2007, of the comprehensive plan for the development and modernization of correctional facilities and rehabilitation centres as well as the closing of the Al-Jafr Correction and Rehabilitation Center in December 2006;

(d) Governmental support to the implementation of the *Karama* Project, in cooperation with civil society actors: the overall objectives of the Project are elimination of the use of torture and ill-treatment, the criminalization of such acts and the investigation, prosecution and punishment of such acts according to the international legal obligations of Jordan; and

(e) The establishment of an "Integrated Services and Family Justice Centre" within the Dar Al-Wifaq Women's Shelter.

(6) The Committee notes with appreciation the information provided by the delegation that the death penalty has not been applied in the State party since March 2006.

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

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

(7) The Committee notes with appreciation that the Convention was published in the Official Gazette in 2006, thereby rendering the Convention part of the national legislation and thus enforceable in national courts. However, referring to its previous concluding observations (A/50/44, para. 165), the Committee regrets that, although the State party has been party to the Convention since 1991, the State party representatives acknowledged that it had not been in effect domestically until its publication (arts. 2 and 10).

**For the purposes of ensuring that incorporation of the Convention takes place and preventing conduct in contradiction to the Convention, the State party should provide extensive training to its State authorities, law enforcement and other relevant officials and the judiciary to make them fully aware of the provisions of the Convention.**

#### **Overarching considerations regarding implementation**

(8) Despite the Committee's requests for specific statistical information in the list of issues and the oral dialogue with the State party, the Committee regrets that such information was not provided. The absence of comprehensive or disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security, intelligence and prison personnel, or on administrative detention, trafficking, ill-treatment of migrant workers and domestic and

sexual violence severely hampers the identification of many abuses requiring attention (arts. 2, 12, 13 and 19).

**The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, disaggregated by gender, age and nationality, as well as information on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, administrative detention, trafficking, ill-treatment of migrant workers and domestic and sexual violence, and outcomes of all such complaints and cases. The State party should, without delay, provide the Committee with the above-mentioned detailed information, including on the number of complaints of torture that have been submitted since 1995, the date of the consideration of the previous State party's report.**

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

(9) While noting that a definition of torture has been included in article 208 of the Penal Code, the Committee regrets that Chapter Two of the Jordanian Constitution which provides for "Rights and Duties of Jordanians" does not contain a specific prohibition of torture and other forms of ill-treatment or punishment. The Committee is also concerned that article 208 refers to "any type of torture impermissible according to law" which implies the existence of forms or instances of torture that are permitted by law. The Committee is further concerned that torture is not treated as a serious crime but rather as a misdemeanour, and is not subject to penalties appropriate to its gravity (between six months' and three years' imprisonment). The Committee regrets the absence of a provision in the Penal Code that would exclude the crime of torture from statutes of limitations and it is concerned that statutes of limitations applicable to provisions of the Penal Code may prevent investigation, prosecution and punishment of these grave crimes (arts. 1 and 4).

**The State party should incorporate the prohibition of torture into the Constitution to show a real and important recognition of torture as a serious crime and human rights abuse and to fight impunity. By naming and defining the offence of torture in accordance with articles 1 and 4 of the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself. The State party should also ensure that perpetrators are prosecuted and convicted in accordance with the gravity of the acts, as required by article 4 of the Convention. To this end, the State party should amend its Penal Code to increase the penalties, as appropriate.**

**The State Party should further review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention so that acts of torture, attempts to commit torture, and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.**

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

(10) The Committee is deeply concerned by the numerous, consistent and credible allegations of a widespread and routine practice of torture and ill-treatment of detainees in detention facilities, including facilities under the control of the General Intelligence Directorate and the Criminal Investigations Department. The Committee is further concerned that such allegations are seldom investigated and prosecuted and that there would appear to be a climate of impunity resulting in the lack of meaningful disciplinary action or criminal prosecution against persons of authority accused of acts specified in the Convention. The Committee is particularly concerned that, while no official has ever been prosecuted for having committed torture under article 208 of the Penal Code, there have

been prosecutions under article 37 of the Public Security Law of 1965 as the *lex specialis*, calling solely for disciplinary action. The Committee is further concerned that article 61 of the Penal Code stipulates that a person shall bear no criminal responsibility for acts performed in accordance with orders given by someone of higher rank (arts. 2, 4, 12 and 16).

**As a matter of urgency, the State party should take immediate and effective measures to prevent acts of torture and ill-treatment throughout the country, including announcement of a policy that would produce measurable results in the eradication of torture and ill-treatment by State officials.**

**The State party should ensure that all allegations of torture and ill-treatment are investigated promptly, effectively and impartially, and that the perpetrators are prosecuted and convicted in accordance with the gravity of the acts, as required by article 4 of the Convention.**

**Furthermore, the State party should amend its legislation in order to explicitly provide that an order from a superior officer or a public authority may not be invoked as a justification of torture.**

#### **Complaints and prompt and impartial investigations**

(11) The Committee expresses its concern at the high number of complaints of torture and ill-treatment by law enforcement, security, intelligence and prison officials, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated. Additionally, the Committee is concerned that the existing investigative bodies lack the necessary independence to review individual complaints about misconduct committed by security officials. The Committee also regrets the lack of detailed information, including statistics, on the number of complaints of torture and ill-treatment and results of all the proceedings, both at the penal and disciplinary levels, and their outcomes (arts. 11, 12 and 16).

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

**The State party should prosecute the perpetrators and impose appropriate sentences on those convicted in order to ensure that State officials who are responsible for violations prohibited by the Convention are held accountable.**

#### **Fundamental legal safeguards**

(12) The Committee expresses its serious concern at the State party's failure in practice to afford all detainees, including detainees held in facilities of the General Intelligence Directorate and the Public Security Department, all fundamental legal safeguards from the very outset of their detention. Such safeguards comprise the right to have prompt access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards. The Committee is particularly concerned that an arrested person does not have the right to a lawyer from the moment of arrest, and especially during the initial stage between arrest and being presented to the prosecutor, and that articles 63, paragraph 2, and

64 of the Code of Criminal Procedure allow prosecutors exceptionally to interrogate detainees without lawyers in “cases of urgency”. The Committee is further concerned that meetings between lawyers and clients reportedly take place in the presence of numerous other persons and attorneys (arts. 2, 11 and 12).

**The State party should promptly implement effective measures to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention. These include, in particular, the right to have prompt access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear expeditiously before a judge. The State party should also take effective measures to ensure that “lawyers’ rooms” provide for the confidentiality of client-lawyer consultations.**

#### **Administrative detention**

(13) According to the State party’s report (para. 45), the Government has instructed administrative court judges to end the practice of administrative detention and a large number of persons have been released. However, the Committee expresses its grave concern at the continued practice of administrative detention (according to the replies to the lists of issues, more than 20,000 persons were held in such detention in 2006 and this was reduced to approximately 16,000). The Committee is particularly concerned that the Crime Prevention Act of 1954 provides for administrative governors affiliated with the Ministry of Interior to detain any person suspected of perpetrating a crime or any person considered a threat to the community for a period of one year, renewable indefinitely. The Committee is also concerned that the Code of Criminal Procedures currently allows arrest and detention without explicit legal grounds, as well as arrest without objective supportive grounds (arts. 2, 11 and 16).

**Since administrative detention puts detainees beyond judicial control and hence at risk of measures in contravention of the Convention, the Committee urges the State party to take all appropriate measures to abolish the practice of administrative detention. The State party should amend the domestic laws cited above to bring them into conformity with international human rights standards and the State party’s obligations under the Convention.**

#### **Special court system**

(14) The Committee expresses its grave concern at the special court system within the security services, including the State Security Court, the Special Police Court and the Military Tribunal of the General Intelligence Directorate, which have reportedly shielded military and security personnel alleged to be responsible for human rights violations from legal accountability. The Committee is concerned that transparency, independence and impartiality are jeopardized by this system and that the procedures in the special courts are not always consistent with fair trial standards (arts. 2 and 12).

**With reference to its previous recommendation (A/50/44, para. 175), the Committee calls on the State party to take immediate steps to ensure that the functioning of the State Security Court and other special courts are brought into full conformity with the provisions of the Convention and international standards for courts of law and, in particular, that accused persons are granted the right to appeal against decisions of the Court; alternatively, the State party should abolish such special courts.**

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

(15) The Committee appreciates the information from the representatives of the State party that a number of bodies, including the National Centre for Human Rights, the Grievances and Human Rights Office of the Public Security Department, some



international non-governmental organizations (NGOs) and the International Committee of the Red Cross perform periodic and regular visits to investigation and detention centres and rehabilitation facilities. However, it is concerned at the lack of systematic and effective monitoring and inspection of all places of detention, especially the facilities of the General Intelligence Directorate, and is concerned that visits to such places by national monitors, including the National Centre for Human Rights, have to be announced and carried out in response to prior requests, often accompanied by representatives of the Public Security Department following the memorandum of understanding concluded between the two institutions in March 2009. The Committee is also concerned that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment was reportedly denied access to such facilities during his visit to Jordan in June 2006 (arts. 2, 11 and 16).

**The Committee calls upon the State party to establish a national system to effectively monitor and inspect all places of detention, including the facilities of the General Intelligence Directorate, and follow up to ensure systematic monitoring. This system should include regular and unannounced visits by national and international monitors, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.**

#### **General Intelligence Directorate**

(16) Further to the Committee's previous concluding observations (A/50/44, para. 168), it expresses its concern at reports of torture and ill-treatment in the facilities of the General Intelligence Directorate and remains concerned that the General Intelligence Directorate continues to detain suspects arbitrarily and incommunicado, often for prolonged periods of time, and that detainees are reportedly deprived of access to judges, lawyers or doctors (arts. 2, 11 and 16).

**The Committee calls upon the State party to place all State security departments, and primarily the General Intelligence Department, under civilian authority and oversight, to establish an independent audit of these services, to limit the powers of the Directorate and to ensure separation of powers, in law and practice, between the authorities responsible for detention of suspects and those responsible for preliminary investigations.**

#### **Anti-terrorism measures**

(17) Recalling the absolute prohibition of torture, the Committee is concerned that the Prevention of Terrorism Act 2006 has a vague and overly broad definition of "terrorist activities". It is also concerned at the reported enhancement of the already excessive powers of the security officers (arts. 2 and 16).

**The Committee recalls that no exceptional circumstances whatsoever can be invoked as a justification for torture and, in accordance with relevant Security Council and other resolutions, anti-terrorism measures must be implemented with full respect for international human rights law. To this end, the State party should review the Prevention of Terrorism Act 2006 and amend it, as necessary, to bring it into conformity with international human rights standards.**

#### **Impunity for crimes committed in the name of honour, and rape**

(18) The Committee notes with concern that violence against women, as a form of discrimination against women, is a deeply rooted problem in Jordan and, as a result, a culture of impunity towards domestic and gender-based violence has evolved. In this respect, the Committee expresses its serious concern that crimes, where a family's "honour" is thought to be breached, often go unpunished, and when they are punished, the sentences are far less than for equally violent crimes without this "honour" dimension (arts. 1, 2, 4, 13 and 16).

The Committee calls upon the State party to amend, without delay, applicable provisions of the Penal Code to ensure that perpetrators of “honour” crimes do not benefit from a reduction of penalty under article 340; that perpetrators of premeditated “honour” crimes do not benefit from a reduction of penalty under article 98; and that article 99 is not applicable to “honour” crimes or other cases where the victim is related to the perpetrator. The Committee also urges the State party to ensure that “honour” crimes are treated as seriously as other violent crimes with regard to investigation and prosecution, and that effective prevention efforts are put in place.

(19) While noting information provided by the delegation that the State party is currently reviewing this issue, the Committee is gravely concerned at the practice of allowing perpetrators of rape to escape prosecution by marrying their victims (art. 308 of the Penal Code), or allowing families to waive their “right to complain” (arts. 1, 2, 4, 13 and 16).

**Recalling that numerous international judicial and quasi-judicial bodies have established that rape is a form of torture, the Committee calls upon the State party to withdraw the exculpatory provision in article 308 of the Penal Code and ensure that a rapist does not escape punishment by marrying his victim.**

#### **Domestic violence**

(20) Notwithstanding the adoption, in January 2009, of the new Protection from Family Violence Act, the Committee is concerned that the law fails to explicitly criminalize domestic violence or provide adequately for the prosecution of those who perpetrate it. According to the replies to the list of issues, the question of criminalization is left to the Penal Code. The Committee is also concerned that the new Law has a limited scope as it specifies as a condition that the perpetrator lives with the victim in the family home. The Committee further expresses its concern at the lack of data, including statistics on complaints, prosecutions and sentences related to domestic violence (arts. 1, 2, 4, 12 and 16).

**The State party should strengthen its efforts to prevent and combat violence against women and children, to ensure prompt, impartial and effective investigations of such acts and to prosecute and punish perpetrators. The State party is encouraged to participate directly in rehabilitation and legal assistance programmes and to conduct broader awareness-raising campaigns for officials (judges, law officers, law enforcement agents and welfare workers) who are in direct contact with the victims.**

**The State party should also strengthen its efforts in respect of research and data collection on the extent of domestic violence and it is requested to provide the Committee with statistical data on complaints, prosecutions and sentences in its next periodic report.**

#### **Protective custody**

(21) The Committee notes with concern that the Suppression of Offences Act of 1954 authorizes “protective custody” for women at risk of violence, which according to reports is akin to administrative detention, and that some women are still retained in such custody (arts. 2, 11 and 16).

**The Committee urges the State party to replace the practice of “protective custody” with other measures that ensure the protection of women without jeopardizing their liberty, and to accordingly transfer all women currently held in “protective custody” to other safe and rehabilitative shelters. To this end, the Committee encourages the State party to adopt a national plan for the protection of women in danger.**

### **Trafficking**

(22) While welcoming the adoption, in 2009, of the Human Trafficking Prohibition Act No. 9 which criminalizes all forms of human trafficking, the Committee expresses its concern at reports of trafficking in women and children for sexual and other exploitative purposes. The Committee is also concerned at the general lack of information on the extent of trafficking in the State party, including the number of complaints, investigations, prosecutions and convictions of perpetrators of trafficking, and on the practical measures adopted to prevent and combat such phenomena (arts. 1, 2, 4, 12 and 16).

**The State party should increase its efforts to prevent and combat trafficking of women and children, including by implementing the current laws combating trafficking, providing protection for victims and ensuring their access to medical, social, rehabilitative and legal services, including counseling services, as appropriate. The State party should also create adequate conditions for victims to exercise their right to make complaints, should conduct prompt, impartial and effective investigations into all allegations of trafficking and should ensure that perpetrators are brought to justice and punished with penalties appropriate to the nature of their crimes.**

### **Refugees, violations of article 3 and lack of investigations**

(23) The Committee regrets the absence of domestic legislation in the State party that guarantees the rights of refugees and asylum-seeking persons. The Committee expresses its concern at the absence of legal provisions, including in the Fugitive Offenders Act of 1927 or the Residence Alien Affairs Act No. 2 of 1973 that would explicitly prohibit the expulsion, refoulement or extradition of a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee is also concerned at reports that individuals have not been afforded the full protection provided for by article 3 of the Convention in cases of expulsion, return or deportation. Such cases include those of Maher Arar, Mohamed Farag Bashamilah and Salah Naser Salem Ali Darwish. The Committee is further concerned at reports that the cooperation of Jordan with other Governments in the context of the “war on terror” has resulted in additional human rights violations, including secret detentions and renditions of terrorism suspects, in breach of the Convention. In this respect, the Committee regrets the lack of information as to whether the State party is considering the establishment of an independent investigation to follow up on such allegations (arts. 3, 12 and 13).

**The State party should formulate and adopt domestic legislation guaranteeing the rights of refugees and asylum-seeking persons. The State party should also formulate and adopt a legal provision to implement article 3 of the Convention into its domestic law. Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or ill-treatment. Furthermore, the State party should establish an independent investigation to review and follow up on allegations of its involvement in “extraordinary renditions” and inform the Committee of the outcome of such investigation.**

### **Withdrawal of nationality**

(24) While acknowledging that more than 200,000 Palestinian refugees have been granted Jordanian citizenship, the Committee expresses its concern at the reported withdrawal of nationality from more than 2,700 Jordanians of Palestinian origin. Notwithstanding the explanation provided by the delegation and its statement that such allegations are a gross distortion of facts and numbers, the Committee notes with concern that such withdrawal is conducted in an arbitrary and random manner, with no clear basis in

law, thereby denying such persons basic citizenship rights and putting them at risk of expulsion without the guarantees pursuant to article 3 of the Convention (arts. 3 and 16).

**The Committee calls upon the State party to put an end to its arbitrary withdrawal of nationality from Jordanians of Palestinian origin.**

#### **Human rights defenders**

(25) The Committee notes with concern reports of threats against and harassment and intimidation of persons monitoring human rights in the State party and is concerned that this may hinder the operation and activities of civil-society monitoring groups and thus their capacity to function effectively (arts. 2, 12 and 16).

**The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities and exercise of human rights guarantees, to ensure the prompt, impartial and effective investigation of such acts, and to prosecute and punish perpetrators.**

#### **Children in detention**

(26) The Committee welcomes the efforts made by the State party to reform its juvenile justice system. However, the Committee notes with concern that, despite the information provided that the provisions of the Juvenile Act are being amended to raise the age of criminal responsibility to 12 years, the minimum age of criminal responsibility (7 years) remains below international standards, and there is a lack of alternatives to imprisonment. Furthermore, the Committee notes with concern that a juvenile who commits a crime with an adult is tried before the court competent to hear the charges against the adult (arts. 2, 11 and 16).

**The State party should, as a matter of urgency, raise the minimum age of criminal responsibility in order to bring it into line with generally accepted international standards. The State party should also take all necessary measures to develop and implement a comprehensive system of alternative measures to ensure that deprivation of liberty of juveniles is used only as a measure of last resort, for the shortest possible time and in appropriate conditions. Furthermore, the State party should ensure that juveniles are tried before juvenile courts.**

#### **Conditions of detention**

(27) While noting that prison and detention centre conditions have improved, including in the context of the Government's comprehensive plan for the development and modernization of correctional facilities and rehabilitation centres, the Committee remains concerned at continued reports of overcrowding, understaffing, inadequate food and health care, and ineffective pre-release and post-release programmes (arts. 11 and 16).

**The State party should continue to take effective measures to improve conditions in places of detention and to reduce overcrowding in such places, including through the application of alternative measures to imprisonment.**

#### **Training**

(28) The Committee takes note of the information included in the State party's report on training and awareness-raising programmes. However, the Committee regrets the lack of information on targeted training for security and intelligence personnel, judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, including methods to document the physical and psychological sequelae of torture (art. 10).

**The State party should further develop and strengthen educational programmes to ensure that all officials, including law enforcement, security, intelligence and prison**

officials, are fully aware of the provisions of the Convention, that reported breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. Furthermore, all relevant personnel should receive specific training on how to identify signs of torture and ill-treatment, including those that will investigate and document these cases. Such training should include the use of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). In addition, the State party should assess the effectiveness and impact of such training/educational programmes.

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

(29) While noting that plaintiffs are entitled to seek damages for any injury suffered in accordance with article 256 of the Civil Code, the Committee is concerned that Jordanian law does not include explicit provisions on the right of torture victims to fair and adequate compensation for damages caused by torture and that information is lacking on any treatment and social rehabilitation services, including medical and psychosocial rehabilitation, provided to these victims (art. 14).

**The State party should strengthen its efforts to provide victims of torture and ill-treatment with redress, including fair and adequate compensation and as full rehabilitation as possible. To this end, the State party should amend its legislation to include explicit provisions on the right of torture victims to fair and adequate compensation for damages caused by torture. Furthermore, the State party should provide information on redress and compensation measures ordered by the courts and provided to victims of torture, or their families, during the reporting period. This information should include the number of requests made, the number granted, and the amounts ordered and actually provided in each case. In addition, the State party should provide information on any on-going reparation programmes.**

#### **Coerced confessions**

(30) While noting the existence of article 159 of the Criminal Procedure Code which does not refer explicitly to torture, the Committee expressed its concern at reports that the use of forced confessions as evidence in courts is widespread in the State party. The Committee is also concerned at the lack of information on any officials who may have been prosecuted and punished for extracting such confessions (art. 15).

**The State party should take the necessary steps to ensure inadmissibility in court of confessions obtained as a result of torture in all cases in line with the provisions of article 15 of the Convention. The Committee requests the State party to firmly prohibit admissibility of evidence obtained as a result of torture in any proceedings, and provide information on whether any officials have been prosecuted and punished for extracting such confessions.**

#### **Women migrant domestic workers**

(31) The Committee notes the establishment, in 2006, of the Directorate of Domestic Workers, to monitor and regulate the practices of employment agencies. However, it expresses its concern at reports referring to widespread abuse of women migrant domestic workers, of which the vast majority is from South and South-East Asia, and against whom physical, psychological and sexual abuse is common (arts. 13 and 16).

**The State party should strengthen its measures to prevent violence and abuse directed against women migrant domestic workers in the State party by ensuring their right to lodge complaints against those responsible, and by ensuring that such cases are reviewed and adjudicated in a prompt and impartial manner by a competent oversight mechanism and that all employers and representatives of employment agencies who abuse migrant domestic workers are brought to justice.**

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

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

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

(35) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.6.

(36) The State party is encouraged to disseminate widely the reports submitted by Jordan to the Committee and these concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(37) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 10, 11, 18 and 31 above.

(38) The State party is invited to submit its third periodic report by 14 May 2014.

#### **61. Liechtenstein**

(1) The Committee against Torture considered the third periodic report of Liechtenstein (CAT/C/LIE/3 and Corr.1) at its 938th and 941st meetings (CAT/C/SR.938 and 941), held on 4 and 5 May 2010, and adopted, at its 948th meeting (CAT/C/SR.948), the following concluding observations as set out below.

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

(2) The Committee welcomes the third periodic report of Liechtenstein which was submitted, with some delay, and which follows in general terms the Committee's guidelines on the form and content of periodic reports. The Committee expresses its appreciation for the comprehensive written replies to the list of issues which provided important additional information and for with the provision of a translation of the 2009 annual report of the national preventive mechanism in due time for the consideration of the report.

(3) The Committee expresses its appreciation for the frank, constructive and fruitful dialogue held with the delegation of the State party, as well as for their extensive and precise replies provided orally and in writing in response to the questions and concerns expressed by the Committee.

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

(4) The Committee takes note with satisfaction the ratification by the State party of the following international human rights instruments during the reporting period:

- (a) Optional Protocol to the Convention against Torture in 2006;
- (b) International Convention on the Elimination of All Forms of Racial Discrimination in 2000;
- (c) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2001;
- (d) 1954 Convention relating to the Status of Stateless Persons in 2009;

(e) 1961 Convention on the Reduction of Statelessness in 2009.

(5) The Committee notes with satisfaction:

(a) The complete revision of the Execution of Sentences Act of 20 September 2007, which, *inter alia*, strengthens the legal safeguards relating to the right of sentenced prisoners to have access to a medical doctor;

(b) The establishment, under the revised Execution of Sentences Act (2007), in December 2007 of the Corrections Commission, which is also designated as the national preventive mechanism of the State party pursuant to its ratification of the Optional Protocol, and the active role of the State party in the drafting of the Protocol;

(c) The entry into force of the amended Code of Criminal Procedure on 1 January 2008 which, *inter alia*, guarantees the rights of all apprehended persons to inform a relative or another person of trust and a defence lawyer of their arrest and to remain silent.

(6) The Committee further notes with satisfaction:

(a) The establishment of the Equal Opportunities Commission with its operational Office of Equal Opportunities, the Ombuds Office for Children and Young People and the Victims Assistance Office;

(b) The support by the State party to United Nations mechanisms established to prevent and eradicate torture and other forms of ill-treatment, including its increased contribution to the United Nations Voluntary Fund for Victims of Torture and its support to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

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

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

(7) The Committee notes with satisfaction the constitutional amendments of 2003, according to which the prohibition of torture and inhuman treatment is an absolute prohibition and may not be undermined either by law or by emergency decree (art. 10, para. 2, of the Constitution) and of 2005, which prohibits “inhuman or degrading treatment or punishment” (27bis of the Constitution). The Committee also recognizes that, according to the monist legal system of the State party, the provisions of the Convention have become part of the domestic law as from the date of ratification. Notwithstanding these provisions, the Committee firmly believes that the incorporation into the domestic law of the State party of a distinct crime of torture based on the definition of article 1 of the Convention would directly advance the Convention’s overarching aim of preventing torture or ill-treatment (arts. 1 and 4).

**The Committee recommends that the State party incorporate into its domestic criminal law a distinct crime of torture in strict conformity with article 1 of the Convention. By naming and defining the offence of torture in accordance with articles 1 and 4 of the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention’s overarching aim of preventing torture, *inter alia*, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition of torture.**

#### **Appropriate penalties**

(8) The Committee, recalling that penalties that are commensurate with the gravity of the crime of torture are indispensable in order to have a successful deterrent effect, considers that the current criminal provisions of the State party under which acts of torture are prosecuted (two years’ imprisonment in the case of torment and neglect of a prisoner,

(art. 312 of the Criminal Code) and up to five years in the case of bodily injury (arts. 83–85 of the Criminal Code) provide for very lenient punishment. The Committee reminds the State party that, in accordance with the Convention, each State party should make these offences punishable by appropriate penalties which take into account their grave nature (art. 4).

**The State party should make the offences that amount to acts of torture punishable by appropriate penalties which take into account their grave nature, in accordance with article 4 of the Convention.**

#### **Statute of limitations**

(9) The Committee is also concerned that, as a result of criminalizing acts of torture pursuant to articles 83–85 and 312 of the Criminal Code, the statute of limitations with respect to offences that would amount to torture is limited to five years. In this respect, the Committee is concerned that the State party does not intend to amend the Criminal Code “so as to eliminate the statute of limitations applicable to cases of torture”. No justification for imposing time limits on the obligation of the State party to investigate and prosecute crimes of torture, including the lack of court decisions as referred to in the State party’s written reply, is acceptable (arts. 2, 4 and 12).

**The State party should ensure that acts amounting to torture are not subject to any statute of limitations.**

#### **Fundamental safeguards**

##### **The right to have access to a medical doctor**

(10) The Committee welcomes the new Execution of Sentences Act which, inter alia, guarantees the right of sentenced prisoners to be examined by a doctor upon admission or as soon as possible thereafter. The Committee is concerned, however, that the same right is not legally guaranteed to all persons deprived of their liberty as from the very outset of their detention. In this context, the Committee regrets that the new Public Health Act no longer contains an explicit provision regarding access to a doctor during police custody (former section 7a, para. 3 (b)) and that it is not clearly guaranteed by either the Criminal Code or the Code of Criminal Procedure. Also, while appreciating that the handouts of legal instructions on legal safeguards provided by the National Police to persons deprived of their liberty provide for the exercise of the right to access to a doctor as from the very outset of their detention, the Committee is concerned that the legal handouts to foreign nationals do not explicitly provide this right (arts. 2 and 11).

**The State party should ensure that the right of all persons deprived of their liberty, including foreign nationals, to have access to an independent doctor, if possible of their own choice, as from the very outset of their detention, is explicitly guaranteed in its domestic law.**

##### **Right to have access to a lawyer and to inform relatives**

(11) The Committee notes with appreciation that, pursuant to the revision of the Code of Criminal Procedures, “all apprehended persons” are legally guaranteed the right to have access to a defence lawyer and to inform a relative or another person of trust of their arrest “at the time of apprehension or immediately thereafter” (art. 128a). Noting its restrictions during interrogations, the Committee welcomes information by the State party that the Code of Criminal Procedure is under complete revision and will stipulate that any person being interviewed or interrogated by the police will have the right to have a lawyer present during the first police investigation. However, the Committee is concerned that, at present, the legal instructions handed out to foreign nationals provide the arrested person with the choice between the right to inform either a family member or a lawyer (arts. 2, 11 and 12).



**The State party should ensure the inclusion in the revised Code of Criminal Procedure the right of all persons deprived of their liberty to have access to a lawyer as from the very outset of their deprivation of liberty, without any restrictions. The legal instructions handed out to foreign nationals upon their arrest should be redrafted so as to guarantee in practice both the right to have access to a lawyer and to inform a family member.**

#### **Separation of responsibilities between corrections and investigations authorities**

(12) The Committee notes with concern the lack of separation of competencies between the Ministry of Justice and the Ministry of Home Affairs in the correctional system of the State party, and, as noted by the Corrections Commission, “the continuing competence and organizational influence of the police authorities with regard to the field of corrections”. The Committee notes with appreciation, however, that the recommendation of the Corrections Commission to this effect is currently examined in the light of expert advice from Austria (art. 2).

**The State party should ensure full and exclusive competence by the Ministry of Justice over the correctional system of the State party, as recommended by the Corrections Commission in 2008 and 2009.**

#### **Legal status, mandate and composition of the national preventive mechanism**

(13) The Committee welcomes the establishment of the Corrections Commission as the national preventive mechanism of the State party, which became operational in 2008. The Committee notes with appreciation reports on the existence of very good collaboration between the authorities and the Corrections Commission during its visits to Vaduz National Prison in 2009, the State party’s efforts to follow up and make public its recommendations, including the translation of its Annual Report 2009 into English. While noting the direct applicability of the Optional Protocol in the State party, the Committee is nevertheless concerned that the mandate of the Corrections Commission as the State party’s national preventive mechanism is not specified in the Execution of Sentences Act which still determines the number of visits that the Corrections Commission can carry out on an annual basis without notice. In addition, the Committee is concerned that article 17, paragraph 3, of the Execution of Sentences Act relating to the composition of the Corrections Commission, according to which at least two out of the five members should not be in the service of the National Public Administration, may compromise its independence (art. 2).

**The State party should amend the Execution of Sentences Act with a view to ensuring that the mandate and powers of the Corrections Commission as the national preventive mechanism of the State party are clearly specified in law in accordance with articles 17 to 23 of the Optional Protocol to the Convention. In this respect, attention should be paid to article 18, paragraph 4, of the Optional Protocol which calls upon States parties to give due consideration to the Paris Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights and to the importance of a public, inclusive and transparent process in the appointment of its members.**

#### **Non-refoulement, rights of refugees and asylum-seekers**

(14) The Committee notes the significant increase in the number of asylum applications in the State party during recent years, from an annual average of 66 applications (2004–2008) to 294 applicants in 2009. The Committee is particularly concerned about information received that asylum-seekers may not always have an opportunity to have their claim examined in substance. In this respect, the Committee notes with particular concern that the majority of asylum applications rejected, or otherwise closed, in 2009 concern two

States where the risk of torture or other forms of ill-treatment can be considered substantial. The Committee is also concerned at reports that Government officials exert pressure on asylum-seekers to leave voluntarily the State party, including by offering monetary rewards (art. 3).

(15) Noting that “preventive expulsion” to a “safe third country” is contingent, *inter alia*, on that State’s treaty obligation to consider the asylum request and the principle of non-refoulement, the Committee is concerned at reports that not all persons that have applied for asylum in Liechtenstein have had the opportunity to apply for asylum in the third State concerned (usually Switzerland and Austria), thus leaving such persons without sufficient safeguards against refoulement. In this respect, the Committee notes with concern the very short time period (24 hours) within which asylum-seekers “under preventive expulsion” may submit a request for restoration of the suspensive effect to competent authorities (art. 3).

**In order to fulfil its obligations under article 3 of the Convention, the Committee recommends that the State party:**

**(a) Ensure a substantive assessment and review on the merits of all asylum applications, including those submitted in 2009;**

**(b) Increase the time limit within which asylum-seekers under “preventive expulsion” may apply for restoration of the suspensive effect of the order and also guarantees their right to a proper hearing before the Administrative Court in cases of appeals on rejected requests for suspensive effect so as to ensure that those who are returned to “safe third countries” pursuant to “preventive expulsion” are guaranteed access to the asylum procedure in these States;**

**(c) Investigate allegations of payments by Government officials to asylum-seekers to persuade them to leave the State party in order to avoid having to undertake an in-depth assessment of the respective asylum application;**

**(d) Establish an effective data collection system which identifies: (i) the grounds for asylum requests, including requests that were based on the applicant’s fear of being subjected to torture or other forms of ill-treatment, and the number of approved requests in those cases; (ii) the number and outcome of appeals of rejected requests; and (iii) the number of approved asylum and long-term resident requests that were granted on the basis of the Convention.**

(16) While noting information from the State party that asylum-seekers are detained while undergoing deportation proceedings if they absconded in another country during pending proceedings and/or if they claim a false identity, the Committee is concerned at information that asylum-seekers have been held in detention solely on the basis of their illegal entry into the State party. While appreciating information that asylum-seekers held in administrative detention are offered legal counsel by the State party free of charge, the Committee is concerned at information received that such persons have had difficulties in contacting a lawyer and receiving legal aid (arts. 3, 11 and 16).

**The State party should ensure that detention of asylum-seekers is only used as a last resort for as short a time as possible in accordance with article 31 of the 1951 Convention relating to the Status of Refugees and that all asylum-seekers held in administrative detention have access to a lawyer and free legal aid.**

(17) The Committee notes with concern that the period of administrative detention to prepare or ensure deportation may be extended up to nine months and, in the case of minors between 15 and 18, up to six months (arts. 3, 11 and 16).

**The State party should consider reducing the permissible length of administrative detention in preparation for deportation, in particular for children under the age of 18 years. The State party is strongly recommended to do so in the framework of its revision of the Asylum Act and the Foreigners Act.**

#### **Asylum-seekers' accommodation**

(18) The Committee is concerned at information that, due to limited reception capacity (60 persons) of the Liechtenstein Centre for Refugees coupled with the sudden increase of asylum-seekers in 2009, asylum-seekers have been accommodated in underground shelters/bunkers deprived of daylight (arts. 3, 11 and 16).

**The State party should increase the reception capacity of the Refugee Centre, where asylum-seekers can benefit from health care, language classes, food coupons and pocket money, and draw up contingency plans to ensure that alternative accommodation that respects the dignity and rights of all asylum-seekers is made available in future emergency situations.**

#### **Jurisdiction over acts of torture**

(19) The Committee takes note of the bilateral treaty of 1982 between Liechtenstein and Austria on the accommodation of prisoners, according to which sentences longer than two years of imprisonment are executed in Austria. The Committee further notes that the treaty also applies to "persons who have committed a criminal offence under the influence of a mental disorder" against whom orders of preventive measures are issued and, where necessary, persons under the age of 18 years. While noting the application of Austrian law to such detainees, the Committee is concerned that the 1982 bilateral treaty does not contain any express safeguards for the prevention of torture and other forms of ill-treatment. Furthermore, the Committee expresses serious concern at information by the State party that there are "no procedures or mechanisms in place to ensure that the rights of persons imprisoned in Austria are upheld" with respect to the implementation of the treaty. The Committee takes note of the information that, in principle, the Austrian Corrections Commission is competent also in relation to Liechtenstein prisoners serving their sentence in Austria (arts. 2, 5, 12, 13 and 14).

**The Committee recommends that the State party re-negotiates the 1982 Treaty On Accommodation of Prisoners so as to ensure that the rights of persons deprived of their liberty under the Convention are guaranteed, through the monitoring of their implementation by the Corrections Commission of the State party or by another independent monitoring mechanism. The State party should also ensure that persons detained in Austria have the right to complain to an independent body regarding torture and ill-treatment by prison officers and have their complaints promptly and impartially investigated and prosecuted, and receive redress according to article 14 of the Convention.**

#### **Training and education**

(20) While noting with appreciation the information provided by the State party on initial and continuing training for prison staff, the Committee notes that, according to the report by the Corrections Commission, the training and supervisory courses for prison officers employed at Vaduz National Prison were not used in actual fact in 2009. The Committee also notes with appreciation that programmes of supervision, as recommended by the Corrections Commission, and the possibility of making them mandatory, are currently under discussion (art. 10).

**The State party should ensure that the mandatory initial and continuous training programmes, as well as programmes of supervision, for prison officers are effectively**

**implemented and attended so that they are fully aware of the rights of persons deprived of their liberty.**

(21) The Committee is concerned that no special training programme on the prohibition of torture and other forms of ill-treatment exists for medical personnel who receive their training abroad, whereby a “certain dependency therefore exists on the manner in which content of medical training is defined abroad”. The Committee furthermore notes that it has no information with respect to training of members of the judiciary and prosecutors in the State party on the Convention and the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) (art. 10).

**The State party should take measures to ensure that all medical personnel dealing with persons deprived of their liberty receive complementary training, in addition to education received abroad, on the prohibition and prevention of torture. The Committee recommends that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”) is integrated into such training programmes and into the training of those involved in the investigation of torture, such as judges and prosecutors, in addition to their training on the Convention against Torture. These programmes should be subject to regular assessment and evaluation.**

#### **Detention conditions**

(22) The Committee notes the limited holding capacity and the shortage of space and personnel resources of Vaduz National Prison. In particular, the Committee is concerned that the space restrictions and personnel limitations, has resulted, on occasions, in the removal of prisoners from the prison by police for interrogation without the presence of a corrections officer, contrary to applicable domestic law (art. 89 of the Execution of Sentences Act). The Committee is furthermore concerned at the fact that the national prison holds different categories of detainees, including convicted prisoners, prisoners on remand, detainees awaiting deportation and juveniles. While appreciating information on arrangements for separation between men and women and juveniles and adults, the Committee is concerned that separation between pretrial prisoners, persons detained for expulsion and convicted prisoners is not always possible. In this regard, the Committee notes with regret the discontinuation of a project initiated in 2002 aimed at better ensuring separation and infrastructure of the Vaduz National Prison subsequent to the result of a referendum (arts. 11 and 16).

**The State party should undertake an assessment of the detention facilities in Vaduz National Prison with a view to ensuring adequate personnel and space so as to conform to relevant international human rights standards. Immediate measures should also be taken to ensure that interrogations of prisoners by police always take place in the presence of a corrections officer. The Committee strongly recommends that the project initiated in 2002 to improve infrastructure and ensure better separation of detainees in Vaduz National Prison be reintroduced and completed.**

#### **Treatment of persons deprived of their liberty**

(23) The Committee is concerned with the practice by the National Police of covering the eyes of apprehended persons considered extremely dangerous and violent with black goggles and, until 2007, of covering the heads of such apprehended persons with a bag, and that such practices are justified on grounds of protecting the identity of the suspect and protecting the law enforcement officers. While appreciating that the practice of black goggles has been used only once in 2007 and once in 2008 by the State party officials, the Committee notes that the practice is still allowed by law and that it may still be used on

exceptional occasions. The Committee remains concerned that such a practice often makes the prosecution of torture virtually impossible (arts. 2, 11 and 16).

**The State party should ensure that the practice of covering the head or eyes of suspects by the National Police is abolished in law and in practice. The State party should introduce alternative measures which respect the inherent dignity of suspects while ensuring the safety and protection of police officers.**

(24) The Committee notes with appreciation that the practice of ensuring psychological care for inmates at the Vaduz National Prison through visits by staff of the Therapeutic Services Division of the Office of Social Affairs has been reintroduced as of 2010, pursuant to the recommendation by the Corrections Commission. In view of the absence of a full-time nurse or other medical personnel in the prison, the Committee furthermore expresses appreciation that the State party has initiated a process of assessing and evaluating the possibility of ensuring that medicaments are provided solely by medical personnel and not by corrections officers (arts. 11 and 16).

**The Committee recommends that State party considers the appointment of a part-time nurse or other medical staff member at Vaduz National Prison, with a view to ensuring that medicaments are provided by medical personnel only.**

### **Interrogations**

(25) While the Committee notes that all police interrogations have to be documented in writing, it is concerned that, at present, police interrogations are neither audio nor video recorded, with the exception of interviews with victims of sexual crimes (arts. 2, 11, 12 and 16).

**The State party should further improve interrogation rules and procedures of the National Police by amending the Code of Criminal Procedure with a view to introducing audio- and, preferably, video-recording of all police interrogations and questioning as part of the State's parties efforts to prevent torture and ill-treatment.**

### **Investigations into allegations of ill-treatment**

(26) The Committee notes with concern that some allegations of excessive use of force, tight-fitting handcuffs and verbal abuse by police at the time of apprehension were reported in 2007 by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe. In this respect, while noting the establishment in the same year of a special unit in the National Police tasked with investigating allegations in respect of certain serious criminal offences against police officers and other State officials, the Committee emphasizes the importance of the independence of the body carrying out such investigations (arts. 11, 12 and 16).

**The Committee strongly recommends that all allegations of ill-treatment by police should be investigated promptly and impartially by independent bodies and not by other members of the police force.**

### **Juvenile justice**

(27) Recalling information by the State party that Vaduz National Prison was not designed for the detention of juveniles, the Committee notes with concern information in the Annual Report 2009 of the Corrections Commission that, during the last quarter of 2009, juveniles, including one female person, were held in Vaduz National Prison, contrary to the principle of separation between adults and juveniles in accordance with international human rights standards. Also, while appreciating the reduction of the maximum length of pretrial detention for children under the age of 18 (art. 19, para. 2, of Juvenile Court Act), the Committee is concerned that it remains high (one year). The Committee is furthermore concerned that some juveniles sentenced to imprisonment serve their sentences in Austria

according to the 1982 bilateral treaty, which does not contain any safeguards for special protection for persons under the age of 18 years. The Committee reminds the State party that deprivation of liberty, and in particular pretrial detention, of juveniles should be used only as a measure of last resort and for the shortest appropriate period of time (arts. 11 and 16).

**The Committee recommends that the State party expands and reinforces alternative measures other than deprivation of liberty for children below the age of 18 in pretrial detention and in prison. In particular, in upholding the principle of separation of juveniles from adults, the State party should ensure that alternative measures are applied for persons under the age of 18 currently held in Vaduz National Prison and for the juvenile currently serving a sentence in Austria. It is recommended that the State party further reduce the maximum length of pretrial detention of juveniles by amending the Juvenile Court Act.**

(28) The Committee notes with concern that the State party does not intend to amend the Juvenile Court Act (sect. 21a, of the Juvenile Court Act), according to which a person of trust is present during the questioning of a juvenile by the police (or a judge) only if the juvenile so requests. The Committee believes that the presence of legal or other appropriate assistance should not be limited to the trial before the court or other judicial body, but also apply to all other stages of the process, beginning with the interviewing (interrogation) of the child by the police as is stated in general comment No. 10 (2007) on children's rights in juvenile justice of the Committee on the Rights of the Child (para. 52) (arts. 11 and 16).

**The State party is urged to change its position and amend article 21 of the Juvenile Court Act with a view to ensuring the presence of a person of trust during interrogation or questioning by police of children under the age of 18 without any request of the juvenile.**

#### **Involuntary civil placement**

(29) The Committee is concerned that the right of persons under involuntary placement to give their consent to treatment and the right to request at any time their own discharge from a psychiatric or social welfare establishment are not explicitly guaranteed by law. In this respect, the Committee notes with appreciation that the State party is considering a formulation regarding the right to request at any time one's own discharge as part of a future revision of the Social Welfare Act and that the courts interpret the provisions of article 13, paragraph 2, of the Social Welfare Act as empowering such persons to request their own discharge (arts. 2 and 16).

**It is strongly recommended that the State party amend the Social Welfare Act so as to expressly provide for the right of persons deprived of their liberty in involuntary civil placements to request at any time their discharge.**

#### **Domestic violence**

(30) The Committee notes with appreciation that the State party has approved the proposal for a revision of its sexual criminal law which will include domestic violence as an ex officio prosecution. The Committee is concerned, however, that offences of domestic violence are not statistically recorded as such in the crime statistics of the State party, since domestic violence is a collective term for several offences that may also be committed in another environment. Therefore, the State party is unable to provide any information on the number of cases of domestic violence and on the number of investigations, prosecutions and convictions as well as on the number of cases where redress was awarded by the courts. The Committee is also concerned at reports of allegations of violence against women, including spousal abuse. According to the police, there were 32 police interventions in cases of domestic violence during 2009. Regrettably, there has been no information as to

any investigations, prosecutions and convictions of the perpetrators undertaken by the appropriate authorities of the State party (arts. 1, 2, 12 and 16).

**The State party should ensure ex officio prosecution for all forms of domestic violence in its revised sexual criminal law. The State party should also ensure prompt and impartial investigation of all allegations of domestic violence and should prosecute and punish perpetrators. The Committee urges the State party to take all necessary measures to ensure that victims are effectively compensated and rehabilitated, noting the important role of the Victims Assistance Office in this regard. The State party should also strengthen its efforts in respect of research and data collection on the extent of domestic violence and is requested to provide the Committee with statistical data on complaints, prosecution and sentences, as well as on compensation, including full rehabilitation, awarded to victims in its next periodic report.**

#### **Trafficking in persons**

(31) The Committee notes the high number of foreign women engaged as dancers in seven nightclubs operating in the State party and that many of them originate from “origin countries” that top the list of human trafficking. While noting that no cases of human trafficking were recorded, the Committee is concerned at information that suggests that trafficking in women have occurred but was not reported. While welcoming the measures taken by the State party to prevent human trafficking and sexual exploitation in such settings, including mandatory information sessions for new dancers on their rights and duties, and the regular inspections of night clubs by the National Police and the Immigration and Passport Office, the Committee is concerned that the State party has not initiated any ex officio investigations into suspected cases of trafficking or undertaken a comprehensive analysis to fully assess the situation of this group of women who remain vulnerable to abuse and violations. This is particularly important in view of reports that, while prostitution is illegal in the State party, it was “tolerated” in nightclubs by the law enforcement agencies as it did not cause public offence (arts. 2, 14 and 16).

**The State party should initiate an analysis on the phenomenon of foreign women working as dancers in nightclubs and strengthen its efforts to prevent and combat human trafficking, including by investigating any allegation of suspected cases of human trafficking and provide victims with an effective remedy for fair and adequate compensation, including the means for as full rehabilitation as possible.**

(32) The Committee recommends that the State party ratify the core United Nations human rights treaties to which it is not yet party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

(33) The Committee invites the State party to submit a core document in accordance with the requirements for the preparation of a common core document established in the new harmonized guidelines for the submission of reports approved by the international human rights treaties bodies (HRI/GEN/2/Rev.6).

(34) The State party is urged to ensure wide circulation of the report submitted to the Committee and of the Committee’s concluding observations through official websites, the media and non-governmental organizations.

(35) The Committee requests the State party to provide information, within one year (by 14 May 2011), in response to the Committee’s recommendations in paragraphs 14, 15 (a), 30 and 31 of the present document.

(36) The State party is invited to submit its fourth periodic report by 14 May 2014.

**62. Switzerland**

(1) The Committee against Torture considered the sixth periodic report of Switzerland (CAT/C/CHE/6) at its 935th and 936th meetings, held on 30 April and 3 May 2010 (CAT/C/SR.935 and 936), and adopted the following concluding observations at its 948th meeting on 11 May 2010 (CAT/C/SR.948).

**A. Introduction**

(2) The Committee welcomes the sixth periodic report of Switzerland, prepared in accordance with the Committee's guidelines, and the replies to the list of issues (CAT/C/CHE/Q/6 and Add.1). It appreciates open and constructive dialogue with the State party's high-level and multisectoral delegation, as well as the additional information and explanations provided by the delegation to the Committee.

**B. Positive aspects**

(3) The Committee welcomes the ratification of the following international instruments:

(a) Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (24 September 2009);

(b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (19 September 2006);

(c) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (26 June 2002);

(d) Protocols Nos. 1 and 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1 March 2002);

(e) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (27 October 2006);

(f) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (27 October 2006);

(g) Rome Statute of the International Criminal Court (12 October 2001);

(h) United Nations Convention against Transnational Organized Crime (27 October 2007).

(4) The Committee notes with satisfaction the efforts being made by the State party to amend its legislation, policies and procedures in order to ensure greater protection of human rights, particularly the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, as follows:

(a) The adoption of the Swiss Code of Criminal Procedure on 5 October 2007 (scheduled to enter into force on 1 January 2011), which strengthens the rights of defence and increases the rights of victims, as well as witness protection measures;

(b) The complete revision of the Federal Act on Assistance to Crime Victims of 4 October 1991, which entered into force on 1 January 2009;

(c) The entry into force on 1 January 2007 of the Federal Act on the Criminal Status of Minors of 20 June 2003;



(d) The extension under the new Criminal Code (art. 97), which entered into force on 1 January 2007, of the statute of limitations for serious offences against the sexual integrity of children to the time when the victim reaches 25 years of age;

(e) The standardized Code of Civil Procedure (due to enter into force on 1 January 2011);

(f) The establishment of a National Commission for the Prevention of Torture, which began working on 1 January 2010, following ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

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

#### **Definition of torture**

(5) While noting that many acts that amount to torture are criminalized under Swiss criminal law (arts. 111–117, 122–128, 180–185 and 189–193), the Committee is concerned that, despite a previous recommendation (CAT/C/CR/34/CHE, paras. 4 (b) and 5 (a)), Swiss legislation still lacks a definition of torture that covers all the constituent elements set out under article 1 of the Convention (art. 1).

**The Committee reiterates its recommendation that the State party include a definition of torture in its Criminal Code incorporating all elements contained in article 1 of the Convention.**

#### **Fundamental safeguards**

(6) While taking into account the State party's federal structure, the Committee is concerned by the fact that the cantons can differ in how they implement the State party's obligations under the Convention (art. 2).

**The State party should take the necessary steps to ensure that the authorities of all the cantons are aware of the rights stipulated in the Convention, and that they implement them as soon as possible, regardless of the structure of the State party.**

(7) The Committee notes with concern that the State party has not yet established a national human rights institution, with broad competence in the area of human rights, in accordance with the Paris Principles. The Committee notes the State party's initiative to carry out a five-year pilot project aimed at creating a "human rights centre" through a call for tenders to universities, but considers that this is no substitute for establishing a national human rights institution (art. 2).

**The State party should consider establishing a national human rights institution, with broad competence in the area of human rights and equipped to play a role in the coordination and implementation of human rights policies and the implementation of recommendations by treaty bodies, and providing it with the necessary financial and human resources to enable it to work in accordance with the Paris Principles (General Assembly resolution 48/134).**

#### **Police violence**

(8) The Committee is concerned by allegations of violence or the excessive use of force or other mistreatment by the police during the questioning of suspects in their homes or in police stations. The Committee is particularly concerned by the fact that some of these allegations mention an excessive use of force against foreigners, especially asylum-seekers and migrants, above all of African origin, and particularly in the cantons of Geneva and Vaud (arts. 2, 12, 13, 14 and 16).

**The State party must ensure that prompt, thorough and impartial inquiries are held into all allegations of violence or mistreatment by police, that the perpetrators are prosecuted and, if proven guilty, punished in proportion to the seriousness of their acts, that victims receive compensation and, where appropriate, rehabilitation. The State party must also continue training police officials and raising their awareness of human rights and, in particular, of the provisions of the Convention. In its next report, it must inform the Committee of any ongoing investigations and their outcome.**

**Mechanisms of independent investigation into police violence**

(9) The Committee notes that, in the State party, complaints of police violence, torture and mistreatment may be brought before the ordinary courts. Nevertheless, it is concerned that the State party has not yet fully implemented the Committee's recommendation to establish, in each canton, independent mechanisms of investigation to deal with complaints of violence or mistreatment lodged against police officials. It reminds the State party that the possibility of seeking remedy in the ordinary courts should not prevent the establishment of such mechanisms (arts. 2, 12 and 16).

**The State party must ensure the creation in each canton of an independent mechanism empowered to receive any complaints of violence or mistreatment on the part of the police and to investigate them promptly, thoroughly and impartially.**

**Non-refoulement**

(10) The Committee notes that, according to article 5, paragraph 2, of the Asylum Act of 1999, the ban on refoulement may not be invoked if there are substantial grounds for believing that the person invoking it represents a threat to the security of Switzerland or, having been convicted and sentenced for a particularly serious crime or offence, must be considered a public menace. The Committee also notes that article 68, paragraph 4, of the Federal Act on Foreign Nationals of 2005, provides for the immediately enforceable expulsion of a foreigner from the State party's territory if the person concerned has seriously or repeatedly violated, or represents a threat to, public security and order or represents a threat to internal or external security. The Committee is concerned that the application of article 68, paragraph 4, of the Federal Act on Foreign Nationals of 2005 could lead to a violation of the principle of non-refoulement, without the possibility of appeal. It is equally concerned that article 5, paragraph 2, of the Asylum Act of 1999 is incompatible with the State party's obligations with respect to the principles of non-refoulement under article 3 of the Convention (art. 3).

**The State party should consider modifying its legislation to allow an assessment of the risk involved and take measures to ensure for a person expelled under article 68, paragraph 4, of the Federal Act on Foreign Nationals of 2005 and article 5, paragraph 2, of the Federal Asylum Act of 1999, that the expulsion proceedings comply with article 3 of the Convention. It should also allow appeals against, and the suspension of, expulsion orders.**

(11) The Committee notes that the people's initiative on the expulsion of foreign criminals under discussion in Parliament calls for foreigners to be deprived of their residence permit and any further right to reside in Switzerland, regardless of their status, if they are convicted by final judgement of murder, rape or other serious sexual offences, or of other acts of violence such as armed robbery, trafficking in human beings, drug trafficking or breaking and entering, or if they have improperly claimed social security or welfare benefits. The Committee also notes that such persons would be expelled and banned from returning to Switzerland for a period of between 5 and 15 years, and that the authorities would lose all discretionary power in this respect. The Committee notes, finally, that the Federal Council has made a counter-proposal and recommended that the initiative be rejected, having found it incompatible with international law and the Swiss Constitution.

However, the Committee remains concerned that the application of the initiative, if adopted by referendum, would seriously risk violating the principle of non-refoulement (art. 3).

**The State party must continue its efforts to ensure that the initiative on the expulsion of foreign criminals does not violate the international obligations that Switzerland has undertaken, especially the Convention against Torture, or article 25 of the Swiss Constitution on the principle of non-refoulement.**

(12) The Committee notes that provisions of the Federal Act on Foreign Nationals governing procedures for refusal of entry into the country at airports (art. 65) stipulate that a decision must be made within 48 hours, subject to an appeal without suspensive effect being filed within 48 hours of notification and a decision on the appeal being handed down within 72 hours. The Committee is concerned that this rapid procedure, without suspensive effect, could impede the proper examination of the motives of appeal and constitute a violation of the principle of non-refoulement (art. 3).

**The State party should consider modifying the procedure set out under article 65 of the Federal Act on Foreign Nationals with a view to providing more time for thorough consideration of appeals and an assessment of whether the principle of non-refoulement is being violated, and to lending such appeals suspensive effect.**

(13) The Committee considers the Federal Act on Foreign Nationals of 2005, which applies stricter coercive measures (arts. 73–78) to foreigners without residence permits and extends the maximum period of administrative detention from 12 to 24 months, or 12 months for minors aged from 15 to 18, excessive. The Committee notes that, as a result of Switzerland adopting the European Union directive on the return of illegal immigrants, the maximum period of administrative detention will be 18 months for adults and 9 months for minors (art. 3).

**The State party should reconsider the maximum period of administrative detention, resort to it only in exceptional circumstances and limit its duration in light of the principle of proportionality.**

(14) While noting that asylum-seekers are entitled to free legal aid during the ordinary asylum procedure, the Committee remains concerned that free legal aid may be subject to restrictive conditions when asylum-seekers file an application under the extraordinary procedure (art. 3).

**The State party should review its legislation in order to grant free legal assistance to asylum-seekers during all asylum procedures, whether ordinary or extraordinary.**

#### **Repatriation and mistreatment**

(15) While noting the steps taken by the State party to ensure the peaceful implementation of forcible repatriation by air, particularly the training of specialized officials, the Committee is concerned by persistent allegations of police violence and mistreatment when persons are forcibly returned by air. The Committee notes with concern that the Federal Act on the use of coercion and police measures in spheres within the jurisdiction of the Confederation, which entered into force on 1 January 2009, does not provide for the presence of human rights observers or independent physicians when forcible repatriation by air takes place, as the Committee had recommended (CAT/C/CR/34/CHE, para. 5 (b)) (arts. 2, 3 and 16).

**The State party must:**

**(a) Ensure that human rights observers and independent physicians are present when persons are forcibly repatriated by air;**

(b) **Provide also for their participation in the drafting by the Federal Office for Migration of orders on the use of coercive measures by police escorts during forcible returns;**

(c) **Prevent police violence and mistreatment against persons being forcibly repatriated by air, open inquiries into any such allegations, prosecute and punish perpetrators, and compensate victims;**

(d) **Continue training in human rights and, especially, in Convention safeguards of police and other officials who carry out forcible repatriation.**

(16) The Committee is most concerned by the death of a Nigerian citizen, Joseph Ndukaku Chiakwa, on 10 March 2010, when he was being forcibly repatriated by air. While noting that the authorities of the State party have opened an inquiry, the Committee is concerned about whether the coercive measures applied by the State party are compatible with the provisions of the Convention. The Committee is also concerned by the failure of the State party to respond to claims for compensation from the families of the two latest victims in recent cases of forced repatriation (arts. 2, 3 and 14).

**The State party must:**

(a) **Open an independent and impartial inquiry into the circumstances of the death of Joseph Ndukaku Chiakwa, establish who was responsible for the use of force that led to his death, prosecute and punish the perpetrators and offer compensation to the victim's family;**

(b) **Provide the Committee with details of the compensation made to the families of the two latest victims of forcible repatriation by air;**

(c) **Inform the Committee as to whether the order on the use of coercive measures by police escorts during forcible returns currently being drafted by the Federal Office for Migration is in accordance with the State party's international obligations, particularly the Convention against Torture.**

**Conditions of detention**

(17) The Committee takes note of information provided by the State party regarding its efforts to create more dignified and more secure conditions for detainees, including the construction in 2008 of the detention centre of La Brenaz, and plans to expand capacity at the Champ Dollon and La Brenaz prisons. However, the Committee notes with concern the acute overcrowding of the Champ Dollon prison, that conditions in Swiss prisons, especially in the French-speaking cantons, are inadequate and that the separation of adults and minors is not always guaranteed. Moreover, the Committee is concerned by the state of health and access to decent health care of detainees, especially those with psychiatric disorders and, above all, those housed in the Frambois holding centre (arts. 11 and 16).

**The State party must act immediately to deal with the problem of overcrowding in the Champ Dollon prison and to improve conditions in all Swiss prisons. The Committee urges the State party to make use of alternative and non-custodial sentences and to reduce pretrial detention periods. The State party must also take measures to ensure that minors and adults, as well as detainees serving under different prison regimes, are separated. Finally, it must take steps to ensure the application of legislation and procedures concerning health-care access for all prisoners, especially those with psychiatric problems.**

(18) The Committee takes note of information supplied by the State party on life imprisonment procedures. However, the Committee remains concerned that article 123a of the Constitution, specified in the Act of 1 August 2008, allows imprisonment for life of dangerous or sexual offenders considered to be non-reformable. The Committee is, in this

respect, concerned by the detention conditions of such prisoners, especially by the death of Skander Vogt, held in a cell of the high security wing of Plaine de l'Orbe prison, after setting fire to his cell (arts. 10, 12 and 13).

**The State party should review the manner in which article 123a of the Constitution, specified in the Act of 1 August 2008, is applied and the conditions in which such prisoners are held. The State party should open a prompt and independent inquiry into the death of Skander Vogt and inform the Committee of the inquiry's outcome in its next periodic report.**

#### **Complaints and prosecutions**

(19) The Committee reiterates its concern that only a minority of complaints of violence or mistreatment by the police result in prosecutions or charges being brought and that only a few lead to compensation being offered to victims or their families (arts. 2, 12 and 13).

**The State party must systematically conduct impartial, thorough and effective inquiries into all allegations of violence committed by the police, and prosecute and punish the perpetrators in proportion to the seriousness of their acts. It should also ensure that victims or their families receive compensation. The State party should inform the Committee of the outcome of current proceedings.**

#### **Violence against women**

(20) The Committee notes that the Criminal Code addresses violence against women by prosecuting the offences of violation of physical integrity and violation of liberty (art. 122 ff. and art. 180) and that it provides for automatic prosecution in the event of an attack on a spouse or companion. It also notes that article 28b of the Civil Code contains further protective measures. Nevertheless, the Committee remains concerned by reports indicating an unacceptable rate of violence against women, especially in the home. In this respect, it is concerned that statements made by the authorities criticizing police action in cases involving persons with international protection conveys the wrong message as far as combating impunity is concerned. It also notes with concern the continued lack of a specific provision in the Criminal Code targeting violence against women (arts. 2 and 16).

**The State party must ensure that a provision is inserted in its Criminal Code specifically aimed at preventing and combating violence against women. The State party must also act to raise the public's awareness of all forms of violence against women. It must ensure that victims of violence can make complaints without fear of reprisals, and it must train and encourage police to protect the victims of domestic violence, even when it occurs in the home, in accordance with article 5 of the Federal Victims Assistance Act (II). The State party should firmly combat impunity in cases of domestic violence by opening inquiries, and prosecuting and punishing perpetrators in accordance with the seriousness of their acts.**

(21) The Committee is concerned that the requirements of article 50 of the Federal Act on Foreign Nationals of 2005, in particular the proof of problems in resettling in the country of origin, make it difficult for foreign women who have been married for less than three years to a Swiss national or a foreigner with a residence permit, and who are victims of domestic violence, to leave their spouse or seek protection, for fear of not having their residence permits renewed (arts. 13, 14 and 16).

**The State party should consider amending article 50 of the Federal Act on Foreign Nationals in order to enable migrant women who are victims of violence to seek protection without necessarily forfeiting their residence permit, taking as a reference the Federal Tribunal's ruling of 4 November 2009 (ATF 136 II 1), which states that "either conjugal violence or serious difficulty in resettling in the country of origin may [...] be considered to constitute sufficient compelling personal reasons".**

**Trafficking in persons**

(22) While noting the measures taken by the State party to combat human trafficking, in particular trafficking in women and girls for purposes of sexual exploitation, the Committee is concerned that trafficking in persons still persists in the State party (arts. 12, 13 and 16).

**The State party must continue its efforts to combat human trafficking, particularly in women and girls for purposes of sexual exploitation, by adopting a comprehensive strategy, improving prevention and ensuring that victims, including those who cooperate with the justice system, are protected. The State party must also prosecute and punish perpetrators, and inform the Committee of the results of cases currently being prosecuted.**

**Corporal punishment**

(23) While taking note of information supplied by the State party, according to which the jurisprudence of the Federal Tribunal confirms the ban on corporal punishment, including for educational purposes, and that corporal punishment is also covered by article 126 (2) of the Criminal Code, the Committee notes with concern that corporal punishment is not specifically prohibited under the legislation of the State party (art. 16).

**The State party should specifically prohibit corporal punishment in its legislation. To that end, the Committee urges the State party to relaunch the 06.419 Vermont-Mangold parliamentary initiative, aimed at enacting legislation to protect children from corporal punishment and other affronts to their dignity, which was shelved by Parliament. The Committee also calls upon the State party to carry out public-awareness campaigns on the negative effects of violence against children, especially corporal punishment.**

**Disappearance of unaccompanied minors**

(24) While taking note of information supplied by the State party regarding the procedure to protect unaccompanied minors, and of statistics on minors said to have disappeared from its territory, the Committee is concerned by the matter of the disappearance of unaccompanied minors and by the risk they run of becoming victims of human trafficking or other forms of exploitation (art. 16).

**The State party must examine the plight of unaccompanied minors closely, seek means of preventing their disappearance, improve the level of protection afforded to them and report to the Committee as soon as possible.**

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

(26) The Committee draws the attention of the State party to the fact that new harmonized guidelines on the submission of reports were approved in 2009 by the international human rights treaty bodies (HRI/GEN/2/Rev.6) and invites it to submit its core document in accordance with these new guidelines.

(27) The State party is urged to ensure wide circulation, particularly in all its official languages and cantons, of the report submitted to the Committee and of the Committee's concluding observations through official websites, the media and non-governmental organizations (NGOs).

(28) The Committee requests the State party to report, within one year, on its follow-up to the Committee's recommendations in paragraphs 8, 11, 16 and 23 of the present document.

(29) The Committee invites the State party to submit its seventh periodic report not later than 14 May 2014.

### **63. Syrian Arab Republic**

(1) The Committee against Torture considered the initial report of Syrian Arab Republic (CAT/C/SYR/1) at its 937th and 939th meetings (CAT/C/SR.937 and 939), held on 3 and 4 May 2010, and adopted, at its 951st meeting (CAT/C/SR.951), the following concluding observations.

#### **A. Introduction**

(2) The Committee welcomes the submission of the initial report of the Syrian Arab Republic, which, while generally following the Committee's guidelines for reporting, lacks statistical and practical information on the implementation of the provisions of the Convention and relevant domestic legislation. However, the Committee regrets that the report was submitted five years late, which prevented the Committee from conducting an analysis of the implementation of the Convention in the State party following its ratification in 2004.

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

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

(4) The Committee welcomes the fact that the State party has ratified or acceded to the following international instruments:

- (a) International Covenant on Civil and Political Rights, on 21 April 1969;
- (b) International Covenant on Economic, Social and Cultural Rights, on 21 April 1969;
- (c) International Convention on the Elimination of All Forms of Racial Discrimination, on 21 April 1969;
- (d) Convention on the Rights of the Child, on 15 July 1993, as well as the two Optional Protocols thereto, namely, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 25 May 2000;
- (e) Convention on the Elimination of All Forms of Discrimination against Women, on 28 March 2003;
- (f) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, on 2 June 2005;
- (g) Convention on the Rights of Persons with Disabilities, on 10 July 2009.

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

##### **Definition of torture**

(5) While noting that article 28 in the Constitution of the Syrian Arab Republic prohibits torture, the Committee notes with concern the absence of a definition of torture in

accordance with article 1 of the Convention in the national legal system of the State party, which seriously hampers the implementation of the Convention in the State party (art. 1).

**The State party should amend its legislation to adopt a definition of torture in full conformity with article 1 of the Convention that would encompass all elements of this definition. By naming and defining the offence of torture in accordance with articles 1 and 4 of the Convention and making it distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture by, inter alia, alerting everyone, including perpetrators, victims and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself.**

#### **Criminalization of torture**

(6) While acknowledging that torture is punishable by article 391, paragraph 1, of the Criminal Code and that no offence or penalty shall be recognized without a corresponding legal provision in accordance with article 29 of the Constitution, the Committee notes with serious concern that these provisions fail to ensure appropriate penalties applicable to such acts, since they set the maximum penalty at three years of imprisonment (art. 4).

**The State party should revise its national legislation to ensure that acts of torture are offenses under criminal law and are punishable by appropriate penalties which take into account the grave nature of these acts, as required by article 4, paragraph 2, of the Convention.**

#### **Widespread use of torture**

(7) The Committee is deeply concerned about numerous, ongoing and consistent allegations concerning the routine use of torture by law enforcement and investigative officials, at their instigation or with their consent, in particular in detention facilities. It is also concerned at credible reports that such acts commonly occur before formal charges are laid, as well as during the pretrial detention period, when the detainee is deprived of fundamental legal safeguards, in particular access to legal counsel. This situation is exacerbated by the reported use of internal regulations which, in practice, permit procedures contrary to published laws and in violation of the Convention. The Committee is also gravely concerned at the absence of systematic registration of all detainees in places of detention under the State party's jurisdiction (arts. 2, 12 and 13).

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

(a) **Unambiguously reaffirm the absolute prohibition of torture and publicly condemn practices of torture, especially by the police and prison personnel, accompanied by a clear warning that anyone committing such acts, or otherwise complicit or participating in torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties;**

(b) **In order to combat impunity, immediately adopt all necessary measures to ensure, in practice, prompt, impartial and effective investigations into all allegations of torture, and should prosecute and punish those responsible, including law enforcement and investigation officials, with penalties taking into account the grave nature of torture offences. Investigations should be undertaken by a fully independent body;**

(c) **Ensure that all persons detained are fully and promptly registered at the place of detention, as one measure to prevent acts of torture. Registration should contain the identity of the detainee, the date, time and place of the detention, the identity of the authority that detained the person, the ground for the detention, the date and time of admission to the detention facility and the state of health of the**



**detainee upon admission and any changes thereto, the time and place of interrogations, with the names of all interrogators present, as well as the date and time of release or transfer to another detention facility.**

(8) The Committee is deeply concerned at numerous reports of torture, ill-treatment, death in custody and incommunicado detention of people belonging to the Kurdish minority, in large part stateless, in particular political activists of Kurdish origins. The Committee is further concerned that convictions of some Kurdish detainees pronounced by military courts have been passed on vague charges of “weakening national sentiment” or “spreading false or exaggerated information”. Moreover, the Committee notes with concern reports of a growing trend of deaths of Kurdish conscripts who have died while carrying out their mandatory military service and whose bodies were returned to the families with evidence of severe injuries (arts. 1, 2, 12 and 16).

**The State party should take urgent measures to ensure prompt, thorough, impartial and effective investigation into all allegations of torture, ill-treatment, death in custody, death during military service and incommunicado detention of people belonging to the Kurdish minority, in particular of political activists of Kurdish origins, and to prosecute and punish law enforcement, security, intelligence and prison officials who carried out, ordered or acquiesced in such practices. Furthermore, the State party should amend or abolish the vague security provisions under the Syrian Criminal Code that unlawfully restrict the right to freedom of expression, association or assembly.**

#### **Fundamental legal safeguards from the outset of detention**

(9) While noting that Prison Regulation No. 1222 guarantees the right of prisoners to communicate with their lawyers and family members as well as visiting rights, the Committee is seriously concerned that in practice these provisions do not provide all detainees with all fundamental legal safeguards and that they are not applied from the very outset of the detention. Such legal safeguards comprise the right of detainees to have prompt access to a lawyer and an independent medical examination, to notify a relative, to be informed of their rights at the time of detention, including about the charges laid against them, and to appear before a judge within a time limit in accordance with international standards (art. 2).

**The State party should promptly take effective measures to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention, including the rights to have prompt access to a lawyer and an independent medical examination, to notify a relative, to be informed of their rights at the time of detention, including about the charges laid against them, and to appear before a judge within a time limit in accordance with international standards.**

#### **State of Emergency**

(10) Notwithstanding the information provided by the State party delegation during the dialogue, the Committee expresses its concern that the State of Emergency, issued by Legislative Decree No. 51 of 22 December 1962 and amended by Decree-Law No. 1 of 9 March 1963, which was intended to apply to exceptional circumstances where there is an internal or external threat to national survival, now has quasi-permanent nature and allows the suspension of fundamental rights and freedoms. The Committee notes with concern that the State of Emergency attributes broad emergency powers to various branches of the security forces outside any judicial control, which in practice leads to serious breaches of the Convention by State authorities. In particular, the Committee is concerned that the State of Emergency is inconsistent with the commitments undertaken by the Syrian Arab Republic under article 4 of the International Covenant on Civil and Political Rights and

under article 2 and other relevant articles of the Convention (arts. 2, 4, 11, 12, 13, 15 and 16).

**The State party should ensure that the principle of the absolute prohibition of torture is incorporated in its legislation, and ensure its strict application, in accordance with article 2, paragraph 2, of the Convention, which stipulates that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. Moreover, the State party should take immediate steps to bring the legislation into full conformity with the provisions of the International Covenant on Civil and Political Rights and the Convention.**

#### **Supreme State Security Court**

(11) While noting the information provided to the Committee by the State party on the composition, functions and procedures of the Supreme State Security Court, the Committee is deeply concerned at the numerous, consistent and serious allegations that this court fails to function in accordance with the international standards for courts of law. The Committee notes that the Supreme State Security Court was established under Decree No. 47 of 1968 and has been created as an exceptional court outside the ordinary criminal justice system accountable only to the Minister of Interior. The Court, composed of two judges, one civilian and one military, has the competence to adopt sentences and impose penal sanctions for crimes that are very widely defined, such as “weakening the national sentiment” or “awakening racial or sectarian tensions, while the Syrian Arab Republic is at war or is expecting a war”. According to information before the Committee the Court is exempt from the rules of criminal procedure and permits the use of prolonged incommunicado detention without judicial supervision. In addition, lawyers are not allowed to meet with their clients until the trial begins and the decisions of the court cannot be appealed (arts. 2, 11 and 12).

**The State party should take immediate steps to ensure that the composition and the functioning of the Supreme State Security Court are brought into full conformity with the provisions of the Convention and international standards for courts of law, in particular, that the persons brought before this court are granted all fundamental legal safeguards, including the right to appeal against decisions of the Court, otherwise it should consider abolishing this Court.**

#### **Independence of courts and tribunals**

(12) The Committee is concerned by information that the lack of judicial independence and arbitrary procedures have resulted in the systematic violation of the right to fair trials. In addition judges do not enjoy immunity according to the provisions of Legislative Decree 40, issued on 21 May 1966 and they can be transferred by an order which is not subject to any form of review (arts. 2 and 11).

**The State party should, as a matter of urgency, adopt all necessary measures to protect the independence of its courts and tribunals, as well as the independence and immunity of judges, in accordance with international standards.**

#### **Immunity from prosecution**

(13) According to information before the Committee, Legislative Decree No. 61 of 1950 and Decree No. 64 of 2008 grant members of intelligence agencies, including military, air and public security forces, de facto immunity from prosecution for crimes committed while they were on duty. The Committee is deeply concerned at a widespread impunity preventing prosecution for crimes committed on duty, including torture and ill-treatment, in total violation of the provisions of the Convention (arts. 2, 4, 12, 15 and 16).

**As a matter of urgency, the State party should take vigorous steps to rescind the decrees legalizing immunity for crimes committed on duty which result, in practice, in impunity for acts of torture committed by members of security services, intelligence agencies and police. Furthermore the State party should carry out prompt, impartial and thorough investigations, bring the perpetrators of such acts to justice and, where they are convicted, impose sentences commensurate with the gravity of the acts committed.**

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

(14) The Committee notes that the Ministry of Justice, the Ministry of Interior and the Prosecutor General are empowered to inspect prisons to verify that inmates are being treated humanely. The Committee is nevertheless concerned at the lack of systematic, effective and independent monitoring and inspection of all places of detention (arts. 11 and 12).

**The Committee calls upon the State party to establish a national system to effectively monitor and inspect all places of detention and follow up on the outcome of such systematic monitoring. This system should include regular and unannounced visits by national and international monitors, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.**

#### **Secret detention centres**

(15) The Committee is also concerned at reports that the State party has established secret detention facilities under the command of intelligence services, such as the Military Intelligence service, the Political Security Directorate, the Directorate General of Intelligence Services and the Directorate of Air Force Intelligence Services. The centres controlled by these services are not accessible by independent monitoring and inspection bodies, and are not subject to review by the authorities. The Committee is further concerned that detainees are deprived of fundamental legal safeguards, including an oversight mechanism in regard to their treatment and review procedures in respect to their detention. The Committee is also concerned at allegations that those detained in such facilities could be held for prolonged periods without any judicial review, in practice in incommunicado detention and subject to torture or cruel, inhuman or degrading treatment (arts. 2, 11 and 16).

**The State party should ensure that no one is detained in a secret detention facility under its de facto effective control. As often reiterated by the Committee, detaining persons in such conditions constitutes, per se, a violation of the Convention. The State party should also investigate and disclose the existence of any such facilities, the authority under which they have been established and the manner in which detainees are treated in such facilities. The Committee urges the State party to close all such facilities.**

#### **Complaint mechanism**

(16) Notwithstanding the information provided to the Committee in the State party report on the possibility for a person to submit to the Office of the Public Prosecutor a complaint of torture allegedly committed by a public official, the Committee regrets the lack of an independent complaint mechanism for receiving and conducting impartial and full investigations into the many allegations of torture reported to the authorities, and for ensuring that those found guilty are appropriately punished. The Committee also regrets the absence of information, including statistics, on the number of complaints of torture and ill-treatment and results of all proceedings, at both the penal and disciplinary levels (art. 2, 5, 12, 13 and 16).

The State party should take urgent and effective measures to establish a fully independent complaint mechanism, should ensure prompt, impartial and full investigations into the many allegations of torture and should prosecute alleged perpetrators and punish them, as appropriate. The State party should ensure in practice that complainants are protected against any ill-treatment or intimidation as a consequence of his/her complaint or any evidence given. The Committee requests the State party to provide information, including statistics, on the number of complaints filed against public officials on torture and ill-treatment, as well as information about the results of the proceedings, at both the penal and disciplinary levels.

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

(17) While noting with appreciation the State party's generous policy to admit and grant permission to stay to a significant number of nationals from Iraq and the Occupied Palestinian Territories, the Committee is concerned at the absence in the State party of a national procedure for the determination of refugee status and that the national legislation on aliens does not recognize any special status attributed by the Office of the United Nations High Commissioner for Refugees (UNHCR). The Committee notes with concern that the State party has not acceded to the Convention relating to the Status of Refugees (1951) and the Optional Protocol (1967) thereto, nor to the Convention relating to the Status of Stateless Persons (1954) or to the Convention on the Reduction of Statelessness (1961) (arts. 2, 3, 11 and 16).

**The State party should establish a national procedure for determination of refugee status and amend its national legislation to recognize special status attributed by UNHCR. The Committee recommends that the State party consider becoming party to the Refugee Convention, the Optional Protocol thereto and other related international legal instruments.**

#### **Non-refoulement**

(18) The Committee is seriously concerned by the numerous reports of expulsion, return or deportation, including several cases concerning recognized refugees or asylum-seekers registered with UNHCR, in violation of the non-refoulement principle contained in article 3 of the Convention. The Committee is further concerned at reports that the participation of the Syrian Arab Republic in the so-called "war on terror" has resulted in secret detentions and renditions of terrorism suspects, in breach of the principle of non-refoulement (art. 3).

**The State party should formulate, adopt into its domestic law and effectively implement legal provisions in line with article 3 of the Convention, including guaranteed fair treatment at all stages of the proceedings and an opportunity for effective, independent and impartial review of decisions on expulsion, return or extradition. Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture or ill-treatment. Furthermore, the State party should ensure protection from refoulement, including by refraining from expelling or forcibly returning persons who hold a UNHCR Refugee Certificate or Asylum Seeker Certificate. Furthermore, the State party should establish an independent investigation to follow up on allegations of its involvement in "extraordinary renditions" and inform the Committee of the outcome of such investigation in its next periodic report.**

(19) The Committee is further concerned about the continued administrative detention, for indefinite — and thus arbitrary — periods of time, of Iranian nationals of Arab (Ahwazi) ethnic descent pending deportation (art. 3).

**The State party should provide information on the situation of Iranian nationals of Arab (Ahwazi) ethnic descent and measures taken to ensure their protection against refoulement.**

#### **Training**

(20) The Committee takes note of the information on trainings, seminars and courses on human rights for police officers included in the State report and provided during the oral presentation. However, the Committee regrets that there was sparse and inadequate information on training programmes for security and intelligence personnel, as well as for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, on the provisions of the Convention and on how to detect and document physical and psychological sequelae of torture. The Committee also regrets the lack of information on monitoring and evaluation of the impact of any of its training programmes in reducing incidents of torture and ill-treatment (art. 10).

**The State party should further develop and strengthen educational programmes to ensure that all officials, including law enforcement, security, intelligence and prison officials, are fully aware of the provisions of the Convention, that breaches of the Convention will not be tolerated and will be promptly and effectively investigated, and that offenders will be prosecuted. Furthermore, all relevant personnel, including medical personnel, should receive specific training on how to identify signs of torture and ill-treatment, including training on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), which should be utilized effectively. In addition, the State party should assess the effectiveness and impact of such training/educational programmes.**

#### **Enforced disappearances**

(21) The Committee is deeply concerned at the numerous reports regarding a high number of persons involuntarily disappeared in the State party. The 2009 report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/13/31)) refers to allegations of enforced disappearance of 28 persons, on which the delegation failed to provide sufficient and precise explanations and information. Furthermore, the Committee has received numerous and credible reports pointing at a much higher number of persons subjected to disappearance. These allegations concern, in particular, the disappearances of members of the Muslim Brotherhood and those that occurred during the military presence of the Syrian Arab Republic in Lebanon since the early 1970s. The Committee has been informed about the Lebanese-Syrian official commission that was established on 31 July 2005 to look into the issue of disappeared Syrians in Lebanon and disappeared Lebanese in the Syrian Arab Republic. A total of 640 cases were submitted to the commission, but no further action has been taken to investigate these cases. Furthermore, the Secretary General of the Lebanese Centre for Human Rights, who is also a member of the Executive Committee of the Euro-Mediterranean Human Rights Network, has not been permitted entry to the State party to research these matters. The Committee expresses its concern that the competent authorities have not initiated proceedings to investigate the fate of missing persons and to identify, prosecute and punish the perpetrators of enforced disappearances, which constitutes a violation of the Convention (arts. 1, 2, 11, 12, 13, 14 and 16).

**The State party should as a matter of urgency investigate every case of reported enforced disappearances and communicate the results of the investigations to the families of missing persons. The Committee urges the State party to establish, within an appropriate time frame, an independent commission of inquiry into all disappearances, including of members of the Muslim Brotherhood and those that occurred during the military presence of the Syrian Arab Republic in Lebanon since**

the early 1970s, to prosecute and punish perpetrators and to provide effective remedies and rehabilitation to the victims. The Committee encourages the State party to collaborate with international organizations on questions of enforced and involuntary disappearances.

#### **Investigations**

(22) Taking into account the explanations provided by the State party during the dialogue, the Committee continues to be concerned about the reported riots that took place in Sednaya prison on 4 July 2008 where, following protest actions from the prison population an action was initiated by the police, that resulted in a number of persons injured or killed. Despite repeated requests for an investigation and confirmation as to the number and names of those killed and injured, there has been no official and independent investigation into or public announcement of the identities of persons killed or injured, nor any information on action taken to clarify the use of force and other circumstances surrounding the event (art. 12).

**The State party should urgently carry out an independent investigation of the Sednaya prison incident of July 2008 and provide the Committee with detailed information on the circumstances of the death of prisoners in that incident. The State party should also inform the families of the prisoners involved in the incident as to whether their relatives are alive and still held in prison. The State party should further inform the Committee as to whether it conducts regular monitoring in this prison.**

(23) The Committee is concerned about the case of three Canadian nationals, Ahmed Al-Maati (arrested on his arrival at the Damascus airport on 12 November 2001), Abdullah Almalki (arrested on his arrival at the Damascus airport on 3 May 2002) and Maher Arar (arrested in September 2002 in the United States of America, where he was detained without legal procedure for 15 days before being deported to Jordan and then to the Syrian Arab Republic). The Committee is concerned that they were detained and allegedly tortured in the largest detention centre controlled by the intelligence services, the Military Intelligence Palestine Branch Centre, due to suspected links with Al-Qaida. The Committee notes with concern that no investigation has been undertaken on this case and no compensation has been provided to the victims. The Committee notes with concern the failure of the State party to conduct a full and effective investigation on this case (arts. 12, 13 and 14).

**The Committee urges the State party to institute a prompt, thorough and impartial investigation into the cases of Ahmed Al-Maati, Abdullah Almalki and Maher Arar in order to ensure that all persons allegedly responsible for violations of the Convention are investigated and brought to justice. The Committee recommends that such investigations be undertaken by independent experts in order to examine all information thoroughly and reach conclusions as to the facts and measures taken and to provide compensation to victims.**

(24) The Committee is concerned about the prolonged detention in the case of Abdelkader Mohammed Sheikh Ahmed, who served his sentence and should have been released in 1979 but who, according to the information before the Committee, was still in prison in 2004. The Committee regrets that no further information about this case was provided in the dialogue (art. 12).

**The Committee urges the State party to provide information about the current situation of Abdelkader Mohammed Sheikh Ahmed, and to institute a prompt, thorough and impartial inquiry into the case and on the reasons for him not being released after having served his sentence. The Committee recommends that such investigations be undertaken by independent experts in order to examine all**

**information thoroughly, to reach conclusions as to the facts and measures taken and to ensure that those responsible for the violations are brought to justice.**

**Lack of legal protection of women and impunity for crimes committed in the name of “honour”**

(25) The Committee notes with concern that the State party report lacks information on the legal regime and practice affecting women. The Committee expresses its concern on numerous reports informing that violence against women, as a form of discrimination, is a widespread problem in the State party and that the law reform process has been delayed, namely the amendment of the Personal Status Act, Penal Code and Nationality Act, and as a result, a culture of impunity towards domestic and gender-based violence has evolved. In this respect, the Committee expresses its serious concern that crimes, where a family’s “honour” is thought to be breached, often go unpunished, and when they are, the sentences are far less than those for equally violent crimes without this “honour” dimension (arts. 1, 2, 4 and 16).

**The Committee calls upon the State party to put in place comprehensive measures to address all forms of violence against women and enact, as soon as possible, legislation on violence against women, including on domestic violence. The Committee further calls upon the State party to amend, without delay, applicable provisions of the Penal Code to ensure that perpetrators of “honour” crimes do not benefit from a penalty reduction under article 548. The Committee also urges the State party to ensure that “honour” crimes are treated as seriously as other violent crimes with regard to investigation and prosecution, and that effective prevention efforts are put in place.**

(26) While noting information provided by the delegation of the State party during the dialogue, the Committee is gravely concerned at the practice of allowing perpetrators of rape to escape prosecution by marrying their victims (art. 508 of the Penal Code), or allowing families to waive their “right to complain” (arts. 2, 13 and 16).

**Recalling that numerous international judicial and quasi-judicial bodies have established that rape is a form of torture, the Committee calls upon the State party to withdraw the exculpatory provision in article 508 of the Penal Code and ensure that a rapist does not escape punishment by marrying his victim.**

**Domestic violence**

(27) The Committee is concerned at the absence of information in the report regarding measures taken to combat torture and ill-treatment affecting women and girls, particularly in view of the prevalence of domestic violence and other forms of gender-based violence in the State party. In this respect, the Committee notes with concern that marital rape is not a criminal offence under the law. The Committee is further concerned that the national legislation fails to explicitly criminalize domestic violence or provide adequately for the prosecution of those who perpetrate it, in particular, it is concerned that the definition of rape in article 489 of the Penal Code excludes marital rape, that article 508 of the Penal Code exempts rapists from punishment if they marry their victims, and that article 548 of the Penal Code exonerates perpetrators of “honour” crimes. The Committee also expresses its concern at the lack of data, including statistics on complaints, prosecutions and sentences relating to domestic violence (arts. 1, 2, 4, 12 and 16).

**(a) The State party should take immediate action to strengthen its efforts to prevent and combat violence against women and children and to ensure prompt, impartial and effective investigations of such acts, and to prosecute and punish perpetrators. The Committee also urges the State party to take necessary measures to ensure that the legal provisions in national legislation cover the many forms of**

violations committed against women, including making marital rape a criminal offence;

(b) The State party is encouraged to participate directly in rehabilitation and legal assistance programmes and to conduct broader awareness campaigns for officials (judges, law officers, law enforcement agents and welfare workers) who are in direct contact with the victims;

(c) The State party should provide victims in the process of filing complaints on rape, abuse and other forms of gender-based violence with protection from further abuse;

(d) The State party should also strengthen its efforts in respect of research and data collection on the extent of domestic violence, and it is requested to provide the Committee with statistical data on complaints, prosecutions and sentences in its next periodic report.

#### **Trafficking in persons**

(28) While welcoming the ratification by the State party of the International Convention for the Suppression of the Traffic in Women and Children of 1921, the International Convention for the Suppression of the Traffic in Women of Full Age of 1933 and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1950, the Committee expresses its concern at the general lack of information on the extent of trafficking in the State party, including the number of complaints, investigations, prosecutions and convictions of perpetrators of trafficking, as well as on the concrete measures adopted to prevent and combat such phenomena (arts. 1, 2, 4, 12 and 16).

**The Committee recommends the adoption of a specific law against trafficking in persons which determines the crimes and adequate penalties and foresees the adoption of measures to facilitate the rehabilitation and social integration of victims of human trafficking. The State party should increase its efforts to prevent and combat the trafficking of women and children, including by implementing the current laws combating trafficking, providing protection for victims and ensuring their access to medical, social, rehabilitative and legal services, including counselling services, as appropriate. The State party should also create adequate conditions for victims to exercise their right to make complaints, conduct prompt, impartial and effective investigations into all allegations of trafficking and ensure that perpetrators are brought to justice and punished with penalties appropriate to the nature of their crimes.**

#### **Redress and compensation for victims of torture, including rehabilitation**

(29) The Committee notes that the Code of Criminal Procedures and the Criminal Code contain some provisions on the right to obtain compensation by applying to a competent court which will award fair and appropriate compensation, taking into account all material and psychological damage incurred. The Committee notes with concern the absence of information on any treatment and social rehabilitation services and other forms of assistance, including medical and psychosocial rehabilitation, provided to victims (art. 14).

**The State party should take the necessary measures to ensure the effective application of the law and provide all victims of torture and ill-treatment with redress, including fair and adequate compensation and as full rehabilitation as possible. The State party should provide, in its next periodic report, information on redress and compensation measures ordered by the courts and provided to victims of torture, or their families, during the reporting period. This information should include the number of requests made, the number granted and the amounts ordered and actually provided in each**



case. In addition, the State party should provide information on any ongoing reparation programmes, including for treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as on the allocation of adequate resources to ensure the effective functioning of such programmes.

#### **Conditions of detention**

(30) While noting that the Prison Regulation in the Syrian Arab Republic provides for the delivery of health care to prisoners, the Committee is concerned about information received on the deplorable living conditions in places of detention, prison overcrowding, lack of hygiene, insufficient food, health risks and inadequate health care. The Committee is also concerned about the failure of the State party to separate juveniles from adults (arts. 11 and 16).

**The State party should take urgent measures to bring the conditions of detention in police stations, prisons and other detention facilities into line with the Standard Minimum Rules for the Treatment of Prisoners, in particular by:**

- (a) Reducing prison overcrowding, including by considering non-custodial forms of detention, and, in the case of juveniles, by ensuring that detention is only used as a measure of last resort;**
- (b) Improving the food and the health care provided to detainees;**
- (c) Improving the conditions of detention for minors, ensuring that they are detained separately from adults;**
- (d) Strengthening the judicial supervision of conditions of detention.**

#### **Children in detention**

(31) While noting the State party's information that juvenile offenders are not given criminal records and are not subjected to capital punishment, the Committee is concerned by the fact that the Juvenile Offenders Act No. 18 applies only to children under the age of 15 (arts. 2, 11 and 16).

**The State party should classify all persons under 18 as juveniles in order to extend the protection offered by the Juvenile Offenders Act.**

#### **Deaths in custody**

(32) The Committee expresses its concern at credible reports on a number of deaths in custody and on the alleged restrictions on independent forensic examination into the cases of such deaths (arts. 12 and 16).

**The State party should promptly, thoroughly and impartially investigate all incidents of death in custody and, in all such cases, prosecute those responsible. The State party should provide the Committee with information on any cases of death in custody resulting from torture, ill-treatment or wilful negligence. The State party should also ensure independent forensic examinations and accept their findings as evidence in criminal and civil cases.**

#### **Coerced confessions**

(33) The Committee is concerned at the lack of legal provisions explicitly prohibiting the use of confessions and statements obtained as result of torture as evidence in judicial proceedings. It is alarmed by reports that confessions obtained by torture are invoked as a form of evidence in proceedings, especially in the Supreme State Security Court and the military courts, and that the defendants' claims that they have been tortured are almost never investigated (art. 15).

**The State party should amend the Code of Criminal Procedure to explicitly prohibit the use of any statement obtained as a result of torture as a form of evidence in judicial proceedings. It should also take the necessary measures to ensure that statements made under torture are not invoked as evidence in any proceedings, except against a person accused of torture, in accordance with the provisions of the Convention. The State party is requested to review criminal convictions based solely on confessions, especially those ruled by the Supreme State Security Court and military courts, in order to identify instances of wrongful conviction based on evidence obtained through torture or ill-treatment and to take appropriate remedial measures.**

#### **Human rights defenders**

(34) The Committee is concerned about reports of persisting acts of harassment and persecution, including threats and other human rights violations, experienced by human rights defenders, and about the fact that such acts go unpunished (arts. 12 and 16).

**The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities and exercise of human rights guarantees, to ensure the prompt, impartial and effective investigation into such acts, and to prosecute and punish perpetrators and provide compensation to victims.**

(35) The Committee is concerned about the case of Muhannad Al-Hassani, president of the Syrian Human Rights Organization (Swasiah), arrested on 28 July 2009 and charged with “weakening national sentiment” and “spreading false or exaggerated information” in connection with his monitoring of the Supreme State Security Court. The Committee is also concerned about the case of Haytham al-Maleh, a 79-year-old prominent human rights lawyer who has been jailed repeatedly and is now on trial (art. 12 and 16).

**The Committee urges the State party to provide information about the legal situation and physical and mental integrity of Muhannad Al-Hassani, as well as information about the ongoing trial of Haytham al-Maleh.**

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

(36) The Committee notes with concern that the State party has not yet established a national human rights institution to promote and protect human rights in the State party, in accordance with the Paris Principles (art. 2).

**The State party should establish an independent national human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), annexed to General Assembly resolution 48/134.**

#### **Data collection**

(37) While noting that some statistics have been provided, the Committee regrets the lack of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture by law enforcement officials, as well as on trafficking in persons and domestic and sexual violence (arts. 2, 12, 13 and 16).

**The State party should establish an effective system to gather all relevant statistical data in order to monitor the implementation of the Convention at the national level, including complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking in persons and domestic and sexual violence.**

### **Cooperation with United Nations human rights mechanisms**

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

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

(40) The State party should consider withdrawing its reservation to article 20 of the Convention.

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

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

(43) The Committee invites the State party to ratify the core United Nations human rights treaty to which it is not yet a party, namely, the International Convention for the Protection of All Persons from Enforced Disappearance.

(44) The Committee invites the State party to submit its core document in accordance with the new requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies (HRI/GEN/2/Rev.6).

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

(46) The Committee requests the State party to provide, within a year, information on its response to the Committee's recommendations contained in paragraphs 15, 24, 25 and 35.

(47) The State party is invited to submit its next periodic report, which will be the second report, by 14 May 2014.

### **64. Yemen**

(1) The Committee against Torture considered the second periodic report of Yemen (CAT/C/YEM/2) at its 898th meeting (CAT/C/SR.898), held on 3 November 2009, and adopted, at its 917th meeting (CAT/C/SR.917), provisional concluding observations (CAT/C/YEM/CO/2). The Committee met with a delegation from the State party at its 943rd meeting (CAT/C/SR.943), on 6 May 2010. Pursuant to rule 66, paragraph 2 (b), of its rules of procedure, the Committee reviewed the provisional concluding observations in the light of the replies to the list of issues provided by the State party (CAT/C/YEM/Q/2/Add.1), and adopted, at its 952nd meeting (CAT/C/SR.952), its final concluding observations as set out below.

#### **A. Introduction**

(2) The Committee welcomes the submission of the second periodic report of Yemen, which, while generally following the Committee's guidelines for reporting, lacks statistical and practical information on the implementation of the provisions of the Convention and relevant domestic legislation. However, the Committee regrets the delay in the submission of the report and the written responses to its list of issues (CAT/C/YEM/Q/2) and that the

State party has not responded to the letter of 21 April 2006, in which the Committee Rapporteur for follow-up to concluding observations requested further information on Yemen (CAT/C/CR/31/4 and Add.1).

(3) The Committee regrets the absence of a delegation from the State party able to enter into a dialogue with it during its consideration of Yemen at the forty-third session, and notes that, owing to the absence of representatives from the State party, the examination of the report took place in accordance with rule 66, paragraph 2 (b), of its rules of procedure. The Committee welcomes, however, that a high-level delegation from the State party met with the Committee during its forty-fourth session to provide further information about recent developments and relevant measures pertaining to the implementation of the Convention in the State party. While regretting that the State party did not submit written responses and comments to the provisional concluding observations, the Committee welcomes the State party's submission of replies to the list of issues (CAT/C/YEM/Q/2/Add.1). The Committee urges the State party, in the future, to comply fully with its obligations under article 19 of the Convention.

## **B. Positive aspects**

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

(a) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, in 2009;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2007;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2004.

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

(a) The State party's signature of several memorandums of understanding with the United Nations High Commissioner for Refugees in 2004, 2005 and 2007, including its commitment to prepare a refugee law and to promote it;

(b) The State party's comprehensive review of the criminal justice legislation and its implementation in Yemen, including in relation to the right not to be subjected to torture;

(c) The various human rights education and training activities and the State party's openness to international cooperation.

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

### **Implementation of the Convention**

(6) The Committee notes with concern that the conclusions and recommendations it addressed to Yemen in 2003 have not been sufficiently taken into consideration. The Committee stresses the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. In its view, cultural and religious specificities may be taken into consideration in order to develop adequate means to ensure respect for universal human rights, but they cannot jeopardize the implementation of all provisions of the Convention or negate the rule of law. In this respect, the Committee notes with concern the establishment, in 2008, of a commission to protect

virtue and fight vice, and the lack of information on the mandate and jurisdiction of this commission, existing appeal procedures, and whether it is subject to review by ordinary judicial authorities (art. 2).

**The State party should implement in good faith all recommendations addressed to it by the Committee and find ways to ensure that its religious principles and laws are compatible with human rights and its obligations under the Convention. In this respect, the Committee draws the attention of the State party to its general comment No. 2 on the implementation of article 2. The State party is requested to provide information on the mandate of the new virtue and vice commission, its appeal procedures and whether it exercises a precise jurisdiction in full conformity with the requirements of the Convention or is subject to review by ordinary judicial authorities.**

#### **Definition of torture**

(7) While noting that the Constitution of Yemen prohibits torture, the Committee reiterates its concern at the lack of a comprehensive definition of torture in the domestic law as set out in article 1 of the Convention (CAT/C/CR/31/4, para. 6 (a)). The Committee is concerned that the current definition in the Constitution prohibits torture only as a means of coercing a confession during arrest, investigation, detention and imprisonment, and that punishment is limited to individuals who order or carry out acts of torture and does not extend to individuals who are otherwise complicit in such acts. The Committee is also concerned that, while the Constitution provides that crimes involving physical or psychological torture should not be subject to a statute of limitations, the criminal procedure law may include a statute of limitations (arts. 1 and 4).

**The State party should incorporate the crime of torture into domestic law and adopt a definition of torture that covers all of the elements contained in article 1 of the Convention. By naming and defining the offence of torture in accordance with the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture by, inter alia, alerting everyone, including perpetrators, victims and the public to the special gravity of the crime of torture, and by improving the deterrent effect of the prohibition itself. The State party is requested to clarify to the Committee whether acts of torture are subject to a statute of limitations; if so, the State party should review its rules and provisions on the statute of limitations and bring them into line fully with the Constitution and the State party's obligations under the Convention.**

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

(8) The Committee is deeply concerned at the numerous allegations, corroborated by a number of Yemeni and international sources, of a widespread practice of torture and ill-treatment of detainees in Yemeni prisons, including State security prisons run by the Public Security Department, the national security authority and the Department of Anti-Terrorism under the Ministry of the Interior. The Committee is further concerned that such allegations are seldom investigated and prosecuted, and that there appears to be a climate of impunity for perpetrators of acts of torture. In this respect, the Committee expresses its concern at article 26 of the code of criminal procedure, which appear to provide that criminal lawsuits may not be filed against a law enforcement officer or a public employee for any crime committed while carrying out his job or caused thereby, except with the permission of the General Prosecutor, a delegated public attorney or heads of prosecution, and at the lack of information on the application of this provision (arts. 2, 4, 12 and 16).

**As a matter of urgency, the State party should take immediate steps to prevent acts of torture and ill-treatment throughout the country and to announce a policy of eradication of torture and ill-treatment by State officials.**

**The State party should ensure that all allegations of torture and ill-treatment are investigated promptly, effectively and impartially, and that the perpetrators are prosecuted and convicted in accordance with the gravity of the acts, as required by article 4 of the Convention.**

**The State party is requested to clarify to the Committee whether article 26 of the code of criminal procedure is still in force and, if so, how the provision is applied in practice.**

#### **Fundamental legal safeguards**

(9) Notwithstanding the information provided in the replies to the list of issues and by the State party delegation, the Committee remains seriously concerned at the State party's failure in practice to afford all detainees, including detainees held in State security prisons, with all fundamental legal safeguards from the very outset of their detention. Such safeguards comprise the right to have prompt access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, and to appear before a judge within a time limit in accordance with international standards. In this respect, the Committee is concerned at the statement in the State report (para. 203) that "persons in pretrial detention may meet with their relatives and lawyers, provided they obtain a written authorization from the body/entity that issued the detention order". The Committee notes the information on record keeping provided in the replies to the list of issues but it remains concerned at the lack of a central register for all persons held in detention, including minors (arts. 2, 11 and 12).

**The State party should take effective measures promptly to ensure that all detainees are afforded, in practice, all fundamental legal safeguards from the very outset of their detention; these include, in particular, the rights to have prompt access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards. The State party should also ensure that all detainees, including minors, are included in a central register that functions effectively.**

**The Committee reiterates its request to the State party to provide information on the requirements to obtain written authorization for persons in pretrial detention to meet with their relatives and lawyers, as well as the conditions under which such authorization may be refused.**

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

(10) The Committee notes that the Department of Public Prosecutions (the Prosecutor-General) has overall responsibility for overseeing and inspecting prisons and that prosecutor's offices are established in central prisons in the different governorates following decree No. 91 of 1995. It also notes the information provided by the State party that a significant number of inspections of arrest, detention and prison facilities are conducted on a yearly basis, including visits to the facilities of the Political Security Department. However, the Committee remains concerned at the lack of systematic and effective monitoring and inspection of all places of deprivation of liberty, especially places of detention, including regular and unannounced visits to such places by national and international monitors. In this respect, the Committee expresses its concern at the proliferation of places of detention, including political security, national security and military prisons, as well as private detention facilities run by tribal leaders, and at the apparent absence of control by the Prosecutor-General over such prisons and detention centres. As a consequence, detainees are allegedly deprived of fundamental legal

safeguards, including an oversight mechanism with regard to their treatment and review procedures with respect to their detention (arts. 11 and 16).

**The Committee calls upon the State party to establish an effective national system to monitor and inspect all places of detention and to follow up on the outcome on such systematic monitoring. It should also ensure that forensic doctors trained in detecting signs of torture are present during these visits. The Committee requests the State party to clarify whether the Political Security Department, the National Security authority and the Department of Anti-Terrorism under the Ministry of the Interior are under the control of the civil authorities, and whether the Prosecutor-General has access to the said detention centres, military prisons and private detention facilities. The State party should formally prohibit all detention facilities that do not come under State authority.**

#### **Anti-terrorism measures**

(11) The Committee recognizes that the State party is engaged in a prolonged fight against terrorism. However, recalling the absolute prohibition of torture, the Committee is concerned at reports of grave violations of the Convention committed in the context of the State party's fight against terrorism. Such violations include cases of extrajudicial killing, enforced disappearance, arbitrary arrest, indefinite detention without charge or trial, torture and ill-treatment, and deportation of non-citizens to countries where they are in danger of being subjected to torture or ill-treatment. The Committee is also concerned at the content of the draft anti-terrorism and the money laundering and terrorism funding laws, including the reportedly broad definition of terrorism and the absence of legal/judicial procedures pertaining to the delivery, arrest or detention of individuals (arts. 2 and 16).

**The State party should take all necessary measures to ensure that its legislative, administrative and other anti-terrorism measures are compatible with the provisions of the Convention, especially with article 2, paragraph 2. The Committee recalls that no exceptional circumstances whatsoever can be invoked as a justification for torture and, in accordance with relevant Security Council and other resolutions, anti-terrorism measures must be implemented with full respect for international human rights law, especially the Convention. The State party is requested to provide information on the content and status of the draft anti-terrorism and the money laundering and terrorism funding laws.**

#### **Incommunicado detention**

(12) While noting that information regarding the Political Security Department was provided in the replies to the list of issues, the Committee reiterates its concern at credible reports of the frequent practice of incommunicado detention by Political Security Department officials, including detention for prolonged periods without judicial process (CAT/C/CR/31/4, para. 6 (c)), and is concerned that other security agencies reportedly also engage in such practices. The Committee is also concerned at the lack of information on the exact number and location of places of detention in the State party (arts. 2 and 11).

**The State party should take all appropriate measures to abolish incommunicado detention and ensure that all persons held incommunicado are released, or charged and tried under due process. The State party should submit information on the exact number and location of places of detention used by the Political Security Department and other security forces, and the number of persons deprived of liberty in such facilities. The State party should also provide an update on the case of four nationals of Cameroon — Mouafo Ludo, Pengou Pierpe, Mechoup Baudelaire and Ouafu Zacharie — who have been detained incommunicado and without legal process in Sana'a since 1995.**

**Enforced disappearances and arbitrary arrests and detention**

(13) The Committee expresses its concern at reports of enforced disappearance and of the widespread practice of mass arrests without a warrant and arbitrary and prolonged detention without charges and judicial process. The Committee is also concerned at the wide array of security forces and agencies in Yemen empowered to arrest and detain, and at the lack of clarification as to whether such powers are prescribed by the relevant legislation, including the Criminal Procedure Law. The Committee stresses that arrests without a warrant and the lack of judicial oversight on the legality of detention can facilitate torture and ill-treatment (arts. 2 and 11).

**The State party should take all necessary measures to counter enforced disappearances and the practice of mass arrest without a warrant and arbitrary detention without charges and judicial process. The State party should clarify to the Committee whether the powers of the various security forces and agencies to arrest and detain are prescribed by the relevant legislation, including the Criminal Procedure Law; it should minimize the number of security forces and agencies with such powers. Furthermore, the State party should take all appropriate steps to ensure the application of relevant legislation, to reduce further the duration of detention before charges are brought, and develop and implement alternatives to the deprivation of liberty, including probation, mediation, community service or suspended sentences. The State party is requested to provide detailed information on any investigations into the many reported cases of detention during the “Bani Hashish events” of May 2008.**

**Hostage-taking of relatives**

(14) Notwithstanding the statement provided by the State party delegation that hostage-taking is illegal in the country, the Committee expresses its great concern at the reported practice of holding relatives of alleged criminals, including children and elderly, as hostages, sometimes for years at a time, to compel the alleged criminals to surrender themselves to the police; it also emphasizes that such practice is a violation of the Convention. In this respect, the Committee notes with particular concern the case of Mohammed Al-Baadani, who was abducted in 2001, at age 14, by a tribal chief because of his father’s failure to pay back debts, and who reportedly remains in a State prison without a set trial date (arts. 12 and 16).

**The State party should, as a matter of priority, discontinue its practice of holding relatives of alleged criminals as hostages, and punish the perpetrators. The State party should also provide an update on the case of Mohammed Al-Baadani.**

**Allegations of extrajudicial killings**

(15) While noting the statement in the replies to the list of issues that extra-judicial, arbitrary or summary executions constitute violations of the Convention and the laws in force and are “unlikely to occur”, the Committee expresses its great concern at allegations of extrajudicial killings by security forces and other serious human rights violations in different parts of the country, in particular the northern Sa’ada province and in the south (arts. 2, 12 and 16).

**The State party should take effective steps to investigate promptly and impartially all allegations of involvement of members of law enforcement and security agencies in extrajudicial killings and other serious human rights violations in different parts of the country, in particular the northern Sa’ada province and in the south.**



### **Complaints and prompt and impartial investigations**

(16) The Committee notes the information provided by the State party on its complaints system in its replies to the list of issues, but it remains concerned at the apparent failure to investigate promptly and impartially the numerous allegations of torture and ill-treatment and to prosecute alleged offenders. The Committee is particularly concerned at the lack of clarity of which authority has the overall responsibility for reviewing individual complaints of torture and ill-treatment by law enforcement, security, military and prison officials, and for initiating investigations in such cases. The Committee also regrets the lack of information, including statistics, on the number of complaints of torture and ill-treatment and results of all the proceedings, at both the penal and disciplinary levels, and their outcomes (arts. 11, 12 and 16).

**The State party should strengthen its measures to ensure prompt, thorough, impartial and effective investigation into all allegations of torture and ill-treatment committed by law enforcement, security, military and prison officials. In particular, such investigations should not be undertaken by or under the authority of the police or military, but by an independent body. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should as a rule be subject to suspension or reassignment during the process of investigation, to avoid any risk that he or she might impede the investigation or continue any reported impermissible actions in breach of the Convention.**

**The State party should prosecute the perpetrators and impose appropriate sentences on those convicted in order to ensure that State officials who are responsible for violations prohibited by the Convention are held accountable.**

**The Committee requests the State party to provide information, including statistics, on the number of complaints of torture and ill-treatment and results of all the proceedings, at both the penal and disciplinary levels, and their outcomes. This information should be disaggregated by sex, age and ethnicity of the individual bringing the complaints, and indicate which authority undertook the investigation.**

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

(17) The Committee appreciates the detailed information provided by the State party on existing legal guarantees ensuring the security of tenure of judges, the procedure for the appointment of judges, the duration of their mandate, the constitutional or legislative rules governing their irremovability and the way in which they may be dismissed from office. While noting the information provided in the replies to the list of issues that the laws on the judiciary are currently being amended so as to strengthen the judiciary's independence, the Committee expresses its concern at the reported lack of efficiency and independence of the judiciary, despite the existence of constitutional guarantees and the measures taken to reform the judicial branch, including in the context of the national strategy for the modernization and development of the judiciary (2005–2015). It is particularly concerned that this may impede the initiation of investigation and prosecution of cases of torture and ill-treatment. In this respect, the Committee is concerned at reports of interference by the executive and lack of security of tenure of judges. While noting that article 150 of the Constitution of Yemen prohibits without exception the establishment of special courts, the Committee is also concerned at the establishment by Republican Decree of 1999 of the Specialized Criminal Court and at reports that international norms of fair trial are not upheld by this Court (arts. 2, 12 and 13).

**The State party should take the necessary measures to establish and ensure the full independence and impartiality of the judiciary in the performance of its duties in conformity with international standards, notably the Basic Principles on the Independence of the Judiciary. In this respect, the State party should ensure that the**

judiciary is free from any interference, in particular from the executive branch, in law as in practice. The State party should also strengthen the role of judges and prosecutors with regard to the initiation of investigation and prosecution of cases of torture and ill-treatment and the legality of detention, including by providing adequate training on the State party's obligations under the Convention to judges and prosecutors.

Furthermore, the State party should dissolve the Specialized Criminal Court, as the trials before this exceptional court violate basic principles for the holding of a fair trial.

#### **Criminal sanctions**

(18) The Committee remains concerned that certain criminal sanctions (or *hadd* penalties) such as floggings, beatings and even amputation of limbs are still prescribed by law and practised in the State party, in violation of the Convention. The Committee is also concerned at reports that courts across the country impose sentences of flogging almost daily for alleged alcohol and sexual offences, and that such floggings are carried out immediately, in public, without appeal. It is also concerned at the wide discretionary powers of judges to impose these sanctions and that they may be imposed in a discriminatory way against different groups, including women (arts. 1, 2 and 16).

**The State party should put an end immediately to such practices and modify its legislation accordingly, especially with regard to the discriminatory effects of such criminal sanctions on different groups, including women, in order to ensure its full compatibility with the Convention.**

#### **Internally displaced persons**

(19) The Committee is seriously concerned at the high number of internally displaced persons in the northern Sa'ada province, and at the fact that the State party has reportedly not taken sufficient steps to ensure the protection of persons affected by the conflict in the north, in particular the internally displaced persons currently confined to camps (arts. 12 and 16).

**The State party should take all necessary measures to ensure the protection of persons affected by the conflict in the northern Sa'ada province, particularly internally displaced persons currently confined to camps.**

#### **Human rights defenders, political activists, journalists and other individuals at risk**

(20) The Committee notes with concern allegations, including in conjunction with recent events in the region of Sa'ada, indicating that many Government opponents, including human rights defenders, political activists and journalists, have been subjected to arbitrary detention and arrest, incommunicado detentions lasting anything from several days to several months, denied access to lawyers and the possibility of challenging the legality of their detention before the courts. The Committee regrets the lack of information provided on any investigations into such allegations (arts. 2, 12 and 16).

**The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from intimidation or violence as a result of their activities and exercise of human rights guarantees, to ensure the prompt, impartial and effective investigation of such acts, and to prosecute and punish perpetrators with penalties appropriate to the nature of those acts. The State party should provide information on any investigation into recent events in the region of Sa'ada, as well as the outcome of such investigations.**

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

(21) While noting the information provided by the State party in the replies to the list of issues, the Committee expresses its concern that a total of 283 death sentences were executed in the period 2006-2008. The Committee also remains deeply concerned at reported cases of imposition of the death penalty on children of between 15 and 18 years of age. The Committee also expresses concern at the conditions of detention of convicted prisoners on death row, which may amount to cruel, inhuman or degrading treatment, in particular owing to the excessive length of time on death row. The Committee is further concerned at the lack of information in the State report and the replies to the list of issues on the precise number of persons executed in the full reporting period and for which offences, as well as the number of persons currently on death row, disaggregated by sex, age, ethnicity and offence (arts. 2 and 16).

**The Committee recommends that the State party consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty. In the meantime, the State party should review its policy with regard to the imposition of the death penalty, and in particular take the measures necessary to ensure that the death penalty is not imposed on children. Furthermore, the State party should ensure that its legislation provides for the possibility of the commutation of death sentences, especially where there have been delays in their implementation. The State party should ensure that all persons on death row are afforded the protection provided by the Convention and are treated humanely.**

**The Committee reiterates its request to the State party to provide information, in detail, on the precise number of people executed in the full reporting period, for which offences and whether any children have been sentenced to death and executed. The State party should also indicate the current number of people on death row, disaggregated by sex, age, ethnicity and offence.**

### **Non-refoulement**

(22) While noting the information provided by the State party in the replies to the list of issues, the Committee remains concerned at numerous cases of forced return of foreign nationals, including to Egypt, Eritrea and Saudi Arabia, without the individuals being able to oppose it by means of an effective remedy, which may be in breach of the obligations imposed by article 3 of the Convention. The Committee also regrets the lack of information on measures taken by the State party to ensure that those foreign nationals did not run a real risk of being subjected to torture or inhuman or degrading treatment in the country of destination, or that they would not be subsequently deported to another country where they might run a real risk of being subjected to such torture or ill-treatment, as well as the lack of any follow-up measures taken by the State party in this respect (art. 3).

**Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or ill-treatment. The State party should ensure that it complies fully with article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by its competent authorities and guaranteed fair treatment at all stages of proceedings, including an opportunity for effective, independent and impartial review of decisions on expulsion, return or extradition.**

**When determining the applicability of its non-refoulement obligations under article 3 of the Convention, the State party should examine thoroughly the merits of each individual case, ensure that adequate judicial mechanisms for the review of the decision are in place and ensure effective post-return monitoring arrangements. Such**

**assessment should also be applied with regard to individuals who may constitute a security threat.**

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

(23) The Committee notes with interest the information provided by the State party delegation that the Cabinet has decided to study the possibility of establishing an independent national human rights institution. However, it regrets that such an institution has not yet been created. The Committee also notes that the Human Rights Ministry has a mandate to receive complaints, but regrets the lack of information on how the complaints received by the Ministry are dealt with, as well as on investigations, prosecutions and criminal and/or administrative punishments of perpetrators (arts. 2, 11 and 12).

**The State party should, as a priority, continue to work towards establishing a national human rights institution in accordance with the Principles relating to the status and functioning of national institutions for protection and promotion of human rights (the Paris Principles) adopted by the General Assembly in its resolution 48/134. The State party is also requested to provide information, including statistical data, on the complaints received by the Human Rights Ministry and on any investigation, prosecution and criminal and/or administrative punishment of perpetrators.**

#### **The situation of women in detention**

(24) The Committee takes note of the information provided by the State party in the replies to the list of issues. However, it expresses its serious concern at information that prisons' conditions are not suitable for women, that there are no female guards in female prisons, with the exception of the Hajjah detention centre or specific health care for women prisoners, including for pregnant women and for their children. Women in detention are frequently harassed, humiliated and ill-treated by male guards, and there are allegations of sexual violence, including rape, against women in detention. The Committee reiterates its concern with regard to the situation of women who have served their prison sentence but who remain in prison for prolonged periods, owing to the refusal of their guardian or family to receive them home upon completion of their sentences or because they are unable to pay the "blood money" they have been convicted to pay (CAT/C/CR/31/4, para. 6 (h)). The Committee is also concerned that the majority of women in prison have been sentenced for prostitution, adultery, alcoholism, unlawful or indecent behaviour, in a private or public setting, as well as for violating restrictions of movement imposed by family traditions and Yemeni laws; the Committee also notes with concern that such sentences are applied in a discriminatory way against women (arts. 1, 2, 4, 11 and 16).

**The State party should take effective measures to prevent sexual violence against women in detention, including by reviewing current policies and procedures for the custody and treatment of detainees, ensuring separation of female detainees from males, enforcing regulations calling for female inmates to be guarded by officers of the same gender, and monitoring and documenting incidents of sexual violence in detention.**

**The State party should also take effective measures to ensure that detainees who have allegedly been sexually victimized are able to report the abuse without being subjected to punitive measures by staff, protect detainees who report sexual abuse from retaliation by the perpetrator(s); promptly, effectively and impartially investigate and prosecute all instances of sexual abuse in custody; and provide access to confidential medical and mental health care for victims of sexual abuse in detention, as well as access to redress, including compensation and rehabilitation, as appropriate. The State party is requested to provide data, disaggregated by sex, age and ethnicity of the victims of sexual abuse, and information on investigation, prosecution and punishment of perpetrators.**

Furthermore, the State party should ensure that women prisoners have access to adequate health facilities and provide rehabilitation programmes to reintegrate them into the community, notwithstanding the refusal of the guardian or family to receive them. In this respect, the State party is requested to inform the Committee of any steps taken to establish “half-way homes” for these women, as recommended by the Committee in its previous concluding observations (CAT/C/CR/31/4, para. 7 (k)).

#### **Children in detention**

(25) While appreciating information provided by the State party on progress achieved in the juvenile justice system and that a draft amendment to the Juvenile Welfare Act that would raise the minimum age of criminal responsibility to 10 years is currently being considered, the Committee remains deeply concerned at the continued practice of detention of children, including children as young as 7 or 8 years of age; it is also concerned at reports that children are often not separated from adults in detention facilities and that they are frequently abused. The Committee also remains concerned at the very low minimum age of criminal responsibility (7 years) and other shortcomings in the juvenile justice system (arts. 2, 4, 11 and 16).

**The State party should, as a matter of urgency, raise the minimum age of criminal responsibility in order to bring it into line with generally accepted international standards. The State party should also take all measures necessary to significantly reduce the number of children in detention and ensure that persons below 18 years of age are not detained with adults; that alternative measures to deprivation of liberty, such as probation, community service or suspended sentences, are available; that professionals in the area of recovery and social reintegration of children are properly trained; and that deprivation of liberty is used only as a measure of last resort, for the shortest possible time and in appropriate conditions. In this respect, the Committee reiterates the recommendations made by the Committee on the Rights of the Child (CRC/C/15/Add.267, paras. 76 and 77). The Committee requests the State party to provide statistics on the number of children in detention, disaggregated by sex, age and ethnicity.**

#### **Training**

(26) The Committee takes note of the detailed information included in the State report and the replies to the list of issues on training and awareness-raising programmes. However, it is concerned at the limited information on any awareness-raising and training programmes for members of the Political Security Department, the National Security authority and the Ministry of the Interior, as well as on any training programmes for forensic doctors and medical personnel dealing with detained persons, to detect and document physical and psychological sequelae of torture. The Committee also regrets the lack of information on monitoring and evaluation of the impact of its training programmes in reducing incidents of torture and ill-treatment (art. 10).

**The State party should further develop and strengthen educational programmes to ensure that all officials, including law enforcement, security, military and prison officials, are fully aware of the provisions of the Convention, that reported breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. In this respect, the State party is requested to provide information on any awareness-raising and training programmes in place for members of the Political Security Department, the National Security authority and the Ministry of the Interior. Furthermore, all relevant personnel should receive specific training on how to identify signs of torture and ill-treatment; such training should include the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), which should**

**be provided to physicians and utilized effectively. In addition, the State party should assess the effectiveness and impact of such training/educational programmes.**

**Redress, including compensation and rehabilitation**

(27) The Committee reiterates its concern at the lack of information on modalities of compensation for and rehabilitation of victims of torture and ill-treatment by the State party (CAT/C/CR/31/4, para. 6 (g)), as well as on the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases. The Committee also regrets the lack of information on treatment and social rehabilitation services and other forms of assistance, including medical and psychosocial rehabilitation, provided to victims (art. 14).

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

**Coerced confessions**

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

**The State party should take the steps necessary to ensure that confessions obtained under torture or duress are inadmissible in court in all cases in line with domestic legislation and the provisions of article 15 of the Convention. The Committee requests the State party to submit information on the application of the provisions prohibiting admissibility of evidence obtained through torture, and whether any officials have been prosecuted and punished for extracting such confessions.**

**Domestic violence**

(29) The Committee notes that a team of legal experts has been established to review domestic legislation on women and eliminate any discriminatory provisions incompatible with international treaties on women's rights. The Committee also notes the reference in the State report to the adoption of the Protection against Domestic Violence Act No. 6 of 2008 (CAT/C/YEM/2, paras. 132-146), but regrets the very limited information on its content and implementation. The Committee notes with deep concern that violence against women and children, including domestic violence, remains prevalent in Yemen. It is also concerned that women reportedly experience difficulties in filing complaints and seeking redress with regard to such violence. The Committee is also concerned that article 232 of the Penal Code provides that a man, or any male relative, who kills his wife, or a female member of the family suspected of adultery is not prosecuted with murder but a less serious crime. It also expresses its concern at the lack of data, including statistics on complaints, prosecutions and sentences, relating to homicides committed against women by their husbands or male relatives and to domestic violence (arts. 1, 2, 12 and 16).

The State party should strengthen its efforts to prevent, combat and punish violence against women and children, including domestic violence. The State party is encouraged to participate directly in rehabilitation and legal assistance programmes and to conduct broader awareness campaigns for officials (judges, law officers, law enforcement agents and welfare workers) who are in direct contact with victims. The Committee also recommends that the State party establish clear procedures for filing complaints on violence against women, and establish female sections in police stations and prosecutor's offices to deal with such complaints and investigations.

The State party should repeal article 232 of the Penal Code to ensure that homicides committed against women by their husbands or male relatives are prosecuted and punished in the same way as any other murders. The State party should also strengthen its efforts in respect of research and data collection on the extent of domestic violence and homicides committed against women by their husbands or male relatives; it is also requested to provide the Committee with statistical data on complaints, prosecutions and sentences in this respect.

### **Trafficking**

(30) The Committee notes the statement in the replies to the list of issues that the "problem of child smuggling" in the country is largely a matter of irregular migration by children, not child trafficking, and it also notes a number of measures adopted by the State party to prevent and combat such phenomenon. However, the Committee expresses its grave concern at reports of trafficking in women and children for sexual and other exploitative purposes, including reports of trafficking of children out of Yemen, mostly to Saudi Arabia. The Committee is also concerned at the general lack of information on the extent of trafficking in the State party, including the number of complaints, investigations, prosecutions and convictions of perpetrators of trafficking, as well as on the concrete measures taken to prevent and combat such phenomena (arts. 1, 2, 12 and 16).

The State party should increase its efforts to prevent and combat trafficking of women and children and cooperate closely with the authorities of Saudi Arabia in respect of cases of combating trafficking in children. The State party should provide protection for victims and ensure their access to medical, social, rehabilitative and legal services, including counselling services, as appropriate. The State party should also create adequate conditions for victims to exercise their right to make complaints, conduct prompt, impartial and effective investigations into all allegations of trafficking, and ensure that perpetrators are brought to justice and punished with penalties appropriate to the nature of their crimes. The State party is requested to provide further information on measures taken to provide assistance to the victims of trafficking as well as statistical data on the number of complaints, investigations, prosecutions and convictions relating to trafficking.

### **Early marriages**

(31) The Committee notes with interest the information provided by the State party delegation that a draft legislative amendment to raise the minimum age of marriage has been approved by the Council of Ministers and is currently before the Parliament. However, the Committee remains seriously concerned at the amendment to Personal Status Law No. 20 of 1992 by Law No. 24 of 1999, which legalized the marriage of girls under 15 years of age with the consent of their guardian. The Committee expresses its concern at the "legality" of such early marriages of girls, some as young as 8 years of age, and underlines the fact that this amounts to violence against them as well as inhuman or degrading treatment, and is thus in breach of the Convention. The Committee further expresses its concern at the very high maternal and child mortality rates, including the considerable

number of girls that reportedly die every day following complications during labour and delivery (arts. 1, 2 and 16).

**The State party should take urgent legislative measures to raise the minimum age of marriage for girls, in line with article 1 of the Convention on the Rights of the Child, which defines a child as being below the age of 18, and the provision on child marriage in article 16, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination against Women; it should also stipulate that child marriages have no legal effect. The Committee also urges the State party to enforce the requirement to register all marriages in order to monitor their legality and the strict prohibition of early marriages and to prosecute the perpetrators violating such provisions, in line with the recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/YEM/CO/6, para. 31) and the universal periodic review (A/HRC/12/13).**

#### **Harassment of an NGO participating in the work of the Committee**

(32) The Committee expresses its serious concern at information of threats against, and intimidation and harassment of, members of the non-governmental organization Sisters' Arab Forum for Human Rights, which coordinated an alternative joint submission to the Committee prior to its consideration of the State party at its forty-third session and also briefed the Committee during the current session. The Committee is concerned that such threats and intimidation may be related to the peaceful activities of this non-governmental organization in promoting and protecting human rights, and in particular with monitoring and documenting cases of torture. The Committee deeply regrets that the State party has not replied to the letter sent by the Committee's Chairperson on 3 December 2009, drawing the attention of the State party to this issue and requesting the State party to provide information on the measures taken to implement, especially with regard to the organization's chairperson, articles 12, 13 and 16 of the Convention and paragraph 20 of the provisional concluding observations of the Committee.

**The Committee reiterates its request to the State party, as a matter of urgency, to provide information on the measures taken to implement, especially with regard to members of the Sisters' Arab Forum for Human Rights, articles 12, 13 and 16 of the Convention and paragraph 20 of the Committee's final concluding observations.**

#### **Data collection**

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

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

#### **Cooperation with United Nations human rights mechanisms**

(34) The Committee recommends that the State party strengthen its cooperation with United Nations human rights mechanisms, including by permitting visits of, inter alia, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of human rights while



countering terrorism, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working Group on Arbitrary Detention.

(35) Noting the commitment made by the State party in the context of the universal periodic review (A/HRC/12/13, para. 93 (4)), the Committee recommends that the State party consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible.

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

(37) With reference to its previous concluding observations (CAT/C/CR/31/44 (d)), the Committee recommends that the State party consider ratifying the Rome Statute of the International Criminal Court.

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

(39) The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies (HRI/GEN/2/Rev.6).

(40) The State party is encouraged to disseminate widely the reports submitted to the Committee and the present provisional concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(41) The Committee requests the State party to provide, within a year, information on its response to the Committee's recommendations contained in paragraphs 10, 12, 16, 31 and 32 above.

(42) The State party is invited to submit its next periodic report, which will be the third report, by 14 May 2014.

#### **IV. Follow-up to concluding observations on States parties' reports**

65. In this chapter, the Committee updates its findings and activities that constitute follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the procedure established on follow-up to concluding observations. The follow-up responses by States parties, and the activities of the Rapporteur for follow-up to concluding observations under article 19 of the Convention, including the Rapporteur's views on the results of this procedure, are presented below. This information is updated through 14 May 2010, the end of the Committee's forty-fourth session.

66. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. In that report and each year thereafter, the Committee has presented information on its experience in receiving information on follow-up measures taken by States parties since the initiation of the procedure in May 2003.

67. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. In November 2009 and May 2010, the Rapporteur presented a progress report to the Committee on the results of the procedure.

68. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific measures to prevent acts of torture and ill-treatment. Thereby, the Committee assists States parties in identifying effective legislative, judicial, administrative and other measures to bring their laws and practice into full compliance with the obligations set forth in the Convention.

69. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information within one year. Such follow-up recommendations are identified because they are serious, protective and are considered able to be accomplished within one year. The States parties are asked to provide information within one year on the measures taken to give effect to the follow-up recommendations. In the concluding observations on each State party report, the recommendations requiring follow-up within one year are specifically identified in a paragraph at the end of the concluding observations.

70. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-fourth session in May 2010, the Committee has reviewed 95 reports from States parties for which it has identified follow-up recommendations. It must be noted that periodic reports of Chile, Latvia, Lithuania and New Zealand have been examined twice by the Committee since the establishment of the follow-up procedure. Of the 81 States parties that were due to have submitted their follow-up reports to the Committee by 14 May 2010, 57 had completed this requirement. As of 14 May 2010, 24 States had not yet supplied follow-up information that had fallen due: Republic of Moldova, Cambodia, Cameroon, Bulgaria, Uganda, Democratic Republic of the Congo, Peru, Togo, Burundi, South Africa, Tajikistan, Luxembourg, Benin, Costa Rica, Indonesia, Zambia, Lithuania (to the 2009 concluding observations), Chad, Chile, Honduras, Israel, New Zealand, Nicaragua and the Philippines.

71. The Rapporteur sends reminders requesting the outstanding information to each of the States for which follow-up information is due, but not yet submitted. The status of the follow-up to concluding observations may be found in the web pages of the Committee at

each of the respective sessions. As of 2010, the Committee has established a separate web page for follow-up (<http://www2.ohchr.org/english/bodies/cat/follow-procedure.htm>).

72. Of the 24 States parties that did not submit any information under the follow-up procedure as of 14 May 2010, non-respondents came from all world regions. While about one-third had reported for the first time, two-thirds were reporting for a second, third or even fourth time.

73. The Rapporteur expresses appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

74. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties which are posted on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website.

75. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

76. Among the Rapporteur's activities in the past year, have been the following: attending the inter-committee meetings in Geneva where follow-up procedures were discussed with members from other treaty bodies, and it was decided to establish a working group on follow-up; addressing the Committee on the Elimination of Discrimination against Women at its August 2009 meeting in New York concerning aspects of the follow-up procedure; assessing responses from States parties and preparing follow-up letters to countries as warranted and updating the information collected from the follow-up procedure.

77. Additionally, the Rapporteur initiated a study of the Committee's follow-up procedure, beginning with an examination of the number and nature of topics identified by the Committee in its requests to States parties for follow-up information. She reported to the Committee on some preliminary findings, in November 2009 and later in May 2010, and specifically presented charts showing that the number of topics designated for follow-up has substantially increased since the thirty-fifth session. Of the 87 countries examined as of the forty-third session (November 2009), one to three paragraphs were designated for follow-up for 14 States parties, four or five such topics were designated for 38 States parties, and six or more paragraphs were designated for 35 States parties. The Rapporteur drew this trend to the attention of the members of the Committee and it was agreed in May 2010 that, whenever possible, efforts would henceforth be made to limit the number of follow-up items to a maximum of five paragraphs.

78. The Rapporteur also found that certain topics were more commonly raised as a part of the follow up procedure than others. Specifically, for all State parties reviewed since the follow-up procedure began, the following topics were most frequently designated:

Ensure prompt, impartial and effective investigation(s)	76 per cent
Prosecute and sanction persons responsible for abuses	61 per cent
Guarantee legal safeguards	57 per cent
Enable right to complain and have cases examined	43 per cent
Conduct training, awareness-raising	43 per cent
Ensure interrogation techniques in line with the Convention	39 per cent
Provide redress and rehabilitation	38 per cent
End gender-based violence, ensure protection of women	34 per cent
Ensure monitoring of detention facilities/visit by independent body	32 per cent
Carry out data collection on torture and ill-treatment	30 per cent
Improve condition of detention, including overcrowding	28 per cent

79. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies and her concerns (illustrative, not comprehensive) have been included in prior annual reports. To summarize them, she finds there is considerable value in having more precise information being provided, e.g. lists of prisoners, details on deaths in detention and forensic investigations.

80. As a result of numerous exchanges with States parties, the Rapporteur has observed that there is need for more vigorous fact-finding and monitoring in many States parties. In addition, there is often inadequate gathering and analysing of police and criminal justice statistics. When the Committee requests such information, States parties frequently do not provide it. The Rapporteur further considers that conducting prompt, thorough and impartial investigations into allegations of abuse is of great protective value. This is often best undertaken through unannounced inspections by independent bodies. The Committee has received documents, information and complaints about the absence of such monitoring bodies, the failure of such bodies to exercise independence in carrying out their work or to implement recommendations for improvement.

81. The Rapporteur has also pointed to the importance of States parties providing clear-cut instructions on the absolute prohibition of torture as part of the training of law-enforcement and other relevant personnel. States parties need to provide information on the results of medical examinations and autopsies, and to document signs of torture, especially including sexual violence. States parties also need to instruct personnel on the need to secure and preserve evidence. The Rapporteur has found many lacunae in national statistics, including on penal and disciplinary action against law-enforcement personnel. Accurate record keeping, covering the registration of all procedural steps of detained persons, is essential and requires greater attention. All such measures contribute to safeguard the individual against torture or other forms of ill-treatment, as set forth in the Convention.

82. The chart below details, as of 14 May 2010, the end of the Committee's forty-fourth session, the replies with respect to follow-up. This chart also includes States parties' comments to concluding observations, if any.

## Follow-up procedure to concluding observations from May 2003 to May 2010

### Thirtieth session (May 2003)

<i>State party</i>	<i>Information due in</i>	<i>Information received (including comments)</i>	<i>Action taken</i>
Azerbaijan	May 2004	7 July 2004 CAT/C/CR/30/RESP/1	Request for further clarifications
Republic of Moldova	May 2004		Reminder

### Thirty-first session (November 2003)

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Cambodia	November 2004	-	Reminder
Cameroon	November 2004	-	Reminder
Colombia	November 2004	24 March 2006 CAT/C/COL/CO/3/Add.1 17 October 2007 CAT/C/COL/CO/3/Add.2 Comments: 17 December 2009 CAT/C/COL/CO/3/Add.3	Reminder Request for further clarifications Request for further clarifications
Latvia	November 2004	3 November 2004 CAT/C/CR/31/RESP/1 14 May 2007 CAT/C/LVA/CO/1/Add.2	Request for further clarification Information under review
Lithuania	November 2004	7 December 2004 CAT/C/CR/31/RESP/1 25 October 2006 CAT/C/LTU/CO/1/Add.2	Request for further clarification Request for further clarifications Information under review
Morocco	November 2004	22 November 2004 CAT/C/CR/31/2/Add.1 31 July 2006 CAT/C/MAR/CO/3/Add.2 30 October 2006 CAT/C/MAR/CO/3/Add.3	Request for further clarifications Information under review
Yemen	November 2004	22 August 2005 CAT/C/CR/31/4/Add.1	Request for further clarifications

**Thirty-second session (May 2004)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Bulgaria	May 2005	-	Reminder
Chile	May 2005	22 January 2007 CAT/C/38/CRP.4	Reminder Request for further clarifications
Croatia	May 2005	16 February 2009 CAT/C/HRV/CO/3/Add.2 12 July 2006 CAT/C/HRV/CO/3/Add.1	Reminder Request for further clarifications Information under review
Czech Republic	May 2005	25 April 2005 CAT/C/CZE/CO/3/Add.1 14 January 2008 CAT/C/CZE/CO/3/Add.2	Request for further clarifications Information under review
Germany	May 2005	4 August 2005 CAT/C/CR/32/7/RESP/1 27 September 2008 CAT/C/CR/32/7/RESP/2	Request for further clarifications Information under review
Monaco	May 2005	30 March 2006 CAT/C/MCO/CO/4/Add.1	Reminder Request for further clarifications
New Zealand	May 2005	9 June 2005 CAT/C/CR/32/4/RESP/1 Comments: 19 December 2006 CAT/C/NZL/CO/3/Add.2	Request for further clarifications

**Thirty-third session (November 2004)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Argentina	November 2005	2 February 2006 CAT/C/ARG/CO/4/Add.1	Request for further clarifications
Greece	November 2005	14 March 2006 CAT/C/GRC/CO/4/Add.1 8 October 2008 CAT/C/GRC/CO/4/Add.2	Reminder Request for further clarifications Information under review
United Kingdom of Great Britain and Northern Ireland	November 2005	14 March 2006 CAT/C/GBR/CO/4/Add.1	Reminder Request for further clarifications

**Thirty-fourth session (May 2005)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Albania	May 2006	15 August 2006 CAT/C/ALB/CO/1/Add.1	Request for further clarifications
Bahrain	May 2006	21 November 2006 CAT/C/BHR/CO/1/Add.1	Request for further clarifications
		13 February 2009 CAT/C/BHR/CO/1/Add.2	Information under review
Canada	May 2006	2 June 2006 CAT/C/CAN/CO/4/Add.1	Request for further clarifications
Finland	May 2006	19 May 2006 CAT/C/FIN/CO/4/Add.1	Request for further clarifications
		2 December 2008 CAT/C/FIN/CO/4/Add.2	Information under review
Switzerland	May 2006	16 June 2005 CAT/C/CR/34/CHE/Add.1	Reminder
		15 May 2007 CAT/C/CHE/CO/4/Add.2	Request for further clarifications
Uganda	May 2006	-	Reminder

**Thirty-fifth session (November 2005)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Austria	November 2006	24 November 2006 CAT/C/AUT/CO/3/Add.1	Request for further clarifications
Bosnia and Herzegovina	November 2006	Comments: 1 February 2006 CAT/C/BIH/CO/1/Add.1	Reminder
		6 May 2007 CAT/C/BIH/CO/1/Add.2	Request for further clarifications
Democratic Republic of the Congo	November 2006	-	Reminder
Ecuador	November 2006	20 November 2006 CAT/C/ECU/CO/3/Add.1	Request for further clarifications
France	November 2006	13 February 2007 CAT/C/FRA/CO/3/Add.1	Information under review
Nepal	November 2006	1 June 2007 CAT/C/NPL/CO/2/Add.1	Reminder
			Request for further clarifications
Sri Lanka	November 2006	22 November 2006 CAT/C/LKA/CO/2/Add.1	Request for further clarifications

**Thirty-sixth session (May 2006)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Georgia	May 2007	31 May 2007 CAT/C/GEO/CO/3/Add.1	Request for further clarifications
Guatemala	May 2007	15 November 2007 CAT/C/GTM/CO/4/Add.1  1 June 2009 CAT/C/GTM/CO/4/Add.2	Reminder  Request for further clarifications  Information under review
Republic of Korea	May 2007	27 June 2007 CAT/C/KOR/CO/2/Add.1  10 July 2009 CAT/C/KOR/CO/2/Add.2	Request for further clarifications  Request for further clarifications
Peru	May 2007	-	Reminder
Qatar	May 2007	12 December 2006 CAT/C/QAT/CO/1/Add.1	Request for further clarifications
Togo	May 2007	-	Reminder
United States of America	May 2007	25 July 2007 CAT/C/USA/CO/2/Add.1	Request for further clarifications  Request for additional clarifications

**Thirty-seventh session (November 2006)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Hungary	November 2007	15 November 2007 CAT/C/HUN/CO/4/Add.1	Request for further clarification
Russian Federation	November 2007	23 August 2007 CAT/C/RUS/CO/4/Add.1	Request for further clarification
Mexico	November 2007	14 August 2008 CAT/C/MEX/CO/4/Add.1  7 January 2010 CAT/C/MEX/CO/4/Add.1	Request for further clarification  Information under review
Guyana	November 2007	5 December 2008 CAT/C/GUY/CO/1/Add.1	Reminder  Request for further clarifications
Burundi	November 2007	-	Reminder
South Africa	November 2007	-	Reminder
Tajikistan	November 2007	-	Reminder



**Thirty-eighth session (May 2007)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Denmark	May 2008	18 July 2008 CAT/C/DNK/CO/5/Add.1	Request for further clarifications
Italy	May 2008	9 May 2008 CAT/C/ITA/CO/4/Add.1	Request for further clarification
Japan	May 2008	29 May 2008 CAT/C/JPN/CO/1/Add.1	Request for further clarification
Luxembourg	May 2008	-	Reminder
The Netherlands	May 2008	17 June 2008 CAT/C/NET/CO/4/Add.1	Information under review
Poland	May 2008	12 June 2008 CAT/C/POL/CO/4/Add.1	Information under review
Ukraine	May 2008	21 April 2009 CAT/UKR/CO/5/Add.1	Reminder Information under review

**Thirty-ninth session (November 2007)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Benin	November 2008	-	Reminder
Estonia	November 2008	19 January 2009 CAT/C/EST/CO/4/Add.1	Reminder Information under review
Latvia	November 2008	9 February 2010 CAT/C/LVA/CO/2/Add.1	Reminder Information under review
Norway	November 2008	9 July 2009 CAT/C/NOR/CO/5/Add.1	Reminder Request for further clarifications
Portugal	November 2008	23 November 2007 (including comments) CAT/C/PRT/CO/4/Add.1	Request for further clarifications
Uzbekistan	November 2008	19 February 2008 (including comments) CAT/C/UZB/CO/3/Add.1 7 January 2010 CAT/C/UZB/CO/3/Add.2	Reminder and request for further clarification Information under review

**Fortieth session (May 2008)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Algeria	May 2009	29 May 2008 (including comments) CAT/C/DZA/CO/3/Add.1	Reminder and request for further clarification
Australia	May 2009	29 May 2009 CAT/C/AUS/CO/3/Add.1	Request for further clarifications
Costa Rica	May 2009	-	Reminder
Iceland	May 2009	22 December 2009 CAT/C/ISL/CO/3/Add.1	Reminder Information under review
Indonesia	May 2009	-	Reminder
The former Yugoslav Republic of Macedonia	May 2009	15 September 2009 CAT/C/MKD/CO/Add.1	Information under review
Sweden	May 2009	11 June 2009 CAT/C/SWE/CO/5/Add.1	Information under review
Zambia	May 2009	-	Reminder

**Forty-first session (November 2008)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Belgium	November 2009	17 March 2010 CAT/C/BEL/CO/2/Add.1	Information under review
China	November 2009	Comments: 17 December 2008 CAT/C/CHN/CO/4/Add.1  26 November 2009 CAT/C/CHN/CO/4/Add.2	Information under review (China)
Hong Kong		7 January 2010 (Hong Kong) CAT/C/HKG/CO/4/Add.1	Information under review (Hong Kong)
Macao		8 March 2010 (Macao) CAT/C/MAC/CO/4/Add.1	Information under review (Macao)
Kazakhstan	November 2009	25 February 2010 CAT/C/KAZ/CO/2/Add.1	Information under review
Kenya	November 2009	30 November 2009 CAT/C/KEN/CO/1/Add.1	Request for further clarifications
Lithuania	November 2009	-	
Montenegro	November 2009	6 April 2009 CAT/C/MNE/CO/1/Add.1	Information under review

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Serbia	November 2009	5 February 2010 CAT/C/SRB/CO/1/Add.1	Information under review

**Forty-second session (May 2009)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Chad	May 2010	-	
Chile	May 2010	-	
Honduras	May 2010	-	
Israel	May 2010	-	
New Zealand	May 2010	-	
Nicaragua	May 2010	-	
Philippines	May 2010	-	

**Forty-third session (November 2009)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Azerbaijan	November 2010	-	
Colombia	November 2010	-	
El Salvador	November 2010	-	
Republic of Moldova	November 2010	-	
Slovakia	November 2010	-	
Spain	November 2010	-	

**Forty-fourth session (May 2010)**

<i>State party</i>	<i>Information due in</i>	<i>Information received</i>	<i>Action taken</i>
Austria	May 2011	-	
Cameroon	May 2011	-	
France	May 2011	-	
Jordan	May 2011	-	
Liechtenstein	May 2011	-	
Switzerland	May 2011	-	
Syrian Arab Republic	May 2011	-	
Yemen	May 2011	-	

## **V. Activities of the Committee under article 20 of the Convention**

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

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

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

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

87. In the framework of its follow-up activities, the Rapporteurs on article 20 continued to carry out activities aimed at encouraging States parties on which enquiries had been conducted and the results of such enquiries had been published, to take measures to implement the Committee's recommendations.

## **VI. Consideration of complaints under article 22 of the Convention**

### **A. Introduction**

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

89. In accordance with rule 98, paragraph 1, of its rules of procedure, the Committee established the post of the Rapporteur for new complaints and interim measures that is currently held by Mr. Fernando Mariño. Mr. Mariño gave the Committee an overview of the situation in relation to individual complaints submitted under article 22 of the Convention.

90. Consideration of complaints under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents relating to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential. Rules 107 and 109 of the Committee's rules of procedure set out the modalities of the complaints procedure.

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

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

### **B. Interim measures of protection**

93. Complainants frequently request preventive protection, particularly in cases concerning imminent expulsion or extradition, where they allege a violation of article 3 of the Convention. Pursuant to rule 108, paragraph 1, at any time after the receipt of a complaint, the Committee, through its Rapporteur for new complaints and interim measures, may transmit to the State party concerned a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violations. The State party shall be informed that such a request does not imply a determination of the admissibility or the merits of the complaint. The Rapporteur for new complaints and interim measures regularly monitors compliance with the Committee's requests for interim measures.

94. The Rapporteur for new complaints and interim measures has developed the working methods regarding the withdrawal of requests for interim measures. Where the circumstances suggest that a request for interim measures may be reviewed before the consideration of the merits, a standard formulation is added to the request, stating that the request is made on the basis of the information contained in the complainant's submission and may be reviewed, at the initiative of the State party, in the light of information and comments received from the State party and any further comments, if any, from the complainant. Some States parties have adopted the practice of requesting the Rapporteur to withdraw his/her request for interim measures of protection. The Rapporteur has taken the position that such requests need only be addressed if based on new and pertinent information which was not available to him/her when he/she took his/her initial decision on interim measures.

95. The Committee has conceptualized the formal and substantive criteria applied by the Rapporteur for new complaints and interim measures in granting or rejecting requests for interim measures of protection. Apart from timely submission of a complainant's request for interim measures of protection under rule 108, paragraph 1, of the Committee's rules of procedure, the basic admissibility criteria set out in article 22, paragraphs 1 to 5, of the Convention, must be met by the complainant for the Rapporteur to act on his or her request. The requirement of exhaustion of domestic remedies need not be fulfilled if the only remedies available to the complainant are without suspensive effect, i.e. remedies that, for instance, do not automatically stay the execution of an expulsion order to a State where the complainant might be subjected to torture, or if there is a risk of immediate deportation of the complainant after the final rejection of his or her asylum application. In such cases, the Rapporteur may request the State party to refrain from deporting a complainant while his or her complaint is under consideration by the Committee, even before domestic remedies have been exhausted. As for substantive criteria to be applied by the Rapporteur, a complaint must have a reasonable likelihood of success on the merits for it to be concluded that the alleged victim would suffer irreparable harm in the event of his or her deportation.

96. In cases concerning imminent expulsion or extradition where a complaint failed to establish a *prima facie* case with a reasonable likelihood of success on the merits that would allow the Rapporteur for new complaints and interim measures to conclude that the alleged victim would suffer irreparable harm in the event of his or her deportation, the complainant is requested in writing to confirm his or her interest in having his or her communication considered by the Committee, despite the rejection of the respective request for interim measures by the Rapporteur for new complaints and interim measures.

97. The Committee is aware that a number of States parties have expressed concern that interim measures of protection have been requested in too large a number of cases alleging violations of article 3 of the Convention, especially where the complainant's deportation is alleged to be imminent, and that there are insufficient factual elements to warrant a request for interim measures. The Committee takes such expressions of concern seriously and is prepared to discuss them with the States parties concerned. In this regard it wishes to point out that in some cases, requests for interim measures are lifted by the Rapporteur, on the basis of pertinent State party information received that obviates the need for interim measures.

### **C. Progress of work**

98. At the time of adoption of the present report the Committee had registered, since 1989, 420 complaints concerning 30 States parties. Of those, 106 complaints had been discontinued and 60 had been declared inadmissible. The Committee had adopted final decisions on the merits on 164 complaints and found violations of the Convention in 49 of

them. Eighty-eight complaints were pending for consideration and one was suspended, pending exhaustion of domestic remedies.

99. At its forty-third session, the Committee declared inadmissible complaint No. 307/2006 (*E.Y. v. Canada*). The complainant claimed that his forcible removal to Iraq would constitute a violation by Canada of article 3 of the Convention, as there were substantial grounds for believing that he would be tortured and even killed in present-day Iraq for having been a member of Saddam Hussein's Republican Guards and because he was a Sunni Muslim. The Committee declared this complaint inadmissible for non-exhaustion of domestic remedies, having concluded that the complainant did not advance sufficient arguments which would justify his failure to avail himself of the possibility to apply for judicial review of his Pre-Removal Risk Assessment decision, or of the humanitarian and compassionate decision in his case. Nor did the complainant provide reasons for his failure to complete his application for leave to apply to the Federal Court for judicial review of the decision of the Canadian Border Services Agency on his request to defer his removal from Canada. The text of this decision is reproduced in annex XIII, section B, to the present report.

100. Also at its forty-third session, the Committee adopted Views on complaints Nos. 331/2007 (*M.M. v. Canada*) and 348/2008 (*F.A.B. v. Switzerland*). The text of these decisions is reproduced in annex XIII, section A, to the present report.

101. Complaint No. 331/2007 (*M.M. v. Canada*) concerned a Burundian national who was a member of the Burundian organization Puissance Autodéfense (Self-Defence Force) (PA)-Amasekanya, which has since 1994 denounced the impunity enjoyed by those responsible for the Tutsi genocide. According to the complainant, the members of PA-Amasekanya, an organization involved in efforts to prevent genocide and protect minorities in Burundi, ran the risk of being subjected to torture or ill-treatment whenever they voiced their opinions or attempt to hold public demonstrations. He claimed, therefore, that his deportation to Burundi would violate article 3 of the Convention, as he would be at risk of being subjected to torture on account of his membership in and work for PA-Amasekanya. The Committee, after examining the claims and evidence submitted by the complainant as well as the arguments from the State party concluded, on the merits, that the complainant did not substantiate his claim that he would face a real and imminent risk of being subjected to torture upon his return to Burundi, and that, therefore, his removal to that country would not constitute a breach of article 3 of the Convention.

102. In complaint No. 348/2008 (*F.A.B. v. Switzerland*), the complainant claimed that his deportation to Côte d'Ivoire would constitute a breach of article 3 of the Convention by Switzerland, because of the risk of being tortured or subjected to inhuman or degrading treatment by Ivorian authorities, Liberian rebels in Côte d'Ivoire or by the inhabitants of Para, in the Ivorian department of Tabou situated on the border with Liberia. The Committee noted the State party's arguments that the complainant's account of the events that prompted his departure from Côte d'Ivoire was improbable, that he had not claimed to have been politically active, or to have been subjected to torture, and that it was unlikely that he would be persecuted by the authorities upon return. The Committee observed that, since the peace agreement in Côte d'Ivoire, there was no generalized violence in the country, nor were there consistent, gross, flagrant or mass violations of human rights. It further observed that the complainant's allegations were merely theories and that the risk posed by Liberian rebels and by the villagers, apart from being unlikely, could not be attributed to the Ivorian authorities. With regard to the risk of torture by the Ivorian authorities, the Committee noted the absence of objective evidence pointing to the existence of such risk other than the complainant's own account. It also noted that the complainant did at no time seek the protection of the Ivorian authorities. The Committee concluded, therefore, that the complainant had failed to provide sufficient evidence to allow it to

consider that his return to Côte d'Ivoire would put him at a real, present and personal risk of being subjected to torture. Accordingly, no breach of article 3 was found in this complaint.

103. At its forty-fourth session, the Committee adopted decisions on the merits in respect of complaints Nos. 302/2006 (*A.M. v. France*), 322/2007 (*Njamba and Balikosa v. Sweden*), 355/2008 (*C.M. v. Switzerland*) and 356/2008 (*N.S. v. Switzerland*). The text of these decisions is also reproduced in annex XIII, section A, to the present report.

104. In complaint No. 302/2006 (*A.M. v. France*), the complainant claimed that he feared for his life in his country of origin, the Democratic Republic of the Congo, given his support, *inter alia*, to the Mobutu regime, and that France would breach its obligations under article 3 of the Convention if it would forcibly return the complainant to that country. The State party had challenged the complainant's credibility and the authenticity of a number of documents provided to the Committee. The Committee, after examining all claims and evidence submitted by the complainant and the arguments of the State party, concluded that the complainant had failed to rebut in a sufficiently convincing manner the State party's objections on his credibility, and that he had been unable to validate the authenticity of a number of documents submitted. The Committee considered that the complainant had not produced sufficient satisfactory evidence or details to corroborate his claim that there existed a real and personal risk for him to be subjected to torture in case of his return to the Democratic Republic of the Congo. In light of this, the Committee concluded that the complainant had not substantiated his claim that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to the Democratic Republic of the Congo. Therefore, no breach of article 3 was found in this complaint.

105. Complaint No. 322/2007 (*Njamba and Balikosa v. Sweden*) related to a claim by a woman and her minor daughter of a violation of article 3 of the Convention in the event of their forcible deportation from Sweden to the Democratic Republic of the Congo. They claimed that there were substantial grounds for believing that they would be subjected to torture by the security forces as well as by families seeking revenge for their husband's/father's involvement with and support of rebel forces. They also claimed that the first complainant was HIV-positive and would not be able to receive anti-viral drugs in the Democratic Republic of the Congo. While acknowledging the poor human rights situation in certain parts of the Democratic Republic of the Congo, in particular those areas in conflict, the State party argued, *inter alia*, that it intended to return the complainants to the province of Equateur, which it argued was not in conflict. It also argued that the complainants had not demonstrated a real and personal risk of torture. On admissibility, concerning the first complainant's claim in relation to her expulsion and her condition as HIV-positive, the Committee recalled its prior jurisprudence that the aggravation of the condition of an individual's physical or mental health by virtue of a deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of article 16 and did not find such additional factors in this case. On the merits, the Committee found that while some factual issues of this case were disputed, including the claims relating to the complainants' husband's/father's political activities, the Committee observed that the most relevant issues raised in this communication relate to the legal effect that should be given to undisputed facts, such as the risk of danger to the complainants' security upon return. It noted that the State party itself acknowledged that sexual violence occurs in Equateur Province, to a larger extent in rural villages. It noted that since the State party's last response of 19 March 2010, relating to the general human rights situation in the Democratic Republic of the Congo, new reports have emanated from the United Nations, all of which refer to alarming levels of violence against women across the country. The Committee considered that the conflict situation in the Democratic Republic of the Congo, as attested to in all recent United Nation reports, makes it impossible for the



Committee to identify particular areas of the country which could be considered safe for the complainants in their current and evolving situation. Accordingly, it found that, on a balance of all of the factors, substantial grounds existed for believing that the complainants are in danger of being subjected to torture if returned to the Democratic Republic of the Congo.

106. In complaint No. 355/2008 (*C.M. v. Switzerland*), the complainant claimed that he would be subjected to torture if returned to the Congo (Brazzaville), in violation of article 3 of the Convention. A soldier in the national army, the claimant had been accused of supporting former President Pascal Lissouba from within the national forces. These suspicions arose after the rebels attacked Brazzaville in 1999. Since members of Cobra militias close to the current regime would have looked for him since 2000, the complainant decided to flee and seek asylum in Switzerland. The Committee, after examining the claims and evidence submitted by the complainant as well as the arguments of the State party, concluded that the claimant had been unable to counter-argue the inconsistencies pointed out by the State party with regard to the documents provided and the testimony given. The Committee also noted that the State party's assessment of the potential risk had been performed with due diligence. Accordingly, no breach of article 3 was found.

107. Complaint No. 356/2008 (*N.S. v. Switzerland*) related to a Turkish national of Kurdish origins, who claimed that he would be exposed to torture in case of his forcible return to Turkey. The complainant had explained that he had been arrested and subjected to torture by the authorities, in 1993, when he had witnessed an attack, by governmental troops, on a village, which had later been attributed to the Kurdistan Workers' Party. The Committee was not persuaded that the facts as submitted were sufficient to conclude that the complainant would face a foreseeable, real and personal risk of being subjected to torture if returned to Turkey. Accordingly, the Committee concluded that the complainant's removal to that country would not constitute a breach of article 3 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>2</sup> and Montenegro (with respect to *Dimitrov*, No. 171/2000,<sup>3</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>4</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 Falakaflaki 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>5</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.

<sup>2</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>3</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>4</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>5</sup> The State had already remedied the breach prior to consideration of the case.

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.

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

<b>State party</b>	<b>Austria</b>
<b>Case</b>	<b><i>Halimi-Nedibi Quani, 8/1991</i></b>
<b>Nationality and country of removal if applicable</b>	Yugoslav
<b>Views adopted on</b>	18 November 1993
<b>Issues and violations found</b>	Failure to investigate allegations of torture – article 12
<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	The State party is requested to ensure that similar violations do not occur in the future.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	12 January 2007
<b>State party's response</b>	The decision of the Committee was communicated to the heads of all public prosecutors' offices. The prosecution authorities were asked to follow the general principles contained in the Committee's relevant Views. The Decree of the Federal Ministry for Justice dated 30 September 1999 reaffirmed the standing instruction to the prosecutors' offices to follow up on every case of an allegation of mistreatment by law enforcement authorities by launching preliminary investigations or by means of judicial pretrial inquiries. Concurrently, the Federal Ministry of the Interior requested the law enforcement authorities to give notice to the competent prosecutors' offices of allegations of mistreatment raised against their own officials and of other indications pointing to a relevant case without any delay. Furthermore, Decree of the Ministry of Interior of 10 November 2000 set forth that law enforcement authorities are bound to transmit a description of the facts or the complaint without delay to the prosecution, if one of their officials is the object of allegations of mistreatment. By Decree of the Federal Ministry of Justice of 21 December 2000, the heads of penal institutions were requested to follow the same proceedings in case of allegations against officials entrusted with the enforcement of sentences.
<b>Complainant's comments</b>	None

<b>Committee's decision</b>	The Committee considered the response satisfactory, in view of the time lapsed since it adopted its Views and the vagueness of the remedy recommended. It decided to discontinue consideration of the case under the follow-up procedure.
<b>State party</b>	<b>Australia</b>
<b>Case</b>	<b><i>Shek Elmi, 120/1998</i></b>
<b>Nationality and country of removal if applicable</b>	Somali to Somalia
<b>Views adopted on</b>	25 May 1999
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party.
<b>Remedy recommended</b>	The State party has an obligation to refrain from forcibly returning the complainant to Somalia or to any other country where he runs a risk of being expelled or returned to Somalia.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	23 August 1999 and 1 May 2001
<b>State party's response</b>	<p>On 23 August 1999, the State party responded to the Committee's Views. It informed the Committee that on 12 August 1999, the Minister for Immigration and Multicultural Affairs decided that it was in the public interest to exercise his powers under section 48B of the Migration Act 1958 to allow Mr. Elmi to make a further application for a protection visa. Mr. Elmi's solicitor was advised of this on 17 August 1999, and Mr. Elmi was personally notified on 18 August 1999.</p> <p>On 1 May 2001, the State party informed the Committee that the complainant had voluntarily departed Australia and subsequently "withdrew" his complaint against the State party. It explains that the complainant had lodged his second protection visa application on 24 August 1999. On 22 October 1999, Mr. Elmi and his adviser attended an interview with an officer of the Department. The Minister of Immigration and Multicultural Affairs in a decision dated 2 March 2000 was satisfied that the complainant was not a person to whom Australia has protection obligations under the Refugee Convention and refused to grant him a protection visa. This decision was affirmed on appeal by the Principal Tribunal Members. The State party advises the Committee that his new application was comprehensively assessed in light of new evidence which arose following the Committee's consideration. The Tribunal was not satisfied as to the complainant's credibility and did not accept that he is who he says he is – the son of a leading elder of the Shikal clan.</p>
<b>Author's response</b>	N/A
<b>Committee's decision</b>	In light of the complainant's voluntary departure no further action was requested under follow-up.

<b>State party</b>	<b>Azerbaijan</b>
<b>Case</b>	<b><i>Pelit, 281/2005</i></b>
<b>Nationality and country of removal if applicable</b>	Turkish to Turkey
<b>Views adopted on</b>	30 April 2007
<b>Issues and violations found</b>	Removal – articles 3 and 22
<b>Interim measures granted and State party response</b>	Granted but not acceded to by the State party (assurances had been granted). <sup>6</sup>
<b>Remedy recommended</b>	To remedy the violation of article 3 and to consult with the Turkish authorities on the whereabouts and state of well-being of the complainant.
<b>Due date for State party response</b>	29 August 2007
<b>Date of reply</b>	4 September 2007
<b>State party's response</b>	The Azerbaijani authorities obtained diplomatic assurances that the complainant would not be ill-treated or tortured after her return. Several mechanisms were put in place for a post extradition monitoring. Thus, she was visited in prison by the First Secretary of the Azerbaijani Embassy and the visit took place in private. During the meeting she stated that she had not been subjected to torture or ill-treatment and was examined by a doctor who did not reveal any health problems. She was given the opportunity to meet with her lawyer and close relatives and to make phone calls. She was also allowed to receive parcels, newspapers and other literature. On 12 April 1997, she was released by decision of the Istanbul Court on Serious Crimes.
<b>Complainant's comments</b>	On 13 November 2007, counsel informed the Committee that Ms. Pelit had been sentenced to six years imprisonment on 1 November 2007. Her Istanbul lawyer had appealed the judgement.
<b>Committee's decision</b>	The Committee considers the dialogue ongoing. It decided that the State party should continue monitoring the situation of the author in Turkey and keep the Committee informed.
<b>State party</b>	<b>Bulgaria</b>
<b>Case</b>	<b><i>Keremedchiev, 257/2004</i></b>
<b>Nationality and country of removal if applicable</b>	N/A
<b>Views adopted on</b>	11 November 2008

<sup>6</sup> The Committee expressed its concern and reiterated that once a State party makes a declaration under article 22 of the Convention, it voluntarily accepts to cooperate in good faith with the Committee under article 22; the complainant's expulsion had rendered null the effective exercise of her right to complain.

<b>Issues and violations found</b>	Cruel, inhuman or degrading treatment or punishment, prompt and impartial investigation – articles 12 and 16, paragraph 1
<b>Interim measures granted and State party response</b>	N/A
<b>Remedy recommended</b>	An effective remedy to the complainant, including fair and adequate compensation for the suffering inflicted, in line with the Committee's general comment No. 2 (2007), as well as medical rehabilitation.
<b>Due date for State party response</b>	17 February 2009
<b>Date of reply</b>	None
<b>State party's response</b>	None
<b>Complainant's comments</b>	N/A
<b>Committee's decision</b>	Follow-up dialogue ongoing

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

<b>Case</b>	<b><i>Falcon Rios, 133/1999</i></b>
<b>Nationality and country of removal if applicable</b>	Mexican to Mexico
<b>Views adopted on</b>	30 November 2004
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and</b>	Requested and acceded to by the State party.

**State party response****Remedy recommended**

Relevant measures

**Due date for State party response**

None

**Date of reply**

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

**State party's response**

On 9 March 2005, the State party provided information on follow-up. It stated that the complainant had submitted a request for a risk assessment prior to return to Mexico and that the State party will inform the Committee of the outcome. If the complainant can establish one of the motives for protection under the Immigration and Protection of Refugee's Law, he will be able to present a request for permanent residence in Canada. The Committee's decision will be taken into account by the examining officer and the complainant will be heard orally if the Minister considers it necessary. Since the request for asylum was considered prior to the entry into force of the Immigration and Protection of Refugee's Law, that is prior to June 2002, the immigration agent will not be restricted to assessing facts after the denial of the initial request but will be able to examine all the facts and information old and new presented by the complainant. In this context, it contests the Committee's finding in paragraph 7.5 of its decision which found that only new information could be considered during such a review.

**Complainant's comments**

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

**State party's response**

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

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

On 9 July 2009, the State party informed the Committee that the complainant voluntarily returned to Mexico on 1 June 2009. It stated that on 21 May 2009, the author was intercepted by the Canadian immigration authorities as he was attempting to leave for Mexico. He was in possession of a Mexican passport, which had been delivered on 12 January 2005. The State party highlights the fact that despite the author's alleged fears of torture upon return to Mexico he requested a passport as early as 2005. In addition, it states that there is more than one entry into Mexico marked on his passport since the Committee's Decision. He was also in possession of two forged documents, a

	<p>Canadian identity card and insurance card, which had his picture but another individual's name. He also had a certificate indicating that he intended to establish his residence in Mexico. The complainant was detained by the authorities as it was probable that he would flee. On 25 May 2009, he was brought before the same authorities to review the reason for his detention. His detention was continued for a further seven days, as it was considered likely that he would flee. He was represented throughout by a lawyer and had interpretation. On 1 June 2009, the complainant voluntarily left Canada having spoken to his lawyer and having signed a declaration of voluntary departure. In the light of the above, the State party requests that the consideration of this case be discontinued under the follow-up procedure.</p>
<b>Committee's decision</b>	<p>Given the complainant's voluntary return to Mexico, the Committee decides to discontinue consideration of this case under the follow-up procedure.</p>
<b>Case</b>	<b><i>Dadar, 258/2004</i></b>
<b>Nationality and country of removal if applicable</b>	Iranian to the Islamic Republic of Iran
<b>Views adopted on</b>	3 November 2005
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Yes and State party acceded.
<b>Remedy recommended</b>	<p>The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days of the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.</p>
<b>Due date for State party response</b>	26 February 2006
<b>Date of reply</b>	<p>Latest reply 10 October 2007 (had previously responded on 22 March 2006 and 24 April 2006 (see annual report A/61/44) and 9 August 2006 and 5 April 2007 (see annual report A/62/44)).</p>
<b>State party's response</b>	<p>The Committee will recall that the State party removed the complainant to Iran on 26 March 2006 despite a finding of a violation of the Convention. In its response of 24 April 2006, it stated that since his return a Canadian representative had spoken with the complainant's nephew who said that Mr. Dadar had arrived in Tehran without incident, and was staying with his family. The State party had no direct contact with him since he was returned to Iran. In light of this information, as well as Canada's determination that he did not face a substantial risk of torture upon return to Iran, the State party submits that it was not necessary for it to consider the issue of monitoring mechanisms in this case. (For a full account of the State party's response, see A/61/44.)</p>
<b>Complainant's comments</b>	<p>On 29 June 2006, counsel informed the Committee that</p>



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

**State party's response**

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

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

**Complainant's comments**

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

**State party's response**

On 10 October 2007, the State party reiterates that the complainant has not been tortured since his return to Iran. Therefore, Canada has fully complied with its obligations under article 3 of the Convention and is under no obligation to

monitor the complainant's condition. The absence of evidence of torture upon return supports Canada's position that it should not be held responsible for a purported violation of article 3 when subsequent events confirm its assessment that the complainant was not at substantial risk of torture. In the circumstances, the State party reiterates its request that the case be removed from the agenda of the follow-up procedure.

**Complainant's comments**

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

**Action taken**

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

**Committee's decision**

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

**Case**

***Bachan Singh Sogi, 297/2006***

**Nationality and country of removal if applicable**

Indian to India

**Views adopted on**

16 November 2007

**Issues and violations found**

Removal – article 3

**Interim measures granted and State party response**

Requested but rejected by the State party.<sup>7</sup>

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

<b>Remedy recommended</b>	To make reparation for the breach of article 3 of the Convention, and to determine, in consultation with the country to which he was deported, the complainant's current whereabouts and the state of his well-being.
<b>Due date for State party response</b>	28 February 2008
<b>Date of reply</b>	Latest reply on 31 August 2009 (the State party had previously responded on 29 February 2008, 21 October 2008 and 7 April 2009).
<b>State party's response</b>	<p>On 29 February 2008, the State party regretted that it was not in a position to implement the Committee's Views. It did not consider either a request for interim measures of protection or the Committee's Views themselves to be legally binding and is of the view that it has fulfilled all of its international obligations. Its failure to comply with the Committee's Views should not be interpreted as disrespect for the Committee's work. It submitted that the Government of India is better placed to advise the Committee on the complainant's whereabouts and well-being and reminds the Committee that India is a party to the Convention as well as the International Covenant on Civil and Political Rights. However, it has written to the Ministry of Foreign Affairs of India informing it of the Committee's Views, in particular, its request for updated information on the complainant.</p> <p>The State party submitted that the decision to return the complainant was not a matter of "exceptional circumstances", as suggested by the Committee in its Decision (para. 10.2). It reminded the Committee that the decision of 2 December 2003 was cancelled by the Court of Federal Appeal of 6 July 2005 and that the complainant's deportation was based on the decision of 11 May 2006. In this latter decision, the Minister's delegate had concluded that there was no risk of torture to the complainant and thus it was not necessary to balance the aspect of risk with that of danger to society to determine whether the complainant's situation gave way to "exceptional circumstances" justifying his return despite the risk of torture.</p> <p>The State party contested the conclusion that the Minister's delegate denied the existence of a risk and that the decision was not motivated. The existence of a new law in India was not the only basis upon which the delegate made his decision. He took into account the general human rights situation in India as well as the particular circumstances of the complainant's case. The soundness of this decision was confirmed by the Court of Federal Appeal on 23 June 2006.</p> <p>The State party contested the Committee's View that its determination that the complainant would not risk torture was</p>

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Consequently the Committee considers that, by sending the complainant back to India despite the Committee's repeated requests for interim measures, the State party has committed a breach of its obligations under articles 3 and 22 of the Convention."

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

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

As to the Committee's point that it is entitled to freely assess the facts of each case (para. 10.3), the State party referred to jurisprudence in which the Committee found that it would not question the conclusion of national authorities unless there was a manifest error, abuse of process, or grave irregularity, etc. (see cases No. 282/2005 and No. 193/2001). In this context, it submits that the delegate's decision was reviewed in detail by the Court of Federal Appeal, which itself reviewed all the original documentation submitted to support his claims as well as new documents and found that it could not conclude that the delegate's conclusions were unreasonable.

#### **Complainant's comments**

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

The following information was provided to the complainant's counsel from India over the telephone on 27 February 2008. As to his removal from Canada counsel states that the complainant was tied up for the whole 20 hours of his return to India, and that despite repeated requests the Canadian guards refused to loosen the ties around him which were causing pain. In addition, he was refused permission to use the toilet and had to

relieve himself in a bottle in front of female guards, which he found humiliating. He was also denied food and water for the entire journey. In the representative's view, this treatment by the Canadian authorities amounted to a violation of his fundamental rights.

The complainant also described his treatment upon arrival in India. Upon return to India, he was handed over to the Indian authorities and was interrogated at the airport for about five hours during which he was accused, inter alia, of being a terrorist. He was threatened with death if he did not answer the questions posed. He was then driven to a police station in Guraspur, which took five hours and during which he was brutally beaten, with fists and feet and sat upon after being made to lay on the floor of the vehicle. In addition, his hair and beard were pulled which is against his religion. Upon arrival at the police station, he was interrogated and tortured in what he believes to have been an unused toilet. He was given electric shocks on his fingers, temples, and penis, a heavy machine was rolled over him, causing him severe pain and he was beaten with sticks and fists. He was poorly fed during these six days in detention and neither his family nor lawyer knew of his whereabouts. In or around the sixth day, the complainant was transferred to another police station where he suffered similar treatment and remained for three further days. On the ninth day he was brought before a judge for the first time and saw his family. After being accused of having supplied explosives to persons accused of terrorism and plotting to murder leaders of the country, he was transferred to another detention centre in Nabha where he was detained for a further seven months without seeing any member of his family or his lawyer. On 29 January 2007, he appealed the decision which had ordered his preliminary detention and on 3 February 2007, was released subject to certain conditions.

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

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

**State party's response**

the complainant on a permanent basis. Finally, she requested a figure of 368,250 Canadian dollars by way of compensation for the damages suffered.

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

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

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

authorities.

#### **Complainant's comments**

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

#### **State party's response**

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

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

#### **Committee's decision**

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

complainant in India.

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

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

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

During the 43rd session, the Committee decided that it should again remind the State party of its earlier requests under the follow-up procedure in the context of fulfilling its obligations under article 3 of the Convention. It regretted the State party's refusal to adopt the Committee's recommendations in this regard. It decided to inform other United Nations mechanisms, dealing with issues of torture, of the State party's response.



The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>France</b>
<b>Case</b>	<b><i>Arana, 63/1997</i></b>
<b>Nationality and country of removal if applicable</b>	Spanish to Spain
<b>Views adopted on</b>	9 November 1999
<b>Issues and violations found</b>	Complainant's expulsion to Spain constituted a violation of article 3.
<b>Interim measures granted and State party response</b>	Request not acceded to by the State party who claimed to have received the Committee's request after expulsion. <sup>8</sup>
<b>Remedy recommended</b>	Measures to be taken
<b>Due date for State party response</b>	5 March 2000
<b>Date of reply</b>	Latest reply on 1 September 2005
<b>State party's response</b>	The Committee will recall that on 8 January 2001, the State party had provided follow-up information, in which it stated, <i>inter alia</i> , that since 30 June 2000, a new administrative procedure allowing for a suspensive summary judgement suspending a decision, including deportation decisions, was instituted. For a full account of its response, see the annual report of the Committee (A/61/44).
<b>Complainant's comments</b>	<p>On 6 October 2006, counsel responded that on 17 January 1997, the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had visited the complainant and stated that allegations of ill-treatment were credible. He was convicted by the "Audiencia Nacional" on 12 June 1998 to 83 years of imprisonment, having been convicted on the basis of confessions made under torture and contrary to extradition regulations. There was no possibility of appeal from a decision of the "Audiencia Nacional".</p> <p>In addition, he stated that since the Committee's decision and numerous protests, including hunger strikes by Basque nationals under threat of expulsion from France to Spain, the French authorities have stopped handing over such individuals to the Spanish authorities but return them freely to Spain.</p> <p>Also on 18 January 2001, the French Ministry of the Interior, stated, <i>inter alia</i>, that it was prohibited from removing Basque nationals outside an extradition procedure whereby there is a warrant for their arrest by the Spanish authorities.</p> <p>However, the Ministry continued by stating that torture and inhuman treatment by Spanish security forces of Basque nationals accused of terrorism and the tolerance of such treatment</p>

<sup>8</sup> No comment was made in the decision itself. The question was raised by the Committee with the State party during the consideration of the State party's third periodic report at the thirty-fifth session.

	by the Spanish authorities is corroborated by a number of sources.
<b>Committee's decision</b>	Given that the complainant was removed nearly 10 years ago, no further action should be taken by the Committee to follow-up on this case.
<b>Case</b>	<i>Brada, 195/2003</i>
<b>Nationality and country of removal if applicable</b>	Algerian to Algeria
<b>Views adopted on</b>	17 May 2005
<b>Issues and violations found</b>	Removal – articles 3 and 22
<b>Interim measures granted and State party response</b>	Granted but not acceded to by the State party. <sup>9</sup>
<b>Remedy recommended</b>	Measures of compensation for the breach of article 3 of the Convention and determination, in consultation with the country (also a State party to the Convention) to which the complainant was returned, of his current whereabouts and state of well-being.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	21 September 2005
<b>State party's response</b>	Pursuant to the Committee's request of 7 June 2005 on follow-up measures taken, the State party informed the Committee that the complainant will be permitted to return to French territory if he so wishes and provided with a special residence permit under article L.523-3 of the Code on the entry and stay of foreigners. This is made possible by a judgement of the Bordeaux Court of Appeal, of 18 November 2003, which quashed the decision of the Administrative Tribunal of Limoges, of 8 November 2001. This latter decision had confirmed Algeria as the country to which the complainant should be returned. In addition, the State party informs the Committee that it is in the process of contacting the Algerian authorities through diplomatic channels to find out the whereabouts and state of well-being of the complainant.
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	Follow-up dialogue ongoing

<sup>9</sup> "The Committee observes that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party's action in expelling the complainant in the face of the Committee's request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee's final decision on the merits futile and devoid of object. The Committee thus concludes that in expelling the complainant in the circumstances that it did the State party breached its obligations under article 22 of the Convention."

<b>Case</b>	<b><i>Tebourski, 300/2006</i></b>
<b>Nationality and country of removal if applicable</b>	Tunisian to Tunisia
<b>Views adopted on</b>	1 May 2007
<b>Issues and violations found</b>	Removal – articles 3 and 22
<b>Interim measures granted and State party response</b>	Granted but not acceded to by the State party. <sup>10</sup>
<b>Remedy recommended</b>	To remedy the violation of article 3 and to consult with the Tunisian authorities on the whereabouts and state of well-being of the complainant.
<b>Due date for State party response</b>	13 August 2007
<b>Date of reply</b>	15 August 2007
<b>State party response</b>	Following several requests for information made by the State party, the Tunisian authorities indicated that the complainant had not been disturbed since his arrival in Tunisia on 7 August 2006 and that no legal action had been initiated against him. He lives with his family in Testour, Beja Governorate. The State party monitors the situation of the complainant and is trying to verify the information provided by the Tunisian authorities.
<b>Complainant's comments</b>	Not yet received
<b>Committee's decision</b>	The Committee considers the dialogue ongoing.
<b>State party</b>	<b>The Netherlands</b>
<b>Case</b>	<b><i>A.J., 91/1997</i></b>
<b>Nationality and country of removal if applicable</b>	Tunisian to Tunisia
<b>Views adopted on</b>	13 November 1998
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Requested and acceded to by the State party.
<b>Remedy recommended</b>	The State party has an obligation to refrain from forcibly returning the complainant to Tunisia or to any other country where he runs a real risk of being expelled or returned to Tunisia.

<sup>10</sup> The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure, which become inseparable from the Convention to the extent that they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would only offer asylum-seekers invoking a serious risk of torture a purely relative, if not theoretical, form of protection. The Committee therefore considers that, by expelling the complainant to Tunisia under the conditions in which that was done and for the reasons adduced, thereby presenting the Committee with a fait accompli, the State party not only failed to demonstrate the good faith required of any party to a treaty, but also failed to meet its obligations under articles 3 and 22 of the Convention.

<b>Due date for State party response</b>	None
<b>Date of reply</b>	7 July 2008
<b>State party response</b>	The State party informed the Committee that following the Committee's decision the Government refrained from expelling the complainant to Tunisia and in response to his request for asylum provided him with a residence permit valid from 2 January 2001 to be renewed on 2 January 2011.
<b>Complainant's comments</b>	Awaiting response
<b>Committee's decision</b>	In the light of the State party's decision to grant the complainant a residence permit, the Committee decides to close the dialogue with the State party under the follow-up procedure.

<b>State party</b>	<b>Norway</b>
<b>Case</b>	<i>Dar, 249/2004</i>
<b>Nationality and country of removal if applicable</b>	Pakistani to Pakistan
<b>Views adopted on</b>	11 May 2007
<b>Issues and violations found</b>	Removal – article 22
<b>Interim measures granted and State party response</b>	Requested but not acceded to by the State party. <sup>11</sup>
<b>Remedy recommended</b>	None – State party has already remedied the breach.
<b>Due date for State party response</b>	N/A
<b>Committee's decision</b>	No consideration under the follow-up procedure necessary.

<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

<sup>11</sup> “The Committee recalls that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the procedure of individual complaints established thereunder. The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure which become inseparable from the Convention to the extent they do not contradict it. In this case, rule 108 of the rules of procedure is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would only offer asylum-seekers invoking a serious risk of torture a merely theoretical protection. By failing to respect the request for interim measures made to it, and to inform the Committee of the deportation of the complainant, the State party committed a breach of its obligations of cooperating in good faith with the Committee, under article 22 of the Convention. However, in the present case, the Committee observes that the State party facilitated the safe return of the complainant to Norway on 31 March 2006, and that the State party informed the Committee shortly thereafter, on 5 April. In addition, the Committee notes that the State party has granted the complainant a residence permit for 3 years. By doing so, it has remedied the breach of its obligations under article 22 of the Convention.”

<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).
<b>State party's response</b>	<p>On 18 August 2006, the State party denied that it had violated the Convention, and reiterated its arguments on the merits, including its argument on article 5 that under the Convention a State party is not obliged to meet its obligations within a particular time. The extradition request was dealt with under national law applicable between the State party and States with which it does not have an extradition treaty. It stated that any other way of handling this case would have violated national law. The integration of article 5 into domestic law is in its final stage and the relevant text would be examined by the Legislative Authority. To avoid possible impunity, the State party submitted that it had deferred the case to the African Union for consideration, thus avoiding a violation of article 7. As the African Union had not yet considered the case at that point, it would be impossible to provide the complainants with compensation.</p> <p>On 28 September 2006, the State party informed the Committee that the Committee of Eminent Jurists of the African Union had taken the decision to entrust Senegal with the task of trying Mr. Hissène Habré of the charges against him. It stated that its judicial authorities were looking into 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.</p> <p>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</p>

diplomatic sphere to ensure cooperation between all of the countries concerned as well as other States and the African Union; security issues; and financial support. These elements were included in a report to the African Union during its eighth session which was held between 29 and 30 January 2007.

The report underlined the necessity to mobilize financial resources from the international community.

#### **Complainant's comments**

On 9 October 2006, the complainants commented on the State party's submission of 18 August 2006. They stated that the State party had provided no information on what action it intends to take to implement the Committee's decision. Even three months after the African Union's decision that Senegal should try Mr. Habré, the State party had still failed to clarify how it intends to implement the decision.

On 24 April 2007, the complainants responded to the State party's submission of 7 March 2007. They thanked the Committee for its decision and for the follow-up procedure which they are convinced play an important role in the State party's efforts to implement the decision. They greeted the judicial amendments referred to by the State party, which had prevented it from recognizing the Habré affair.

While recognizing the efforts made to date by the State party, the complainants highlighted the fact that the decision has not yet been fully implemented and that this case has not yet been submitted to the competent authorities. They also highlighted the following points:

(a) The new legislation does not include the crime of torture but only of genocide, crimes against humanity and war crimes;

(b) Given that the State party has an obligation to proceed with the trial or extradite Mr. Habré, the same should not be conditional upon the receipt by the State party of financial assistance. The complainants assume that this request is made to ensure that a trial is carried out in the best possible conditions;

(c) Irrespective of what the African Union has decided with respect to this affair, it can have no implications as to the State party's obligation to recognize this affair and to submit it to the competent jurisdiction.

#### **State party's response**

On 31 July 2007, the State party informed the Committee that, contrary to the statement of counsel, the crime of torture is defined in article 295-1 of Law No. 96-15 and its scope has been strengthened by article 431-6 of Law 2007-02. It also emphasizes that the conduct of proceedings against Mr. Habré require considerable financial resources. For this reason, the African Union invited its member States and the international community to assist Senegal in that respect. Furthermore, the proposals made by the working group referred to above regarding the trial of Mr. Habré were submitted to the 8th Conference of Heads of State and Government of the African Union and approved. The

Senegalese authorities are evaluating the cost of the proceedings and a decision in that respect will be adopted soon. In any case, they intend to fill the mandate given to them by the African Union and to meet Senegal's treaty obligations.

#### **Complainant's comments**

On 19 October 2007, counsel expressed concern at the fact that 17 months after the Committee had taken its decision, no criminal proceedings had yet been initiated in the State party and no decision regarding extradition had been taken. He emphasized that time was very important for the victims and that one of the complainants had died as a result of the ill-treatment suffered during Mr. Habré's regime. Counsel requested the Committee to continue engaging the State party under the follow-up procedure.

On 7 April 2008, counsel reiterated his concern that despite the passage of 21 months since the Committee's decision, Mr. Habré has still neither been brought to trial nor extradited. He recalls that the Ambassador, in his meeting with the Rapporteur for follow-up of decisions on complaints during the November session of the Committee in 2007, indicated that the authorities were waiting for financial support from the international community. Apparently, this request for aid was made in July 2007 and responses were received from, among others, the European Union, France, Switzerland, Belgium and the Netherlands. These countries indicated that they would be prepared to assist financially as well as technically. The Senegalese authorities assured the victims last November that proceedings would not be held up but to date no date has been fixed for criminal action.

#### **State party's response**

On 17 June 2008, the State party confirmed the information provided by the State party's representative to the Rapporteur during its meeting on 15 May 2008. It submits that the passing of a law which will amend its Constitution will shortly be confirmed by Parliament. This law will add a new paragraph to article 9 of the Constitution which will circumvent the current prohibition on the retroactivity of criminal law and allow individuals to be judged for crimes including genocide, crimes against humanity and war crimes, which were considered crimes under international law at the time in which they were committed. On the issue of the budget, the State party submits that the figure of 18 million CFA francs (equivalent to around US\$ 43,000) was the initial figure anticipated, that a counter-proposal has been examined by the cabinet and that once this report is final a meeting will be organized in Dakar with the potential donors. To express its commitment to the process, the State itself has contributed 1 million CFA francs (equivalent to US\$ 2,400) to commence the process. The State party has also taken account of the European Union experts' recommendation, and named Mr. Ibrahima Gueye, Judge and President of the Court of Cassation, as the "Coordinator" of the process. It is also expected that the human resources of the Tribunal in Dakar which will try Mr. Habré will be reinforced, and that the necessary judges will be designated.

**Complainant's comments**

On 22 October 2008, counsel expressed his concern at an interview published in a Senegalese newspaper, in which the President of the Republic is reported as having said that, "*il n'est pas obligé de juger*" Mr. Habré and that due to the lack of financial assistance he is not going to, "*garder indéfiniment Habré au Sénégal*" but "*fera qu'il abandonne le Sénégal*". Counsel reiterated the measures taken to date for the purposes of trying Mr. Habré, including the fact that financial assistance has been offered by a number of countries but that the State party has not managed for two years to present a reasonable budget for his trial. The complainants are concerned at what counsel refers to as the "threat" from the President to expel Mr. Habré from Senegal, reminds the Committee that there is an extradition request from Belgium which remains pending, and requests the Committee to ask Senegal not to expel him and to take the necessary measures to prevent him from leaving Senegal other than through an extradition procedure, as the Committee did in 2001.

**State party's response**

On 28 April 2010, the State party provided an update on implementation of this case. It referred to the cooperation it provided to the Committee against Torture mission to Senegal in August 2009 and reiterated the financial impediment to commencing the trial. It submitted that on 23 June 2009, Belgium contacted the Senegalese authorities due to concern that the trial had not begun. It offered to send a copy of the file it had already put together on the case to the Senegalese authorities and invited Senegalese judges to Belgium to meet with their counterparts there to share experience.

On 4 June 2009, a mission to Senegal headed by Maitre Robert Dossou at the request of the President of the African Union took place. In addition, in December 2009, two experts from the European Union worked with the African Union on finalizing the budget. The presence of experts from both the African Union and the European Union coincided with the holding of a meeting on the terms of reference of a trial, during which they took part, including the regional representative of OHCHR. The presence of these experts occasioned a visit to the old Palais de Justice, where the trial will take place after its renovation. The State party is currently waiting for the conclusion of this European Union mission which has considerable consequences for the determination of the budget. During the 12th and 13th summits of the African Union, numerous appeals were made to African States requesting financial support to Senegal for the trial and in February 2010 the African Union adopted a decision to invite Senegal to organize a round table of donors in 2010 to include other African States with the purpose of raising funds. By letter of 30 March 2010, Chad confirmed its commitment to contribute to the trial and requested information on the number of the account to which such financial assistance should be forwarded.

The State party also referred to Mr. Habré's case before the Economic Community of West African States Court of Justice, where he claimed that Senegal violated the principles of non-retroactivity and equality, in applying new legislation



retroactively. In January 2010, this case was adjourned until 16 April 2010. A case lodged before the African Court of Human and Peoples' Rights against Senegal challenging the universal jurisdiction prosecution of Mr. Habré was dismissed for want of jurisdiction on 15 December 2009.

#### **Consultations with State party**

During the thirty-ninth session, the Rapporteur for follow-up 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.

**State party**

**Serbia and Montenegro**

**Case**

***Ristic, 113/1998***

<b>Nationality and country of removal if applicable</b>	Yugoslav
<b>Views adopted on</b>	11 May 2001
<b>Issues and violations found</b>	Failure to investigate allegations of torture by police – articles 12 and 13
<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	Urges the State party to carry out such investigations without delay. An appropriate remedy.
<b>Due date for State party response</b>	6 January 1999
<b>Date of reply</b>	Latest note verbale 28 July 2006 (had replied on 5 August 2005 – see the annual report of the Committee, A/61/44).
<b>State party's response</b>	The Committee will recall that by note verbale of 5 August 2005, the State party confirmed that the First Municipal Court in Belgrade by decision of 30 December 2004 found that the complainant's parents should be paid compensation. However, as this case is being appealed to the Belgrade District Court, this decision was neither effective nor enforceable at that stage. The State party also informed the Committee that the Municipal Court had found inadmissible the request to conduct a thorough and impartial investigation into the allegations of police brutality as a possible cause of Mr. Ristic's death.
<b>Complainant's comments</b>	On 25 March 2005, the Committee received information from the Humanitarian Law Centre in Belgrade to the effect that the First Municipal Court in Belgrade had ordered the State party to pay compensation of 1,000,000 dinars to the complainant's parents for failure to conduct an expedient, impartial and comprehensive investigation into the causes of the complainant's death in compliance with the decision of the Committee against Torture.
<b>State party's response</b>	On 28 July 2006, the State party informed the Committee that the District Court of Belgrade had dismissed the complaint filed by the Republic of Serbia and the State Union of Serbia and Montenegro in May 2005. On 8 February 2006, the Supreme Court of Serbia dismissed as unfounded the revised statement of the State Union of Serbia and Montenegro, ruling that it is bound to meet its obligations under the Convention. It was also held responsible for the failure to launch a prompt, impartial and full investigation into the death of Milan Ristic.
<b>Committee's decision</b>	The follow-up dialogue is ongoing.
<b>Case</b>	<i>Hajrizi Dzemajl et al., 161/2000</i>
<b>Nationality and country of removal if applicable</b>	Yugoslav
<b>Views adopted on</b>	21 November 2002
<b>Issues and violations found</b>	Burning and destruction of houses, failure to investigate and failure to provide compensation – articles 16, paragraph 1, 12 and

	13 <sup>12</sup>
<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	Urges the State party to conduct a proper investigation into the facts that occurred on 15 April 1995, prosecute and punish the persons responsible for those acts and provide the complainants with redress, including fair and adequate compensation.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	See <i>Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 44 (A/59/44)</i> , chap. V, para. 267.
<b>State party's response</b>	See first follow-up report. <sup>13</sup> Following the thirty-third session and while welcoming the State party's provision of compensation to the complainants for the violations found, the Committee considered that the State party should be reminded of its obligation to conduct a proper investigation into the case. During consideration of the State party's initial report to the Committee on 11 and 12 November 2008, the State party indicated that compensation had been paid to the complainants and that given the length of time since the incident in question, it would not be possible to make any further investigation.
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	Given the payment of compensation in this case, the fact that the case is quite old and the declaration of independence of the State party (the Republic of Montenegro) since the incident in question, the Committee decided that it need not consider this communication any further under the follow-up procedure
<b>Case</b>	<b><i>Dimitrov, 171/2000</i></b>
<b>Nationality and country of removal if applicable</b>	Yugoslav
<b>Views adopted on</b>	3 May 2005
<b>Issues and violations found</b>	Torture and failure to investigate – article 2, paragraph 1, in connection with articles 1, 12, 13 and 14
<b>Interim measures granted and State party response</b>	N/A

<sup>12</sup> Regarding article 14, the Committee declared that article 16, paragraph 1, of the Convention does not mention article 14 of the Convention. Nevertheless, article 14 of the Convention does not mean that the State party is not obliged to grant redress and fair and adequate compensation to the victim of an act in breach of article 16 of the Convention. The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision. The Committee is therefore of the view that the State party has failed to observe its obligations under article 16 of the Convention by failing to enable the complainants to obtain redress and to provide them with fair and adequate compensation.

<sup>13</sup> *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 44 (A/59/44)*, chap. V, paras. 266–267.

<b>Date of reply</b>	None
<b>State party response</b>	None
<b>Complainant's comments</b>	N/A
<b>Committee's decision</b>	The follow-up dialogue is ongoing.
<b>Case</b>	<i>Dimitrijevic, 172/2000</i>
<b>Nationality and country of removal if applicable</b>	Serbian
<b>Views adopted on</b>	16 November 2005
<b>Issues and violations found</b>	Torture and failure to investigate – articles 1, 2, paragraphs 1, 12, 13, and 14
<b>Interim measures granted and State party response</b>	N/A
<b>Remedy recommended</b>	The Committee urges the State party to prosecute those responsible for the violations found and to provide compensation to the complainant, and, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.
<b>Due date for State party response</b>	26 February 2006
<b>Date of reply</b>	None
<b>State party response</b>	None
<b>Complainant's comments</b>	N/A
<b>Committee's decision</b>	The follow-up dialogue is ongoing.
<b>Case</b>	<i>Nikolic, 174/2000</i>
<b>Nationality and country of removal if applicable</b>	N/A
<b>Views adopted on</b>	24 November 2005
<b>Issues and violations found</b>	Failure to investigate – articles 12 and 13
<b>Interim measures granted and State party response</b>	N/A
<b>Remedy recommended</b>	Information on the measures taken to give effect to the Committee's Views, in particular on the initiation and the results of an impartial investigation of the circumstances of the death of the complainant's son.
<b>Due date for State party response</b>	27 February 2006
<b>Date of reply</b>	None
<b>State party's response</b>	None
<b>Complainant's comments</b>	On 27 April 2009, the complainant indicated that on 2 March

2006, the Minister of Justice sent a letter to the Office of the District Public Prosecutor (ODPP) pointing to the binding nature of the Committee's decisions and requesting the initiation of an "appropriate procedure in order to establish the circumstances under which Nikola Nikolić lost his life". On 12 April 2006, the ODPP requested the Belgrade District Court Investigative Judge to procure a new forensic report to determine the complainant's cause of death. On 11 May 2006, the trial chamber of the District Court rendered a decision dismissing the request on the grounds that the cause of his death had been sufficiently clarified in the report to the Belgrade Medical School Expert Commission of 27 November 1996 and in its subsequent report. On 27 December 2007, the ODPP made an extraordinary request to the Serbian Supreme Court for "protection of legality", against the District Court decision. On 14 November 2008, the Supreme Court dismissed this request as unfounded. Thus, the complainant claims that the State party has failed to implement the Committee's decision and is responsible for repeating the violation of article 13.

**Committee's decision**

The follow-up dialogue is ongoing.

**Case**

*Dimitrijevic, Dragan, 207/2002*

**Nationality and country of removal if applicable** Serbian

**Views adopted on**

24 November 2004

**Issues and violations found**

Torture and failure to investigate – article 2, paragraph 1, in connection with articles 1, 12, 13, and 14

**Interim measures granted and State party response**

None

**Remedy recommended**

To conduct a proper investigation into the facts alleged by the complainant.

**Due date for State party response**

February 2005

**Date of reply**

None

**State party's response**

None

**Complainant's comments**

On 1 September 2005, the complainant's representative informed the Committee that having made recent enquiries, it could find no indication that the State party had started any investigation into the facts alleged by the complainant.

**Committee's decision**

The follow-up dialogue is ongoing.

**Case**

*Besim Osmani, 261/2005*

**Nationality and country of removal if applicable** N/A

**Views adopted on**

8 May 2009

<b>Issues and violations found</b>	Cruel, inhuman or degrading treatment or punishment, failure to investigate promptly and impartially, failure to provide compensation – articles 16, paragraph 1; 12; and 13
<b>Interim measures granted and State party response</b>	N/A
<b>Remedy recommended</b>	The Committee urges the State party to conduct a proper investigation into the facts that occurred on 8 June 2000, prosecute and punish the persons responsible for those acts and provide the complainant with redress, including fair and adequate compensation.
<b>Due date for State party response</b>	12 August 2009
<b>Date of reply</b>	Not yet due
<b>State party response</b>	Not yet due
<b>Complainant's comments</b>	N/A
<b>Committee's decision</b>	The follow-up dialogue is ongoing.
<b>State party</b>	<b>Spain</b>
<b>Case</b>	<i>Blanco Abad, 59/1996</i>
<b>Nationality and country of removal if applicable</b>	Spanish
<b>Views adopted on</b>	14 May 1998
<b>Issues and violations found</b>	Failure to investigate – articles 12 and 13
<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	Relevant measures
<b>Due date for State party response</b>	None
<b>Date of reply</b>	Latest reply on 25 May 2009 (had previously responded on 23 January 2008).
<b>State party's response</b>	<p>On 23 January 2008, the State party indicated that it had already forwarded information in relation to the follow-up to this case in September 1998.</p> <p>On 25 May 2009, the State party stated that following the Committee's Decision the prison administration must always send information relating to the medical condition of detainees immediately to court, so that judges may immediately act upon it. This was to satisfy the Committee's concern in paragraph 8.4 of the Decision that the judge waited too long in this case to act upon medical evidence that the complainant had been ill-treated. The Decision was sent to all judges for information, as well as the office of the prosecutor which drafted guidelines for all prosecutors to the effect that all claims of torture should merit a reply by the judiciary. The guidelines themselves were not included.</p>

<b>Complainant's comments</b>	None
<b>Committee's decision</b>	The follow-up dialogue is ongoing.
<b>Case</b>	<i>Urra Guridi, 212/2002</i>
<b>Nationality and country of removal if applicable</b>	Spanish
<b>Views adopted on</b>	17 May 2005
<b>Issues and violations found</b>	Failure to prevent and punish torture, and provide a remedy – articles 2, 4 and 14
<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	Urges the State party to ensure in practice that those individuals responsible of acts of torture be appropriately punished, to ensure the complainant full redress.
<b>Due date for State party response</b>	18 August 2005
<b>Date of reply</b>	23 January 2008
<b>State party's response</b>	According to the State party, this case relates to a case in which officers of the Spanish security forces were condemned for the crime of torture, and later partially pardoned by the Government. The judgement is non-appealable. Civil liability was determined and the complainant was awarded compensation according to the damage suffered. As part of the measures to implement the decision, the State party disseminated it to different authorities, including the President of the Supreme Court, President of the Judiciary Council and President of the Constitutional Court.
<b>Complainant's comments</b>	On 4 June 2009, the complainant reiterates the argument made in the complaint that the pardoning of torturers leads to impunity and favours the repetition of torture. He provides general information on the continual failure of the State party to investigate claims of torture and the fact that torturers are rarely prosecuted. In fact, in the complainant's view such individuals are often rewarded in their careers and some are promoted to working on the struggle against terrorism, including one of those convicted of having tortured the complainant. Manuel Sánchez Corbi (one of the individuals convicted of having tortured the complainant) received the grade of commandant and became responsible for the coordination of anti-terrorism with France. José María de las Cuevas was integrated into the work of the Civil Guard and named representative of the judicial police. He has represented the government in many international forums, including receiving the delegation from the European Committee on the Prevention of Torture of the Council of Europe in 2001, despite the fact that he had been convicted himself of having tortured the complainant.
<b>Committee's decision</b>	The follow-up dialogue is ongoing.



<b>State party</b>	<b>Sweden</b>
<b>Case</b>	<b><i>Tapia Páez, 39/1996</i></b>
<b>Nationality and country of removal if applicable</b>	Peruvian to Peru
<b>Views adopted on</b>	28 April 1997
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party.
<b>Remedy recommended</b>	The State party has an obligation to refrain from forcibly returning Mr. Gorki Ernesto Tapia Páez to Peru.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	23 August 2005
<b>State party response</b>	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 23 June 1997.
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
<b>Case</b>	<b><i>Kisoki, 41/1996</i></b>
<b>Nationality and country of removal if applicable</b>	Democratic Republic of the Congo citizen to the Democratic Republic of the Congo
<b>Views adopted on</b>	8 May 1996
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party.
<b>Remedy recommended</b>	The State party has an obligation to refrain from forcibly returning Pauline Muzonzo Paku Kisoki to the Democratic Republic of the Congo.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	23 August 2005
<b>State party response</b>	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 7 November 1996.
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
<b>Case</b>	<b><i>Tala, 43/1996</i></b>
<b>Nationality and country of removal</b>	Iranian to the Islamic Republic of Iran

if applicable

<b>Views adopted on</b>	15 November 1996
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party.
<b>Remedy recommended</b>	The State party has an obligation to refrain from forcibly returning Mr. Kaveh Yaragh Tala to Iran.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	23 August 2005
<b>State party response</b>	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 18 February 1997.
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

**Case**

*Avedes Hamayak Korban, 88/1997*

**Nationality and country of removal if applicable** Iraqi to Iraq

<b>Views adopted on</b>	16 November 1998
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party.
<b>Remedy recommended</b>	The State party has an obligation to refrain from forcibly returning the complainant to Iraq. It also has an obligation to refrain from forcibly returning the complainant to Jordan, in view of the risk he would run of being expelled from that country to Iraq.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	23 August 2005
<b>State party response</b>	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 18 February 1999.
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

**Case**

*Ali Falakaflaki, 89/1997*

**Nationality and country of removal if applicable** Iranian to the Islamic Republic of Iran

<b>Views adopted on</b>	8 May 1998
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party.
<b>Remedy recommended</b>	The State party has an obligation to refrain from forcibly returning Mr. Ali Falakaflaki to the Islamic Republic of Iran.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	23 August 2005
<b>State party response</b>	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 17 July 1998.
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

**Case** *Orhan Ayas, 97/1997*

<b>Nationality and country of removal if applicable</b>	Turkish to Turkey
<b>Views adopted on</b>	12 November 1998
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party.
<b>Remedy recommended</b>	The State party has an obligation to refrain from forcibly returning the complainant to Turkey or to any other country where he runs a real risk of being expelled or returned to Turkey.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	23 August 2005
<b>State party response</b>	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 8 July 1999.
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

**Case** *Halil Haydin, 101/1997*

<b>Nationality and country of removal if applicable</b>	Turkish to Turkey
<b>Views adopted on</b>	20 November 1998
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and</b>	Granted and acceded to by the State party.

**State party response**

<b>Remedy recommended</b>	The State party has an obligation to refrain from forcibly returning the complainant to Turkey, or to any other country where he runs a real risk of being expelled or returned to Turkey.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	23 August 2005
<b>State party response</b>	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 19 February 1999.
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

**Case** *A.S., 149/1999*

**Nationality and country of removal if applicable** Iranian to the Islamic Republic of Iran

<b>Views adopted on</b>	24 November 2000
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party.
<b>Remedy recommended</b>	The State party has an obligation to refrain from forcibly returning the complainant to Iran or to any other country where she runs a real risk of being expelled or returned to Iran.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	22 February 2001
<b>State party response</b>	The State party informed the Committee that on 30 January 2001, the Aliens Appeals Board examined a new application for residence permit lodged by the complainant. The Board decided to grant the complainant a permanent residence permit in Sweden and to quash the expulsion order. The Board also granted the complainant's son a permanent residence permit.
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

**Case** *Chedli Ben Ahmed Karoui, 185/2001*

**Nationality and country of removal if applicable** Tunisian to Tunisia

<b>Views adopted on</b>	8 May 2002
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and</b>	Granted and acceded to by the State party.

**State party response****Remedy recommended** None**Due date for State party response** None**Date of reply** 23 August 2005**State party response** See first follow-up report in which it was stated that, on 4 June 2002, the Board revoked the expulsion decisions regarding the complainant and his family. They were also granted permanent residence permits on the basis of this decision.<sup>14</sup>**Complainant's comments** None**Committee's decision** No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.**Case** *Tharina, 226/2003***Nationality and country of removal if applicable** Bangladeshi to Bangladesh**Views adopted on** 6 May 2005**Issues and violations found** Removal – article 3**Interim measures granted and State party response** Granted and acceded to by the State party.**Remedy recommended** Given the specific circumstances of the case, the deportation of the complainant and her daughter would amount to a breach of article 3 of the Convention. The Committee wishes to be informed, within 90 days, from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.**Due date for State party response** 15 August 2005**Date of reply** 17 August 2005 (was not received by OHCHR, so resent by the State party on 29 June 2006).**State party response** On 20 June 2005, the Board decided to revoke the expulsion decision regarding the complainant and her daughter and to grant them residence permits.**Complainant's comments** None**Committee's decision** No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.**Case** *Agiza, 233/2003***Nationality and country of removal if applicable** Egyptian to Egypt<sup>14</sup> Ibid, para. 269.

<b>Views adopted on</b>	20 May 2005
<b>Issues and violations found</b>	Removal – articles 3 (substantive and procedural violations) on two counts and 22 on two counts. <sup>15</sup>
<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee requests the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above. The State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party response</b>	20 August 2005
<b>Date of reply</b>	Latest information on 7 December 2009 (it also provided information on 18 August 2005, (see annual report of the Committee, A/61/44), 1 September 2006 (see annual report of the Committee, A/62/44), 25 May and 5 October 2007, and 16 December 2008).
<b>State party's response</b>	The Committee will recall the State party's submission on follow-up in which it referred inter alia to the enactment of a new Aliens Act and the continual monitoring of the complainant by staff from the Swedish Embassy in Cairo. See annual report of the Committee (A/61/44) for a full account of its submission.  On 1 September 2006, the State party provided an update on its

<sup>15</sup> (1) The Committee observes, moreover, that by making the declaration under article 22 of the Convention, the State party undertook to confer upon persons within its jurisdiction the right to invoke the complaints' jurisdiction of the Committee. That jurisdiction included the power to indicate interim measures, if necessary, to stay the removal and preserve the subject matter of the case pending final decision. In order for this exercise of the right of complaint to be meaningful rather than illusory, however, an individual must have a reasonable period of time before execution of a final decision to consider whether, and if so to in fact, seize the Committee under its article 22 jurisdiction. In the present case, however, the Committee observes that the complainant was arrested and removed by the State party immediately upon the Government's decision of expulsion being taken; indeed, the formal notice of decision was only served upon the complainant's counsel the following day. As a result, it was impossible for the complainant to consider the possibility of invoking article 22, let alone seize the Committee. As a result, the Committee concludes that the State party was in breach of its obligations under article 22 of the Convention to respect the effective right of individual communication conferred thereunder.

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

monitoring of the complainant. It stated that embassy staff had made seven further visits to Mr. Agiza. Mr. Agiza had been in consistently good spirits and received regular visits in prison from his mother and brother. His health was said to be stable and he visited Manial Hospital once a week for physiotherapeutic treatment. The Embassy's staff has visited him now on 39 occasions and will continue the visits.

**Complainant's comments**

On 31 October 2006, the complainant's counsel responded that he had a meeting with the Ambassador of the Swedish Embassy on 24 January 2006. During this meeting, counsel emphasized that it was essential that the embassy continue their visits as regularly as it has been doing. Counsel requested the State party to consider having a retrial in Sweden or to allow him to complete his imprisonment there, but the State party responded that no such steps were possible. In addition, requests for compensation ex gratia had been refused and it was suggested that a formal claim should be lodged under the Compensation Act. This has been done. According to counsel, although the monitoring aspect of the State party's efforts is satisfactory its efforts as a whole were said to be inadequate with respect to the request for contact with his family in Sweden, a retrial etc.

**State party's response**

On 25 May 2007, the State party reported that 5 additional visits to the complainant had been conducted, which made a total of 44 visits. His well-being and health remained unchanged. He had on one occasion obtained permission to telephone his wife and children and he received visits from his mother. His father died in December 2006, but he did not receive permission to attend the funeral. Early in 2007, Mr. Agiza lodged a request to be granted a permanent residence permit in Sweden as well as compensation. The Government instructed the Office of the Chancellor of Justice to attempt to reach an agreement with Mr. Agiza on the issue of compensation. The request for a residence permit is being dealt with by the Migration Board.

**Complainant's comments**

On 20 July 2007, counsel reported that the meetings between Mr. Agiza and staff from the Swedish Embassy took place under the presence of prison officials and were video recorded. The officials had ordered Mr. Agiza not to express any criticism against the prison conditions and he was under the threat of being transferred to a far remote prison. Furthermore, the medical treatment he received was insufficient and he suffered, inter alia, from neurological problems which caused him difficulties to control his hands and legs, as well as from urination difficulties and a problem with a knee joint. The State party has repealed the expulsion decision of 18 December 2001. However, no decision has been taken yet by the Migration Board and the Chancellor of Justice.

**State party's response**

On 5 October 2007, the State party informed the Committee of two further visits to Mr. Agiza, conducted on 17 July and 19 September 2007, respectively. He kept repeating that he was feeling well, although in summer he complained about not receiving sufficiently frequent medical treatment. That situation

seems to have again improved. The Embassy's staff has visited Mr. Agiza in the prison on 46 occasions. These visits will continue. Furthermore, it is not possible at this moment to predict when the Migration Board and the Chancellor of Justice will be able to conclude Mr. Agiza's cases.

The State party provided follow-up information during the examination of its third periodic report to the Committee, which took place during the Committee's fortieth session, between 28 April and 16 May 2008. It indicated to the Committee that the office of the Chancellor of Justice was considering a request from the complainant for compensation for the violation of his rights under the Convention.

On 16 December 2008, the State party informed the Committee that representatives of the Swedish Embassy in Cairo continued to visit the complainant regularly in prison and conducted their 53rd visit in November 2008. His family was due to visit him in December and he availed of the possibility on several occasions of contacting his family on a cell phone provided by the Embassy.

It informed the Committee that compensation of SEK 3,097,920 (US\$ 379,485.20) was paid to the complainant's lawyer on 27 October 2008 following a settlement made by the Chancellor of Justice and the complainant. This compensation was paid in full and final settlement with the exception of non-pecuniary damage suffered as a result of a violation of article 8 of the European Convention on Human Rights, any damage suffered as a result of a violation of article 6 of that Convention and any loss of income. The Chancellor decided that as the liability for the events were partly attributed to the Swedish Security police they should pay a portion of the award (SEK 250,000).

As to the complainant's application for a residence permit, this was turned down by the Migration Board on 9 October 2007, and subsequently by the Supreme Court of Migration on 25 February 2008. Both bodies were of the view that the preconditions for granting a residence permit were lacking, since he was still serving his prison sentence in Egypt, i.e. that he does not only intend to but also has a real possibility of coming and staying in the country. It remained with the Government to examine the appeal which is still pending.

**Complainant's comments**

On 20 January 2009, the complainant's counsel confirmed that the State party had provided the compensation awarded. On the issue of a residence permit, he states that even if Mr. Agiza were unable to avail immediately of a residence permit the grant of same would be a great psychological relief to both him and his family. Thus, an important part of the reparation of the harm caused to him.

**State party's response**

On 7 December 2009, the State party submitted that following the decisions of the Migration Board on 9 October 2007, and the Supreme Court of Migration of 25 February 2008, the Government made a decision on the complainant's renewed



request for a residence permit on 19 November 2009. His application was made under the new 2005 Aliens Act. The Government found that chapter 5, section 4 of the Act, was applicable with regard to his application which reads, "If an international body that is competent to examine complaints from individuals had found that a refusal-of-entry or expulsion order in a particular case is contrary to a Swedish commitment under a convention, a residence permit shall be granted to the person covered by the order, unless there are exceptional grounds against granting a residence permit." After comprehensive consultations with the Swedish Security Police, the Government concluded that there were *exceptional grounds* against granting Mr. Agiza a residence permit owing to reasons relating to national security. The Government considered *inter alia* that, "the activities in which the complainant was involved were of such a serious nature that it feared that if he were granted a residence permit he could engage in similar activities threatening national security in Sweden".

Frequent visits continued to be conducted by the Swedish embassy to monitor the complainant's situation in prison. At the time of the State party's submission, 58 visits had been undertaken – the latest on 18 October 2009. The complainant has repeatedly stated that he is feeling well. His health-care appears to be functioning satisfactorily again and he is receiving necessary medication. He has complained about his treatment during transport to hospital, which he describes as uncomfortable and tiring. He has also claimed that a security guard threatened him with being shot if he tried to escape during his transport to hospital. He stated also that his lawyer intended to make a new petition for his release from prison for health reasons. The State party submits that there are substantial discrepancies in the description of his treatment and his health given to the Embassy representatives by the complainant and by his mother. The security service informally denied this claim that he was threatened and his mother's claim that he was ill-treated.

Given the State party's efforts to date to implement the decision in this case, the State party submits that it will take no further action in this case and considers the matter closed under the follow-up procedure.

**Further action taken/or required**

Following the forty-second session, the Committee considered that the State party should be reminded of its obligation to make reparation for the violation of article 3. Serious consideration should be made of the complainant's appeal for a residence permit.

**Committee's decision**

The Committee considers the dialogue ongoing.

**Case**

*C.T. and K.M., 279/2005*

**Nationality and country of removal if applicable** Rwandan to Rwanda

<b>Views adopted on</b>	17 November 2006
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party.
<b>Remedy recommended</b>	The removal of the complainants to Rwanda would amount to a breach of article 3 of the Convention. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.
<b>Due date for State party response</b>	1 March 2007
<b>Date of reply</b>	19 February 2007
<b>State party response</b>	On 29 January 2007, the Migration Board decided to grant the complainants permanent residence permits. They were also granted refugee status and travel documents.
<b>Committee's decision</b>	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.
<b>State party</b>	<b>Switzerland</b>
<b>Case</b>	<b><i>Mutombo, 13/1993</i></b>
<b>Nationality and country of removal if applicable</b>	Zairian to Zaire
<b>Views adopted on</b>	27 April 1994
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party.
<b>Remedy recommended</b>	The State party has an obligation to refrain from expelling Mr. Mutombo to Zaire, or to any other country where he runs a real risk of being expelled or returned to Zaire or of being subjected to torture.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	25 May 2005
<b>State party response</b>	Pursuant to the Committee's request for follow-up information of 25 March 2005, the State party informed the Committee that, by reason of the unlawful character of the decision to return him, the complainant was granted temporary admission on 21 June 1994. Subsequently, having married a Swiss national, the complainant was granted a residence permit on 20 June 1997.
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

<b>Case</b>	<b><i>Alan, 21/1995</i></b>
<b>Nationality and country of removal if applicable</b>	Turkish to Turkey
<b>Views adopted on</b>	8 May 1996
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party.
<b>Remedy recommended</b>	The State party has an obligation to refrain from forcibly returning Ismail Alan to Turkey.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	25 May 2005
<b>State party response</b>	Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainant was granted asylum by decision of 14 January 1999.
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

<b>Case</b>	<b><i>Aemei, 34/1995</i></b>
<b>Nationality and country of removal if applicable</b>	Iranian to Iran
<b>Views adopted on</b>	29 May 1997
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party.
<b>Remedy recommended</b>	<p>The State party has an obligation to refrain from forcibly returning the complainant and his family to Iran, or to any other country where they would run a real risk of being expelled or returned to Iran.</p> <p>The Committee's finding of a violation of article 3 of the Convention in no way affects the decision(s) of the competent national authorities concerning the granting or refusal of asylum. The finding of a violation of article 3 has a declaratory character. Consequently, the State party is not required to modify its decision(s) concerning the granting of asylum; on the other hand, it does have a responsibility to find solutions that will enable it to take all necessary measures to comply with the provisions of article 3 of the Convention. These solutions may be of a legal nature (e.g. decision to admit the applicant temporarily), but also of a political nature (e.g. action to find a third State willing to admit the applicant to its territory and undertaking not to return or expel him in its turn).</p>

<b>Due date for State party response</b>	None
<b>Date of reply</b>	25 May 2005
<b>State party response</b>	Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainants had been admitted as refugees on 8 July 1997. On 5 June 2003, they were granted residence permits on humanitarian grounds. For this reason, Mr. Aemei renounced his refugee status on 5 June 2003. One of their children acquired Swiss nationality.
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

<b>Case</b>	<b><i>V.L., 262/2005</i></b>
<b>Nationality and country of removal if applicable</b>	Belarusian to Belarus
<b>Views adopted on</b>	20 November 2006
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party.
<b>Remedy recommended</b>	The complainant's removal to Belarus by the State party would constitute a breach of article 3 of the Convention 10. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.
<b>Due date for State party response</b>	27 February 2007
<b>Date of reply</b>	23 March 2007
<b>State party response</b>	The State party informed the Committee that the complainant has now received permission to stay in Switzerland (specific type of permission not provided) and no longer risks removal to Belarus.
<b>Committee's decision</b>	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.

<b>Case</b>	<b><i>El Rgeig, 280/2005</i></b>
<b>Nationality and country of removal if applicable</b>	Libyan to Libyan Arab Jamahiriya
<b>Views adopted on</b>	15 November 2006
<b>Issues and violations found</b>	Removal – article 3
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party.
<b>Remedy recommended</b>	The forcible return of the complainant to the Libyan Arab

Jamahiriya would constitute a breach by Switzerland of his rights under article 3 of the Convention. The Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.

**Due date for State party response** 26 February 2007

**Date of reply** 19 January 2007

**State party response** On 17 January 2007, the Federal Migration Office partially reconsidered its decision of 5 March 2004. The complainant has now received refugee status and no longer risks removal to Libya.

**Committee's decision** No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.

**Case** *Jean-Patrick Iya, 299/2006*

**Nationality and country of removal if applicable** Democratic Republic of the Congo national and deportation to the Democratic Republic of the Congo

**Views adopted on** 16 November 2007

**Issues and violations found** Removal – article 3

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

**Remedy recommended** The forcible return of the complainant to the Democratic Republic of the Congo would amount to a breach of article 3 of the Convention. The Committee invites the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

**Due date for State party's response** 28 May 2008

**Date of reply** 24 June 2008 (it had responded on 19 February 2008)

**State party's response** On 7 February 2008, the Federal Refugee Office Migration Board granted the complainant "temporary admission" and thus the complainant no longer risks removal to the Democratic Republic of the Congo.

On 24 June 2008, the State party responded to a request by the Committee to explain what is meant by "temporary admission". It explained that temporary admission is regulated by chapter 11 of the federal law of 16 December 2005 on foreigners which entered into force on 1 January 2008. Under the terms of this law the return of a foreigner to his/her State of origin or to a third State is not lawful if such a return would be contrary to Switzerland's obligations under international law. This status cannot be removed unless there is a radical political change in the country of origin obviating any risk to the person concerned. In the event that such a provision is lifted, the individual would have certain remedies to exhaust under the terms of the same legislation. In

	addition, this type of status comes to an end if the individual leaves Switzerland definitely, or obtains a residence permit which may be requested after five years of residency in the State party and is based on the individual's level of integration. Under certain conditions, the individual's spouse and children may be able to benefit from family reunification.
<b>Committee's decision</b>	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.
<b>State party</b>	<b>Tunisia</b>
<b>Case</b>	<b><i>M'Barek, 60/1996</i></b>
<b>Nationality and country of removal if applicable</b>	Tunisian
<b>Views adopted on</b>	10 November 2004
<b>Issues and violations found</b>	Failure to investigate – articles 12 and 13
<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	The Committee requests the State party to inform it within 90 days of the steps taken in response to the Committee's observations.
<b>Due date for State party response</b>	22 February 2000
<b>Date of reply</b>	Latest reply on 27 August 2009 (had also responded on 15 April 2002, 23 February 2009 and 24 and 27 August 2009)
<b>State party's response</b>	See first follow-up report. <sup>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.
<b>Complainant's comments</b>	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.
<b>State party's response</b>	On 23 February 2009, the State party responded to the information contained in the complainant's letter of 27 November 2008. It informed the Committee that it could not pursue the complainant's request to exhume the body as this matter has already been considered by the authorities and no new information has come to light to justify such a reopening. On the criminal front, the State party reiterated its arguments submitted prior to the Committee's decision that proceedings were opened

<sup>16</sup> See note 13, para. 270.

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's response**

On 24 August 2009, the State party reiterated its previous argument that the question of exhuming the body of the deceased could not be reopened within the terms of article 121 of the Penal Code. However, to get over this legal difficulty, it submits that the Minister for Justice and Human Rights has applied article 23 and 24 of the same Code, and requested the prosecutor of the Court of appeal of Nabeul to take up the proceedings and to take what measures are necessary to find out the cause of the deceased's death, including the request for an exhumation of the body and the demand for a new medico-legal report.

On 27 August 2009, the State party updated the Committee with information that the proceedings in question have been entrusted to the judge of the court of first instance in Grombalia and registered under number 27227/1.

#### **Complainant's comments**

On 7 September 2009, the complainant welcomed the initiative taken by the State party to establish the cause of death of the deceased and considered the new actions taken by the State party as a turning point in the investigation of this matter. However, he also raises a concern over the vague nature of the State party's intentions concerning the details of the judicial exhumation. The complainant reminds the State party that any exhumation should be conducted from the beginning in the presence of all or some of the four international doctors who already pronounced on this

case before the Committee, which according to the complainant was part of the Committee's Decision. Any unilateral action by the State party to interfere with the remains of the deceased will be regarded as suspicious. The complainant requests the Committee to remind the State party of its obligations without which an exhumation would have no credibility. Finally, the complainant thanks the Committee for its invaluable assistance and the part it has played in the promising turn of events

**Consultations with 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.

**Cases**

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



<b>Nationality and country of removal if applicable</b>	Tunisian
<b>Views adopted on</b>	20 November 2003
<b>Issues and violations found</b>	Failure to investigate – articles 12 and 13
<b>Interim measures granted and State party response</b>	None
<b>Remedy recommended</b>	To conduct an investigation into the complainants' allegations of torture and ill-treatment, and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.
<b>Due date for State party response</b>	23 February 2004
<b>Date of reply</b>	16 March 2004 and 26 April 2006
<b>State party's response</b>	See first follow-up report. <sup>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's 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.
<b>Complainant's comments</b>	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

<sup>17</sup> See note 13, paras. 271–272.

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.

#### **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

<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
<b>Date of reply</b>	None
<b>State party response</b>	None
<b>Complainant's comments</b>	<p>On 3 March 2008, the complainant submitted that since the Committee's decision, he has been subjected again to ill-treatment and harassment by the State party's authorities. On 20 December 2007, he was thrown to the ground and kicked by police, who are in permanent watch outside his home, when he went to greet friends and colleagues who had come to visit him. His injuries were such that he had to be taken to hospital. The next day, several NGOs including the World Organization Against Torture (OMCT) (the complainant's representative), condemned the incident. The complainant now remains under surveillance 24 hours a day, thereby depriving him of his freedom of movement and contact with other people. His telephone line is regularly cut and his e-mail addresses are surveyed and systematically destroyed.</p> <p>Except for an appearance before a judge of the instance court on 8 January 2008, during which the complainant was heard on his complaint (filed in 2000) no action has been taken to follow up on the investigation of this case. In addition, the complainant does not see how the proceedings on 8 January relate to the implementation of the Committee's decision. He submits that he is currently in very poor health, that he does not have sufficient money to pay for his medical bills and recalls that the medical expenses for the re-education of victims of torture are considered reparation obligations.</p>
<b>Consultations with State party</b>	The consultations were held during the forty-second session with the permanent representative and the Rapporteur for follow-up of decisions on complaints.
<b>Committee's decision</b>	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's response</b>	<p>The State party expressed its astonishment at the Committee's decision given that in the State party's view domestic remedies had not been exhausted. It reiterated the arguments set forth in its submission on admissibility. As to the Committee's view that what were described by the State party as "records" of the preliminary hearing were simply incomplete summaries, the State party acknowledged that the transcripts were disordered and incomplete and 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 prior to her arrest and this would not in any case constitute ill-treatment.</li> <li>3. All of the witnesses stated that she had not suffered ill-treatment.</li> <li>4. One of the witnesses stated that she had attempted to bribe him in return for a false statement against the police.</li> <li>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.</li> <li>6. A witness statement from the court clerk confirmed that her bag was returned intact.</li> <li>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.</li> <li>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</li> </ol>

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.
<b>Committee's decision</b>	The dialogue is ongoing.
<b>State party</b>	<b>Venezuela (Bolivarian Republic of)</b>
<b>Case</b>	<i>Chipana, 110/1998</i>
<b>Nationality and country of removal if applicable</b>	Peruvian to Peru
<b>Views adopted on</b>	10 November 1998
<b>Issues and violations found</b>	Complainant's extradition to Peru constituted a violation of article 3.
<b>Interim measures granted and State party response</b>	Granted but not acceded to by the State party. <sup>18</sup>
<b>Remedy recommended</b>	None
<b>Due date for State party response</b>	7 March 1999
<b>Date of reply</b>	9 October 2007 (had previously responded on 13 June 2001 and 9 December 2005)
<b>State party's response</b>	<p>On 13 June 2001, the State party had reported on the conditions of detention of the complainant. On 23 November 2000, the Ambassador of the Bolivarian Republic of Venezuela in Peru together with some representatives of the Peruvian administration visited the complainant in prison and found her to be in good health. She had been transferred in September 2000 from the top security pavilion to the "medium special security" pavilion, where she had other privileges. On 18 October 2001, the State party had referred to a visit to the complainant on 14 June 2001, during which she stated that her conditions of detention had improved, that she could see her family more often and that she intended to appeal her sentence. She had been transferred from the medium special security pavilion to the "medium security" pavilion where she had more privileges. Her health was good, except that she was suffering from depression. She had not been subjected to any physical or psychological mistreatment, she had weekly visits of her family and she was involved in professional and educational activities in the prison.</p> <p>On 9 December 2005, the State party had informed the Committee that, on 23 November 2005, the Venezuelan</p>

<sup>18</sup> The Committee stated "Furthermore, the Committee is deeply concerned by the fact that the State party did not accede to the request made by the Committee under rule 108, paragraph 3, of its rules of procedure that it should refrain from expelling or extraditing the author while her communication was being considered by the Committee and thereby failed to comply with the spirit of the Convention. The Committee considers that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying the procedure. Compliance with the provisional measures called for by the Committee in cases it considers reasonable is essential in order to protect the person in question from irreparable harm, which could, moreover, nullify the end result of the proceedings before the Committee."

Ambassador in Peru had contacted Mrs. Nuñez Chipana. The complainant regretted that the Peruvian authorities had denied her brother access, who had come from Venezuela to visit her. She mentioned that she was receiving medical treatment, that she could receive visits from her son, and that she was placed under a penitentiary regime which imposed minimum restrictions on detainees. She also mentioned that she would request the judgement against her to be quashed and that she was currently making a new application under which she hoped to be acquitted. The State party considered that it had complied with the recommendation that similar violations should be avoided in the future, through the adoption of the law on Refugees in 2001, according to which the newly established National Commission for Refugees now processes all the applications of potential refugees as well as examining cases of deportation. It requested the Committee to declare that it had complied with its recommendations, and to release it from the duty to supervise the complainant's situation in Peru.

On 9 October 2007, the State party responded to the Committee's request for information on the new procedure initiated by the complainant. The State party informed the Committee that Peru has not requested a modification of the terms of the extradition agreement, which would allow it to prosecute the complainant for crimes other than those for which the extradition was granted (offence of disturbing public order and being a member of the subversive movement Sendero Luminoso). It did not respond on the status of the new procedure initiated by the complainant.

**Complainant's comments**

None

**Committee's decision**

The follow-up dialogue is ongoing.

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

<b>State party</b>	<b>Germany</b>
<b>Case</b>	<b><i>M.A.K., 214/2002</i></b>
<b>Nationality and country of removal if applicable</b>	Turkish to Turkey
<b>Views adopted on</b>	12 May 2004
<b>Issues and violations found</b>	No violation
<b>Interim measures granted and State party response</b>	Granted and acceded to by the State party. Request by State party to withdraw interim request refused by the Rapporteur for new complaints and interim measures.
<b>Remedy recommended</b>	Although the Committee found no violation of the Convention, it welcomed the State party's readiness to monitor the complainant's situation following his return to Turkey and requested the State party to keep the Committee informed about

	the situation.
<b>Due date for State party response</b>	None
<b>Date of reply</b>	20 December 2004
<b>State party response</b>	<p>The State party informed the Committee that the complainant had agreed to leave German territory voluntarily in July 2004 and that, in a letter from his lawyer on 28 June 2004, he said he would leave Germany on 2 July 2004. In the same correspondence, as well as by telephone conversation of 27 September 2004, his lawyer stated that the complainant did not wish to be monitored by the State party in Turkey but would call upon its assistance only in the event of arrest. For this reason, the State party does not consider it necessary to make any further efforts to monitor the situation at this moment.</p>
<b>Complainant's comments</b>	None
<b>Committee's decision</b>	No further action is required.



## VII. Future meetings of the Committee

115. In accordance with rule 2 of its rules of procedure, the Committee holds two regular sessions each year. In consultation with the Secretary-General, the Committee took decisions on the dates of its regular session for 2011. Those dates are:

Forty-sixth	9–27 May 2011*
Forty-seventh	31 October–18 November 2011*

\* The exact dates depend on a request for an additional week per session for 2011 and 2012.

### Additional meeting time for 2011 and 2012

116. The Committee notes that at its forty-fourth session, it decided to request the General Assembly to provide appropriate financial support to enable it to meet for an additional week per each session in 2011 and 2012 (see paras. 23 to 26 of the current report).

117. This request was taken further to the decisions referred to in the annual reports of the Committee to the General Assembly at its sixty-second, sixty-third and sixty-fourth sessions.<sup>19</sup>

118. The extension of meeting time and appropriate financial support to enable the Committee to meet for an additional week in each of the sessions of 2011 and 2012 is an important requirement, especially to address the examination of the reports from States parties that have availed themselves of the optional reporting procedure, as these reports must be considered within the shortest possible period after being received by the Committee, as well as to reduce its backlog of individual complaints pending before it.

119. The Committee decided to transmit this decision (see annex IX to the current report) to the Secretary-General to be presented to the sixty-fifth session of the General Assembly.

<sup>19</sup> *Official Records of the General Assembly, Sixty-second Session, Supplement No. 44 (A/62/44), chap. II, paras. 23–24, Sixty-third Session, Supplement No. 44 (A/63/44), chap. VII, para. 101, and Sixty-fourth Session, Supplement No. 44 (A/64/44), chap. II, para. 27 and chap. VII, para. 97.*

## **VIII. Adoption of the annual report of the Committee on its activities**

120. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly. Since the Committee holds its second regular session of each calendar year in late November, which coincides with the regular sessions of the General Assembly, it adopts its annual report at the end of its spring session, for transmission to the General Assembly during the same calendar year. Accordingly, at its 953rd meeting, held on 14 May 2010, the Committee considered and unanimously adopted the report on its activities at the forty-third and forty-fourth sessions.

## Annexes

### Annex I

#### States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as at 14 May 2010

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994 <sup>a</sup>
Algeria	26 November 1985	12 September 1989
Andorra	5 August 2002	22 September 2006
Antigua and Barbuda		19 July 1993 <sup>a</sup>
Argentina	4 February 1985	24 September 1986
Armenia		13 September 1993 <sup>a</sup>
Australia	10 December 1985	8 August 1989
Austria	14 March 1985	29 July 1987
Azerbaijan		16 August 1996 <sup>a</sup>
Bahamas	16 December 2008	
Bahrain		6 March 1998 <sup>a</sup>
Bangladesh		5 October 1998 <sup>a</sup>
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	25 June 1999
Belize		17 March 1986 <sup>a</sup>
Benin		12 March 1992 <sup>a</sup>
Bolivia	4 February 1985	12 April 1999
Bosnia and Herzegovina		1 September 1993 <sup>b</sup>
Botswana	8 September 2000	8 September 2000
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986
Burkina Faso		4 January 1999 <sup>a</sup>

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Burundi		18 February 1993 <sup>a</sup>
Cambodia		15 October 1992 <sup>a</sup>
Cameroon		19 December 1986 <sup>a</sup>
Canada	23 August 1985	24 June 1987
Cape Verde		4 June 1992 <sup>a</sup>
Chad		9 June 1995 <sup>a</sup>
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987
Comoros	22 September 2000	
Congo		30 July 2003 <sup>a</sup>
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995 <sup>a</sup>
Croatia		12 October 1992 <sup>b</sup>
Cuba	27 January 1986	17 May 1995
Cyprus	9 October 1985	18 July 1991
Czech Republic		22 February 1993 <sup>b</sup>
Democratic Republic of the Congo		18 March 1996 <sup>a</sup>
Denmark	4 February 1985	27 May 1987
Djibouti		5 November 2002 <sup>a</sup>
Dominican Republic	4 February 1985	
Ecuador	4 February 1985	30 March 1988
Egypt		25 June 1986 <sup>a</sup>
El Salvador		17 June 1996 <sup>a</sup>
Equatorial Guinea		8 October 2002 <sup>a</sup>
Estonia		21 October 1991 <sup>a</sup>
Ethiopia		14 March 1994 <sup>a</sup>
Finland	4 February 1985	30 August 1989
France	4 February 1985	18 February 1986
Gabon	21 January 1986	8 September 2000

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Gambia	23 October 1985	
Georgia		26 October 1994 <sup>a</sup>
Germany	13 October 1986	1 October 1990
Ghana	7 September 2000	7 September 2000
Greece	4 February 1985	6 October 1988
Guatemala		5 January 1990 <sup>a</sup>
Guinea	30 May 1986	10 October 1989
Guinea-Bissau	12 September 2000	
Guyana	25 January 1988	19 May 1988
Holy See		26 June 2002 <sup>a</sup>
Honduras		5 December 1996 <sup>a</sup>
Hungary	28 November 1986	15 April 1987
Iceland	4 February 1985	23 October 1996
India	14 October 1997	
Indonesia	23 October 1985	28 October 1998
Ireland	28 September 1992	11 April 2002
Israel	22 October 1986	3 October 1991
Italy	4 February 1985	12 January 1989
Japan		29 June 1999 <sup>a</sup>
Jordan		13 November 1991 <sup>a</sup>
Kazakhstan		26 August 1998 <sup>a</sup>
Kenya		21 February 1997 <sup>a</sup>
Kuwait		8 March 1996 <sup>a</sup>
Kyrgyzstan		5 September 1997 <sup>a</sup>
Latvia		14 April 1992 <sup>a</sup>
Lebanon		5 October 2000 <sup>a</sup>
Lesotho		12 November 2001 <sup>a</sup>
Liberia		22 September 2004 <sup>a</sup>
Libyan Arab Jamahiriya		16 May 1989 <sup>a</sup>
Liechtenstein	27 June 1985	2 November 1990

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Lithuania		1 February 1996 <sup>a</sup>
Luxembourg	22 February 1985	29 September 1987
Madagascar	1 October 2001	13 December 2005
Malawi		11 June 1996 <sup>a</sup>
Maldives		20 April 2004 <sup>a</sup>
Mali		26 February 1999 <sup>a</sup>
Malta		13 September 1990 <sup>a</sup>
Mauritania		17 November 2004 <sup>a</sup>
Mauritius		9 December 1992 <sup>a</sup>
Mexico	18 March 1985	23 January 1986
Monaco		6 December 1991 <sup>a</sup>
Mongolia		24 January 2002 <sup>a</sup>
Montenegro		23 October 2006 <sup>b</sup>
Morocco	8 January 1986	21 June 1993
Mozambique		14 September 1999 <sup>a</sup>
Namibia		28 November 1994 <sup>a</sup>
Nauru	12 November 2001	
Nepal		14 May 1991 <sup>a</sup>
Netherlands	4 February 1985	21 December 1988
New Zealand	14 January 1986	10 December 1989
Nicaragua	15 April 1985	5 July 2005
Niger		5 October 1998 <sup>a</sup>
Nigeria	28 July 1988	28 June 2001
Norway	4 February 1985	9 July 1986
Pakistan	17 April 2008	
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986 <sup>a</sup>
Poland	13 January 1986	26 July 1989

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Portugal	4 February 1985	9 February 1989
Qatar		11 January 2000 <sup>a</sup>
Republic of Korea		9 January 1995 <sup>a</sup>
Republic of Moldova		28 November 1995 <sup>a</sup>
Romania		18 December 1990 <sup>a</sup>
Russian Federation	10 December 1985	3 March 1987
Rwanda		15 December 2008 <sup>a</sup>
Saint Vincent and the Grenadines		1 August 2001 <sup>a</sup>
San Marino	18 September 2002	27 November 2006
Sao Tome and Principe	6 September 2000	
Saudi Arabia		23 September 1997 <sup>a</sup>
Senegal	4 February 1985	21 August 1986
Serbia		12 March 2001 <sup>b</sup>
Seychelles		5 May 1992 <sup>a</sup>
Sierra Leone	18 March 1985	25 April 2001
Slovakia		28 May 1993 <sup>b</sup>
Slovenia		16 July 1993 <sup>a</sup>
Somalia		24 January 1990 <sup>a</sup>
South Africa	29 January 1993	10 December 1998
Spain	4 February 1985	21 October 1987
Sri Lanka		3 January 1994 <sup>a</sup>
Sudan	4 June 1986	
Swaziland		26 March 2004 <sup>a</sup>
Sweden	4 February 1985	8 January 1986
Switzerland	4 February 1985	2 December 1986
Syrian Arab Republic		19 August 2004 <sup>a</sup>
Tajikistan		11 January 1995 <sup>a</sup>
Thailand		2 October 2007 <sup>a</sup>
The former Yugoslav Republic of Macedonia		12 December 1994 <sup>b</sup>
Timor-Leste		16 April 2003 <sup>a</sup>

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Togo	25 March 1987	18 November 1987
Tunisia	26 August 1987	23 September 1988
Turkey	25 January 1988	2 August 1988
Turkmenistan		25 June 1999 <sup>a</sup>
Uganda		3 November 1986 <sup>a</sup>
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland	15 March 1985	8 December 1988
United States of America	18 April 1988	21 October 1994
Uruguay	4 February 1985	24 October 1986
Uzbekistan		28 September 1995 <sup>a</sup>
Venezuela (Bolivarian Republic of)	15 February 1985	29 July 1991
Yemen		5 November 1991 <sup>a</sup>
Zambia		7 October 1998 <sup>a</sup>

*Notes*<sup>a</sup> Accession (73 States).<sup>b</sup> Succession (7 States).



## **Annex II**

### **States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention, as at 14 May 2010**

Afghanistan

China

Equatorial Guinea

Israel

Kuwait

Mauritania

Saudi Arabia

Syrian Arab Republic

## Annex III

### States parties that have made the declarations provided for in articles 21 and 22 of the Convention, as at 14 May 2010<sup>a, b</sup>

<i>State party</i>	<i>Date of entry into force</i>
Algeria	12 October 1989
Andorra	22 November 2006
Argentina	26 June 1987
Australia	29 January 1993
Austria	28 August 1987
Belgium	25 July 1999
Bolivia	14 February 2006
Bulgaria	12 June 1993
Cameroon	11 November 2000
Canada	13 November 1989
Chile	15 March 2004
Costa Rica	27 February 2002
Croatia	8 October 1991 <sup>c</sup>
Cyprus	8 April 1993
Czech Republic	3 September 1996 <sup>c</sup>
Denmark	26 June 1987
Ecuador	29 April 1988
Finland	29 September 1989
France	26 June 1987
Georgia	30 June 2005
Germany	19 October 2001
Ghana	7 October 2000
Greece	5 November 1988
Hungary	13 September 1989
Iceland	22 November 1996
Ireland	11 May 2002

<i>State party</i>	<i>Date of entry into force</i>
Italy	10 October 1989
Kazakhstan	21 February 2008
Liechtenstein	2 December 1990
Luxembourg	29 October 1987
Malta	13 October 1990
Monaco	6 January 1992
Montenegro	23 October 2006 <sup>c</sup>
Netherlands	20 January 1989
New Zealand	9 January 1990
Norway	26 June 1987
Paraguay	29 May 2002
Peru	28 October 2002
Poland	12 May 1993
Portugal	11 March 1989
Republic of Korea	9 November 2007
Russian Federation	1 October 1991
Senegal	16 October 1996
Serbia	12 March 2001 <sup>c</sup>
Slovakia	17 March 1995 <sup>c</sup>
Slovenia	15 August 1993
South Africa	10 December 1998
Spain	20 November 1987
Sweden	26 June 1987
Switzerland	26 June 1987
Togo	18 December 1987
Tunisia	23 October 1988
Turkey	1 September 1988
Ukraine	12 September 2003
Uruguay	26 June 1987
Venezuela (Bolivarian Republic of)	26 April 1994

**States parties that have only made the declaration provided for in article 21 of the Convention, as at 14 May 2010**

<i>State party</i>	<i>Date of entry into force</i>
Japan	29 June 1999
Uganda	19 December 2001
United Kingdom of Great Britain and Northern Ireland	8 December 1988
United States of America	21 October 1994

**States parties that have only made the declaration provided for in article 22 of the Convention, as at 14 May 2010<sup>a</sup>**

Azerbaijan	4 February 2002
Bosnia and Herzegovina	4 June 2003
Brazil	26 June 2006
Burundi	10 June 2003
Guatemala	25 September 2003
Mexico	15 March 2002
Morocco	19 October 2006
Seychelles	6 August 2001

*Notes*

<sup>a</sup> A total of 60 States parties have made the declaration under article 21.

<sup>b</sup> A total of 64 States parties have made the declaration under article 22.

<sup>c</sup> States parties that have made the declaration under articles 21 and 22 by succession.

## Annex IV

### Membership of the Committee against Torture in 2010

<i>Name of member</i>	<i>Country of nationality</i>	<i>Term expires on 31 December</i>
Ms. Essadia <b>Belmir</b> (Vice-Chairperson)	Morocco	2013
Mr. Alessio <b>Bruni</b>	Italy	2013
Ms. Felice <b>Gaer</b> (Vice-Chairperson)	United States of America	2011
Mr. Luis <b>Gallegos Chiriboga</b>	Ecuador	2011
Mr. Abdoulaye <b>Gaye</b>	Senegal	2011
Mr. Claudio <b>Grossman</b> (Chairperson)	Chile	2011
Ms. Myrna <b>Kleopas</b>	Cyprus	2011
Mr. Fernando <b>Mariño Menendez</b>	Spain	2013
Ms. Nora <b>Sveaass</b> (Rapporteur)	Norway	2013
Mr. Xuexian <b>Wang</b> (Vice-Chairperson)	China	2013

## Annex V

**States that have signed, ratified or acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as at 14 May 2010**

<i>Participant</i>	<i>Signature, succession to signature<sup>b</sup></i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Albania		1 October 2003 <sup>a</sup>
Argentina	30 April 2003	15 November 2004
Armenia		14 September 2006 <sup>a</sup>
Australia	19 May 2009	
Austria	25 September 2003	
Azerbaijan	15 September 2005	28 January 2009
Belgium	24 October 2005	
Benin	24 February 2005	20 September 2006
Bolivia (Plurinational State of)	22 May 2006	23 May 2006
Bosnia and Herzegovina	7 December 2007	24 October 2008
Brazil	13 October 2003	12 January 2007
Burkina Faso	21 September 2005	
Cambodia	14 September 2005	30 March 2007
Cameroon	15 December 2009	
Chile	6 June 2005	12 December 2008
Congo	29 September 2008	
Costa Rica	4 February 2003	1 December 2005
Croatia	23 Sept. 2003	25 April 2005
Cyprus	26 July 2004	29 April 2009
Czech Republic	13 September 2004	10 July 2006
Denmark	26 June 2003	25 June 2004
Ecuador	24 May 2007	
Estonia	21 September 2004	18 December 2006
Finland	23 September 2003	

<i>Participant</i>	<i>Signature, succession to signature<sup>b</sup></i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
France	16 September 2005	11 November 2008
Gabon	15 December 2004	
Georgia		9 August 2005 <sup>a</sup>
Germany	20 September 2006	4 December 2008
Ghana	6 November 2006	
Guatemala	25 September 2003	9 June 2008
Guinea	16 September 2005	
Honduras	8 December 2004	23 May 2006
Iceland	24 September 2003	
Ireland	2 October 2007	
Italy	20 August 2003	
Kazakhstan	25 September 2007	22 October 2008
Kyrgyzstan		29 December 2008 <sup>a</sup>
Lebanon		22 December 2008 <sup>a</sup>
Liberia		22 September 2004 <sup>a</sup>
Liechtenstein	24 June 2005	3 November 2006
Luxembourg	13 January 2005	
Madagascar	24 September 2003	
Maldives	14 September 2005	15 February 2006
Mali	19 January 2004	12 May 2005
Malta	24 September 2003	24 September 2003
Mauritius		21 June 2005 <sup>a</sup>
Mexico	23 September 2003	11 April 2005
Montenegro	23 October 2006 <sup>b</sup>	6 March 2009
Netherlands	3 June 2005	
New Zealand	23 September 2003	14 March 2007
Nicaragua	14 March 2007	25 February 2009
Nigeria		27 July 2009 <sup>a</sup>
Norway	24 September 2003	
Paraguay	22 September 2004	2 December 2005

<i>Participant</i>	<i>Signature, succession to signature<sup>b</sup></i>	<i>Ratification, accession,<sup>a</sup> succession<sup>b</sup></i>
Peru		14 September 2006 <sup>a</sup>
Poland	5 April 2004	14 September 2005
Portugal	15 February 2006	
Republic of Moldova	16 September 2005	24 July 2006
Romania	24 September 2003	2 July 2009
Senegal	4 February 2003	18 October 2006
Serbia	25 September 2003	26 September 2006
Sierra Leone	26 September 2003	
Slovenia		23 January 2007 <sup>a</sup>
South Africa	20 September 2006	
Spain	13 April 2005	4 April 2006
Sweden	26 June 2003	14 September 2005
Switzerland	25 June 2004	24 September 2009
The former Yugoslav Republic of Macedonia	1 September 2006	13 February 2009
Timor-Leste	16 September 2005	
Togo	15 September 2005	
Turkey	14 September 2005	
Ukraine	23 September 2005	19 September 2006
United Kingdom of Great Britain and Northern Ireland	26 June 2003	10 December 2003
Uruguay	12 January 2004	8 December 2005



## Annex VI

### Membership of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2010

<i>Name of member</i>	<i>Country of nationality</i>	<i>Term expires on 31 December</i>
Mr. Mario Luis <b>Coriolano</b> (Vice-Chairperson)	Argentina	2012
Ms. Marija <b>Definis Gojanović</b>	Croatia	2010
Mr. Malcolm <b>Evans</b>	United Kingdom of Great Britain and Northern Ireland	2012
Mr. Emilio <b>Ginés Santidrián</b>	Spain	2010
Mr. Zdeněk <b>Hájek</b>	Czech Republic	2012
Mr. Zbigniew <b>Lasocik</b>	Poland	2012
Mr. Hans Draminsky <b>Petersen</b> (Vice-Chairperson)	Denmark	2010
Mr. Víctor Manuel <b>Rodríguez Rescia</b> (Chairperson)	Costa Rica	2012
Mr. Miguel <b>Sarre Iguiniz</b>	Mexico	2010
Mr. Wilder <b>Tayler Souto</b>	Uruguay	2010

## Annex VII

### **Third annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment\* (April 2009 to March 2010)**

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\* The report, complete with the annexes, has been issued separately under symbol number CAT/C/44/2\*. All annexes have been reproduced as appendices to the present annex, except I and II which correspond to annexes V and VI of the present report.

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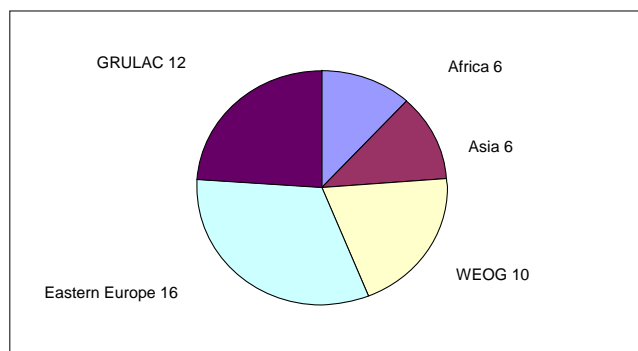
## I. Introduction

1. This public document is the third annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>1</sup> It gives an account of the work of the Subcommittee during the period from April 2009 to the end of March 2010.<sup>2</sup>

2. One of the major events during this period was the depositing of the fiftieth instrument of ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>3</sup> which produced the following situation of signatures and ratifications by geographical region.

### States parties by region

Africa	6
Asia	6
Group of Western European and other States (WEOG)	10
Eastern Europe	16
Group of Latin American and Caribbean States (GRULAC)	12



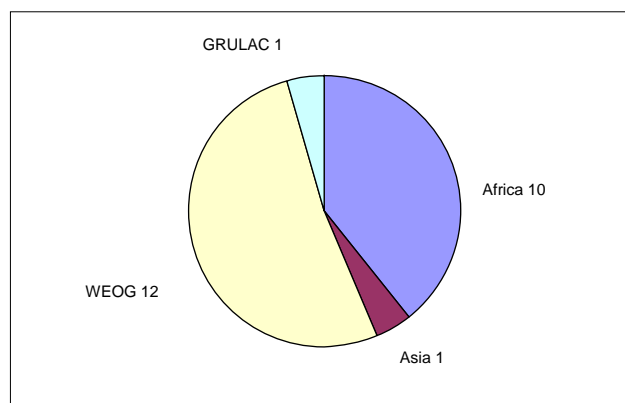
### States that have signed but not ratified the Optional Protocol, by region (total 24)

Africa	10
Asia	1
Group of Western European and other States (WEOG)	12
Eastern Europe	0
Group of Latin American and Caribbean States (GRULAC)	1

<sup>1</sup> Established following the entry into force in June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. For the text of the Optional Protocol, see [www2.ohchr.org/english/law/cat-one.htm](http://www2.ohchr.org/english/law/cat-one.htm).

<sup>2</sup> In accordance with the Optional Protocol (art. 16, para. 3), the Subcommittee presents its public annual reports to the Committee against Torture.

<sup>3</sup> Switzerland deposited its instrument of ratification on 24 September 2009. For a list of the States parties to the Optional Protocol, see annex V of the present report.



3. The fiftieth ratification automatically gives rise to an unavoidable challenge to the entire system of prevention of torture, as the membership of the Subcommittee thereby increases from 10<sup>4</sup> to 25, which will make it the largest expert body in the United Nations.

4. It is hoped that the additional members needed to bring the number to 25 will be elected in 2010. This will entail a complex, informed process in order to ensure the most geographically representative and multidisciplinary membership.

5. The current geographical distribution in the Subcommittee is extremely uneven. There are no members from Africa or Asia, even though there are States parties in each of those regions, and Western Europe and Latin America are overrepresented, as can be seen from the following table.

#### Current geographical distribution

<i>Region</i>	<i>Ratification (%)</i>	<i>Membership (%)</i>
Africa	12	0
Asia	12	0
Eastern Europe	33	30
GRULAC	24	40
WEOG	18	30

6. The General Assembly (resolution 63/167) has encouraged States parties to take action to ensure an equitable geographical institution in the membership of the treaty bodies. The Subcommittee trusts that, in the election of new members to the Subcommittee at the next meeting of the States parties, the following points will be considered:

- Equitable geographical distribution in its membership would give the Subcommittee greater legitimacy and acceptance, in addition to enriching its work. It is also important to establish gender balance in the Subcommittee and to include specialists in particular areas, including health.
- With 50 States parties, the recommended distribution of members would be as follows: Africa 3, Asia 3, Western Europe 5, Eastern Europe 8 and Latin America 6.

7. As a matter of priority in this transition, it is incumbent on the current membership of the Subcommittee to lay the foundations for methods of work and to apply the

<sup>4</sup> For a list of the current members of the Subcommittee, see annex VI to the present report.

experience and lessons learned in order to discharge the three pillars of the Subcommittee's mandate, namely:

- (a) Visits to places of deprivation of liberty;
- (b) Direct contact with national mechanisms for the prevention of torture;
- (c) Cooperation with United Nations bodies, international and regional organizations and national bodies working in related areas.

8. Article 25 of the Optional Protocol states that the "expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations" and that the "Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol". During its third year, the Subcommittee executed its allocated budget in carrying out three visits planned for the year, but the schedule when the remaining 15 members take their seats should comprise at least eight visits a year.

9. During the reporting period the Subcommittee has developed a growth strategy which has meant that, despite not having the resources to carry out more visits or activities under its mandate, it has adopted creative measures to leverage the limited resources at its disposal, as it is still confronted by gaps in the budget that will have to be covered in the next biennium if all the Subcommittee's tasks under the Optional Protocol are to be discharged.

## **II. Mandate of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

### **A. Objectives of the Optional Protocol to the Convention against Torture**

10. Article 1 of the Optional Protocol provides for a system of regular visits by mechanisms at the international and national levels to prevent torture or other cruel, inhuman or degrading treatment or punishment. The Subcommittee conceives this system as an interlocking network of mechanisms carrying out visits and other related functions under their preventive mandates in cooperation with each other. Good relations and communications between the visiting bodies working at different levels need to be developed and maintained in order to avoid duplication and to use scarce resources to best effect. The Subcommittee has a mandate to engage directly with other visiting mechanisms, both at the international and the national levels. During the reporting period it has continued to seek ways to promote synergy among those working in the field of prevention.

### **B. Key features of the mandate of the Subcommittee on Prevention of Torture**

11. The mandate of the Subcommittee is set out in the Optional Protocol in article 11. This establishes that the Subcommittee shall:

- (a) Visit places where persons are or may be deprived of liberty and make recommendations to the States parties on the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment;
- (b) In regard to national preventive mechanisms:

- (i) Advise and assist States parties, when necessary, in their establishment;
- (ii) Maintain direct contact with national preventive mechanisms and offer them training and technical assistance; advise and assist national preventive mechanisms in evaluating the needs and necessary means to improve safeguards against ill-treatment; and make necessary recommendations and observations to States parties with a view to strengthening the capacity and mandate of national preventive mechanisms.

(c) Cooperate with relevant United Nations bodies as well as with international, regional and national bodies, in the prevention of ill-treatment.

12. The Subcommittee considers the three pillars of its mandate to be essential for the prevention of torture and other cruel, inhuman or degrading treatment or punishment but an objective assessment to date shows that the biggest obstacle to fulfilling these international obligations is the small number of visits to countries and, in particular, the total lack of any allocation for the budget item under article 11 (b) of the Optional Protocol, namely assisting States parties with the establishment of national preventive mechanisms.

### **C. Powers of the Subcommittee on Prevention of Torture under the Optional Protocol**

13. In order for the Subcommittee to fulfil its mandate, it is granted considerable powers under the Optional Protocol (art. 14). Each State party is obliged to allow visits by the Subcommittee to any places under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.<sup>5</sup>

14. States parties further undertake to grant the Subcommittee unrestricted access to all information concerning persons deprived of their liberty and to all information referring to the treatment of those persons, as well as their conditions of detention.<sup>6</sup> They are also obliged to grant the Subcommittee private interviews with persons deprived of liberty without witnesses.<sup>7</sup> The Subcommittee is free to choose the places it wishes to visit and the persons it wishes to interview.<sup>8</sup> Similar powers are to be granted to national preventive mechanisms, in accordance with the Optional Protocol.<sup>9</sup>

15. During the reporting period the Subcommittee has continued to exercise these powers successfully, with the cooperation of the States parties visited.

### **D. Preventive approach**

16. The process of prevention of torture and other cruel, inhuman or degrading treatment or punishment ranges from the analysis of international instruments on protection to the examination of the material conditions of detention, taking in along the way public policy, budgets, regulations, written guidelines and theoretical concepts explaining the acts and omissions that impede the application of universal standards to local conditions.

<sup>5</sup> Optional Protocol, arts. 4 and 12 (a).

<sup>6</sup> Ibid., arts. 12 (b) and 14, para. 1 (a) and (b).

<sup>7</sup> Ibid., art. 14, para. 1 (d).

<sup>8</sup> Ibid., art. 14, para. 1 (e).

<sup>9</sup> Ibid., arts. 19 and 20.

17. The Subcommittee has held discussions with the OPCAT Contact Group<sup>10</sup> on the scope of prevention of torture. To that end two working meetings were organized during the eighth and ninth sessions of the Subcommittee.

18. Whether or not torture or other cruel, inhuman or degrading treatment or punishment occurs in practice in a given State, there is always a need for States to be vigilant in order to guard against the risk of it occurring and to put in place and maintain effective and comprehensive safeguards to protect persons deprived of their liberty. It is the role of preventive mechanisms to ensure that such safeguards are actually in place and operating effectively and to make recommendations to improve the system of safeguards, both in law and in practice, and thereby the situation of persons deprived of their liberty.

19. In examining examples of both good and bad practice, the Subcommittee seeks to build upon existing protections, to close the gap between theory and practice and to eliminate, or reduce to a minimum, the possibilities for torture and other cruel, inhuman or degrading treatment or punishment.

### **III. Visiting places of deprivation of liberty**

#### **A. Planning the work of the Subcommittee on Prevention of Torture in the field**

20. During its third year of operation, the Subcommittee selected the States to be visited by a reasoned process, with reference to the principles indicated in article 2 of the Optional Protocol. The factors taken into consideration in the choice of countries to be visited were date of ratification, establishment of a national preventive mechanism, geographical distribution, size and complexity of State, regional preventive monitoring, and urgent issues reported.

21. The Subcommittee limited its programme of visits to three this year because of budgetary constraints, although it takes the view that, after the initial period of development, its visits programme in the medium term should involve 10 visits per 12-month period. This annual rate of visits is based on the conclusion that, to visit the 50 States parties effectively in order to prevent ill-treatment, the Subcommittee would have to visit each State party at least once every four to five years on average. In the Subcommittee's view, less frequent visits could jeopardize effective support to and reinforcement of national preventive mechanisms in the fulfilment of their role and the protection afforded to persons deprived of liberty.

22. To that end, the Subcommittee has prepared for the Office of the United Nations High Commissioner for Human Rights (OHCHR) detailed and reasoned budgetary calculations for its future work (see section VI below).

23. As regards the methodology and logistics of its visits, the Subcommittee requests information from the State party to be visited concerning the legislation and institutional and system features related to deprivation of liberty, as well as statistical and other information concerning their operation in practice. This is summarized in a country brief, which is a vital tool for mapping the situation of prevention of torture in the country to be visited.

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<sup>10</sup> For the membership of the OPCAT Contact Group, see appendix IV.



24. In late November 2009, the Subcommittee announced its programme of work in the field for 2010, including visits to Lebanon, Liberia and the Plurinational State of Bolivia. Other visits may also be made, including one follow-up visit and another to assist in establishing national preventive mechanisms (countries and dates to be determined in due course).

## **B. Visits carried out during the reporting period**

25. The Subcommittee visited Paraguay, Honduras and Cambodia during the period covered by the report – Paraguay in March, Honduras in September and Cambodia in December. During these visits, the delegations focused on the development process for national preventive mechanisms, on the situation in terms of identifying risks of torture, and on protection for persons held in places of deprivation of liberty of various kinds.<sup>11</sup>

26. During visits, Subcommittee delegations have engaged in empirical fact-finding and discussions with a wide range of interlocutors, including officials of the ministries concerned with deprivation of liberty and with other government institutions, other State authorities such as judicial or prosecutorial authorities, relevant national human rights institutions, professional bodies and representatives of civil society. Where national preventive mechanisms are already in existence, they are important interlocutors for the Subcommittee. Confidential face-to-face interviews with persons deprived of their liberty are the chief means of verifying information and establishing the risk of torture. Delegations also engaged in discussions with staff working in custodial settings and, in the case of the police, also with those working in the investigation process. Interviews were also held with staff of juvenile centres, psychiatric hospitals and military units.

27. At the end of each regular visit, the Subcommittee delegation presented its preliminary comments to the authorities orally in a confidential wrap-up meeting. The Subcommittee wishes to thank the authorities of Cambodia, Honduras and Paraguay for the spirit in which delegations' initial comments were received and the constructive discussions about ways forward. After each visit the Subcommittee wrote to the authorities, reiterating key preliminary comments and requesting feedback and updated information on any steps taken or being planned since the visit to address the issues raised during the wrap-up meeting, and in particular on specific issues that could have been or were due to be addressed in the weeks following the visit. The Subcommittee indicated that responses communicated by the authorities would be considered in the drafting of the visit report.

28. The authorities were also reminded, later in the period following the visit, that any responses received by the Subcommittee before the adoption of the draft visit report in plenary session would form part of the Subcommittee's deliberations when considering adoption. These communications form an important part of the ongoing preventive dialogue between the State party and the Subcommittee. The Subcommittee is gratified to report that, for each of the visits carried out to date, it has received feedback from the authorities concerning the preliminary comments, as well as further information, before the adoption of the corresponding report. This is an indication that the first States parties to be visited have embraced the ongoing process of dialogue and incremental progress on prevention.

29. The authorities are asked to respond in writing to the recommendations and to the requests for further information in the Subcommittee's report on the visit to that State, as transmitted to them in confidence after adoption by the Subcommittee. Thus far the

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<sup>11</sup> For details of the places visited, see appendix I.

competent authorities of two of the countries visited have responded promptly – a clear signal of their willingness to cooperate with the Subcommittee.

### **C. Publication of the visit reports of the Subcommittee on Prevention of Torture**

30. At the time of writing, of the seven visit reports issued to date, only those on Honduras, the Maldives and Sweden, along with the authorities' responses in the case of Sweden, were in the public domain. The Subcommittee hopes that in due course the authorities of every State party visited will request that the visit report and the authorities' response to it should be published. Until such time the visit reports remain confidential.

31. Even though the majority of the Subcommittee's reports are still confidential, the following recommendations from those that have been published are summarized below as they may be useful for other States in the area of prevention of torture:

- National preventive mechanisms: Guidelines on their establishment, the involvement of civil society, and their mandate, powers and membership. The Subcommittee has strongly emphasized the need for legislation establishing national preventive mechanisms to contain an independent procedure for selecting members.
- Legal and institutional framework: On the legal framework, the recommendations include alignment of criminal law with international standards on preventing and combating torture, which generally entails defining torture as an offence in accordance with article 1 of the Convention against Torture, and the establishment of legal safeguards against torture, such as access to a lawyer and a doctor and the exclusion of evidence obtained by torture. On the institutional framework, the recommendations are aimed at strengthening institutions involved in prevention of torture. Specifically, the Subcommittee has recommended an increase in the resources allocated to the public defender system and the judiciary, and has highlighted the important role these institutions play in preventing torture.
- Places of deprivation of liberty: With regard to the police, generally speaking the Subcommittee recommends observance and implementation of existing legal safeguards, training in prevention for police personnel and improvement of the material conditions of detention. The Subcommittee has noted with concern that acts of torture and other forms of ill-treatment often take place during the first few hours of detention in police stations, and has therefore emphasized the need for detailed records — giving, for example, the identity of all persons detained, the time of detention and on what grounds — to be kept at police headquarters and for police officials to be trained in their use. With regard to prisons, the recommendations usually refer to the separation of the various categories of prisoners (pretrial/convicted, male/female, minors/adults, in accordance with the relevant international standards), the material conditions in prisons (adequate living space, food and drinking water of adequate quality and in sufficient quantity, etc.) and methods of discipline and punishment, with particular attention to conditions of isolation. Reference is also made to each country's particular circumstances, for example as regards risk groups such as women, minors, persons with disabilities, indigenous people and Afro-descendants.

32. The Subcommittee will develop these comments in future annual reports.

## D. Issues arising from visits

33. The Optional Protocol provides that Subcommittee members may be accompanied on visits by experts of demonstrated professional experience and knowledge, to be selected from a roster prepared on the basis of proposals made by the States parties, OHCHR and the United Nations Centre for International Crime Prevention. To date 30 States parties have provided names and details of experts for the roster.

34. The Subcommittee hopes that experts from all regions of the world will be included in the roster. The Subcommittee still awaits the roster of experts and, in its absence, continues to select experts from the list of names proposed by States parties and from among experts widely recognized as having the required relevant expertise. During the period covered by the present report, it was not possible for delegations to the countries visited to be accompanied by independent experts owing to budgetary constraints.

35. The Subcommittee has concerns about the possibility of reprisals after its visits. Persons deprived of their liberty with whom the Subcommittee delegation has spoken may be threatened if they do not reveal the content of these interviews, or punished for having spoken with the delegation. In addition, the Subcommittee has been made aware that some persons deprived of their liberty may have been warned in advance not to say anything to the Subcommittee delegation. Article 15 of the Optional Protocol lays a positive obligation upon the State to take action to ensure that there are no reprisals as a consequence of a visit by the Subcommittee.

36. The Subcommittee expects the authorities of each State visited to ascertain whether reprisals for cooperating with the Subcommittee have occurred and to take urgent action to protect all concerned. In this regard, the existence of national preventive mechanisms is of prime importance.

## IV. National preventive mechanisms

### A. Work of the Subcommittee on Prevention of Torture related to national preventive mechanisms

37. The Optional Protocol requires each State party to set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (national preventive mechanisms). Most States parties have not met this obligation, as can be seen from the table below.

#### Designation of national preventive mechanisms

States parties that have designated a national preventive mechanism	30
States parties that have not designated a national preventive mechanism	21

38. Of the 21 States that have not designated a national preventive mechanism, 14 are in breach of their obligation to set up or designate a national preventive mechanism, taking into account dates of ratification and declarations made under article 24 of the Optional Protocol.

39. During its third year the Subcommittee again made contact with all States parties who were due to establish or maintain national preventive mechanisms in order to encourage them to communicate with the Subcommittee about the ongoing process of developing such mechanisms. States parties to the Optional Protocol were requested to send detailed information concerning the establishment of national preventive mechanisms (legal mandate, composition, size, expertise, financial resources at their disposal, frequency of

visits, etc.). At the time of writing, 32 States parties had provided information on all or some of these matters.<sup>12</sup> Information was also requested from those mechanisms already designated or in place, many of which sent in their annual reports.

40. The establishment or designation of national preventive mechanisms is an obligation undertaken by States parties under the Optional Protocol. The national preventive mechanisms are a key component of the torture prevention system instituted by the Optional Protocol. Accordingly, the Subcommittee takes this opportunity to urge those States parties that have not yet done so to establish or designate such a mechanism as soon as possible.

41. Given that, during the reporting year — and indeed since the Subcommittee began its work — there has been no budget allocation for the Subcommittee to work directly with States or with the national preventive mechanisms, or for the promotion of ratification and implementation of the Optional Protocol, direct contact with the national preventive mechanisms has been made possible by the firm support, including financial support, of civil society bodies, such as the OPCAT Contact Group and others that have organized workshops in their own countries. The Subcommittee wishes to underline the importance of the support it receives from civil society organizations in this regard but would also draw the attention of the General Assembly to the risks entailed in delegating budget support for the discharge of an official mandate to non-governmental bodies.

42. The Subcommittee has tried to find creative options for maintaining its critical work in this area, and members have made what are to all intents and purposes personal undertakings to take part in workshops and academic activities in countries in every part of the world. During the reporting period, Subcommittee members attended 14 events of this kind.

43. The Subcommittee earnestly hopes that the General Assembly will be able to provide it with sufficient resources for the next biennium to enable it to discharge its mandate to advise and assist the national preventive mechanisms in accordance with article 11 (b) of the Optional Protocol.

44. During the course of the year, the Subcommittee had various bilateral and multilateral contacts with national preventive mechanisms and other organizations, including national human rights institutions (NHRIs) and NGOs involved in the development of such mechanisms in all the regions covered by its mandate. The Subcommittee salutes the work of the member organizations of the OPCAT Contact Group,<sup>13</sup> in partnership with regional bodies such as the African Commission on Human and Peoples' Rights, the Council of Europe, the Inter-American Commission on Human Rights, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe and the European Commission, in organizing gatherings around the world to promote and assist in the implementation of the Optional Protocol.

45. In response to requests from some national preventive mechanisms for assistance, the Subcommittee is exploring ways to develop a pilot programme for assistance to national preventive mechanisms, based on a combination of workshops and observation of national preventive mechanism visits in action, with subsequent feedback and exchange of views. The workshop model arose from a meeting with a representative of the Estonian national

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<sup>12</sup> All official information communicated by States parties to the Subcommittee concerning designation, establishment or maintenance of national preventive mechanisms is available on the Subcommittee's website: <http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>.

<sup>13</sup> For the organizations involved in the OPCAT Contact Group, see appendix IV.

preventive mechanism during the Subcommittee's fifth plenary session and from a workshop carried out in Estonia during the reporting period. The model was piloted in 2009, as part of a programme supported by the Council of Europe and organized by the Association for the Prevention of Torture. The Subcommittee is pursuing such avenues of support in order to fulfil its mandate under the Optional Protocol in the context of the continuing absence of any United Nations budgetary provision for this part of its work (see section VI below).

46. In the course of their visits during the reporting period, Subcommittee delegations met with representatives of the bodies designated to act as national preventive mechanisms in some of the countries visited. In Cambodia a meeting was held with various intergovernmental bodies that have been designated to develop the country's national mechanism. In Honduras, despite the fact that legislation on the designation of a national mechanism has been enacted, its members had not been chosen at the time of the visit.

47. Members of the Subcommittee were also involved in a number of meetings<sup>14</sup> at the national, regional and international levels, concerning the development of national preventive mechanisms. The Subcommittee members consider this part of their mandate so crucial that they have made every effort to be involved through self-funding or with generous support, including financial support, from the organizers – mainly international, regional and national civil society organizations.

48. On another issue, it is well known that there is a discrepancy between the various authentic texts of article 24 of the Optional Protocol, whereby States parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the Protocol. The Arabic, Chinese, English and French versions provide that such a declaration may be made "upon ratification", whereas the Russian and Spanish versions say "once ratified". The matter was referred to the United Nations Office of Legal Affairs, which, having considered the question, initiated a correction procedure to bring the Russian and Spanish versions of article 24 into line with the other four authentic texts. Insofar as the majority of the States parties are not opposed to such a correction, the change will enter into force on 29 April 2010, with retroactive effect. The Subcommittee welcomed this clarification and the resulting certainty with regard to the nature of States parties' obligations under the Optional Protocol.

## **B. Issues in relation to the establishment of national preventive mechanisms**

49. In meeting their obligations under the Optional Protocol to set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other ill-treatment, States parties must choose the model they find most appropriate, taking into account the complexity of the country, its administrative and financial structure and its geography. Similarly, the States parties must comply with all the provisions of the Optional Protocol regarding the mandate and operation of their national preventive mechanism.

50. The national preventive mechanisms should complement existing systems of protection against torture and ill-treatment. They should not replace or duplicate the monitoring, control and inspection functions of governmental and non-governmental bodies. The main objectives of the mechanisms are to formulate recommendations on the

<sup>14</sup> For a list of activities related to national preventive mechanisms in which Subcommittee members participated, see appendix III.

basis of observations made and information obtained and to enter into a dialogue with the competent authorities with a view to improving the situation of persons deprived of their liberty and proposing ways of implementing the recommendations, in addition to submitting draft legislation and comments on proposed or existing legislation.

51. Where existing institutions such as the Ombudsman or the NHRI are designated as national preventive mechanisms, a clear distinction should be made between such bodies, which generally act in response to specific situations, and national preventive mechanisms, which have preventive functions. In such cases, the national preventive mechanism should be constituted as a separate unit or department, with its own staff and budget.

52. The Subcommittee wishes to reiterate the provisions of its preliminary guidelines to the effect that the national preventive mechanism should preferably be established by law or by the Constitution. Its powers, structure, functional independence, mandate and membership should be established in a special law, which should also set forth the various professional qualifications required of members of the mechanism, the way in which they are to be appointed, their term of office and the immunities they should be granted. Places of detention should also be defined in accordance with the Optional Protocol. Further, the national preventive mechanisms should issue annual reports on their work, which should be published and distributed by the States parties. Lastly, States parties should encourage and facilitate contact between the mechanisms and the Subcommittee.

53. Where the national preventive mechanism has a complex multilevel structure, States parties should ensure communication and coordination among the various units comprising the mechanism, including senior officials. Contact between the Subcommittee and all units of the mechanism should also be guaranteed.

## **V. Cooperation with other bodies**

### **A. Relations with relevant United Nations bodies**

54. The Optional Protocol establishes a special relationship between the Committee against Torture and the Subcommittee and provides that both bodies shall hold simultaneous sessions at least once a year.<sup>15</sup> The ninth session of the Subcommittee was held simultaneously with part of the forty-third session of the Committee against Torture, and the third joint meeting took place on 17 November 2009. Issues covered in the discussion included implementation of the Optional Protocol, cooperation between the Committee against Torture and the Subcommittee (Optional Protocol, arts. 11 (c), 16, para. 4 (c) and 24), Committee/Subcommittee working group, exchange of information (on countries visited and to be visited by the Subcommittee; and on the Convention against Torture), and the rights of persons with disabilities and their implications for the Committee against Torture and the Subcommittee.

55. The third joint meeting was public and as a result it was attended by a considerable number of civil society organizations.

56. Another important event that provided an opportunity for exchange of information between the Chairperson of the Subcommittee, the Chairperson of the Committee against Torture and the Special Rapporteur on the question of torture was the presentation of their annual reports to the General Assembly at its sixty-fourth session in New York, on 20

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<sup>15</sup> Optional Protocol, art. 10, para. 3.

October 2009.<sup>16</sup> This was a historic occasion, in part because it was the first time that these reports had been presented orally, but also because it provided other openings, such as a dialogue with representatives of States and civil society organizations the same day, and the introduction, by several Member States led by Denmark, of the draft resolution on torture and other cruel, inhuman or degrading treatment or punishment. The draft was adopted as General Assembly resolution 64/153 on 18 December 2009 and contains several references to the prevention of torture and the strengthening of the Subcommittee, as follows:

*“The General Assembly,*

...

2. *Emphasizes* that States must take persistent, determined and effective measures to prevent and combat all acts of torture and other cruel, inhuman or degrading treatment or punishment, stresses that all acts of torture must be made offences under domestic criminal law, and encourages States to prohibit under domestic law acts constituting cruel, inhuman or degrading treatment or punishment;

3. *Welcomes* the establishment of national preventive mechanisms to prevent torture, encourages all States that have not yet done so to establish such mechanisms, and calls upon States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>17</sup> to fulfil their obligation to designate or establish truly independent and effective national preventive mechanisms for the prevention of torture;

4. *Emphasizes* the importance of States’ ensuring proper follow-up to the recommendations and conclusions of the relevant treaty bodies and mechanisms, including the Committee against Torture, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment;

...

7. *Takes note* in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles)<sup>18</sup> as a useful tool in efforts to prevent and combat torture and of the updated set of principles for the protection of human rights through action to combat impunity;<sup>19</sup>

8. *Calls upon* all States to implement effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, particularly in places of detention and other places where persons are deprived of their liberty, including education and training of personnel who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;

...

<sup>16</sup> For the statement of the Chairperson of the Subcommittee, see the Subcommittee’s website (see note 12 above).

<sup>17</sup> General Assembly resolution 57/199, annex.

<sup>18</sup> General Assembly resolution 55/89, annex.

<sup>19</sup> See E/CN.4/2005/102/Add.1.

23. *Urges* all States that have not yet done so to become parties to the Convention as a matter of priority, and calls upon States parties to give early consideration to signing and ratifying the Optional Protocol to the Convention;

...

27. *Invites* the Chairs of the Committee and the Subcommittee to present oral reports on the work of the committees and to engage in an interactive dialogue with the General Assembly at its sixty-fifth session under the sub-item entitled 'Implementation of human rights instruments';

28. *Calls upon* the United Nations High Commissioner for Human Rights, in conformity with her mandate established by the General Assembly in its resolution 48/141 of 20 December 1993, to continue to provide, at the request of States, advisory services for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including for the preparation of national reports to the Committee and for the establishment and operation of national preventive mechanisms, as well as technical assistance for the development, production and distribution of teaching material for this purpose;

...

32. *Stresses* the need for the continued regular exchange of views among the Committee, the Subcommittee, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with regional organizations and mechanisms, as appropriate, and civil society organizations, including non-governmental organizations, with a view to enhancing further their effectiveness and cooperation on issues relating to the prevention and eradication of torture, inter alia, by improving their coordination;

33. *Recognizes* the global need for international assistance to victims of torture, stresses the importance of the work of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, appeals to all States and organizations to contribute annually to the Fund, preferably with a substantial increase in the level of contributions, and encourages contributions to the Special Fund established by the Optional Protocol to help finance the implementation of the recommendations made by the Subcommittee as well as education programmes of the national preventive mechanisms;

...

36. *Further requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in preventing and combating torture and assisting victims of torture or other cruel, inhuman or degrading treatment or punishment, including in particular the Subcommittee on Prevention of Torture, commensurate with the strong support expressed by Member States for preventing and combating torture and assisting victims of torture; ...".

57. This first experiment in the General Assembly will be repeated next year, when the Subcommittee, the Committee against Torture and the Special Rapporteur on the question of torture will each introduce their annual reports.

58. The administration of the Special Fund to provide assistance to States parties in implementing Subcommittee recommendations and to assist with the education programmes of national preventive mechanisms, in accordance with article 26 of the



Optional Protocol, is the responsibility of OHCHR. The Subcommittee has expressed its willingness to pursue discussions on the Special Fund.

59. To date the Czech Republic, Maldives and Spain have made voluntary contributions to the Fund. The Subcommittee is firmly convinced that, as it carries out more visits and more reports are made public, more States will support its work with generous contributions to the Fund.

60. During its plenary sessions and in other external forums, the Subcommittee members discussed relations with other relevant United Nations bodies. In particular, given the complementarity of the Subcommittee's work and that of the Special Rapporteur on the question of torture, the Subcommittee has kept in close contact with Mr. Manfred Nowak and has discussed common challenges faced and methods of working. These discussions took place this year during the seventh session of the Subcommittee, at the presentation of the various reports to the General Assembly, and at a workshop organized by the Council of Europe and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on 6 November 2009 in Strasbourg, France.

61. Mr. Gianni Magazzeni from the Field Operations and Technical Cooperation Division (National Institutions Unit), and members of his staff, attended the ninth plenary session to discuss accreditation of the NHRIs which in many cases have been designated as national mechanisms for the prevention of torture. At that meeting the Subcommittee confirmed its view that the accreditation of national human rights institutions in accordance with the Paris Principles is a supplementary mechanism but should not be used as a procedure for accreditation of national mechanisms in general, since it is for the Subcommittee to make such assessments in specific cases.

62. The Subcommittee continues to be represented at the inter-committee meetings of United Nations human rights treaty bodies, which are a good opportunity to exchange views with experts whose mandates intersect substantively with the Subcommittee mandate. There are points of common interest among the treaty bodies. The Subcommittee's work relates in particular to the mandate of the Committee against Torture and the Human Rights Committee, with respect to the rights of persons deprived of liberty, and likewise to the work of the Committee on the Rights of the Child, which covers the rights of children deprived of liberty, and of the Committee for the Elimination of Discrimination against Women, as regards the rights of women deprived of liberty. The Subcommittee has also attended a workshop with the Chairperson of the Committee on the Rights of Persons with Disabilities, in Bristol, United Kingdom of Great Britain and Northern Ireland, at which an outline for joint work on the situation of persons with disabilities deprived of liberty was drawn up. The Subcommittee has had occasion to cite the Committee against Torture, the Human Rights Committee and the Committee on the Rights of the Child in its reports on its visits to date.

63. Also for purposes of cooperation, the Subcommittee held a meeting with officials from the Office of the United Nations High Commissioner for Refugees in the course of its ninth session, at which for the first time strategic information was shared that, in the context of its mandates, might make its visits to persons being held in places of asylum more effective.

## **B. Relations with other relevant international organizations**

64. The Subcommittee also remained in contact with the International Committee of the Red Cross (ICRC) and the two bodies kept up a positive dialogue on the many related areas of their work. This year representatives of ICRC met with the Subcommittee during its eighth session in order to exchange information and proposals for future cooperation under

their respective mandates. Likewise, at the regional level, a seminar held in December 2009, attended by Mr. Mario Coriolano, Vice-Chairperson of the Subcommittee, and members of ICRC, emphasized the importance of the role of health workers in the prevention of torture and ill-treatment, by their dissemination of best practices (see appendix III).

65. The Optional Protocol provides that the Subcommittee shall consult with bodies established under regional conventions with a view to cooperating with them and avoiding duplication, in order to promote effectively the objectives of the Optional Protocol to prevent torture and other forms of ill-treatment.

66. During the reporting period, the Subcommittee has maintained close contacts with the Inter-American Commission on Human Rights. Mr. Mario Coriolano, in his capacity as focal point for the inter-American regional system, attended an international workshop organized by OHCHR and the Organization of American States in Washington, D.C. on 8 and 9 December, on the strengthening of cooperation between the international, regional and local human rights protection systems.

67. During the eighth session of the Subcommittee, Ms. Dupe Atoki, then Vice-Chairperson of the African Commission on Human and Peoples' Rights and the Commission's Special Rapporteur on Prisons and Conditions of Detention in Africa, met with the plenary to discuss common issues regarding the prevention of torture and to set up cooperation between the two bodies.

68. The Subcommittee likewise continued to have close contact with CPT. Members of the Subcommittee met with CPT in the course of a Council of Europe-sponsored workshop held in Strasbourg, France, on 6 November. The workshop was part of a pilot project being conducted by the Council of Europe and the Association for the Prevention of Torture on support for the establishment and training of national preventive mechanisms in Europe; the main topic was improvement of cooperation.

### **C. Relations with civil society**

69. During the reporting period, the Subcommittee worked in close contact with international and national NGOs<sup>20</sup> engaged in strengthening the protection of all persons against torture.

70. The Subcommittee has remained in close contact with the Bristol University (United Kingdom) OPCAT Project and has exchanged ideas and views on a number of issues central to the Subcommittee's work. The project team has been involved in organizing regional activities and has provided a critical external academic perspective concerning aspects of the Subcommittee's work, for which the Subcommittee is very grateful. The last meeting was held in May 2009, when several members of the Subcommittee took part in a workshop in Bristol which looked at questions related to prevention of torture.

71. The OPCAT Contact Group has continued to assist, advise and support the Subcommittee. It has become Subcommittee practice to meet with the Contact Group during each of its plenary sessions. In the last two meetings there was a wide-ranging debate on the scope and definition of the concept of prevention of torture.

72. The Subcommittee notes with appreciation the continuing contribution made by civil society both to promoting ratification of, or accession to, the Optional Protocol, and to the

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<sup>20</sup> In accordance with article 11 (c) of the Optional Protocol.

implementation process. It is also grateful for the constant support provided by the Association for the Prevention of Torture in both these lines of work.

## **VI. Administrative and budgetary matters**

### **A. Resources in 2009–2010**

73. Article 25 of the Optional Protocol states that “the expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations” and that “the Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol”.

74. Since it began its work in 2007, no United Nations funding has been provided for the Subcommittee to carry out its mandate in relation to national preventive mechanisms. The Subcommittee welcomes the fact that, at the time of writing, there were plans to adopt a budget for the biennium that would take account of the growth in membership from 10 to 25 and would contain other provisions to permit the discharge of other aspects of the Subcommittee’s mandate.

### **B. Secretariat of the Subcommittee on Prevention of Torture**

75. The Subcommittee welcomed the appointment of a staff member to work on an 80-per cent basis on secretariat functions, and a junior professional officer to work on a 50-per cent basis, thanks to funding from the Government of Denmark.

76. In its eight visits carried out to date, the Subcommittee has worked with a total of 14 different staff members from OHCHR. All have produced very high-quality work and demonstrated great professionalism. However, such a turnover of staff in visits of this kind creates difficulties in induction and specialization and does not provide the continuity required for such visits. The Subcommittee is confident that an increase in secretariat staff will result in greater stability in this regard.

### **C. Budgetary requirements**

77. The Subcommittee has been engaged in discussions with the department of OHCHR responsible for budget and staffing with a view to obtaining a budget capable of supporting the mandate of the Subcommittee in accordance with the requirements of the Optional Protocol and covering the new needs and challenges arising from the transition to a larger, 25-member Subcommittee.

## **VII. Organizational activities**

### **A. Plenary sessions of the Subcommittee on Prevention of Torture**

78. Over the course of the 12 months covered by the present report, the Subcommittee held three one-week sessions: from 22 to 26 June 2009; from 16 to 20 November 2009 and from 22 to 26 February 2010. These sessions were devoted to planning visits, meeting with representatives of States parties to be visited, and adopting visit reports. Considerable attention was given to strategic planning and selection of countries for future visits.

79. The sessions also involved examination and discussion of information relating to States parties and national preventive mechanisms and planning of delegations' field activities, as well as meetings with representatives of bodies within the United Nations and from other organizations active in the field of prevention of ill-treatment, and refinement of a series of materials designed to provide basic information about the Subcommittee.

80. In 2009 Ms. Silvia Casale and Mr. Leopoldo Torres Boursault resigned as members of the Subcommittee. The Subcommittee wishes to express its gratitude for and recognition of the work of these two members, who made a key contribution during the first two years of the Subcommittee's existence.

## **B. Overall assessment**

81. During the reporting period, the Subcommittee has made significant progress. It has developed rules, working practices and methods and guidelines on carrying out and institutionalizing its activities under its mandate, particularly visits in the field, where it has built on the experience gained in the eight carried out thus far. It has adopted creative working methods that prioritize efficient use and leverage of the limited resources allocated to it in its first biennium of operation.

82. The Subcommittee has also developed provisional guidelines on the establishment of national mechanisms for the prevention of torture and is working on analytical tools to evaluate the work of those mechanisms. Lastly, it has launched an open debate on the scope and definition of the concept of prevention of torture, which is closely bound up with its mandate.

## **C. Challenges**

83. Despite the heavy workload of members of the Subcommittee and its secretariat, and the inadequacy of financial resources to fully discharge its mandate, the Subcommittee has set a steady course that has already taken it a good way towards the goal of a focused mandate on the prevention of torture, based on collaboration and cooperation, and assistance to the States parties to the Optional Protocol.

84. Yet, with the increase in membership of the Subcommittee from 10 to 25 in the coming year, and given that its mandate is not like that of other treaty bodies, it is essential for the Subcommittee to have *budget support* from the Organization to enable it to discharge its mandate in a comprehensive, sustained and effective manner. Expansion should not only entail an increase in the budget, which will be required for regular sessions of a larger Subcommittee but should above all allow as many field visits as possible, visits being ultimately the main instrument for prevention of torture at the Subcommittee's disposal.

85. The Subcommittee understands that its mandate has to be carried out with limited resources, and it undertakes to optimize the resources allocated in order to conduct the maximum number of field visits with delegations comprising the minimum number of members commensurate with the requirements and profiles of the countries to be visited. In addition, the Subcommittee will discharge its mandate with the same enthusiasm and interest it has shown since its inception, including participation in activities within its sphere of competence that do not receive financial support from the Organization. In such a context of joint efforts, however, the Subcommittee wishes to emphasize that it must receive adequate resources if it is to carry out its work effectively.

86. Only if the Subcommittee fully discharges both pillars of its mandate under the Optional Protocol will its recommendations have their full impact on the prevention of torture and other ill-treatment, for it is only structural changes in the culture and education of peoples that will make it possible to eliminate violations of the physical and mental integrity of persons deprived of their liberty.

## Appendices

### Appendix I

#### Visits carried out in 2009

##### I. First periodic visit to Paraguay: 10–16 March 2009

###### Places of deprivation of liberty visited by the delegation

###### *Police facilities*

- (a) Metropolitan police district (Asunción):
  - Police station No. 3
  - Police station No. 5
  - Police station No. 9
  - Police station No. 12
  - Police station No. 20
  - Special police unit for women
- (b) Central Department police district:
  - Police station No. 1, San Lorenzo
  - Police station No. 9, Limpio
- (c) Amambay Department police district:
  - Police station No. 3, Barrio Obrero, Pedro Juan Caballero
- (d) San Pedro Department police district:
  - Police station No. 8, San Estanislao
- (e) Special branch of the National Police, Asunción

###### *Prisons*

Tacumbú National Prison, Asunción  
Pedro Juan Caballero Regional Prison

###### *Other institutions*

Asunción Neuropsychiatric hospital

##### II. First periodic visit to Honduras: 13–22 September 2009

###### Places of deprivation of liberty visited by the delegation

###### *Police facilities*

- (a) Metropolitan police district (Tegucigalpa):

Division No. 1

Division No. 3

Manchén district station

Kennedy district station

Headquarters of the National Criminal Investigation Directorate (DNIC)

(b) San Pedro Sula and environs:

Departmental Division No. 5, Choloma

Metropolitan Division 4-3

(c) Police premises of the “Cobras” squadron (not usually a place of detention)

#### *Prisons*

Marco Aurelio Soto Prison, Tegucigalpa

San Pedro Sula Prison

#### *Juvenile facilities*

Renaciendo Centre, Tegucigalpa

### **III. First periodic visit to Cambodia: 2–11 December 2009**

#### **Places of deprivation of liberty visited by the delegation**

##### *Police facilities*

(a) Metropolitan police district (Phnom Penh):

Chamkamon district police inspectorate

Daun Penh district police inspectorate

Seven Makara district police inspectorate

Mean Chey district police inspectorate

(b) Pursat province:

Provincial police inspectorate

Municipal police inspectorate

(c) Kompong Cham province:

Cheung Prey district police inspectorate

##### *Prisons*

CC1 prison, Phnom Penh

CC3 prison, Kompong Cham province

Battambang provincial prison, Battambang province

##### *Military facilities*

Phnom Penh military prison

Prey Suay commune gendarmerie information office, Battambang province

Mong Russey district gendarmerie base, Battambang province

Bakan district gendarmerie base, Pursat province

*Juvenile facilities*

Chom Chao centre (under the Ministry of Social Affairs)

*Other facilities*

Battambang drug rehabilitation centre (under the Military police)

Battambang (Bovel) drug rehabilitation centre (under the provincial police)

Prey Speu centre (social welfare centre, under the Ministry of Social Affairs)



## Appendix II

### **Programme of the work of the Subcommittee on Prevention of Torture in the field for 2010**

First periodic visit to the Plurinational State of Bolivia	(during 2010)
First periodic visit to Lebanon	(during 2010)
First periodic visit to Liberia	(during 2010)
In-country engagement activities with national preventive mechanisms	(during 2010)
Possible follow-up visit, country to be determined	(during 2010)

## Appendix III

### **Participation of the members of the Subcommittee on Prevention of Torture in Optional Protocol-related activities, April 2009–March 2010**

#### **I. Africa**

##### **West African region**

In-country engagement with the national preventive mechanism (NPM) of Benin, organized by the Association for the Prevention of Torture (APT). Cotonou, Benin, October 2009 (Mr. Hans Draminsky Petersen).

#### **II. Americas**

##### **North American region**

Workshop on enhancing cooperation between the inter-American and the international human rights systems, organized by the National Institutions Unit of the Office of the High Commissioner for Human Rights (OHCHR) and the Organization of American States (OAS). Washington, D.C., December 2009 (Mr. Mario Coriolano).

##### **South American region**

National seminar on the implementation of the Optional Protocol in Chile, organized by APT and the Ministry of Justice and the Ministry of Foreign Affairs of Chile. Santiago de Chile, August 2009 (Mr. Wilder Tayler Souto).

Seminar on health professionals and places of detention. Co-organized by the Ministry of Justice of Buenos Aires province, the International Committee of the Red Cross (ICRC), and La Plata University, La Plata, Argentina, 3–5 December 2009 (Mr. Mario Coriolano).

Two seminars and one round-table discussion in Chaco and Buenos Aires provinces and the Federal capital, respectively, in order to discuss the establishment of regional preventive mechanisms in Argentina. Organized by provincial authorities, APT and other NGOs. 11–15 December 2009 (Mr. Wilder Tayler Souto).

#### **III. Middle East and North Africa**

##### **Lebanon**

Workshop on Optional Protocol implementation in Lebanon, organized by APT. Beirut, February 2010 (Mr. Hans Draminsky Petersen and Secretary of the Subcommittee, Mr. Patrice Gillibert).

## IV. Europe

### **Organization for Security and Cooperation in Europe (OSCE) region**

Roundtable on the establishment of an NPM in Kyrgyzstan, organized by OHCHR Regional Office jointly with APT and “Golos Svobody”. Bishkek, Kyrgyzstan, April 2009 (Mr. Zdenek Hajek and Ms. Marija Definis Gojanovic).

Seminar on Independent Detention Monitoring, organized by APT. Dushanbe, Tajikistan, May 2009 (Mr. Zdenek Hajek).

Activity under the Optional Protocol, organized by the Council of Europe. Astana, Kazakhstan, June 2009 (Mr. Zbigniew Lasocik).

Roundtable on the implementation of the Optional Protocol in Georgia and other meetings with officials, organized by Penal Reform International (PRI) Regional Office in Georgia. Tbilisi, Georgia, October 2009 (Mr. Zdenek Hajek and Ms. Marija Definis Gojanovic).

Event: “Instituting an NPM in Turkey under the Optional Protocol”, organized by APT and the Human Rights Centre of the University of Ankara. Ankara, Turkey, October 2009 (Mr. Zdenek Hajek).

Conference: “Legislative provisions for establishing NPM in Kazakhstan”, organized by Penal Reform International (PRI) Representative Office in Central Asia. Astana, Kazakhstan, February 2010 (Mr. Zdenek Hajek and Ms. Marija Definis Gojanovic).

### **Bosnia and Herzegovina**

Roundtable on the design and development of an NPM for Bosnia and Herzegovina, organized by the OSCE Mission to Bosnia and Herzegovina. Sarajevo, October 2009 (Ms. Marija Definis Gojanovic).

### **Estonia**

In-country engagement with the Estonian NPM, organized by APT. Estonia, September–October 2009 (Mr. Hans Draminsky Petersen and Mr. Zbigniew Lasocik).

### **Montenegro**

Workshop on NPMs, organized by OSCE. Podgorica, April 2009 (Ms. Marija Definis Gojanovic).

### **The former Yugoslav Republic of Macedonia**

High-level consultative session for establishment, implementation, functioning and challenges of NPM, organized by the OSCE Mission to Skopje. Skopje, September 2009 (Mr. Zdenek Hajek).

Two-day workshop on the prison/police system, organized by the OSCE Mission to Skopje. Skopje, October 2009 (Ms. Marija Definis Gojanovic).

Final high-level closing event, organized by the OSCE Mission to Skopje. Skopje, November 2009 (Mr. Zdenek Hajek and Ms. Marija Definis Gojanovic).

### **United Kingdom of Great Britain and Northern Ireland**

High Level Roundtable on Prevention of Torture, and Roundtable meeting between the Subcommittee and the Committee on the Rights of Persons with Disabilities, organized by the University of Bristol. Bristol, May 2009 (Ms. Silvia Casale, Mr. Victor Rodriguez Rescia, and Secretary of the Subcommittee Mr. Patrice Gillibert).

**Switzerland**

Expert meeting on NPM Self-Assessment Tools, organized by APT. Geneva, 31 March 2009 (Messrs. Rodriguez Rescia, Petersen and Gillibert).

**V. International and regional organizations****OHCHR**

Expert Consultation on Indicators for Promoting and Monitoring the Implementation of Human Rights, organized by OHCHR – Right to Development Unit, Development and Economic and Social Issues Branch. Geneva, Switzerland, April–May 2009 (Mr. Hans Draminsky Petersen).

Preparatory meeting of the Forum on Minority Issues, organized by OHCHR Forum on Minority Issues – Special Procedures Division. Geneva, Switzerland, July 2009 (Mr. Victor Rodriguez Rescia).

Forum on Minority Issues, organized by OHCHR Forum on Minority Issues – Special Procedures Division. Geneva, Switzerland, November 2009 (Mr. Victor Rodriguez Rescia).

**Council of Europe**

Conference on new partnerships for torture prevention in Europe, organized by the European Committee for the Prevention of Torture and APT. Strasbourg, France, November 2009 (Messrs. Victor Rodriguez Rescia, Hans Draminsky Petersen, Zdenek Hajek, Mario Coriolano, Zbigniew Lasocik, Ms. Marija Definis Gojanovic, and Secretary of the Subcommittee, Mr. Patrice Gillibert).

First meeting of NPM contact persons, European NPM Project organized by the Council of Europe. Padua, Italy, January 2010 (Mr. Hans Draminsky Petersen, Mr. Malcolm Evans and Secretary of the Subcommittee Mr. Patrice Gillibert).

First Thematic Workshop, European NPM Project, organized by the Council of Europe. Padua, Italy, March 2010 (Ms. Marija Definis-Gojanovic and Mr. Victor Rodriguez Rescia).

**European Union**

Presentation of the Subcommittee at a COHOM meeting. Working Party on Human Rights (COHOM) of the Council of the European Union, Brussels, Belgium, May 2009 (Mr. Zdenek Hajek).

Combined meeting and visit to a detention centre with a Chinese delegation, within the European Union-China human rights dialogue, organized by the Czech European Union Presidency. Czech Republic, May 2009 (Mr. Zdenek Hajek).

Meeting between European Commission Vice President Jacques Barrot and European States on supervision of detention centres, organized by the European Commission. Brussels, Belgium, December 2009 (Mr. Malcolm Evans).

## **Appendix IV**

### **OPCAT Contact Group**

Amnesty International (AI)

Association for the Prevention of Torture (APT)

Bristol University OPCAT project

International Federation of Action by Christians for the Abolition of Torture (FIACAT)

Mental Disability Advocacy Centre (MDAC)

Penal Reform International (PRI)

Rehabilitation and Research Centre for Torture Victims (RCT)

World Organization against Torture (OMCT)

## Appendix V

### Information on country visit reports and follow-up as of 26 February 2010

<i>Country visited</i>	<i>Dates of the visit</i>	<i>Report sent</i>	<i>Report status</i>	<i>Response received</i>	<i>Response status</i>
Mauritius	8–18 October 2007	Yes	Confidential	Yes	Confidential
Maldives	10–17 December 2007	Yes	Public	No	-
Sweden	10–14 March 2008	Yes	Public	Yes	Public
Benin	17–26 May 2008	Yes	Confidential	No	-
Mexico	27 August–12 September 2008	Yes	Confidential	No	-
Paraguay	10–16 March 2009	Yes	Confidential	No	-
Honduras	13–22 September 2009	Yes	Public	No	-
Cambodia	2–11 December 2009	No	-	-	-

## Annex VIII

### Joint Statement on the occasion of the United Nations International Day in Support of Victims of Torture

26 June 2010

*The United Nations Committee against Torture; the Subcommittee on Prevention of Torture; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture marked the International Day in Support of Victims of Torture with the following joint statement:*

“We are deeply concerned that torture continues to be widespread and that certain practices amounting to torture as well as to cruel, inhuman or degrading treatment or punishment were reinvigorated, in particular in the context of the so-called global war on terror after 11 September 2001. The prohibition against torture and other forms of inhumane treatment is absolute and cannot be derogated even under emergency situations.

“States must take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction. In addition they should ensure that no reason based on discrimination of any kind be used as justification for torture or inhumane treatment. The lack of criminalization of torture and inadequate sanctions are main factors contributing to impunity. We often see that in the few instances where perpetrators are held accountable they often receive sentences far below what is required by international law. In order to live up to their obligation to protect everyone subject to their jurisdiction from torture, States must ensure that all acts of torture are criminalized as offences in their domestic penal law and punishable with appropriate penalties that take into account their gravity.

“Recent studies have shown that some States, invoking different types of emergencies, have been directly or indirectly involved in practices such as secret detention, disappearances, expulsion or extradition of individuals to countries where they were in danger of torture, and other unlawful treatment or punishment in violation of the Convention against Torture and other international human rights instruments and humanitarian law. We are dismayed to see that in almost no recent cases have there been judicial investigations into such allegations; almost no one has been brought to justice; and most victims have never received any form of reparation, including rehabilitation or compensation.

“Torture leaves indelible traces on the body and minds of the victims and reparation can almost never be complete. Often, the right to a remedy and reparation for victims of torture is non-existent or severely limited. Adequate reparation, tailored to the needs of the victim including compensation and rehabilitation, is rarely provided or entirely dependent on the limited resources of private entities and civil society organizations. In the light of these concerns, we call upon all States to ensure that victims of torture and other forms of cruel, inhuman or degrading treatment obtain full redress and urge them to adopt general guarantees of non-repetition including taking determined steps to fight impunity.

“In this troublesome context, more than twenty years after its entry into force, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is still far from universal ratification. As of today, it has 147 States parties, of which only 64 States have made the declaration under article 22 recognizing the competence of the Committee against Torture to receive individual communications. We urge all States to become party to the Convention against Torture and make the declarations

provided under article 22 of the Convention, on individual complaints, in order to maximize transparency and accountability in their fight against torture and its related impunity.

“Four years after its entry into force, the Optional Protocol to the Convention against Torture has 51 State Parties. The Optional Protocol is a key instrument to prevent torture and ill-treatment by ensuring the establishment of independent and effective national preventive mechanisms empowered to visit places of detention. We therefore urge all States to ratify the Optional Protocol and thus to engage with the Subcommittee on Prevention of Torture. We further call upon those States Parties to the Optional Protocol that have not yet done so to establish the National Preventive Mechanisms to thus live up to their obligations related to the prevention of torture and ill-treatment.

“On this International Day in Support of Victims of Torture, we pay tribute to the Governments, civil society organizations and individuals engaged in activities aimed at preventing torture, punishing it and ensuring that all victims obtain redress and adequate compensation, including the means for as full a rehabilitation as possible. We express our gratitude to all donors to the United Nations Voluntary Fund for Victims of Torture, which currently supports the work of over 200 organizations in more than 60 countries, and hope that contributions to the Fund will continue to increase to make it possible for victims of torture and members of their families to receive the assistance they need. We call on all States, in particular those which have been found to be responsible for widespread or systematic practices of torture, to contribute to the Voluntary Fund as part of a universal commitment for the rehabilitation of torture victims and their families.”



## Annex IX

### **Decision of the Committee to request approval from the General Assembly at its sixty-fifth session for additional meeting time in 2011 and 2012**

**14 May 2010**

At its forty-first session, in November 2008, the Committee adopted a decision to request approval from the General Assembly at its sixty-fourth session for one additional session of four weeks per year, which was not considered positively by the General Assembly.

At its forty-fourth session, the Committee decided to adopt a new decision to request approval from the General Assembly at its sixty-fifth session authorizing the Committee to meet for an additional week per each session in 2011 and 2012, i.e. one additional week of sessional meetings in May and November 2011 and in May and November 2012, a total of four weeks.

The additional meeting time would allow the Committee to consider additional reports submitted by States parties under the new optional reporting procedure, consisting of the transmission of a list of issues to States parties prior to the submission of their reports to the Committee. To date, 39 lists of issues prior to reporting have been adopted by the Committee and transmitted to States parties under this procedure and only one State party has expressly declared that it will not report under it. In 2010, the Committee will adopt and transmit such lists for a further 38 States parties. For reports due in 2009, the first year of implementation of this new procedure, the Committee has already received six additional State reports.

The additional meeting time would also allow the Committee to consider additional individual communications, thus reducing the current backlog of cases pending before the Committee. It would further allow the Committee to better implement other functions mandated under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, such as general comments and confidential inquiries.

Pursuant to rule 25 of the rules of procedure of the Committee against Torture, the programme budget implications arising from the Committee's decision have been circulated amongst the members of the Committee (oral statement, dated 11 May 2010). Therefore, the Committee requests that the General Assembly, at its sixty-fifth session, approve the present request and provide appropriate financial support to enable the Committee to meet for an additional week in each of its sessions of 2011 and 2012.

## Annex X

### **Oral Statement by the Secretariat in connection with the decision of the Committee against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – request for an additional week of meetings per session in 2011 and 2012 (11 May 2010)**

1. This oral statement is made in accordance with rule 25 of the rules of procedure of the Committee against Torture.
2. Under the terms of its draft decision at its forty-fourth session, the Committee against Torture would request the General Assembly to authorize the Committee to meet for an additional week per each session in 2011 and 2012, i.e. one additional week of sessional meetings in May and November 2011 and May and November 2012 for a total of four weeks.
3. The additional meeting time would allow the Committee to consider additional reports submitted under the new reporting procedure, consisting of transmitting a list of issues to States parties prior to the submission of their reports to the Committee, thereby facilitating up to eight additional reports to be examined each year in 2011 and in 2012. It would also allow the Committee to carry out in 2011 and 2012 other functions mandated under the Convention against Torture.
4. Current provisions in the programme budget for the biennium 2010–2011 provide for travel and per diem costs of the 10 members of the Committee to attend its two annual regular sessions in Geneva of three weeks each or 15 working days each as well as for conference services to the Committee meetings.
5. It is recalled that at its forty-first session held in November 2008, the Committee against Torture (CAT) requested the General Assembly to authorize the Committee to meet for an additional session of four weeks each in February 2010 and in February 2011. In accordance with rule 25 of the rules of procedure of the Committee against Torture, the Committee was informed that the recommendation would give rise to additional requirements of \$2,105,300 per year or \$4,210,600 for the biennium, for the provision of conference services for a total of 80 additional sessional meetings during the biennium 2010–2011, including interpretation services in the official languages, summary records of the meetings and an estimated additional 2,880 pages of pre- and in-session and 220 pages of post-session documentation in the official languages, under section 2, General Assembly and Economic and Social Council affairs and conference management. For conference support services it was also estimated that additional requirements of \$30,600 would be required under section 28E, Administration, Geneva. All of the additional conference servicing requirements have been considered in the context of the programme budget for the biennium 2010–2011 which was approved by the General Assembly.
6. The current decision by the Committee revises the earlier estimates downward, hence the General Assembly would authorize the Committee to meet for only an additional four weeks instead of eight weeks. This recommendation would require provisions for a total of 20 additional sessional meetings each in 2011 and in 2012. These additional meetings of the Committee would require conference-servicing resources in the amount of \$1,189,900 for each year in 2011 and 2012 for interpretation services in the official languages, summary records of these 40 additional sessional meetings and an estimated additional 960 pages of pre- and in-session and 160 pages of post-session documentation in

the official languages for each year in 2011 and 2012. Conference support services are also estimated downward, hence additional requirements of only \$15,000 would be required under section 28E, Administration, Geneva.

7. As elaborated in paragraph 5 above, additional resources for conference services have been provided in the programme budget for the biennium 2010–2011 in view of the anticipated increase in conference services required by the Committee against Torture. Hence it is deemed that the existing resources are sufficient to cover the resource requirements for 2011. It is also considered that resources required under section 28E are sufficient to meet the resource requirements in 2011. The additional resource requirements to service the one additional week of sessional meetings in May and in November 2012 would be considered in the context of the proposed programme budget for the biennium 2012–2013.

8. It is also anticipated that additional resources would be required under section 23, Human rights, as follows: (a) for daily subsistence allowance costs for the members of the Committee in relation to the additional meetings, estimated at \$34,700 per session or \$69,400 each in 2011 and in 2012; and (b) for staff support at the P-2 level for 12 work months each, estimated at \$146,200 each in 2011 and in 2012. The requirements for the year 2011 will be met within the resources approved under section 23, Human rights, for the biennium 2010–2011. The additional resource requirements to service the one additional week of sessional meetings in May and in November 2012 would be considered in the context of the proposed programme budget for the biennium 2012–2013.

9. Should the Committee against Torture adopt the draft decision, the estimated requirements will be met within the provision approved for the biennium 2010–2011. With regard to the total requirements of \$1,413,400 for the biennium 2012–2013 they will be dealt with in the context of the proposed programme budget for the biennium 2012–2013.

## Annex XI

### Overdue reports, as at 14 May 2010

<i>State party</i>	<i>Date on which the report was due</i>	<i>Revised date<sup>a</sup></i>
<i>Initial reports</i>		
Guinea	8 November 1990	
Somalia	22 February 1991	
Seychelles	3 June 1993	
Cape Verde	3 July 1993	
Antigua and Barbuda	17 August 1994	
Côte d'Ivoire	16 January 1997	
Malawi	10 July 1997	
Bangladesh	4 November 1999	
Niger	3 November 1999	
Burkina Faso	2 February 2000	
Mali	27 March 2000	
Mozambique	14 October 2000	
Botswana	7 October 2001	
Gabon	7 October 2001	
Lebanon	3 November 2001	
Sierra Leone	25 May 2002	
Nigeria	28 June 2002	
Saint Vincent and the Grenadines	30 August 2002	
Lesotho	11 December 2002	
Holy See	25 July 2003	
Equatorial Guinea	6 November 2003	
Djibouti	5 December 2003	
Timor-Leste	16 May 2004	
Congo	30 August 2004	
Swaziland	25 April 2005	

<i>State party</i>	<i>Date on which the report was due</i>	<i>Revised date<sup>a</sup></i>
Maldives	20 May 2005	
Liberia	22 October 2005	
Mauritania	17 December 2005	
Madagascar	13 January 2007	
Andorra	22 October 2007	
San Marino	27 December 2007	
Thailand	1 November 2008	
Rwanda	14 January 2010	
<i>Second periodic reports</i>		
Afghanistan	25 June 1992	
Belize	25 June 1992	
Uganda	25 June 1992	[25 June 2008]
Togo	17 December 1992	[17 December 2008]
Guyana	17 June 1993	[31 December 2008]
Brazil	27 October 1994	
Guinea	8 November 1994	
Somalia	22 February 1995	
Romania	16 January 1996	
Seychelles	3 June 1997	
Cape Verde	3 July 1997	
Burundi	19 March 1998	[31 December 2008]
Antigua and Barbuda	17 August 1998	
Ethiopia	12 April 1999	
Namibia	27 December 1999	
Tajikistan	9 February 2000	[31 December 2008]
Chad	9 July 2000	[15 May 2013]
Côte d'Ivoire	16 January 2001	
Malawi	10 July 2001	
Honduras	3 January 2002	[15 May 2013]
Kenya	22 March 2002	[21 November 2012]
Kyrgyzstan	4 October 2002	

<i>State party</i>	<i>Date on which the report was due</i>	<i>Revised date<sup>a</sup></i>
Saudi Arabia	21 October 2002	
Bahrain	4 April 2003	[4 April 2007]
Bangladesh	3 November 2003	
Niger	3 November 2003	
South Africa	9 January 2004	[31 December 2009]
Burkina Faso	2 February 2004	
Qatar	10 February 2004	[10 February 2008]
Mali	27 March 2004	
Bolivia (Plurinational State of)	11 May 2004	
Turkmenistan	24 July 2004	
Japan	29 July 2004	[30 June 2011]
Mozambique	13 October 2004	
Syrian Arab Republic	18 September 2005	[14 May 2014]
Ghana	6 October 2005	
Botswana	7 October 2005	
Gabon	7 October 2005	
Lebanon	3 November 2005	
Sierra Leone	25 May 2006	
Nigeria	28 July 2006	
Saint Vincent and the Grenadines	31 August 2006	
Lesotho	11 December 2006	
Mongolia	23 February 2007	
Bahrain	4 April 2007	[4 April 2007]
Ireland	11 May 2007	
Holy See	25 July 2007	
Equatorial Guinea	6 November 2007	
Djibouti	5 December 2007	
Timor-Leste	16 May 2008	
Congo	30 August 2008	
Swaziland	25 April 2009	

<i>State party</i>	<i>Date on which the report was due</i>	<i>Revised date<sup>a</sup></i>
Mauritania	17 December 2009	
<i>Third periodic reports</i>		
Afghanistan	25 June 1996	
Belize	25 June 1996	
Philippines	25 June 1996	[15 May 2013]
Senegal	25 June 1996	
Uruguay	25 June 1996	
Brazil	27 October 1998	
Guinea	8 November 1998	
Somalia	22 February 1999	
Malta	12 October 1999	[1 December 2000]
Romania	16 January 2000	
Nepal	12 June 2000	[12 June 2008]
Yemen	4 December 2000	[14 May 2014]
Jordan	12 December 2000	[14 May 2014]
Seychelles	3 June 2001	
Cape Verde	3 July 2001	
Cambodia	13 November 2001	
Mauritius	7 January 2002	
Slovakia	27 May 2002	[20 November 2013]
Antigua and Barbuda	17 August 2002	
Costa Rica	10 December 2002	[30 June 2012]
Ethiopia	12 April 2003	
The former Yugoslav Republic of Macedonia	11 December 2003	[30 June 2012]
Namibia	27 December 2003	
Republic of Korea	7 February 2004	[7 February 2012]
Tajikistan	9 February 2004	
Cuba	15 June 2004	
Côte d'Ivoire	16 January 2005	
Lithuania	2 March 2005	[21 November 2012]

<i>State party</i>	<i>Date on which the report was due</i>	<i>Revised date<sup>a</sup></i>
Kuwait	5 April 2005	
Malawi	10 July 2005	
El Salvador	16 July 2005	[20 November 2013]
Kyrgyzstan	4 October 2006	
Saudi Arabia	20 October 2006	
Kazakhstan	24 September 2007	[21 November 2012]
Bangladesh	3 November 2007	
Niger	3 November 2007	
Zambia	6 November 2007	[30 June 2012]
Indonesia	27 November 2007	[30 June 2012]
South Africa	9 January 2008	[31 December 2009]
Burkina Faso	2 February 2008	
Qatar	10 February 2008	[10 February 2008]
Mali	27 March 2008	
Bolivia (Plurinational State of)	11 May 2008	
Turkmenistan	24 July 2008	
Belgium	25 July 2008	[21 November 2012]
Mozambique	13 October 2008	
Republic of Moldova	27 December 2008	[20 November 2013]
Ghana	6 October 2009	
Botswana	7 October 2009	
Gabon	7 October 2009	
Lebanon	3 November 2009	
<i>Fourth periodic reports</i>		
Afghanistan	25 June 2000	
Belize	25 June 2000	
Senegal	25 June 2000	
Uruguay	25 June 2000	
Panama	22 September 2000	
Turkey	31 August 2001	
Libyan Arab Jamahiriya	14 June 2002	



<i>State party</i>	<i>Date on which the report was due</i>	<i>Revised date<sup>a</sup></i>
Algeria	11 October 2002	[20 June 2012]
Brazil	27 October 2002	
Guinea	8 November 2002	
Somalia	22 February 2003	
Paraguay	10 April 2003	
Malta	12 October 2003	
Tunisia	22 October 2003	
Liechtenstein	1 December 2003	[14 May 2014]
Romania	16 January 2004	
Nepal	12 June 2004	[12 June 2008]
Cyprus	16 August 2004	
Venezuela (Bolivarian Republic of)	20 August 2004	
Croatia	7 October 2004	[7 October 2008]
Estonia	19 December 2004	[30 December 2011]
Seychelles	3 June 2005	
Cape Verde	3 July 2005	
Cambodia	13 November 2005	
Mauritius	7 January 2006	
Antigua and Barbuda	17 August 2006	
Armenia	12 October 2006	
Costa Rica	10 December 2006	
Ethiopia	12 April 2007	
Georgia	24 November 2007	[24 November 2011]
Namibia	27 December 2007	
Republic of Korea	7 February 2008	[7 February 2012]
Tajikistan	9 February 2008	
Cuba	15 June 2008	
Côte d'Ivoire	16 January 2009	
Kuwait	5 April 2009	
Democratic Republic of	16 April 2009	[16 April 2009]

<i>State party</i>	<i>Date on which the report was due</i>	<i>Revised date<sup>a</sup></i>
the Congo		
Malawi	10 July 2009	
Azerbaijan	14 September 2009	[20 November 2013]
<i>Fifth periodic reports</i>		
Afghanistan	25 June 2004	
Argentina	25 June 2004	[25 June 2008]
Belarus	25 June 2004	
Belize	25 June 2004	
Egypt	25 June 2004	
Hungary	25 June 2004	[31 December 2010]
Mexico	25 June 2004	[31 December 2010]
Russian Federation	25 June 2004	[31 December 2010]
Senegal	25 June 2004	
Uruguay	25 June 2004	
Panama	27 September 2004	
Colombia	6 January 2005	[20 November 2013]
Turkey	31 August 2005	
China, including Hong Kong and Macao SARs	2 November 2005	[21 November 2012]
Greece	4 November 2005	[4 November 2005]
United Kingdom of Great Britain and Northern Ireland	6 January 2006	[31 December 2008]
Libyan Arab Jamahiriya	14 June 2006	
Slovenia	14 August 2006	
Brazil	27 October 2006	
Guinea	8 November 2006	
Somalia	22 February 2007	
Paraguay	10 April 2007	
Malta	12 October 2007	
Tunisia	22 October 2007	
Romania	16 January 2008	

<i>State party</i>	<i>Date on which the report was due</i>	<i>Revised date<sup>a</sup></i>
Nepal	12 June 2008	[12 June 2008]
Cameroon	25 June 2008	[14 May 2014]
Cyprus	16 August 2008	
Venezuela (Bolivarian Republic of)	20 August 2008	
Croatia	7 October 2008	[7 October 2008]
Israel	1 November 2008	[15 May 2013]
Seychelles	3 June 2009	
Cape Verde	3 July 2009	
Cambodia	13 November 2009	
Mauritius	7 January 2010	
<i>Sixth periodic reports</i>		
Afghanistan	25 June 2008	
Argentina	25 June 2008	[25 June 2008]
Belarus	25 June 2008	
Belize	25 June 2008	
Egypt	25 June 2008	
Mexico	25 June 2008	[31 December 2010]
Senegal	25 June 2008	
Uruguay	25 June 2008	
Canada	23 July 2008	[23 July 2008]
Austria	27 August 2008	[14 May 2014]
Panama	27 September 2008	
Spain	19 November 2008	[20 November 2013]
Peru	5 August 2009	[5 August 2009]
Turkey	31 August 2009	
Chile	30 October 2009	[15 May 2013]
Greece	4 November 2009	[4 November 2009]
United Kingdom of Great Britain and Northern Ireland	6 January 2010	
Portugal	10 March 2010	[30 December 2011]

*Note*

- <sup>a</sup> The date indicated in brackets is the revised date for submission of the State party's report, in accordance with the Committee's decision at the time of adoption of the concluding observations on the last report of the State party.

## Annex XII

### Country Rapporteurs and alternate Rapporteurs for the reports of States parties considered by the Committee at its forty-third and forty-fourth sessions (in alphabetical order)

#### A. Forty-third session

<i>Report</i>	<i>Rapporteur</i>	<i>Alternate</i>
Azerbaijan: third periodic report (CAT/C/AZE/3)	Ms. Gaer	Mr. Wang
Colombia: fourth periodic report (CAT/C/COL/4)	Mr. Mariño	Ms. Grossman
El Salvador: second periodic report (CAT/C/SLV/2)	Mr. Gallegos	Ms. Belmir
Republic of Moldova: second periodic report (CAT/C/MDA/2)	Ms. Sveaass	Mr. Kovalev
Slovakia: second periodic report (CAT/C/SVK/2)	Ms. Kleopas	Mr. Wang
Spain: fifth periodic report (CAT/C/ESP/5)	Mr. Grossman	Mr. Gaye
Yemen: second periodic report (CAT/C/YEM/2)	Ms. Sveaass	Ms. Belmir

#### B. Forty-fourth session

Austria: fourth and fifth periodic reports (CAT/C/AUS/4-5)	Mr. Gallegos	Mr. Grossman
Cameroon: fourth periodic report (CAT/C/CMR/4)	Ms. Sveaass	Mr. Gaye
France: fourth to sixth periodic reports (CAT/C/FRA/4-6)	Mr. Grossman	Ms. Belmir
Jordan: second periodic report (CAT/C/JOR/2)	Ms. Gaer	Mr. Gallegos
Liechtenstein: third periodic report (CAT/C/LIE/3 and Corr.1)	Mr. Wang	Ms. Kleopas
Switzerland: sixth periodic report (CAT/C/CHE/6)	Mr. Gaye	Mr. Mariño
Syrian Arab Republic: initial report (CAT/C/SYR/1)	Mr. Mariño	Ms. Sveaass
Yemen: second periodic report (CAT/C/YEM/2)	Ms. Sveaass	Ms. Belmir

## Annex XIII

### Decisions of the Committee against Torture under article 22 of the Convention

#### A. Decisions on merits

##### Communication No. 302/2006: *A.M. v. France*

<i>Submitted by:</i>	A.M. (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	France
<i>Date of the complaint:</i>	25 September 2006 (initial submission)

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

*Meeting* on 5 May 2010,

*Having concluded* its consideration of complaint No. 302/2006, submitted to the Committee against Torture by A.M. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

*Adopts* the following:

#### Decision under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1.1 The complainant, A.M., is a national of the Democratic Republic of the Congo, born in 1960, residing in France and awaiting deportation to his country of origin. He maintains that such a measure would constitute a violation by France of article 3 of the Convention. He is not represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention on 29 September 2006, without attaching a request for interim measures of protection.

#### Factual background

2.1 The complainant claims that he left the Democratic Republic of the Congo after being beaten, tortured and ill-treated by men in uniform, allegedly supporters of President Kabila. He also claims that his wife was raped in front of her children because of his role in, and support for, the Mobutu regime and that he has now been accused of working with the Mouvement de Libération du Congo of Jean-Pierre Bemba and Honoré Ngbanda. He claims that the authorities of the Democratic Republic of the Congo have launched an intensive search for him.

2.2 It appears from the copies of decisions attached to the complaint that the complainant applied for asylum in France on 17 September 2002. On 12 September 2003, the French Office for the Protection of Refugees and Stateless Persons (OFPRA) rejected his application, a decision confirmed on 14 May 2004 by the Refugee Appeals Board (CRR). On 16 September 2004, the complainant submitted his first request for a review of his application for asylum. OFPRA rejected this request on 17 September 2004 and the Board confirmed this decision on 18 April 2005. On 3 September 2005, the complainant was given notice to leave the territory. On 25 March 2006, he was given a residence permit denying him the right to work and was again given notice to leave the territory. The complainant submitted a second request to OFPRA for a review of his asylum application, but this request was rejected as groundless on 10 July 2006, after consideration under a fast-track procedure. He received a deportation order dated 8 August 2006 and lodged an appeal against this decision on 21 August 2006 before the administrative court of Orléans. The latter dismissed his appeal on 25 August 2006 and the complainant appealed this ruling to the administrative court of appeal of Nantes. As the appeal did not stay the judgement, the complainant argues that a negative decision could be handed down at any time.

2.3 The complainant attaches a copy of two medical certificates to his complaint. He also attaches two “wanted notices”, indicating that he is wanted for “subversion and rebellious organization” and for “endangering internal security”, and other supposedly official documents showing that the authorities have been informed of his imminent deportation and have orders to arrest him. The complaint is also accompanied by a handwritten document purporting to be a deposition by someone in the Democratic Republic of the Congo who knows the complainant; this person claims not to know what has happened to him since the authorities began looking for him. The complainant also attaches a copy of a letter dated 22 May 2006 from his uncle to the United Nations Human Rights Office in the Democratic Republic of the Congo, asking for information on the whereabouts of his nephew, who according to him disappeared after being beaten by armed men. His uncle died in July 2006; the complainant claims he was killed by armed men.

### **The complaint**

3. The complainant says he fears for his life if he is returned to the Democratic Republic of the Congo. He claims that his removal would constitute a violation of article 3 of the Convention by the State party.

### **State party’s observations on admissibility**

4.1 In a note verbale of 3 August 2007, the State party challenges the admissibility of the complaint. It sets out to demonstrate that the communication is inadmissible under article 22, paragraph 2, of the Convention for abuse of rights, as the documents produced by the complainant have all the characteristics of forgeries.

4.2 First, the State party wonders why the complainant should suddenly be actively sought in 2006 when he had been in French territory since 2002. Moreover, the documents produced, supposedly issued by departments of the administration of the Democratic Republic of the Congo, are all handwritten, which supports the forgery hypothesis. The complainant does not explain how internal administration documents from “the National Intelligence Agency” came into his hands. Even assuming that “wanted notices” are completed by hand, the State party has strong doubts as to the authenticity of the alleged “deposition” of the individual called G.E., as this is an entirely handwritten document on plain paper and the only “stamp” on it is the same as the one found on the other documents produced. Moreover, the State party believes that this document contains expressions that would be out of place in police documents. It draws the Committee’s attention to the fact that domestic courts have expressed similar doubts about documents of the same type

giving different dates from those mentioned above. It cites the Refugee Appeals Board, which, in its decision of 18 April 2005, found that “the authenticity of the two documents produced and presented as wanted notices, one of which is dated 2 January 2005, is not sufficiently substantiated”. These doubts were confirmed by the administrative court of Orléans on 25 August 2006, which noted that “spelling mistakes in the head and body of the documents raise doubts about their authenticity”.

#### **Complainant’s comments on the State party’s observations on admissibility**

5.1 In comments dated 18 September 2007, the complainant rejects the State party’s argument that the documents he has produced have “all the characteristics of forgeries” in that they are either entirely handwritten or filled in by hand and contain expressions that would be out of place in police documents, as well as spelling mistakes. Besides the fact that these claims do not prove the documents are forgeries, the complainant explains that the presentation of these documents is not surprising given the problems encountered in the local administration.

5.2 The complainant believes that the reason why he was being actively sought in 2006 when he had been in French territory since 2002 was that there had been an upsurge in the activities of the Congolese police, which shows that he would still be at risk if returned to his country.

#### **State party’s observations on the merits**

6.1 On 30 January 2008, the State party submitted its observations on the merits of the complaint. First, it recalls its observations on admissibility and reiterates its request that the Committee declare the communication primarily inadmissible for abuse of the right of submission, in accordance with article 22, paragraph 2, of the Convention. In addition to its observations on admissibility, the State party elaborates on the physical verification of the authenticity of the documents produced by the complainant. In the State party’s view, the only way to obtain such verification would be to make a request through diplomatic channels to the Democratic Republic of the Congo. However, although such an approach would theoretically be possible, the State party believes that it might be counterproductive if the request did not come from the Committee itself. It refers to a decision of the Refugee Appeals Board which concluded that the confidentiality of information on the asylum-seeker is an essential guarantee of the right to asylum, and that the country considering an asylum request is under an obligation to ensure that confidentiality is observed. Disregard for this obligation may aggravate the applicant’s fears, or may in itself create the conditions for exposure to persecution within the meaning of the Convention relating to the Status of Refugees, or for exposure to one of the serious threats covered by law.

6.2 The State party notes that the communication contains no specific grievance and does not refer, even in substance, to any article of the Convention. It believes the communication concerns article 3 of the Convention and proposes to outline, first, the legal framework for asylum requests and, second, the actual remedies applicable, and, finally, to demonstrate that the complainant’s request was considered in accordance with article 3 of the Convention.

6.3 The State party describes the initial procedure followed by OFPRA in its consideration of asylum requests and stresses the independence of this office and its cooperation with the Office of the United Nations High Commissioner for Refugees. Its staff have access to a variety of sources and are in constant contact with its major European counterparts, which increases the amount of documentation available and enhances its ability to carry out checks. The State party emphasizes that it knows how difficult it can be, in certain circumstances, to produce physical evidence, that it strives to assess the person’s



overall credibility and that, if there is any uncertainty, the applicant is given the benefit of the doubt.

6.4 The State party describes the procedure for appealing to the Refugee Appeals Board and stresses that a representative of the United Nations High Commissioner for Refugees is present on account of the need to verify the alleged persecution. It describes the review of an application for asylum by OFPRA when new evidence is submitted by the applicant. In this case, the applicant is subject to a fast-track review procedure and his or her application is processed by a different protection officer from the one who processed the initial application. If OFPRA deems the application for review admissible, it considers whether the facts are established or not and whether they justify the applicant's fears of persecution.

6.5 In the case in point, the State party points out that the risks referred to by the complainant to justify his stay in the country as a refugee were thoroughly examined on five occasions, that is, three times by OFPRA and twice by the Refugee Appeals Board. It notes that none of the reviews found evidence of a real risk to the complainant if he was returned to his country, despite his claims to the contrary. It refers to the Refugee Appeals Board's decision of 18 April 2005, which held that "the authenticity of the two documents produced and presented as wanted notices, one of which is dated 2 January 2005, is not sufficiently substantiated". It further stresses that the administrative court of Orléans, in its decision of 25 August 2006, also carried out a thorough review with regard to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which covers the same area of protection as article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

6.6 The State party invites the Committee primarily to declare the communication inadmissible and, secondarily, to reject it on the merits as groundless.

#### **Complainant's comments on the State party's observations on the merits**

7.1 In a letter dated 20 March 2008, the complainant again asserts that his communication is admissible.

7.2 The complainant notes that the observations of the Government of France do not mention that he appealed against the latest decision of OFPRA on 3 August 2006 before the National Asylum Court (the new name of the Refugee Appeals Board) and that a decision on this appeal is imminent. He adds that on 25 January 2008 he filed a statement of supplementary grounds of appeal before the National Asylum Court. This statement presents new documents which only came to the complainant's attention in November 2007 and confirm the fears he had already voiced to OFPRA and the old Refugee Appeals Board regarding a return to his country. The first document is a summons to appear before the directorate-general of the prosecution service police for a hearing on 21 July 2007, which he takes as proof that he continues to be regarded as a threat by the powers that be. The second document is a communiqué dated 8 September 2007 from a Congolese non-governmental organization which shows that he is still actively sought by the Congolese security services and which carries alarming news about the situation of several people close to him. According to this document, a cousin of the complainant, who is accused of being his accomplice and therefore of carrying out subversive activities, has been missing since his arrest on 1 September 2007; the family of a friend of the complainant has been threatened in an effort to make it reveal the address of the complainant's wife, who also fled the country in 2004; his mother was strangled to death by unknown assailants in August 2005; and one of his cousins was sexually assaulted by unknown assailants in July 2007.

7.3 The complainant claims that attempts are being made to affect him through the people close to him. The third document is a communiqué dated 6 October 2007 from another Congolese non-governmental organization, which reports, naming the complainant, on “inadequate security for politicians, political activists, economic actors and others”, as well as on the persecution suffered by his relatives, corroborating the information in the second document. Finally, the fourth document, a newspaper article dated 22 October 2007, repeats the facts set out above. The complainant concludes from the foregoing that the reality and seriousness of the risks he would run if returned to his country of origin have been duly established.

7.4 In a further letter dated 9 April 2008, the complainant notes that the National Asylum Court rejected his appeal of 21 March 2008. The Court held that neither the evidence nor the statements made before it allowed the new allegations to be taken as facts or the fears expressed to be considered as justified. The complainant also attaches a letter from an association that helped him draft his comments both to the national authorities and to the Committee, which states that the fears expressed by the claimant appear to be justified.

#### **Additional comments by the State party**

8.1 In comments dated 13 May 2008, the State party begins by reaffirming its observations on admissibility and the merits and reiterates its request that the Committee should primarily declare the communication inadmissible and, secondarily, reject it on the merits. The State party supplements its previous observations by explaining the basis for the dismissal by the domestic court of the complainant’s appeal, namely that the circumstances that led to his departure from his country of origin and to the flight of his wife and children to Angola have already been the subject of a ruling by the Refugee Appeals Board and that the new evidence provided by the complainant has been found wanting and does not invalidate the Board’s analysis.

8.2 The State party reaffirms the doubts expressed in its previous observations about the authenticity of the documents added to the file by the applicant.

#### **Additional information provided by the complainant**

9. By letter of 3 October 2008, the complainant informs the Committee of the murder in late March 2008 of his cousin, Mr. G., who was accused of being his accomplice and who had been missing since his arrest by the security services on 1 September 2007. The complainant attaches to his claim a clipping from a Congolese newspaper dated 24 April 2008, with a copy of the envelope showing it had been posted in Kinshasa. According to the clipping, Mr. G., a cousin of the complainant, was kidnapped by men in uniform claiming to be from the Republican Guard after they mistook him for the complainant, and the complainant’s life would therefore really be in danger if he was returned to his country. The complainant also attaches a copy of his cousin’s death certificate, issued by Kinshasa general hospital, which gives “murder” as the cause of death; a copy of the burial permit issued by the funeral service of the city of Kinshasa; a copy of the envelope used; and a new wanted notice in the name of the complainant dated 29 March 2008.

#### **Additional information provided by the State party**

10. In comments dated 20 November 2008, the State party supplemented its observations with the information that, under article R.723-3 of the Code governing the Entry and Stay of Aliens and the Right to Asylum, any alien whose asylum application has been definitively rejected once by OFPRA and the Refugee Appeals Board is entitled to submit new evidence to OFPRA in order to have the application reviewed. It is therefore up

to the complainant to submit a new request for a review of his asylum application if he feels he is now in a position to provide the Committee with new evidence proving he is at risk.

11.1 In comments dated 19 November 2009, pursuant to the Committee's decision, taken at its forty-second session, to ask the State party to provide details of the material verification of the authenticity of the documents produced by the complainant, the State party first recalls that the documents produced by the complainant on 3 October 2008 were produced after his application was submitted to the Committee. The State party points out that it was unaware of the documents until that date and contends that they should not be deemed admissible since, when the complaint was submitted, the State party could not be accused of having failed to take them into account in considering the complainant's asylum application. The State party repeats that it is up to the complainant to submit a new request for a review of his asylum application if he feels he is in a position to provide the Committee with new evidence proving he is at risk. In that light, the State party argues that the Committee cannot admit the documents, which have never been produced to the French authorities, without flouting the subsidiarity principle that is the basis of the efficiency of the international system of protection against torture.

11.2 Secondly, the State party provides the following details regarding the material verification of the documents produced by the complainant. With regard to the death certificate and burial permit in respect of Mr. G., the State party notes that the handwriting on both documents is the same, yet they were issued by different authorities, namely the Kinshasa general hospital and the city of Kinshasa respectively. In addition, the burial permit was issued on 5 April 2008 against a fee paid on 10 July 2007, i.e., before the date of death, which allegedly occurred on 28 March 2008. The State party explains that discrepancies of this kind are common in forged documents, with the first part being altered but not the last part, which includes the signature. It also points out that the death certificate is signed by a doctor who, it has been established by France's diplomatic representation in the Democratic Republic of the Congo, is a general practitioner in Kinshasa and does not work at the hospital. Moreover, the term "murder" as the cause of death given on the certificate is never used: the description given by the hospital is usually more objective (death by gunshot, stabbing or assault, for example). With regard to the newspaper clipping, the State party notes that, while such a paper certainly exists, it is well known to be of poor journalistic quality and has little credibility, and the only way to contact it is through an electronic address. The State party also notes that the date of issue on the clipping is printed in a different typeface, which could indicate a montage. Lastly, according to the State party's diplomatic representatives, it is possible to pay to have an article printed in a newspaper of this kind.

11.3 The State party considers, therefore, that, if the Committee admits these documents, they should be treated with caution in terms of evidentiary value, for the reasons given. In any case, there is nothing in the documents to substantiate either the family ties between Mr. G. and the complainant or Mr. G's murder, let alone the mistaken identity allegedly leading to the murder.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

12.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In the case in question, the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

12.2 The Committee has taken note of the State party's argument that the submission of the request by the complainant to the Committee is an abuse of the right of submission. It considers, in any event, that since the submission of the present communication to the Committee, on 25 September 2006, it is for the latter to evaluate the good faith of the complainant in his presentation of facts and evidence, and their relevance, for the Committee, in addressing the arguments of the State party on the inadmissibility of the communication. However, in the present case, the Committee considers that the communication as a whole is sufficiently substantiated, for purposes of admissibility.

12.3 As to the State party's objection that the complainant has submitted to the Committee new elements, that were never drawn to the authorities' attention, the Committee notes that the information in question was received to no fault of himself by the complainant after the exhaustion of domestic remedies in the State party. Accordingly, the Committee concludes that it is not prevented by article 22, paragraph 4, of the Convention and rule 107 of the Committee's rules of procedure, to examine the communication on the merits.

*Consideration of the merits*

13.1 The Committee must decide whether removal of the complainant to the Democratic Republic of the Congo would violate the State party's obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

13.2 To assess the risk of torture, the Committee must take into account all relevant considerations, including the existence in the State to which the complainant would be returned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally be in danger of being subjected to torture in the country to which he would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not imply that a person cannot be considered to be in danger of being subjected to torture in his particular circumstances.

13.3 The Committee recalls its general comment No. 1 (2007) on article 3,<sup>a</sup> which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.<sup>b</sup> However, the risk does not have to meet the test of being highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.<sup>c</sup>

13.4 With regard to the burden of proof, the Committee also recalls its general comment No. 1 on article 3, and its jurisprudence to the effect that it is normally for the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.<sup>d</sup>

13.5 The Committee recalls that the State party questions the complainant's credibility and the authenticity of the documents he has produced. It also reiterates its doctrine according to which it has the competence to fully examine the facts and evidence before it in adopting its decisions, even if, by making so, a considerable weight has to be attributed to the consideration made on them by the State party's authorities. While the complainant has provided the State party and the Committee with copies of various documents as

evidence, the Committee considers that the complainant has failed to rebut, with convincing arguments, the State party's conclusions on his credibility and has not been able to validate the authenticity of the documents in question. Nor has the complainant explained how he came to have various internal administrative documents in his possession. The Committee notes that the two medical certificates produced by the complainant refer to a number of scars on various parts of the body and fractures to the tibia and fibula, but do not contain any evidence confirming or refuting that they are the result of torture inflicted in the past. In the Committee's view, the credibility of the complainant's claims has been irreparably damaged by the information provided by the State party regarding the material verification of the documents he produced on 3 October 2008, namely the death certificate and burial permit in respect of Mr. Gata, his supposed cousin, and the press clipping purporting to show that Mr. Gata was murdered because he had been mistaken for the complainant.

13.6 The Committee reiterates that, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured. In this case, the Committee believes that the complainant has not produced sufficient satisfactory evidence or details to corroborate his story that the risk to him of being tortured is real and personal if he were to be returned to the Democratic Republic of the Congo. The Committee considers therefore that the complainant has not substantiated his claim that he would personally face a foreseeable, real and personal risk of being subjected to torture upon his return to the Democratic Republic of the Congo.

13.7 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the complainant has not substantiated his claim that he would be subjected to torture upon his return to the Democratic Republic of the Congo, and therefore concludes that the complainant's removal to that country would not constitute a violation of article 3 of the Convention.

#### Notes

<sup>a</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44, (A/53/44), annex XI.*

<sup>b</sup> *Ibid.*, para. 6.

<sup>c</sup> See, *inter alia*, communication No. 258/2004, *Moistafa Dadar v. Canada*, Decision adopted on 23 November 2005, and communication No. 226/2003, *T.A. v. Sweden*, Decision adopted on 6 May 2005.

<sup>d</sup> Communication No. 256/2004, *Mehdi Zare v. Sweden*, Views adopted on 12 May 2006, para. 9.3; communication No. 214/2002, *M.A.K. v. Germany*, Views adopted on 12 May 2004, para. 13.5.

**Communication No. 322/2007: *Njamba and Balikosa v. Sweden***

*Submitted by:* Eveline Njamba and her daughter Kathy Balikosa (represented by counsel, Manuel Boti Flid)

*Alleged victim:* The complainants

*State party:* Sweden

*Date of communication:* 11 June 2007 (initial submission)

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

*Meeting on 14 May 2010,*

*Having concluded* its consideration of complaint No. 322/2007, submitted to the Committee against Torture by Eveline Njamba and her daughter Kathy Balikosa under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

*Adopts the following:*

**Decision under article 22, paragraph 7, of the Convention against Torture****Decision**

1.1 The complainants are Eveline Njamba and her daughter Kathy Balikosa, nationals of the Democratic Republic of the Congo and born on 10 April 1975 and 4 March 2001 respectively. They are the subject of an order for deportation from Sweden to the Democratic Republic of the Congo. While they do not invoke any particular provision of the Convention, their complaint appears to raise issues under article 3 and possibly article 16. They are represented by counsel, Mr. Manuel Boti Flid.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention on 14 June 2007. At the same time, the Committee, pursuant to rule 108, paragraph 1, of its rules of procedure, requested the State party not to deport the complainants to the Democratic Republic of the Congo while their complaint is being considered. On the same day, the State party acceded to the request.

**The facts as presented by the complainants**

2.1 The complainants are from Gemena in the province of Equateur. In 2004, they moved to Goma where Ms. Njamba's husband had started a small business. At that time, her husband's brother was a commander in the Congolese military. In Goma, Ms. Njamba discovered that the small business served as a cover for her husband's real activities which involved providing support for the rebels in the Equateur province and Goma. Her husband had been implicated in acts of treason and espionage on behalf of rebels since 1998, including purchasing of arms for rebels in Equateur. For this reason, many families wanted her husband dead and had threatened him. Ms. Njamba knew about her husband's and her brother-in-law's activities and was thus considered by many to have been their accomplice

and involved herself in pro-rebel activities. The police would not protect her. On the contrary, they had helped expose her husband's activities to the families seeking revenge against him.

2.2 In December 2004, while the complainants were in church, fighting broke out. When they returned home after hiding for a few days in other people's homes, Ms. Njamba's husband and three of her children had disappeared. Ms. Njamba suspects that they were killed by Congolese militia. She believes that she and her daughter survived only because they were hiding in a different place. During the fighting, the complainants witnessed executions, rapes and other acts of torture. Ms. Njamba's brother-in-law was killed for suspected treason.

2.3 Following this incident, the complainants fled the Democratic Republic of Congo and arrived in Sweden on 29 March 2005. They applied for asylum on the same day. On 21 March 2006, their application was rejected by the Migration Board which concluded that the circumstances referred to by the complainants were not sufficient to entitle them to refugee status. The Board considered that there was no personal threat to the complainants' lives. Moreover, it considered that the complainants were from the province of Equateur where they could return. The complainants appealed against this decision submitting that Ms. Njamba was HIV-positive and that no medical treatment was available in the Democratic Republic of Congo.

2.4 On 1 September 2006, the complainants' appeal was rejected by the Migration Court. It shared the conclusions of the Migration Board that the circumstances invoked by the complainants were not sufficient to show that they were in need of protection. With regard to Ms. Njamba's health condition, the Court stated that it was not considered to be of such a character as to amount to the exceptionally distressing circumstances that are required to apply chapter 5, section 6, of the 2005 Aliens Act. On 10 October 2006, the complainants lodged a further appeal before the Migration Court of Appeal, but leave to appeal was denied on 8 January 2007.

2.5 In a request to the Migration Board on 21 March 2007, the complainants called for a new examination of their application under chapter 12, section 19, of the 2005 Aliens Act. They added to their request that they would be in danger if they were to be sent back to the Democratic Republic of the Congo because people who were returned from Europe were automatically arrested and interrogated upon arrival. On 30 May 2007, the Migration Board decided not to stay the execution of the expulsion order. On 7 June 2007, it also decided not to re-examine the complainants' application.

### **The complaint**

3.1 The complainants claim that they would be victims of a violation of the Convention if they were deported to the Democratic Republic of the Congo where they fear they will be subjected to torture. Ms Njamba believes that, if returned, she would be tortured and/or killed by the security services, or in revenge by the families who felt betrayed by her, her husband, and her brother-in-law. The complainants also allege that, in practice, the secret police detains and interrogates everyone returned to the country and often tortures, arbitrarily imprisons, and/or kills them. In addition, they allege that the security situation in the Democratic Republic of the Congo is precarious and that the Government is thus unable to guarantee protection of their human rights.

3.2 Ms. Njamba has been confirmed as HIV-positive by doctors in Sweden.<sup>a</sup> She claims that, given the lack or rarity of treatment in the Democratic Republic of the Congo, returning her there would result in her death from AIDS. Upon return to the Democratic Republic of the Congo, she would face a "painful death" from the disease and suffering due to the knowledge that her young daughter would grow up an orphan.

3.3 The complainants claim to have exhausted domestic remedies, as all of their appeals have been rejected.

#### **State party's observations on admissibility and merits**

4.1 On 11 December 2007, the State party filed observations on the admissibility and the merits of the complaint. It acknowledges that all available domestic remedies have been exhausted. Nevertheless, it maintains that the communication should be considered inadmissible in accordance with article 22, paragraph 2, of the Convention. It recalls that article 3 is only applicable if the complainant is in danger of being subjected to torture as defined in article 1. Accordingly, since any possible deterioration of Ms. Njamba's health after deportation cannot be considered to constitute torture as defined by article 1, the State party contends that the issue of whether the execution of the expulsion order would constitute a violation of the Convention in view of Ms. Njamba having been diagnosed as HIV-positive falls outside the scope of article 3. Moreover, the State party maintains that the complainants' claim that they will be subjected to treatment in breach of article 3 fails to rise to the basic level of substantiation required for purposes of admissibility. It submits that the complaint is manifestly unfounded.<sup>b</sup>

4.2 The State party concedes that the complaint may raise issues under article 16 of the Convention.<sup>c</sup> However, it recalls the Committee's prior jurisprudence that the aggravation of the condition of an individual's physical or mental health by virtue of a deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of article 16.<sup>d</sup> It maintains that no such factors have been revealed by the complainants in their case. Accordingly, the complaint, as far as it relates to article 16, should be declared inadmissible *ratione materiae*. If the Committee were to find that article 16 applies to the issue of the implementation of the complainants' expulsion, the State party maintains that their complaint fails to rise to the basic level of substantiation required for purposes of admissibility. The complaint is considered manifestly unfounded in this respect too.

4.3 On the merits, the State party notes that there have been positive developments towards democracy and stability in the Democratic Republic of the Congo. In particular, the first democratic election in 46 years was held in 2006. The Democratic Republic of the Congo has ratified most major international human rights instruments. While the State party concedes that human rights abuses are still commonly reported in the country, they happen mostly in areas not controlled by the Government, primarily in the eastern parts of the country. The State party thus maintains that the current situation in the Democratic Republic of the Congo does not appear to be such that a general need to protect asylum-seekers from that country exists.

4.4 As for the personal risk of the complainants of being subjected to torture in the Democratic Republic of the Congo, the State party notes that the national authority conducting the asylum interview is in a very good position to assess the information submitted by an asylum-seeker and to estimate the credibility of his or her claims. In the present case, the asylum interview lasted two hours and the Migration Board thus had sufficient information, which, taken together with the facts and documentation in the case file, ensured that it had a solid basis for its assessment of the complainants' need for protection in Sweden. The State party relies on the decisions of the Migration Board and the Migration Court and on the reasoning set out in their respective decisions.

4.5 Considering the complainants' claim that their expulsion would constitute a violation of the Convention because of the hostilities in the Democratic Republic of the Congo, the State party disputes that this claim has been substantiated. While the complainants submit that they witnessed terrible human rights abuses, they have not been assaulted or abused themselves. Accordingly, their statements about risks of torture are



general in nature and based only on the general country situation. Nothing in these statements demonstrates that there is any foreseeable, real and personal risk of the complainants being subjected to torture. Furthermore, the State party notes that the complainants will not be returned to the eastern parts of the Democratic Republic of the Congo, but to the province of Equateur in the western parts of the country where the security and human rights situations are far better. It recalls that the complainants were born in that province and were registered as living there when leaving the country. While the complainants had moved to Goma before leaving the country, this was only for a short period of time. The complainants can avoid any alleged risk of torture due to possible hostilities in the eastern part of the Democratic Republic of the Congo by moving back to the Equateur province.

4.6. Considering the complainants' claim that their forced return to the Democratic Republic of the Congo would put them at risk of being arrested, interrogated, imprisoned and possibly being subjected to torture and then killed by the security services, the State party submits that this claim is equally general and that the complainants have not presented any circumstances which would explain why they face a personal risk. While the complainants submit that persons forcibly returned to the Democratic Republic of the Congo are subjected to abuses, the State party does not find support for this contention in the generally available information on the country. Examples of interrogations upon return to the Democratic Republic of the Congo exist, but no further abuses are reported to have been committed by the authorities in these cases. Moreover, the State party notes that the complainants came to mention these specific circumstances for the first time in their new application to the Migration Board, as late as 21 March 2007.

4.7 With regard to a possible claim under article 16, the State party invokes the Committee's prior jurisprudence and noted that no violation of this provision was ever found in cases regarding expulsion. Invoking the case law of the European Court of Human Rights, the State party notes that the Court has only found a violation of article 3 of the European Convention on Human Rights in very exceptional circumstances when the person to be expelled had reached the advanced stages of AIDS and would face a lack of treatment as well as a lack of social and moral support in the receiving country.<sup>e</sup> In the present case, the State party submits that no such exceptional circumstances exist. Indeed, anti-retroviral medicines are available, in principle free of charge. Considering Ms. Njamba's health condition, the State party notes that she has not reached the stage of AIDS, nor does she suffer from any HIV-related illnesses. Her medical certificate shows that she will be in no need of medication within the next few years.

#### **Complainants' comments on the State party's observations**

5.1 On 20 February 2008, the complainants submitted that they did not have any comments on the State party's observations.

5.2 On 24 June 2008, the complainants reiterated that the whereabouts of Ms. Njamba's husband are still unknown and that they believe him to be dead. They explain that they did not want to mention his political activities in the asylum procedure because they were traumatized by the events they had witnessed. Moreover, Ms. Njamba did not want to put her husband in danger by revealing details of his political activities to the asylum authorities.

#### **Additional comments by the State party**

6.1 On 8 October 2008, the State party pointed out that the new circumstances concerning the disappearance of the complainants' family members had never been presented to the domestic migration authorities, but were introduced for the first time in their complaint to the Committee, i.e. more than two years after their initial asylum

application. The complainants did not invoke these circumstances before the Migration Court in an appeal against the Migration Board's decision. The State party recalls that in cases where the asylum-seeker wishes to invoke new circumstances as ground for their asylum application, there is a domestic remedy available to them under chapter 12, sections 18 and 19 in the 2005 Aliens Act. It notes that the complainants did not appeal against the Migration Board's decision not to grant them a residence permit. In their appeal, they could have invoked the new circumstances they invoked before the Committee. Since they have not done so, the State party considers that the communication should be declared inadmissible for failure to exhaust domestic remedies.

6.2 In any event, the State party argues that the complainants' assertion that they are at risk of being treated in a manner that would amount to a breach of the Convention on account of their husband/father's activities in Goma fails to rise to the level of substantiation required for purposes of admissibility. It thus submits that the communication is manifestly unfounded.<sup>f</sup> In particular, it considers that there are strong reasons to question the veracity of the new allegations and that presenting before the Committee a whole new account of the events in the Democratic Republic of the Congo, which has not been presented before the domestic authorities, calls for close scrutiny of that account. This new account of events has to be substantiated by more facts and details. In any case, the account of facts presented by the complainants is contradictory and confusing even in its lack of details. Moreover, the State party finds it remarkable that the complainants mentioned none of these new circumstances in their original complaint to the Committee. At the time of submission of their complaint, the complainants did not even try to explain why these new circumstances had not previously been submitted. It was only in June 2008 that they provided some explanations as to why they had not previously presented these circumstances (see para. 5.2 above). With regard to these explanations, the State party wishes to point out that at the initial stages of the domestic proceedings before the Migration Board, Ms. Njamba was informed of the consequences of deliberately stating incorrect information and of excluding information in the case. She was also informed that the officials of the Migration Board as well as the interpreter and the legal counsel were under an obligation of secrecy. Furthermore, the reasons put forward by the complainants still do not explain why the new circumstances were not invoked before the domestic authorities, e.g. in an appeal of the Migration Board's decision of 7 July 2007.

6.3 The State recalls that article 3 of the Convention is only applicable if the person is in danger of being subjected to torture as defined in article 1 of the Convention.<sup>g</sup> It also recalls that the Committee has emphasized in its jurisprudence that the issue of whether a State party is under an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention.<sup>h</sup> As the recent claim by the complainants seems to be that they risk being killed by private individuals as revenge for the activities allegedly carried out by their husband/father, this issue in any event falls outside the scope of article 3 of the Convention.

6.4 Concerning the alleged disappearance of the complainants' family members, the State party reiterates that before the national migration authorities, Ms. Njamba neither claimed that her husband was working undercover for the rebels nor that he would be killed for that reason. The reasons the complainants submitted in their asylum claim were the general conflict in the Democratic Republic of the Congo and Ms. Njamba's HIV-positive status. For the examination of these issues, the alleged disappearance of the rest of the family members was not relevant. Furthermore, the issue of availability of family support upon return was not relevant for the determination of whether Ms. Njamba could return to the Democratic Republic of the Congo despite the fact that she had been diagnosed as HIV-positive. It was not relevant because her health was considered to be good and there is adequate HIV treatment in the Democratic Republic of the Congo. Even so, the Migration

Court of Appeal examined the issue of the alleged disappearance of the family members. In its judgment, it held that Ms. Njamba's husband and other children were still somewhere in the Democratic Republic of the Congo. The State party adds that when applying for asylum, Ms. Njamba stated a name and address of a maternal uncle in the Equateur province. In the domestic proceedings, she also mentioned that her husband's brother was alive and has been known to help them in the past. It is thus surprising that she now claims before the Committee that he has been killed due to suspicions of treason. The State party notes that the International Committee of the Red Cross offers assistance to trace family members dispersed by the conflict in the Democratic Republic of the Congo, but that the complainants do not seem to have used this service, although it is available from Sweden. The State party therefore maintains that it still cannot be excluded that Ms. Njamba's husband and other children are still alive in the Democratic Republic of the Congo today.

6.5 Concerning Ms. Njamba's HIV diagnosis, the State party recalls that anti-retroviral (ARV) medicines are available, in principle free of charge, in all 11 of the provincial capitals of the Democratic Republic of the Congo, which have all joined the national HIV programme. Ms. Njamba would therefore have access to ARV therapy upon return to the Equateur province from where she and her daughter originate. The State party provides details about the availability of health care in general in the country. It notes that, according to UNAIDS, ARV therapy coverage over the world, including in Africa, has undergone remarkable improvements in the last few years. With regard to HIV treatment in the Democratic Republic of the Congo specifically, the State party provides details about the availability of such treatment in the various regions of the country. In particular, it notes that Médecins sans Frontières (MSF) runs HIV/AIDS projects in, inter alia, Kinshasa, Goma in North-Kivu and Bukavu in South-Kivu. In addition, the German aid organization GTZ has treatment centres in Kinshasa, Lubumbashi, Bukavu, Kisangani and Mbuji Mayi. Moreover, inter alia, the World Bank contributes towards covering the Government's costs for distributing free ARV drugs in the Democratic Republic of the Congo.

6.6 Bearing in mind the lack of jurisprudence from the Committee on the issue of whether the expulsion of an alien diagnosed as HIV-positive or suffering from AIDS would constitute a violation of the Convention, the State party invokes a recent Grand Chamber judgment from the European Court of Human Rights.<sup>1</sup> In that case, the applicant was a Ugandan national who suffered from AIDS. She claimed that returning her to Uganda would cause her suffering and lead to her early death. Although the Court accepted that her quality of life and life expectancy would be affected if she were returned to Uganda, it found that her removal to Uganda would not give rise to a violation of article 3 of the European Convention on Human Rights. In the present case, the State party points out that Ms. Njamba has still not presented any evidence in support of her statement that her health is deteriorating. In view of the available evidence before the Committee, there is nothing to suggest otherwise than that her health condition is good since the HIV infection has not yet affected her immune system and that she is still in no need of medication.

### **Decision on admissibility**

7.1 On 14 November 2008 during the forty-first session, the Committee considered the admissibility of the communication. It ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter had not been and was not being examined under another procedure of international investigation or settlement.

7.2 With regard to the requirement, under article 22, paragraph 5 (b), of the Convention, that all available domestic remedies be exhausted, the Committee noted that the complainants had applied for asylum on 29 March 2005. Their application had been examined by the Migration Board on 21 March 2006 and their appeal against this decision was rejected by the Migration Court of Stockholm on 1 September 2006. The complainants

had lodged a further appeal before the Migration Court of Appeal, but leave to appeal was denied on 8 January 2007. They had requested a re-examination of their asylum application, which was denied by the Migration Board on 7 June 2007. In these circumstances, the Committee considered that the complainants had exhausted domestic remedies.

7.3 Concerning the claim relating to Ms. Njamba's expulsion in light of her condition as HIV-positive, the Committee recalled its prior jurisprudence that the aggravation of the condition of an individual's physical or mental health by virtue of a deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of article 16.<sup>j</sup> The Committee noted the medical evidence presented by Ms. Njamba, stating that she was HIV-positive and that AIDS treatment was not readily available in the Democratic Republic of the Congo. It also noted that the same medical evidence mentioned that Ms. Njamba did not require HIV treatment. In any case, the Committee took note of the detailed information provided by the State party on the availability of HIV treatment in the Democratic Republic of the Congo (see para. 6.5 above). In the circumstances, the Committee considered that the aggravation of Ms. Njamba's health which might occur following her return to the Democratic Republic of the Congo is in itself insufficient to substantiate this claim, which is accordingly considered inadmissible.

7.4 With respect to the complainants' claim under article 3, paragraph 1, of the Convention, the Committee found that no further obstacles to the admissibility of the complaint existed and that this case should be considered on the merits. While noting that the State party and the complainants had already provided submissions on the merits of this case, prior to making a decision on the merits, the Committee wished to receive further information on how the current developments in the Democratic Republic of the Congo bear upon the decision to deport the complainants from the State party.

#### **State party's submission on the merits**

8.1 On 19 May 2009, the State party provided further comments on the merits in response to the questions posed by the Committee in its admissibility decision. With respect to the general situation in the Democratic Republic of the Congo, the State party submits that it continues to be affected by violence and insecurity, especially in the east. In January 2008, a peace conference took place in Goma and a peace accord was signed, however violent clashes continued and in August 2008 there was renewed fighting between the government and rebel groups. General Nkunda called a ceasefire at the end of October 2008, but reports of fighting continued. However, the fighting was mainly concentrated in the North Kivu and South Kivu provinces, and the Ituru district in the Orientale province; all in the east of the country.<sup>k</sup> In January 2009, the Democratic Republic of the Congo and Rwanda launched a joint military operation against the Rwanda Hutu rebels of the Forces Démocratiques pour la Libération du Rwanda (FDLR) in North Kivu. Moreover, General Nkunda — leader for the Congrès National pour la Défense du Peuple (CNDP) — was arrested. Furthermore, in March 2009, a peace agreement between the Government of the Democratic Republic of the Congo and the CNDP was reached.

8.2 The State party reiterates that numerous human rights abuses are still being committed by different armed groups in the country, including government soldiers. Torture, abductions and sexual abuse by militia groups and government forces continue to be reported. However, the security and human rights situation is still most precarious in the areas of the Democratic Republic of the Congo which are not controlled by the government.

8.3 The State party submits that under the Aliens Act, an alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden. The term "an alien otherwise in need of protection" has been exemplified previously, but it might be added that it also includes a person who needs

protection because of external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuse.

8.4 In November 2008, the Swedish Migration Board adopted a guidance note regarding the situation in the Democratic Republic of the Congo and how it affected the examination of asylum claims of nationals of that country. The note confirmed that there is internal conflict in the eastern part of the Democratic Republic of the Congo, held that internal relocation is possible to the stable parts of the that country but that such a possibility should be considered on an individual basis. Especially regarding a single woman, the note prescribed that the existence of a social network and a connection to other parts of the Democratic Republic of the Congo had to be taken into account when assessing whether internal relocation was a possibility. In fact, in November 2008, the Migration Board also granted a permanent residence permit to a single woman from the North Kivu province for whom it found internal relocation was not an option, as she had no connection to and no social network in another part of the Democratic Republic of the Congo.

8.5 As to the present case, the State party reiterates that the complainants originate from and have a strong connection to the Equateur province where, apart from a few months prior to their flight from the Democratic Republic of the Congo, they have always lived. Thus, for the complainants the question of internal relocation does not arise, as they do not come from an area in conflict and would be returning to their home province. The State party reiterates that it still cannot be excluded that Ms. Njamba's husband and three other children are still alive and could be found in the Democratic Republic of the Congo. Even if they have no close relatives left in their village, given that they have lived there all their lives it is reasonable to expect that there are people there who would be willing to assist them. In any event, the complainants may request a re-examination of their application by the Migration Board if they claim that the current situation has significantly changed since the filing of their initial application and there are impediments to the enforcement of the expulsion decisions.

8.6 The State party reiterates that since the initial submission to the Committee the reasons upon which the complainants submit they need asylum have changed. In addition, their account of events completely changed upon submission of their case to the Committee. It submits that according to article 3, it is for the complainants to present an arguable case. In any event, in the State party's view, the claim that they are likely to be subjected to torture on account of their husband's/father's activities in Goma are neither credible nor consistent and lack veracity. It also refers to the fact that the complainants have not responded to these arguments made by the State party in its last submission. The State party highlights that the complainants will not be returned to Goma where they claim they will risk being killed in revenge for the activities allegedly carried out by their husband/father.

#### **State party's supplementary submission on the merits**

9.1 On 19 March 2010, the State party provided information in response to questions posed by the Secretariat on behalf of the Committee, in particular with respect to how six United Nations reports<sup>1</sup> would bear upon the decision to deport the complainants from Sweden. Given that the Government has no power to influence decisions on expulsion cases, as this lies exclusively with the migration authorities, the Migration Board was asked to respond to the Committee's request. The Board maintains its view that there is currently no foreseeable risk that the complainants would be subjected to violence upon return to the Democratic Republic of the Congo. It submits that the complainants have not sufficiently substantiated that they risk torture in Gemena, Equateur, which is not in a conflict area. They would have access to a social network, as it is the town where Ms. Njamba grew up.

It is a large town safe enough to live there without ending up in a camp for internally displaced persons (IDPs). Several humanitarian organizations are stationed there because of the stable security situation. Living in a large town also reduces the risk of abuse compared with rural areas. The Migration Board reiterates that it adopted a guidance note (para. 8.4) in November 2008, regarding the situation in the Democratic Republic of the Congo and how it affected the examination of asylum claims there. It suggests that if the complainants had been from such a conflict zone, they may have been entitled to a residence permit upon re-examination of their application if internal relocation would not have been possible. Indeed, it submits that if the complainants believe that they meet the criteria in this guidance note or that the situation in the Democratic Republic of the Congo, especially in their home province, has changed significantly so that there are impediments to the enforcement of their decisions on expulsion, it remains open to them to request a re-examination of their application by the Board under chapter 12, section 19 of the Aliens Act.

9.2 As to whether, given the information in the reports in question, enforced deportation would constitute a violation of article 3, the State party reiterates earlier arguments and supports the views expressed by the Migration Board. It emphasizes that the complainants would not be returned to Goma, where they claim that they will risk being killed in revenge for the activities allegedly carried out by their husband/father, but to the Equateur province. The reports in question largely relate to the eastern parts of the Democratic Republic of the Congo and are thus irrelevant. They confirm that there has been no armed conflict in Equateur for many years. Although the State party acknowledges that there is information in these reports that sexual violence occurs in Equateur too, especially in the form of abuse by the police and the military as a form of revenge against rebellious villages, it is clear that women in rural areas and small villages are more exposed to violence than women in towns. Women who are IDPs are also more exposed to violence than women with a permanent abode. In this context, the State party refers to a decision of the European Court of Human Rights, in *S.M. v. Sweden*,<sup>m</sup> which indicates that even though the reports of violence against women are alarming, an individual assessment must be made of each case and the complainants' personal situation must determine his or her risk of being subjected to violence or torture on return. In the State party's view, the information in the reports is not sufficient to establish that the complainants upon return to the Democratic Republic of the Congo would face a foreseeable, real and personal risk of abuse – sexual or otherwise. In addition, the State party reiterates that there are strong reasons to question the veracity of the new allegations presented by the complainants, which were presented for the first time in their submissions of 11 and 12 June 2007, as well as the complainants' failure to respond to the State party's observations of 8 October 2008 and 19 May 2009.

9.3 Finally, the State party makes a procedural request. It submits that according to chapter 12, section 22, of the 2005 Aliens Act, an expulsion order which has not been issued by a general court expires four years after the order becomes final and non-appealable. This is applicable with respect to expulsion orders not issued on account of a criminal offence, as in the present case. The decision on expulsion regarding the complainants became final and non-appealable on 20 December 2006, when the Aliens Appeals Board rejected their appeal against the Migration Boards decision. The expulsion decision will thus become statute-barred on 20 December 2010. In the light of this, and given that this case has already been before the Committee, the State party specifically requests the Committee to decide upon this complaint at its upcoming forty-fourth session in April–May 2010. It also points out that despite being represented by counsel, the complainants have only responded briefly to the State party's observations, in contrast to its own lengthy submissions.

*Consideration of the merits*

9.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

9.2 The issue before the Committee is whether the complainants' removal to the Democratic Republic of the Congo would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.3 In assessing whether there are substantial grounds for believing that the complainants would be in danger of being subjected to torture upon return, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the Democratic Republic of the Congo. The aim of such an analysis is to determine whether the complainants run a personal risk of being subjected to torture in the country to which they would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

9.4 The Committee recalls its general comment No. 1 on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable. The risk need not be highly probable, but it must be foreseeable, real and personal, and present, as confirmed by the Committee in its previous decisions. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal. The Committee recalls that, while it gives considerable weight to the findings of fact of the State party's bodies, it is entitled to freely assess the facts of each case, taking into account the circumstances.

9.5 The Committee finds that while some factual issues of this case are disputed, including the claims relating to the complainants' husband's political activities, the Committee observes that the most relevant issues raised in this communication relate to the legal effect that should be given to undisputed facts, such as the risk of danger to the complainants' security upon return. The Committee notes that the State party itself acknowledges that sexual violence occurs in Equateur Province, to a larger extent in rural villages (para. 9.2 above). It notes that since the State party's last response of 19 March 2010, relating to the general human rights situation in the Democratic Republic of the Congo, a second joint report from seven United Nations experts on the situation in the Democratic Republic of the Congo was published, which refers to alarming levels of violence against women across the country and concludes that "Violence against women, in particular rape and gang rape committed by men with guns and civilians, remains a serious concern, including in areas not affected by armed conflict" (A/HRC/13/63, para. 109). In addition, a second report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo, as well as other United Nations reports, also refers to the alarming number of cases of sexual violence throughout the country, confirming that "these cases are not limited to areas of armed conflict but are happening throughout the country"

(A/HRC/13/64, para. 17). In reviewing this information, the Committee is reminded of its general comment no. 2 on article 2, in which it recalled that the failure “to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity...”. Thus, in light of all of the abovementioned information, the Committee considers that the conflict situation in the Democratic Republic of the Congo, as attested to in all recent United Nation reports, makes it impossible for the Committee to identify particular areas of the country which could be considered safe for the complainants in their current and evolving situation.

9.6 Accordingly, the Committee finds that, on a balance of all of the factors in this particular case and assessing the legal consequences aligned to these factors, substantial grounds exist for believing that the complainants are in danger of being subjected to torture if returned to the Democratic Republic of the Congo.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainants to the Democratic Republic of the Congo would amount to a breach of article 3 of the Convention.

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

#### Notes

<sup>a</sup> An affidavit addressed to the Committee is attached from a Swedish nurse specializing in HIV treatment, who worked 11 years in the Democratic Republic of the Congo as a missionary. She notes that she personally knows of several persons returned to the Democratic Republic of the Congo, who were detained without process upon arrival by Democratic Republic of the Congo security forces and were forced to bribe their way out of prison. She predicts that Ms. Njamba’s health would deteriorate rapidly upon arrival although she does not currently require HIV medication; this prediction she ascribes to conditions in the Democratic Republic of the Congo as well as Ms. Njamba’s precarious conditions were she to be returned without money or contacts and having to resort to her ominous job as a sex worker. She notes that, “it is a known fact that the time span between HIV virus infection to fully blown Aids is significantly shorter in Africa than in Sweden,” and that she would not receive retroviral medication in the Democratic Republic of the Congo.

<sup>b</sup> See for instance communication No. 216/2002, *H.I.A. v. Sweden*, Views adopted on 2 May 2003, para. 6.2.

<sup>c</sup> See for instance communication No. 220/2002, *R.D. v. Sweden*, Views adopted on 2 May 2005; and No. 221/2002, *M.M.K. v. Sweden*, Views adopted on 3 May 2005.

<sup>d</sup> See for instance communications No. 49/1996, *S.V. v. Canada*, Views adopted on 15 May 2001, para. 9.9; No. 83/1997, *G.R.B. v. Sweden*, Views adopted on 15 May 1998, para. 6.5; No. 220/2002, *R.D. v. Sweden*, Views adopted on 2 May 2005, para. 7.2; and No. 221/2002, *M.M.K. v. Sweden*, Views adopted on 3 May 2005, para. 7.3.

<sup>e</sup> See European Court of Human Rights, *D. v. United Kingdom*, judgment of 2 May 1997, Reports of Judgments and Decisions, 1997-III, p. 794, para. 54.

<sup>f</sup> See for instance communication No. 216/2002, *H.I.A. v. Sweden*, Views adopted on 2 May 2003, para. 6.2.

<sup>g</sup> See for instance communication No. 83/1997, *G.R.B. v. Sweden*, Views adopted on 15 May 1998, para. 6.5.

<sup>h</sup> *Ibid.*

<sup>i</sup> See *N. v. the United Kingdom*, application No. 26565/05, judgment of 27 May 2008.

<sup>j</sup> See communications No. 83/1997, *G.R.B. v. Sweden*, Views adopted on 15 May 1998, para. 6.7; No. 183/2001, *B.S.S. v. Canada*, Views adopted on 12 May 2004, para. 10.2; and No. 245/2004, *S.S.S. v. Canada*, Views adopted on 16 November 2005, para. 7.3.



- <sup>k</sup> Department of State of the United States of America, “2008 Human Rights Report: Democratic Republic of the Congo”.
- <sup>l</sup> Combined report of seven thematic special procedures on technical assistance to the Government of the Democratic Republic of the Congo and urgent examination of the situation in the east of the country (A/HRC/10/59); Report of the independent expert on the situation of human rights in the Democratic Republic of the Congo(A/HRC/7/25); Report of the Special Rapporteur on violence against women, its causes and consequences(A/HRC/7/6/Add.4); and Report of the United Nations High Commissioner on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo (A/HRC/10/58 and Corr.1); Twenty-ninth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo (S/2009/472); Report of the Secretary-General pursuant to Security Council resolution 1820 (S/2009/362).
- <sup>m</sup> Application No. 47683/08, 10 February 2009. “As concerns the general situation in the DRC, the Court is aware of the occurrence of reports of continuous, serious human rights violations, in particular, against women, in that country. However, it has to establish whether the applicant’s personal situation was such that her return contravened Article 3 of the Convention.”

**Communication No. 331/2007: *M.M. v. Canada***

*Submitted by:* M.M. (represented by counsel)  
*Alleged victim:* The complainant  
*State party:* Canada  
*Date of the complaint:* 16 September 2007

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

*Meeting on 5 November 2009,*

*Having concluded* its consideration of communication No. 331/2007, submitted on behalf of M.M. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

*Adopts* the following:

**Decision under article 22, paragraph 7, of the Convention against Torture**

1.1 The complainant, M.M., submitted his complaint to the Committee on 16 September 2007. He is a Burundian national residing in Canada and is the subject of an order for deportation to his country of origin. He is married to Eliane Ndimurkundo, a Canadian citizen; the couple have a 2-year-old son, Yann, who has Canadian nationality. He claims that his forcible return to Burundi would constitute a violation by Canada of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention in a note verbale dated 18 October 2007, but did not include a request for interim measures.

**The facts as presented by the complainant**

2.1 The complainant is a member of the Burundian organization *Puissance Autodéfense* (Self-Defence Force) (PA-Amasekanya), which has since 1994 denounced the impunity enjoyed by those responsible for the Tutsi genocide. According to the author, the members of PA-Amasekanya, an organization involved in efforts to prevent genocide and protect minorities in Burundi, run the risk of being subjected to torture or ill-treatment whenever they voice their opinions or attempt to hold public demonstrations.

2.2 A letter dated 10 January 2007 from the President of the *Ligue burundaise des droits de l'homme* (Burundian Human Rights League) mentions the complainant, noting that "all those who criticize the authorities' actions, like M.M. and others, run the same risk of imprisonment". Successive Governments in Burundi have reacted by ordering the mass detention of PA-Amasekanya members. The head of the organization has been detained on numerous occasions and his book and other writings have been banned from publication. The complainant maintains that, in Burundi, political prisoners such as PA-Amasekanya

members are detained alongside ordinary prisoners. Conditions of detention are allegedly cruel and detainees are often beaten and tortured.

2.3 Between February and May 2004, at least 75 members of PA-Amasekanya were arrested in the course of a number of peaceful demonstrations, including M.M.'s brother, J-P.M., who attended a PA-Amasekanya demonstration in March 2004, at which several demonstrators were arrested. On 15 May 2004, following a further PA-Amasekanya demonstration, the complainant spoke on behalf of PA-Amasekanya on Radio Publique Africaine. Following this radio broadcast, he was informed by a friend in the national security forces that he was wanted by the authorities. The complainant hid in another town until he left for Canada on 28 July 2004.<sup>a</sup>

2.4 The complainant claimed refugee status upon arrival in Canada on 12 August 2004. The Immigration and Refugee Board of Canada considered his claim on 8 August 2005 and rejected it on 7 September 2005 on the grounds that he was neither a refugee according to the Convention relating to the Status of Refugees, nor a person in need of protection under its articles 1F (a) and (c).<sup>b</sup> The reason that the Board gave for its decision was that PA-Amasekanya, of which the complainant is a member, is an organization with limited and violent objectives, which has reportedly "committed human or international rights violations".<sup>c</sup> On 23 September 2005, the complainant applied for leave and for judicial review of the Board's decision dated 7 September 2005. In his application, the complainant argued that he did not hold a position of authority within PA-Amasekanya and could not therefore be held responsible for its actions. The Federal Court rejected his application for leave and for judicial review on 3 December 2005.

2.5 In May 2006, while he was preparing his application for a pre-removal risk assessment (PRRA), the complainant found out about a footnote in a Human Rights Watch report written in English, which had been used in the Board's decision of 7 September 2005. According to the complainant, this footnote mentioned an organization composed of armed forces apparently referred to by certain communities as "Amasekanya", which should not be confused with the Tutsi organization of the same name in Bujumbura. The former has reportedly committed abuses against civilians, while the latter, of which the complainant is a member, is said to be a peaceful organization. The complainant believes that the authorities confused the two organizations with the same name, which resulted in the complainant being denied the protection of refugee status. Since the footnote was in English and had not been translated for the complainant, no objection had been raised during the hearing or in the months thereafter. On these grounds, in May 2006 the complainant applied to the Board to review its previous decision. On 8 June 2006, the Board rejected the complainant's application on the grounds that it had "very limited jurisdiction to reopen hearings". It is able to do so only in cases where the "principles of natural justice" have been breached, which according to the Board did not apply in the present case. The Federal Court rejected the application for leave and for judicial review without a hearing and without giving a reason.

2.6 On 5 May 2006, the complainant submitted the application for a pre-removal risk assessment (PRRA) with a covering letter requesting a hearing under article 113 (b) of the Immigration and Refugee Protection Act. He was not called to appear and his PRRA application was rejected on 28 October 2006 on the grounds that he had not established that he risked "torture or cruel or untoward treatment or punishment or a threat to [his] life upon deportation to [his] country of nationality or habitual residence" and that no "new items of evidence had been submitted to support [his] application".

2.7 The applicant was summoned to Citizenship and Immigration Canada (CIC) Hull to receive the PRRA decision. As the summons arrived on 14 December 2006, after the proposed date of the meeting on 7 December, the complainant was summoned to appear immediately before CIC. On 15 December 2006, the complainant reported to CIC, where

he was notified of the PRRA decision and immediately arrested. His wife posted bail of Can\$ 5,000 for his release. On 18 December 2006, the complainant applied for leave and for judicial review of the PRRA decision.

2.8 Being due to be deported from Canada to Burundi on 19 January 2007, the complainant submitted a motion to stay the deportation to the Ministry of Justice of Canada on 15 January 2007, which was received by the Federal Court the following day. On 17 January 2007, the Federal Court refused to hear his request. The applicant did not report for deportation, but continued to seek remedy before the Federal Court.

2.9 On 29 March 2007, the Federal Court rejected the complainant's application for leave and for judicial review of the PRRA decision, which had been submitted on 18 December 2006. The immigration authorities have issued a warrant for the complainant's arrest and ordered his deportation.

### **The complaint**

3. The complainant asserts that if he is deported to Burundi he will be subjected to torture, in violation of article 3 of the Convention, on account of his membership of and work for PA-Amasekanya.

### **State party's observations on admissibility and the merits**

4.1 On 23 April 2008, the State party submitted its observations on the admissibility and, subsidiarily, on the merits of the complaint. It argues that the complainant's communication is inadmissible because it does not meet the minimum requirements to make it compatible with article 22. It also expresses the view that the complaint is based on mere theory and does not show that the author personally risks being subjected to torture if deported to Burundi. In particular, it maintains that there is no proof that the Burundian authorities have tortured any member of the organization to which the complainant belongs.

4.2 The State party describes the various remedies sought by the complainant in order to show that the procedure was legal and that the Committee does not need to re-examine the facts of the case. The State party believes that, in the absence of proof of an obvious error, abuse of process, bad faith, obvious bias or serious irregularities in the procedure, the Committee should not substitute its own findings of fact for those of the Canadian authorities.

4.3 The State party begins by questioning why the complainant did not seek asylum in France or Switzerland before arriving in Canada, despite having transited through those two countries. The State party quotes the complainant's explanation that he was in the hands of traffickers who told him what to do. With regard to the refusal to grant refugee status, on 5 May 2005, the Department of Citizenship and Immigration Canada asked the Immigration and Refugee Board to have M.M. excluded from the refugee protection system on the grounds that the organization to which he belonged had committed human rights violations of which he was aware. Having heard oral testimony from M.M. and his counsel, the Board decided to exclude M.M. from the refugee protection system on 7 September 2005. The State party submits that the Board questioned M.M. at length about PA-Amasekanya's activities. The complainant responded to the Board's questions by saying that he had no knowledge of the crimes attributed to the organization. The Board concluded that "the mere fact that he was a member thereof is sufficient reason to exclude him" from the protection system. The State party considers that this issue does not fall within the jurisdiction of the Committee, as the Board's initial decision relates solely to the complainant's exclusion from the protection system and not to the alleged risk of torture.

4.4 On 23 September 2005, the complainant applied for leave and for judicial review of the Board's decision. He stated in his application that he had not personally committed or

encouraged the crimes in question, and that he did not hold a position of authority within PA-Amasekanya. He alleged that he was a “mere member” of the organization.<sup>d</sup> The State party argues that the complainant did not contest the Board’s affirmation that the organization was a movement “that incited and perpetrated violence”.<sup>e</sup> On 3 December 2005, the Federal Court of Canada rejected the complainant’s application for leave and for judicial review without giving a reason. The State party asserts that in order to obtain leave to apply for judicial review, the complainant needed to show that he had an arguable case, which required a lesser burden of proof than that required for judicial review on the merits.<sup>f</sup> The Court can grant an application if it is established that an administrative body has committed an error of jurisdiction, natural justice, law or any other apparent error, or error made in a perverse or capricious manner. The State party recalls that the Court did not find that any of these circumstances applied in the present case.

4.5 On 9 May 2006, the complainant applied to the Immigration and Refugee Board to reopen the procedure on the grounds that it had committed an error in its decision of 7 September 2005: it had taken into account a Human Rights Watch report of which he had not been given a translation and to which he could not respond.<sup>g</sup> This report described a massacre perpetrated by an organization referred to as “Amasekanya” by certain communities. The complainant argued that the organization of which he was a member had been confused with the organization mentioned by Human Rights Watch, and that that confusion was central to his exclusion from the refugee protection system. On 23 May 2006, the Canada Border Services Agency lodged an objection to M.M.’s application to reopen the procedure on the grounds that the document in question had been sent to the complainant’s counsel three months prior to his hearing and that his counsel had not objected to the evidence submitted in English. The Agency also argued that the document in question was only one of many items of evidence supporting its decision. On 8 June 2006, after hearing the complainant, the Board rejected the application to reopen the procedure. On 25 September 2006, the Federal Court rejected the complainant’s application for leave and for judicial review of the Board’s decision without giving a reason.

4.6 On 4 May 2006, the complainant applied for a PRRA.<sup>h</sup> According to the State party, the complainant did not substantiate his application or provide any supporting evidence. When questioned about the description of the events that had led him to seek protection and about supporting evidence, the complainant indicated that relevant material would be provided in due course. Although reference was made to a letter attached to the application, the State party notes that no letter was attached thereto. On 28 October 2006, in the absence of this documentary evidence, the PRRA officer took a decision on the basis of the complainant’s initial case file and more recent documentary sources<sup>i</sup> reporting that significant political changes had occurred in Burundi after the complainant had left. The PRRA officer rejected the complainant’s application on the grounds that he had not provided evidence that he was in danger of being subjected to torture or other prohibited treatment upon his return to Burundi. The State party adds that the PRRA officer acted in accordance with Canadian legislation, which does not require a hearing to be held if the officer concerned does not doubt the credibility of an applicant. On 18 December 2006, the complainant applied for leave and for judicial review of the PRRA officer’s decision. On 27 March 2007, the Federal Court dismissed this application.

4.7 On 15 January 2007, the complainant applied for a stay of the deportation order that was due to be executed on 17 January 2007. The Court rejected this application on the grounds that the complainant had not given good reason for having missed the application deadline. On 18 January 2007, a warrant for the complainant’s arrest was issued when he failed to appear at the office of the Canada Border Services Agency as agreed. On 19 January 2007, the author failed to report at Montreal Airport to be deported to Burundi. M.M. has not contacted the Canadian authorities since that date and is currently in hiding.

4.8 The State party maintains that M.M.'s application does not meet the minimum requirements to make it compatible with article 22 of the Convention. Article 3 requires "substantial grounds for believing that the author would be in danger of being subjected to torture". "The risk of torture must be assessed on grounds that go beyond mere theory or suspicion." The State party considers that the conditions established under rule 127 of the rules of procedure have not been met.

4.9 The State party argues that the complaint is without merit given the lack of evidence of a personal risk of torture, whether as an individual or as a member of PA-Amasekanya. There is no evidence to indicate that any member of that organization has been tortured and the complainant refers solely to the risk of being arrested. He adds that detainees "are often beaten and tortured" in Burundian prisons. The State party considers that none of the elements in the case file provides evidence that torture is systemic or endemic in Burundian prisons. PA-Amasekanya is not among the groups whose members are particularly at risk in Burundian prisons.

4.10 The State party also points to the lack of evidence showing that the complainant risks imprisonment and, consequently, exposure to ill-treatment upon his return to Burundi. The complainant refers to a letter written by the President of the Ligue burundaise des droits de l'homme, which mentions that M.M. is particularly exposed to such risks. The State party questions whether the person meant in that letter is really M.M., as he himself had declared during the Federal Court hearing of 23 September 2005 that he was a mere member of PA-Amasekanya and had shown that he had only taken part in a radio broadcast.

4.11 The "numerous, sometimes mass, detentions" mentioned by the complainant occurred in February and May 2004. All of the organization's members arrested during those events have since been released. Thus, there is not, at present, any risk of being imprisoned on account of belonging to PA-Amasekanya. The State party recalls that article 3 of the Convention cites the danger of being subjected to torture — not detention — as the basis for the principle of non-refoulement. The State party argues that the scope of article 3 does not extend to the risk of treatment prohibited under article 16 of the Convention, as it mentions only torture as defined by article 1. The State party considers that the complainant has not demonstrated that the conditions of detention in Burundi are inhuman, cruel or degrading.

4.12 As a subsidiary argument to its observations on admissibility, the State party maintains that the complaint should be found inadmissible on the merits for the above-mentioned reasons.

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

5.1 With regard to the complaint being inadmissible on the grounds that the allegations put forward by the complainant lacked foundation, counsel considers that there have been obvious errors and serious irregularities in the due process. Counsel maintains that the Committee should therefore rule on these issues. He refers to the obvious error in the decision of 7 September 2005 excluding the complainant from the refugee protection system. Despite the obligation under Canadian law to translate evidence used against a person appearing in court into his or her language, no one had translated the footnote contained in the Human Rights Watch report used during the Immigration and Refugee Board hearing. The State party cannot evade its obligation to translate this evidence on the pretext that the complainant was allowed enough time to obtain a translation of the document. The complainant adds that the Board's decision did not even mention this footnote, which should have precluded it from constituting evidence which could be used to exclude the complainant. The latter believes that this document was central to the decision

to exclude him. With regard to the other documents used by the authorities, the complainant considers them to be irrelevant, as they simply repeat the “clever comments” of government spokespersons, without mentioning any specific crimes attributable to Amasekanya.

5.2 According to the complainant, the irregularity of the procedure rests on the fact that he was denied the protection associated with refugee status. The complainant notes that the organization to which he belongs is a peaceful one. In support of his argument, he quotes an affidavit from the President of PA-Amasekanya, which refers to acts of persecution, such as the police breaking up one of the organization’s meetings on 13 October 2007. The affidavit mentions the arrest on 21 October 2007 of 10 of the organization’s members, who were reportedly tortured and beaten during their detention and to whom their families were not permitted to bring food. The President of PA-Amasekanya adds that the members of the organization risk being imprisoned, tortured or beaten every time they hold a demonstration. Some members of the organization have been killed by genocidal groups in Burundi. The complainant believes that his membership of PA-Amasekanya exposes him to the same risk of torture as those other members who have already been arrested and tortured. The complainant also mentions the arrest of his brother, J-P.M., and subsequent disappearance since 2004.

5.3 The complainant reaffirms that he is indeed the person mentioned in the letter of 10 January 2007 from the President of the Ligue burundaise des droits de l’homme, which confirms the personal risk to which he is exposed. The complainant accordingly rejects the State party’s argument that he does not personally risk torture.

5.4 As for the argument that torture is not systemic in Burundian prisons, the complainant mentions a report by the independent expert on the situation of human rights in Burundi, which refers to the growing number of cases of torture, including at the time of arrest. This report contradicts Canada’s allegations that torture is not a systemic practice in Burundian prisons.

5.5 Lastly, the complainant maintains that he applied for a stay of his deportation to Burundi within the statutory time limit and that the legal precedent that prompted the Federal Court to reject the complainant’s application pertains to applications made just hours before deportation, not several days before as in the complainant’s case.

5.6 The complainant believes the fact that he was unjustly “labelled” as a member of a criminal organization from the start of the procedure distorted the authorities’ judgement and led to him being denied refugee status protection. The “flagrant” injustice of the Board’s decision affected all subsequent decisions.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

6.1 Before considering an allegation in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. It has ascertained, as it is required to in accordance with article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee notes that the State party has raised an objection to admissibility based on the fact that the complaint is manifestly without foundation because of a lack of evidence, and that the alleged risk to the complainant does not meet the definition contained in article 1 of the Convention. The complaint would therefore supposedly be incompatible with article 22 of the Convention. The Committee considers, however, that the arguments before it appear to raise issues that need to be considered on the merits, rather than simply for the point of view of admissibility. As the Committee finds no further obstacles to

admissibility, it declares the communication admissible and proceeds with consideration of the merits.

*Consideration of the merits*

7.1 The Committee must decide whether the complainant's deportation to Burundi would violate the State party's obligation under article 3 of the Convention not to expel or return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its general comment No. 1 on implementation of article 3 in the context of article 22, which states that the Committee is to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if deported to the country concerned. The risk need not be highly probable, but it must be personal and present.<sup>j</sup> In this regard, in previous decisions, the Committee has determined that the risk of torture must be "foreseeable, real and personal".<sup>k</sup>

7.4 With regard to the burden of proof, the Committee also recalls its general comment and its previous decisions, according to which the burden is generally on the complainant to present an arguable case and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

7.5 In assessing the risk of torture in the present case, the Committee has noted that the complainant states that he is a member of the Burundian organization PA-Amasekanya, which has since 1994 denounced the impunity enjoyed by those responsible for the Tutsi genocide. It has also noted the allegation that, as a member of this organization, the complainant runs the risk of being arrested and then tortured during detention, an allegation largely based on a letter dated 10 January 2007 written by the President of the Ligue burundaise des droits de l'homme, which mentions the complainant as running a substantial risk of imprisonment. The Committee has noted the allegation that the complainant made a radio broadcast in 2004 which, in his view, resulted in a wanted notice being issued for him. The Committee has noted the complainant's argument that PA-Amasekanya members are tortured during detention. It notes that the complainant has provided a letter written by the PA-Amasekanya President which testifies that torture was practised on members of the organization, who have since been released. Lastly, the Committee notes that the complainant's brother is reported to have been arrested in 2004 and to have subsequently disappeared.

7.6 The State party contests the merits of the complainant's allegations given the lack of evidence of a personal risk of torture, whether as an individual or as a member of PA-Amasekanya. It points to the lack of evidence proving that the complainant risks imprisonment and exposure to ill-treatment on his return to Burundi. The State party has also highlighted the significant political changes in Burundi since the complainant left.



7.7 The Committee notes that the complainant has not provided evidence that he was wanted by the Burundian authorities.<sup>1</sup> The complainant has based his allegation that he risks torture if deported to Burundi purely on his affiliation to PA-Amasekanya. Having previously argued before the Canadian authorities that he was an active and committed member of the organization, he changed his approach, admitting that he was a “mere member” when the Canadian authorities made it clear that involvement with the organization would constitute grounds for denying him the protection of refugee status. The complainant submits that, since PA-Amasekanya members are particularly at risk of arrest and torture, he would be exposed to the same risk if deported to Burundi. Only a letter signed by the PA-Amasekanya President testifies that the organization’s members have been tortured, and the letter is not supported by the testimony of a victim or other relevant documents that would lead the Committee to conclude that the complainant was at real risk on account of his PA-Amasekanya membership. Lastly, the Committee notes that the risk of the complainant being arrested on his return to Burundi is substantiated only by a letter from the President of the Ligue burundaise des droits de l’homme dated 10 January 2007, which mentions only a risk of imprisonment and not a substantial, real and personal risk of torture. The complainant refers to the disappearance of his brother but provides no evidence thereof.<sup>m</sup> In the light of the above, the Committee considers that the complainant has not been able to provide objective evidence of a personal, real and present risk of torture upon return to Burundi.

7.8 The Committee notes that the complainant submitted his arguments and supporting evidence to the various State party authorities. It also notes the State party’s observation that, in the absence of procedural irregularities, the Committee should not substitute its own findings of fact for those of the Canadian authorities. The Committee nevertheless observes that, while it gives considerable weight to findings of fact made by the organs of the State party, it has the power of free assessment of the facts arising in the circumstances of each case.<sup>n</sup> In the present case, the Committee notes that the complainant believes that obvious errors and serious irregularities did occur in the procedure concerning refugee status and that, because of those irregularities, the risk of torture in the event of deportation was not assessed. However, the Committee notes that the risk in question was in fact assessed in the PRRA officer’s decision dated 28 October 2006, in the light of all the elements of the case file made available to him. Moreover, the fact that the complainant was not called to a hearing is not of itself a procedural irregularity insofar as his arguments were considered by the Canadian authorities. Accordingly, the evidence received by the Committee does not show that the State party’s examination of the complainant’s allegations was flawed.

7.9 Lastly, the Committee must reiterate that, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured. On the basis of the above, the Committee considers that the complainant has not substantiated his claim that he faces a real and imminent risk of being subjected to torture upon his return to Burundi.

7.10 The Committee against Torture, acting under article 22, paragraph 7, of the Convention, considers that the complainant has not substantiated his claim that he would be tortured upon return to Burundi and therefore concludes that the complainant’s removal to that country would not constitute a breach of article 3 of the Convention.

#### *Notes*

<sup>a</sup> The complainant left Bujumbura for Paris on 28 July 2004 on a false passport. On 29 July 2004, he went by car from Paris to Zurich. He flew from Zurich to Montreal on a false passport, arriving on 14 August 2004. The complainant explains that he did not seek asylum in France or Switzerland because

- the “success of [his] journey and flight depended on [his] traffickers, who told him what to do”.
- <sup>b</sup> Convention relating to the Status of Refugees, 28 July 1951.
- <sup>c</sup> Notice of intervention and statement of the facts and the law, 5 May 2005 hearing by the Canada Border Services Agency.
- <sup>d</sup> In quotation marks in the submission.
- <sup>e</sup> As above. The State party adds other expressions taken from the text.
- <sup>f</sup> In para. 14 of its submission, the State party refers to Canadian case law in the matter.
- <sup>g</sup> This report was referred to in a footnote.
- <sup>h</sup> The complainant gives the date as 5 May 2006 and not 4 May 2006.
- <sup>i</sup> The submission refers to the PRRA decision which mentions reports by non-governmental organizations, the State Department of the United States and the Canadian authorities.
- <sup>j</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44, (A/53/44), annex IX.*
- <sup>k</sup> Communication No. 203/2002, *A.R. v. The Netherlands*, Views adopted on 21 November 2003, para. 7.3.
- <sup>l</sup> No evidence of a warrant for the complainant’s arrest.
- <sup>m</sup> No copy of a missing person notice, for example.
- <sup>n</sup> Communication No. 258/2004, *Dadar v. Canada*, Views adopted on 23 November 2005, para. 8.8.

## Communication No. 348/2008: *F.A.B. v. Switzerland*

*Submitted by:* F.A.B. (not represented by counsel)  
*Alleged victim:* The complainant  
*State party:* Switzerland  
*Date of communication:* 20 July 2008 (initial submission)

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

*Meeting on 17 November 2009,*

*Having concluded* its consideration of complaint No. 348/2008, submitted to the Committee against Torture by F.A.B. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

*Adopts* the following:

### **Decision under article 22, paragraph 7, of the Convention against Torture**

1.1 The complainant, F.A.B., an Ivorian national born on 27 December 1988, is currently awaiting deportation from Switzerland. He claims that his forced return to Côte d'Ivoire would be a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is not represented by counsel.

1.2 On 31 July 2008 the Committee requested the State party not to expel the complainant to Côte d'Ivoire while his complaint was under consideration. On 4 August 2008 the State party acceded to this request.

### **The facts as submitted by the complainant**

2.1 The complainant was born in Agou, in the department of Adzope, and lived there until he was 2 years of age. After the death of his mother, his father moved to Para, in the department of Tabou, on the Liberian border.

2.2 On 1 January 2003 Liberian rebels attacked Para and took the village's young men captive. The complainant was taken prisoner and was made to carry the property stolen by the rebels. His father was killed while attempting to defend him. During his captivity the complainant was forced to take part in plundering and to work in the fields for the rebels.

2.3 One day, he was able to steal some money and escape. He crossed the border and returned to Para. The village's inhabitants reportedly attacked him, reproaching him for helping the rebels by taking part in the pillaging and destruction of their property and accusing him of being a rebel himself. They wanted to kill him, and reported him to the loyalist soldiers stationed in the village. On 24 December 2004 the village chief issued an order requesting the complainant to leave the village, barring which he would be prosecuted. The complainant therefore fled, walking 100 kilometres before being picked up by a vehicle and continuing on to San Pedro. There, a person helped him find a boat to

leave the country. He arrived in Switzerland, where he applied for asylum on 31 March 2005.

2.4 On 6 May 2005 the Federal Office for Migration (ODM) rejected his asylum request, as the persecution to which the complainant had allegedly been subjected by Liberian rebels came at the hands of third parties who moreover were foreigners, and the Ivorian authorities could not be held responsible. Furthermore, ODM challenged the complainant's allegations. Specifically, it considered it unlikely that villagers who were present when the complainant was abducted in January 2003 would accuse him of working for the rebels and chase him out of the village while reporting him to the armed forces stationed there. As for the risk of persecution by the army, ODM considered the risk low, considering that the complainant was young, was not politically active and was unknown to the authorities. ODM concluded that, although a minor, the complainant could be sent back to Côte d'Ivoire, considering the fact that since his father's death he had been able to take care of himself, had arranged for travel to Switzerland, spoke several languages and was apparently independent and mature for his age.

2.5 On 16 June 2008 the complainant's appeal was rejected by the Federal Administrative Tribunal, which agreed with the assessment made by ODM. Furthermore, the Tribunal noted that the complainant could name administrative units only around Agou, a town that he claimed to have left at the age of 2, but was unable to name any near Para, where he had supposedly spent most of his life. It thus concluded that the complainant had apparently not lived in the south-west of the country. It added that Côte d'Ivoire was not generally in a situation of war, civil war or generalized violence throughout its territory, and consequently observed that the complainant could be sent back to Abidjan.

### **The complaint**

3. The complainant believes that he will be tortured or subjected to inhuman or degrading treatment by Ivorian soldiers, Liberian rebels or the inhabitants of Para, in violation of article 3 of the Convention.

### **State party's observations on admissibility and on the merits**

4.1 On 29 January 2009, the State party submitted its observations on the merits. It maintains that the complainant does not provide any new evidence calling into question the decisions made by the domestic bodies.

4.2 The State party maintains that Côte d'Ivoire is not in a situation of generalized violence throughout its territory and that the crisis that separated the country into two regions between 2002 and 2007 was resolved by means of a peace agreement signed in March 2007. The State party refers to the observations made by the Federal Administrative Tribunal on 16 June 2008, in which it concludes that, taking into account the positive changes that have taken place in Côte d'Ivoire, and in spite of the fact that the complainant reportedly claims that he has not lived in Abidjan, the file does not contain any elements indicating that the complainant's return would actually put him in danger or that he has no family members in Abidjan who can help him upon his return.

4.3 The State party also maintains that the complainant did not at any point during the proceedings claim to have been tortured or maltreated in the past.<sup>a</sup> It adds that any persecution to which the complainant may have been subjected was the work of foreign third parties, and the Ivorian authorities could not be held responsible for the acts of such parties. As the Liberian rebels have not been active in Côte d'Ivoire since 2003, the State party asserts that future persecution of the complainant is unlikely.

4.4 With regard to the new evidence submitted to the Committee by the complainant, the State party asserts that these documents were not submitted during the proceedings

before the domestic bodies, even though they are dated 2003 and 2004. Moreover, it adds that they contain clear contradictions of the facts as submitted by the complainant, as well as spelling errors. The certificate of displacement issued by the Red Cross is dated 11 October 2003 and the order to leave the village of Para, issued by the village chief, is dated 24 December 2004; however, the complainant reportedly maintained that he was held by Liberian rebels for about a year and a half following his abduction at the beginning of 2003, which is to say until February or March 2005. The State party recalls that, according to its general comment No. 1, considerable weight is to be given by the Committee to the conclusions of the organs of the State party.<sup>b</sup> It emphasizes that the domestic bodies concluded that there were no substantial grounds for believing the complainant would be at risk of torture, and that the complainant did not address the reasons that led the authorities of the State party to deny the existence of a genuine and serious risk of torture.

4.5 Furthermore, the State party asserts that the complainant has never claimed to have been politically active.<sup>c</sup> It also asserts that the complainant was unable to provide precise and detailed information proving his allegations.<sup>d</sup> The domestic bodies held that it was incomprehensible that villagers who were present when the complainant was abducted should, upon his return, have rejected him as a traitor and reported him to the soldiers. The State party adds that the army had no reason to persecute the complainant, an unassuming young man who is not politically active. The State party emphasizes, moreover, that the complainant has not managed to present a plausible case that he has lived in the region and, instead, has mentioned the names of villages located on the border with Ghana. Lastly, the State party maintains that, even if the allegations of the complainant were credible, according to the Committee's consistent jurisprudence, article 3 of the Convention offers no protection to a complainant who alleges a fear of being arrested on his or her return.

#### **Comments by the complainant on the State party's observations**

5. On 5 April 2009, the complainant reiterated his account of the facts as submitted, adding that the western region of Côte d'Ivoire is still unstable owing to frequent incidents involving Liberian rebels who cross the border illegally to commit abuses. He emphasizes that he has been seriously traumatized by the killing of his father, which he says explains the discrepancies and contradictions in his account. He adds that the villagers consider him to be a foreign rebel and that he would be persecuted not only by third parties, but also by Ivorian government officials. He maintains that he has substantiated his claims with documents from his country and that the State party has assessed them in a subjective manner.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

6. Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. The Committee notes furthermore that domestic remedies have been exhausted and that the State party does not contest the admissibility. Accordingly, the Committee considers the complaint admissible and proceeds to its consideration of the merits.

##### *Consideration of the merits*

7.1 The issue before the Committee is whether the removal of the complainant to Côte d'Ivoire would violate the State party's obligation under article 3 of the Convention not to

expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, in accordance with article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of this assessment, however, is to determine whether the individuals concerned would personally risk torture in the country to which they would be returned. It follows that the existence in a country of a consistent pattern of gross, flagrant or mass violations of human rights does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture on his or her return to that country. Additional grounds must be adduced to show that the complainant would be personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person may not be subjected to torture in his or her specific situation.

7.3 The Committee recalls its general comment No. 1 (1996) on article 3, as well as its jurisprudence, according to which it is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he or she to be expelled, returned or extradited, and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. The risk does not have to meet the test of being highly probable, but the complainant must establish that the grounds for believing there is such a danger are substantial and that such danger is personal and present.<sup>e</sup>

7.4 In the present case, the complainant asserts that he runs the risk of being tortured by Liberian rebels in Côte d'Ivoire, by villagers in Para and by the authorities who may be informed of his case. The Committee notes that, according to the State party, the complainant's account is improbable, that he has not claimed to have been politically active, nor to have been subjected to torture, and that it is unlikely that he will be persecuted by the authorities. The Committee observes that, since the peace agreement in Côte d'Ivoire, there has been no generalized violence in the country, nor are there consistent, gross, flagrant or mass violations of human rights. It observes moreover that the complainant's allegations are merely theories and that the risk posed by Liberian rebels and by the villagers, apart from being unlikely, cannot be attributed to the Ivorian authorities. With regard to the risk of torture by the authorities, the Committee notes the absence of objective evidence pointing to the existence of such risk other than the complainant's own account. It also notes that the complainant has at no time sought the protection of the Ivorian authorities.

7.5 The Committee considers that, based on all the information submitted, the complainant has not provided sufficient evidence to allow it to consider that his return to Côte d'Ivoire would put him at a real, present and personal risk of being subjected to torture.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainant to Côte d'Ivoire would not constitute a breach of article 3 of the Convention.

#### Notes

<sup>a</sup> On pertinent information, see general comment No. 1 on the implementation of article 3 of the Convention in the context of article 22, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44, (A/53/44)*, annex IX, para. 8 (a) and (b).

<sup>b</sup> See note 1, para. 9 (a).

<sup>c</sup> Ibid., para. 8 (e); see communication No. 34/1995, *Aemei v. Switzerland*, Views adopted on 9 May 1997.

<sup>d</sup> General comment No. 1 (see note 1), para. 8 (g).

<sup>e</sup> General comment No. 1 (see note 1), paras. 6–7.

**Communication No. 355/2008: C.M. v. Switzerland**

*Submitted by:* C.M.  
*Alleged victim:* The complainant  
*State party:* Switzerland  
*Date of complaint:* 28 July 2008 (initial submission)

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

*Meeting on 14 May 2010,*

*Having concluded* its consideration of communication No. 355/2008, submitted by C.M. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

*Adopts* the following:

**Decision under article 22, paragraph 7, of the Convention against Torture**

1.1 The complainant, C.M., born on 12 October 1968 in the Congo, submitted his complaint on 28 July 2008. He is a Congolese national residing in Switzerland and is subject to an order of deportation to his country of origin. He alleges that his enforced return to the Congo would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is not represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention in a note verbale dated 25 September 2008, which also included a request for interim measures.

**The facts as submitted by the complainant**

2.1 The complainant was recruited by the Congolese army in 1989 and became a sergeant in the armed airborne unit of the regular Congolese army. After having fought for former President Pascal Lissouba in 1997, he resumed service in the army in October of that same year under Denis Sassou Nguessou's new Administration. Coming from the north of the Congo, he was suspected by his fellow unit members of supporting the rebels who were backing former President Lissouba. At the end of 1999, the rebels attacked Brazzaville, and the military from the north of the country were suspected of having instigated the assault. Some were arrested. The complainant found out that he had been on a wanted notice issued by the authorities since 1 April 2000. On 6 April 2000, Cobra militias close to the Government searched the complainant's family home and killed his mother. The complainant was on duty at army headquarters on that day. Having been told of the events by a neighbour, the complainant hid at a friend's house in Ouenze. Afraid of being killed by the Cobras, he left the Congo for Kinshasa on 9 April 2000. From there, he went on to Brussels, then Milan and finally Switzerland, where he requested asylum on 17 April 2000.



2.2 The government police allegedly took the complainant's two brothers hostage and, on 3 March 2002, killed them. After that event, the complainant was actively sought by the country's security services. The complainant did not mention these facts during the initial asylum application procedure, as he was not certain of them. He later sent the Committee the death certificates of his brothers, as well as the wanted notice, dated 10 May 2002, in which he is named.

2.3 The Swiss Federal Office for Refugees, which is now known as the Federal Office for Migration, turned down the complainant's asylum application on 25 October 2002, on the grounds that his allegations regarding certain crucial points were ill-reasoned and were without sufficient foundation. The Office noted, in particular, that the complainant had served in the army for two and one half years without the slightest problem. On 16 February 2004, the Swiss Asylum Review Board, now the Federal Administrative Tribunal, rejected the complainant's appeal. The application for review of that decision was turned down by the Board on 23 August 2004 because the necessary advance payment had not been made. A new application for review was submitted on 1 June 2008, but was rejected on 11 July 2008 on the same grounds as before, i.e., failure to pay the necessary fees in advance. The Federal Administrative Tribunal also noted that the application for review appeared in any case bound to fail, so that it had no reason to waive the required advance payment, equivalent to the estimated cost of the procedure. As the complainant was unable to make the advance payment, he was denied the opportunity to have his application reviewed by the Tribunal.

### **The complaint**

3.1 The complainant alleges that his deportation to the Congo would place him at serious risk of torture, in violation of article 3 of the Convention. He bases this claim on the fact that his mother was killed in his stead in 2000, that he deserted from the army by leaving the country — which is punishable by death — and that his two brothers were subsequently killed in 2003. The complainant maintains that the amnesty signed in 2003<sup>a</sup> is purely notional and does not protect him from persecution by the pro-government Cobra militias. In addition, he has been a wanted man since his two brothers were killed in 2003.

3.2 The complainant maintains that the State party simply rejected the evidence he submitted in support of his application without checking the authenticity of the documents concerned. None of the documents that he provided was submitted for expert authentication.

### **State party's observations on admissibility and on the merits**

4.1 On 21 November 2008, the State party challenged the admissibility of the complaint on the grounds that domestic remedies had not been exhausted. On 1 June 2008, the complainant submitted an application for reconsideration to the Federal Office for Migration, which passed it on to the Federal Administrative Tribunal, the competent body in the matter. In its interlocutory decision of 19 June 2008, the Tribunal found that there were no grounds for waiving the fees to be paid in advance in order to cover the estimated cost of the procedure. As the complainant did not pay the fees required in order for the procedure to go ahead, the Tribunal declared the appeal inadmissible in its judgement of 11 July 2008. According to the State party, the investigating judge (a single judge) takes the interlocutory decision regarding the chances of success of the reconsideration and the payment of fees in advance, and these decisions do not predetermine the judgement on the merits. Once the fees are paid, the judgement on the merits can be handed down by the single judge provided that a second judge concurs.<sup>b</sup> Failing agreement, the judgement on the merits is handed down by a panel of three judges.<sup>c</sup> The State party believes that nothing in the case file indicates that the requirement that the fee be paid in advance prevented the

complainant from exhausting this remedy. The State party therefore argues that domestic remedies have not been exhausted.

4.2 On 25 March 2009, the State party submitted its observations on the merits. It notes that, on 21 November 2008, the Swiss Government challenged the admissibility of the complaint. Consequently, its observations on the merits have been formulated for consideration solely in the event that the Committee does not come to the same conclusion as the Swiss Government on the complaint's admissibility.

4.3 After reviewing the facts of the case, the State party asserts that the complainant, in the complaint he submitted to the Committee, did not produce any new evidence or put forward any facts. The complainant is essentially reiterating on the same arguments that he brought before the Tribunal at the time of his second application for review in 2008 and on the documents that he appended to his application, namely two death certificates, two photos of deceased persons and a wanted notice in his name. The State party points out that this evidence was examined by the Swiss asylum authorities. The only new documents accompanying the complainant's letter to the Committee, dated 16 March 2009, are copies of a notice of court proceedings and a wanted notice dating from 2007, neither of which affects the issue in any way.

4.4 In the light of article 3 of the Convention, the State party notes the Committee's jurisprudence and its general comment No. 1 on implementation of article 3 of the convention in the context of article 22,<sup>d</sup> paragraphs 6 ff., which require the complainant to prove that he is in personal, present and substantial danger of being subjected to torture if deported to his country of origin. The State party argues that it follows from this provision that the alleged facts must go beyond mere suspicion and that they should demonstrate a serious risk. The State party observes that the Congo is not in a situation of war or civil war and is not experiencing widespread violence of a sort that would, in itself, constitute sufficient grounds to conclude that the complainant would be in danger of torture if returned.

4.5 With regard to the concern raised by the complainant that he risks persecution if deported to the Congo, the State party recalls that peace agreements were signed in December 1999 between Sassou Nguessou's new Administration and the opposition militias. A general amnesty law was also promulgated that same month. This law applied to demobilized militiamen who had surrendered their weapons as of the date of its promulgation, i.e., 20 December 1999, as well as to career soldiers. Additionally, on 28 August 2003, another amnesty law covering the period from 15 January 2000 until the law's promulgation was adopted for Ninja militia<sup>e</sup> who had clashed with government troops. According to the complainant, the amnesty for Ninja militia was not applied in practice. In that respect, the State party refers to several independent sources, such as reports from Amnesty International, Freedom House, Human Rights Watch and the United States Department of State, which it says make no mention of any prosecution brought against former members of these militias. The State party also mentions members of the regime of former President Lissouba, who had apparently returned to the Congo without any trouble. It points out that the complainant was a simple sergeant in the regular army and that he served for two years without the slightest problem. These elements suggest that the complainant was not demonstrably at risk of persecution.

4.6 With regard to subparagraphs 8 (b) and (c) of general comment No. 1, the State party notes that, firstly, the complainant has not alleged that he was tortured in his country of origin prior to his departure and that, secondly, he has never engaged in political activity in the Congo. These two risk factors that might arise in the event of return cannot therefore be taken into account.

4.7 In relation to factual inconsistencies in the complainant's claims, the State party refers the Committee to the rulings issued by the domestic courts, which gave ample reasons for their decisions as part of a detailed examination of the case. With regard to the problems that the complainant allegedly experienced after joining the regular army, namely tension with other military personnel, the State party considers his account to be incoherent and without foundation. Moreover, the complainant does not pursue that argument in his complaint to the Committee. The complainant also alleges that two of his brothers were taken hostage and killed by the police because of his non-appearance before the authorities. The Federal Administrative Tribunal maintains that the two death certificates appear to have been issued on request and might even be forgeries. Indeed, the preprinted sheet appears to contain errors of form, and the State party is doubtful that the information given on it is true. Furthermore, the occupation of the author's brothers as it appears on the death certificates, namely "pupil", appear inconsistent with their ages. The State party notes that the death certificates do not give the cause of death or explain how the alleged brothers of the complainant died. It therefore considers that these certificates have no evidential value. The same applies to the wanted notice dated 10 May 2002. The State party believes the notice to be a crude forgery, as the stamp and signature have been copied using a colour photocopier, while the personal details of the party concerned have been added using a typewriter.

4.8 The copies of a notice of court proceedings dated 1 February 2007 and a wanted notice dated 16 March 2007, which were submitted to the Committee on 16 March 2009, were not submitted to the Swiss authorities. The State party believes that, at first sight, these documents exhibit similar flaws to those of the wanted notice of 10 May 2002. The State party adds that they do not state, or at least not explicitly, the reasons why the complainant might be wanted. The State emphasizes that, as a general rule, wanted notices are not shown to the persons concerned. This is all the more so in the case of notices of court proceedings, which are documents circulated between authorities only. The complainant does not explain how he was able to obtain these documents. The State party points out how easy it is to obtain forgeries in the Congo, so that their evidential value is therefore very limited. It also contends that it is impossible to identify the bodies shown in the photos as those of the complainant's two brothers.

4.9 In his application for review of 1 June 2008, the complainant alleges for the first time that he had taken part in secret operations for the current regime. He was therefore allegedly party to State secrets, which would mean that his illegal exit from the country could place him in danger. The State party believes these allegations to be unsupported by evidence. The complainant's alleged involvement in such secret operations would seem to contradict the allegation that he had been suspected of supporting the rebels.

4.10 The State party points out that the 2003 Amnesty Act invalidates the complainant's fear argument. The complainant has not shown that his situation would be any different from that of other persons covered by the amnesty. The State party adds that, even if the complainant's account was credible, he has not established that he could still encounter problems today. With regard to the complainant's alleged fear of being prosecuted because he had left the Congo illegally, the State party recalls that the Committee's jurisprudence is clear on this point: the fear of prosecution and imprisonment is not sufficient grounds for concluding that a person would be subjected to torture. The State party adds that military service is voluntary in the Congo and that it has not even been shown that the complainant would risk imprisonment on his return to the Congo. For all the above-mentioned reasons, the State party considers that nothing in the case file establishes that the complainant would be placed in real and personal danger upon his return to his country of origin.

**Complainant's comments on the State party's submission**

5.1 On 26 January 2009, the complainant cited article 65, paragraph 1, of the Swiss Administrative Procedure Act, according to which the appeal authority may, once an appeal has been lodged, waive the required fees for any indigent party on request, provided that his or her case does not seem bound to fail. The complainant stresses that his financial hardship was known to the authorities, since he was permitted neither to work nor to receive social assistance. In his application to the Federal Administrative Tribunal, the complainant implicitly requested that the advance fees be waived or that he be granted partial legal aid. In its interlocutory decision of 19 June 2008, the Tribunal judged that all the evidence that the complainant submitted to it in support of his application for reconsideration was bound to fail. The complainant adds that, under the established case law of the Asylum Review Board and the Tribunal, the payment in advance of the cost of the review procedure is a precondition for the consideration of applications.<sup>f</sup> Neither payment in instalments, nor partial payment, nor reduced fees are acceptable. Thus, according to the complainant, failing any major new evidence, he was unable to proceed with his application for reconsideration of the relevant interlocutory decision. As the complainant was unable to produce the sum of 1,200 Swiss francs in time, the Tribunal declared his application inadmissible. The decision to deport him has been final with the effect of *res judicata* since 11 July 2008, so that the complainant has no further access to domestic remedies. The fact that the final decision was handed down by a single judge has no bearing on the question as to whether domestic remedies have been exhausted.

5.2 On 26 March 2009, the complainant replied to the State party's comments on the merits. He recalls that his fear of returning to the Congo is based partly on the risk of persecution that he runs following the deaths of his mother and his brothers. Another of his fears is related to his illegal exit from the territory while serving in the army, after performing unofficial duties under Sassou Nguessou's regime. The complainant explains that he acquired a copy of the wanted notice and of the notice of court proceedings through persons close to him, who are currently working in the General Staff Headquarters and the Office of the Public Prosecutor. The complainant considers that in any case the documents are official since they were issued by the authorities.

5.3 Regarding the authenticity of the documents that he has submitted, the complainant counters that such details as the form, the colour of the lettering and the quality of the paper should not cast doubts on the validity of the documents insofar as they were issued by a country in different circumstances and with different resources from those of the State party. With regard to the death certificates for his brothers, the complainant explains that they are authentic, as each carries a registration number which allows authentication. The complainant invites the State party, if it is unsure of the authenticity of the evidence provided, to obtain a copy of the official documents issued generally by the Congolese authorities. This would enable the State party to authenticate the evidence provided with the application.

5.4 In relation to the systematic violation of human rights in the Congo, the complainant mentions a press article which reports that, in 1999, despite the peace agreements, several persons from the Democratic Republic of the Congo were reported missing upon their return to the Congo. The complainant also mentions a journalist who was burnt alive when he returned to the country. Consequently, he believes that the peace agreements signed in 2003 are not sufficient grounds to justify the argument that there is no risk of torture in the case of deportation. The complainant adds that there are still isolated cases of individuals being tortured unofficially. He maintains that his involvement in secret missions can of itself lead to prosecution in his country of origin. As he has divulged information on his secret missions to the Government of Switzerland in the course of his asylum application, the complainant could be regarded as having betrayed the Congolese nation.

5.5 Lastly, the complainant runs the additional risk of being persecuted if he returns to his country because of the activities of his brother, B.M., who is currently living in exile. All the members of the M. family who have remained in the Congo risk persecution by State agents seeking information on the complainant's older brother.

#### **Additional comments by the complainant**

6.1 On 31 August 2009, the complainant sent the Committee a letter written by the Cantonal Migrations Office of Zurich, notifying him of the possibility that he might be eligible for a humanitarian permit in Switzerland. For the purposes of the procedure, the Office needed details of the procedure currently being conducted before the Committee. The letter added that the application for a humanitarian permit in Switzerland had to be suspended until the international procedure before the Committee had been completed.

6.2 On 1 November 2009, the Advisory Bureau for French-speaking Africans in Switzerland submitted a request in the complainant's name to suspend the procedure before the Committee until such time as the Swiss cantonal and federal authorities issued a ruling regarding the grant of a humanitarian permit.

#### **Additional comments by the State party**

7.1 On 3 December 2009, the State party stated that the competent authorities of the Canton of Zurich could not decide on applications for permits in hardship cases (humanitarian permits) while another procedure was under way, including one before the Committee. Thus the suspension of the procedure is still not sufficient for the cantonal and federal authorities to take a decision since the international procedure has not been halted or has not led to a decision on admissibility or on the merits. The State party points out that the grant of a hardship permit is subject to the approval of the federal authorities, that it is an extraordinary, non-mandatory and humanitarian remedy, and is subject to criteria which are entirely dissociated from the conditions stipulated in article 3 of the Convention. So long as there is a procedure still open whereby the complainant could obtain a more favourable status, the cantonal authorities of the State party cannot take a decision on the grant of the humanitarian permit.

#### **Further additional comments by the author**

8.1 By letter of 9 January 2010, after being notified of the State party's position, the complainant asked the Committee to cancel the suspension and to take a decision on the complaint.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

9.1 Before considering any claim contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. As required under article 22, paragraph 5 (a), of the Convention, the Committee has ascertained that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.2 The Committee takes note that the State party challenges the admissibility of the complaint for failure to exhaust domestic remedies. The State party asserts that if the complainant had paid the fee for the procedure, the judge could have ruled on his application for review but that, in the absence of such a payment, the application must be considered inadmissible. The Committee notes the complainant's argument that he is experiencing financial hardship because he is not permitted to work or receive social

assistance and that he was consequently unable to pay the fee for the review procedure. The Committee takes note of the fact that the complainant was not even permitted to make a partial payment in advance. The Committee considers that, given the complainant's personal circumstances, it was unfair to oblige him to pay the sum of 1,200 Swiss francs in order for his last application for review to be admissible. This view is based on the fact that the complainant was not authorized to work within the State party's territory and that he appears to have been denied social assistance. It therefore seems unreasonable to deny the complainant the possibility of applying for a review of his case on financial grounds considering his difficult financial circumstances. The Committee therefore considers that the argument that the complaint is inadmissible for failure to exhaust domestic remedies does not stand in the present case. The complaint is therefore admissible under article 22, paragraph 5 (b), of the Convention.

*Consideration of the merits*

10.1 The Committee must determine whether the deportation of the complainant to the Republic of the Congo would violate the State party's obligation under article 3 of the Convention not to expel or return ("refouler") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

10.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, in accordance with article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of such an assessment, however, is to determine whether the individual concerned would personally be at risk of torture in the country to which he or she would be returned. It follows that the existence in a country of a consistent pattern of gross, flagrant or mass violations of human rights does not in itself constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture on his or her return to that country. Additional grounds must be adduced to show that the individual concerned would be personally at risk. By the same token, the absence of a consistent pattern of flagrant violations of human rights does not mean that a particular person might not be subjected to torture.

10.3 The Committee recalls its general comment No. 1 on the implementation of article 3 in the context of article 22, in which it states that it is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if he or she were returned to the country concerned. While the risk does not have to meet the test of being highly probable, the danger must be personal and present. In this regard, in previous decisions the Committee has determined that the risk of torture must be "foreseeable, real and personal".<sup>8</sup>

10.4 As to the burden of proof, the Committee also recalls its general comment and its jurisprudence, which establishes that the burden is generally upon the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere presumption or suspicion.

10.5 In assessing the risk of torture in the present case, the Committee takes note of the complainant's statement that he resumed service in the army in October 1997 under the new Administration after having supported former President Lissouba. It also notes that the complainant was allegedly suspected by his colleagues of supporting the rebels and that, subsequent to an attack by the Ninja militia on Brazzaville at the end of 1999, he found out that he had been wanted by the authorities since 1 April 2000. The Committee notes the complainant's claim that his mother was murdered and that he consequently decided to leave the country. Lastly, it notes that the complainant's two brothers were supposedly

killed on 3 March 2002 and that, since 2007, the complainant has reportedly been the subject of an arrest warrant and a notice of court proceedings in the Congo.

10.6 The Committee further notes the State party's argument that, with the exception of an arrest warrant and a notice of court proceedings dating from 2007, the complainant has not submitted any new evidence to the Committee and that all the other documents have been assessed in depth by the domestic courts. The Committee notes that the State party believes that the peace agreements and the amnesty laws adopted by the Congo have given rise to a new situation, which nullifies any fears, whether well founded or not, that the complainant might have. The State party maintains that no independent sources have reported the initiation of any court proceedings against former rebels since the laws were adopted. The Committee notes the State party's argument that the complainant did not apparently experience any problems during the two years following his readmission into army ranks under the Nguessou Administration, nor has he proved that his situation differs from that of other persons covered by the amnesty law. The Committee notes the State party's argument that all the documents submitted by the complainant could have been drawn up in response to a request and could be forgeries.

10.7 The Committee notes the author's argument that, despite the peace agreements, several individuals have been reported missing following their return from exile. It also notes the complainant's belief that the agreements signed in 2003 are not sufficient grounds for maintaining that there is no risk of torture if he is deported, and that isolated cases of torture still occur. Lastly, the Committee notes that the complainant considers that his divulgence of State secrets during the asylum application procedure has exposed him to an imminent danger of torture if he returns.

10.8 Having taken into account the arguments put forward by the parties, the Committee finds that the complainant has not shown evidence of a real, present and foreseeable risk. The Committee considers that the State party's opinion that the complainant's account is inconsistent, in particular with regard to the successive versions that he gives of his involvement in secret missions for the Government of the Congo, is well founded. It is indeed hard to believe that if the complainant was involved in such operations he would at the same time have been persecuted by pro-government militia. The Committee notes that the burden is on the complainant to prove that his fears are real and personal. The Committee further recalls its general comment and its jurisprudence,<sup>h</sup> whereby the burden is upon the complainant to present an arguable case. In its general comment, the Committee also emphasized that it would give considerable weight to findings of fact made by organs of the State party, but that it retains the power of free assessment of the facts and evidence of the circumstances of each case.<sup>i</sup> It appears in the present case that the complainant has been unable to put forward any counter-arguments to the fact that the peace agreements and the amnesty laws adopted in the Congo brought about a new situation, which would nullify any fears, whether well founded or not, that the complainant might have; that no judicial proceedings against former rebels have been reported by independent sources since the laws were adopted; that the complainant apparently met with no difficulties during the two years that followed his readmission in the armed forces of the Nguessou Government; and lastly that he has apparently not shown that his own situation was any different from that of other persons covered by the amnesty law. The Committee notes finally that the documents submitted by the complainant were examined in detail by the domestic courts of the State party,<sup>j</sup> which, in the light of their examination, established that there was room for serious doubt as to their authenticity.

10.9 The Committee further recalls that the risk of arrest does not in itself constitute a violation of article 3 of the Convention.<sup>k</sup> In this respect, the complainant's allegations that he risks arrest for desertion would not of themselves entail a violation, since he has been

unable to show that he is in personal danger of being subjected to torture or persecuted if he is deported to the Congo.

10.10 Given all the information that has been transmitted to it, the Committee finds that the complainant has not given sufficient evidence to demonstrate that he is at personal, real and foreseeable risk of being subjected to torture if he is deported to his country of origin.

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainant to the Congo would not constitute a breach of article 3 of the Convention.

#### Notes

<sup>a</sup> The Congolese National Assembly passed an amnesty law on 28 August 2003 benefiting the Ninja militias that had clashed with the government troops of the Sassou Nguessou Administration. The law supplements a previous general amnesty law adopted in December 1999, which applied to former militia fighters who had demobilized and surrendered their weapons; see the State party's observations, para. 4.5 below.

<sup>b</sup> Art. 111 (E) of the Asylum Act of 26 June 1998.

<sup>c</sup> Art. 21, para. 1, of the Federal Administrative Tribunal Act of 17 June 2005, in conjunction with article 105 of the Asylum Act.

<sup>d</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44, (A/53/44), annex IX.*

<sup>e</sup> The Ninja militia, from the north of the Congo, fought against Sassou Nguessou's Administration.

<sup>f</sup> Art. 63, para. 4, of the Swiss Administrative Procedure Act.

<sup>g</sup> Communications No. 203/2002, *A.R. v. The Netherlands*, Views adopted on 21 November 2003, para. 7.3; No. 285/2006, *A.A. et al. v. Switzerland*, Views adopted on 10 November 2008, para. 7.6.

<sup>h</sup> Communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 23 November 2005, para. 7.5; No. 293/2006, *M.J.A.M.O. v. Canada*, decision adopted on 9 May 2008, para. 10.4.

<sup>i</sup> Communication No. 195/2002, *Brada v. France*, decision adopted on 17 May 2005, para. 13.2.

<sup>j</sup> See, in this regard, *M.J.A.M.O. v. Canada* (see note 8 above), para. 10.5.

<sup>k</sup> Communications No. 57/1996, *P.Q.L. v. Canada*, decision adopted on 17 November 1997, para. 10.5; No. 65/1997, *I.A.O. v. Sweden*, decision adopted on 6 May 1998, para 14.5.



## Communication No. 356/2008: *N.S. v. Switzerland*

*Submitted by:* N.S. (represented by counsel)  
*Alleged victim:* The complainant  
*State party:* Switzerland  
*Date of complaint:* 19 September 2008 (initial submission)

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

*Meeting on 6 May 2010,*

*Having concluded* its consideration of complaint No. 356/2008, submitted to the Committee against Torture by N.S. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

*Adopts the following:*

### **Decision under article 22, paragraph 7, of the Convention against Torture**

1.1 The complainant is N.S., a Turkish national of Kurdish origin born in 1975. He sought political asylum in Switzerland, his application was rejected, and he risks deportation to Turkey. He claims that if Switzerland proceeds with his forcible return, it would breach its obligations under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention" hereafter). He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, while transmitting the communication to the State party, on 29 September 2009, the Committee requested it, under rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant to Turkey while his communication was under consideration. On 3 October 2008, the State party informed the Committee that measures have been taken in order to comply with the Committee's request for interim measures.

### **The facts as presented by the complainant**

2.1 On 4 October 1993, the complainant, his cousin, and a friend, witnessed an attack on the village of Daltepe, near Siirt, in Turkey. From a hill near the village, they saw soldiers in uniform approaching the village in the afternoon. According to the complainant, the soldiers changed their uniforms to clothes used normally by the Kurdistan Workers' Party (PKK) groups. When it became dark, they heard shooting and screaming from the village. According to the media and NGO reports, between 24 and 33 people were killed in this action. In contrast to what the complainant and his two friends had seen, media and some NGOs presented the attack as being committed by a rebel group.

2.2 The complainant and his friends told people in the neighbourhood what they had seen. The authorities reacted by arresting the complainant and detaining him for 40 days. According to the complainant, he was tortured by security services during his detention. The complainant explains that the officials dropped melting plastic on his legs and arms;

the scars are still visible.<sup>a</sup> He was also forced to stand on his tiptoes and to hold his chin through a hole. While in this position, he was hit with a metal bar on the head and he fainted as a result. Finally, the complainant claims that he had been blindfolded and sexually abused by a soldier.

2.3 After his release, the complainant was under the control of the security forces. One of the other two witnesses disappeared while he was doing his military service; no information about his whereabouts is available. The second witness — the complainant's cousin — allegedly received a serious knock on the back of the head during his imprisonment to the point that he had mental disorders; he had spent around seven years in prison. For all these reasons, and due to his fear of being caught and tortured again, the complainant decided to hide and refused to perform his military service.

2.4 In 1994 or 1995, he moved to Istanbul, where he stayed unregistered for more than seven years without a permanent address, moving from one location to another, and working in the building sector. After his departure, in 1994/1995, his family was under surveillance by the security services and was questioned about his whereabouts. According to the complainant, the security forces assumed that he had joined the PKK. His father was allegedly tortured by authorities; he subsequently died in 1997, allegedly as a result of his injuries. For this reason, the complainant's mother and his four brothers and sisters also moved to Istanbul.

2.5 The complainant adds that in the meantime, in July 2003, his uncle (and father of the cousin who had also witnessed the 1993 attack) had died after a strange conflict with two villagers. The complainant contends that subsequent to the 1993 attack, his uncle was also under surveillance and was ill-treated by security forces' agents.<sup>b</sup>

2.6 On 9 October 2002, the complainant left Turkey. He applied for political asylum in Switzerland on 11 November 2002. His application was rejected by the Federal Office for Migration (FOM)<sup>c</sup> on 16 June 2003, as non-credible. On 18 August 2008, the Federal Court for Administrative Matters (CAM) rejected the complainant's appeal against the negative decision of the Federal Office for Migration.

2.7 The complainant points out that the Federal Court had argued, *inter alia*, that the reports of independent human rights organizations (such as Amnesty International and the Human Rights Foundation of Turkey) attributed responsibility to the PKK, contrary to the complainant's allegations. According to the complainant, however, there was no guarantee that the NGOs' information was correct, and in addition, over the years, more and more incidents involving security forces covert operations outside of the hierarchy of command<sup>d</sup> have become known.

2.8 The complainant adds that, according to the Federal Court, there were no details about the situation of his cousin and their friend or the death of his father. The Federal Court has also concluded that the complainant's uncle's death was not related to the authorities and was thus not relevant to the case. According to the complainant, he could not provide supporting information, as: (a) his friend disappeared during his military service and there was no information on his whereabouts; (b) he did not witness his father's torture, but was informed about it by his relatives; (c) he was now in a possession of a testimony of a person who was granted asylum in Switzerland in 2006, who confirmed having spent about three years in the same prison as his cousin (who had witnessed the 1993 attack) — the complainant points out, in particular, that this person recalls the bad physical and psychological condition of the complainant's cousin in prison; (d) his uncle's death was suspicious, as his uncle was initially brought to a police station, and he was transported to a hospital only later, and died during the trip.

2.9 The complainant notes further that the Federal Court has finally noted the long period between the attack of the village (1993) and the complainant's father's death (1997)

on the one hand, and the complainant's departure to Switzerland (2002) on the other hand. Lastly, the Court considered that there would be no risk for the complainant during his presumable future military service in Turkey. The complainant claims that the Swiss authorities have failed to take into account his poor education, and he explains that he was never informed on what exact grounds he was released in 1993, and whether his release was ordered by a court. He claims that he would face problems in Turkey. His torture in 1993, his sympathy to the Kurdish cause, the long life underground and his absence from the country would, according to the complainant, make him suspicious. According to the complainant, at present, torture remains widespread in Turkey, with respect to people suspected of being involved with the PKK. Moreover, in the army, he wouldn't have any protection against persecution.

2.10 According to the complainant, in general, the Swiss authorities have failed to examine the evidence in his case in its totality, and they instead have concentrated on specific elements, which were declared non-established. The complainant's torture allegations were not sufficiently addressed by the authorities, even if he had described them in a sufficiently detailed manner. Although his torture scars are still visible, nobody from either the Federal Office of Migration or the CAM examined them in person or provided comments on them.

### **The complaint**

3. The complainant claims that his forcible return to Turkey would constitute a breach by Switzerland of its obligations under article 3 of the Convention.

### **State party's observations on admissibility and merits**

4.1 The State party presented its observations on admissibility and merits by note verbale of 13 March 2009. It recalls the facts of the case and notes that, with one exception, the complainant presents to the Committee exactly the same allegations as those presented to and examined by the Swiss asylum authorities and the Federal Court for administrative matters. The new element is a letter signed by an individual who alleges that he has been kept in the same prison with one of the complainant's cousins.

4.2 The State party affirms that its asylum authorities' decisions are correct and legally grounded. The Federal Office of Migration has found the complainant's allegations as lacking in credibility and contradictory. It had noted that the complainant never documented the judicial proceedings under which he allegedly had been released, in 1993, even though the Swiss authorities had asked him, on several occasions, to provide evidence in this respect. Another element that weakened the complainant's credibility was his behaviour which did not correspond to that which one could reasonably expect from an individual who was sought by the police in Istanbul, Siirt, Ankara or Izmir. The FOM found it surprising that the complainant went to Istanbul to live there secretly for seven years, and his explanations that he needed to save money there in order to flee were not convincing. The FOM also found other contradictions in the complainant's description of the facts. Thus, at his second interview, he had contended having been arrested and tortured every two to three days after his release, following the above-mentioned judicial proceedings. At the same time, however, during his first interview, the complainant contended that he had been arrested, one first time following the proceedings, and a second time, around one month later.

4.3 According to the State party, the Federal Administrative Court did not simply confirm the FOM conclusions. It noted also that several independent sources had reported about the events that the complainant allegedly had witnessed. The Court did, *inter alia*, refer to a detailed report of Amnesty International ([www.amnesty.org/en/library/info/EUR44/093/1996/en](http://www.amnesty.org/en/library/info/EUR44/093/1996/en); p. 25) attributing explicitly the

responsibility of the 1993 attack to the PKK, contradicting the complainant's allegations. The Court emphasized that the complainant failed to adduce any proof with respect to his judicial proceedings in relation to his release.

4.4 The CAM also assessed the rest of the complainant's allegations. On the complainant's fear to serve in the army, the Court observed that the problems experienced by other acquaintances of the complainant were irrelevant to the present case. As to hypothetical sanctions for desertion, the Court noted that the complainant had never claimed having received any convocation to enrol in the army.

4.5 According to the CAM, neither the death of his father nor of his uncle indicates that there is a risk of persecution for the complainant. His father died two years after the complainant's arrival in Istanbul, and his uncle died as a consequence of the injuries received during a virulent argument with two individuals who were subsequently arrested. The inexistence of a risk of persecution is corroborated by other elements: the death of the complainant's father took place four years after the 1993 attack; the complainant did not encounter any problems with the authorities during his stay in Istanbul; and his mother, sisters, and brothers are officially registered in Istanbul, where they settled after the death of his father.

4.6 The State party refers to the Committee's general comment No. 1 (1997)<sup>e</sup> and observes that article 3 of the Convention prohibits States parties from extraditing an individual to a State if there are serious grounds to believe that the individual would be at risk of torture. It also recalls that the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not constitute sufficient reason for concluding that a particular individual is likely to be subjected to torture on return to his or her country, and that additional grounds must exist before the likelihood of torture can be deemed to be, "foreseeable, real and personal", for the purposes of article 3, paragraph 1; the risk in question must also be serious.

4.7 The State party recalls that paragraph 8 of the general comment requires, *inter alia*, to take into account the following information when assessing the risk of expelling someone: information on the changes in the internal situation in the receiving State; allegations on the complainant's torture in the recent past and information from independent sources in this regard; the complainant's political activities in and outside his/her country of origin; existence of evidence on the credibility of the complainant; and existence of relevant factual inconsistencies in the complainant's claim.

4.8 The State party recalls that in order to assess whether there are serious grounds to believe that a complainant would be at risk of torture in case of forcible removal, the Committee must take into account all pertinent considerations, in particular proof on the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the receiving State. The complainant, however, has to face a personal risk of being subjected to torture. Therefore, the sole existence of a consistent pattern of gross, flagrant or mass human rights violations does not constitute sufficient ground to believe that an individual would be subjected to torture in the receiving State. The State party recalls that additional grounds must exist.

4.9 The State party recalls that the Committee has already dealt with a number of cases relating to forcible return to Turkey. It notes that the Committee had concluded that the human rights situation there was most problematic, in particular in relation to PKK militants who have often been tortured by the authorities, and this practice was not limited to a particular region. When the Committee had concluded in such communications that complainants would be at a personal and real risk of being tortured, it was established that the complainants had been engaged politically in favour of the PKK, that they had been detained and tortured prior to their departure from Turkey, and that their allegations were

confirmed by independent sources, such as medical certificates. The State party further notes that the Committee had also concluded, in two cases against Switzerland, that the complainants' removal to Turkey would not expose the latter to any real risk of torture.<sup>f</sup>

4.10 The State party explains that both the CAM and the FOM had considered that the complainant's allegations in respect to the attack of the Dartepe Köyü village, and the harassments, ill-treatments, and alleged arrests and detentions lacked credibility. In addition, the complainant was never prosecuted or encountered any problems with the authorities.

4.11 The State party further notes the complainant's contention that his marks of torture confirm the veracity of his allegations. According to the State party, however, these scars do not by themselves prove that he had been subjected to torture. The CAM had qualified as not credible the complainant's allegations. Such marks could have had other origins, for example a car accident or a work accident. The State party notes also that the complainant had not provided any medical evidence in relation to the potential origins of the abuses to which he was allegedly subjected.

4.12 According to the State party, in his communication, the complainant tries to establish that the independent sources used by the CAM in assessing the circumstances of the 1993 attack were wrong. However, the complainant had not provided until now the People's Democracy Party (HADEP) report which, according to him, confirms his version of the attack. In addition, no independent sources confirming the complainant's version exist. The newly presented allegation that two Turkish lawyers had recently learned that no information in respect to the Daltepe Köyü attack existed in the archives of the two human rights organizations is not documented in any way.

4.13 The 1993 report of the Turkish human rights foundation indicated that during the attack in question, 25 houses belonging to the village guards had been destroyed and nine guards were killed. Thus, it cannot be deduced that the army was responsible for the attack. The State party explains that it cannot understand how secret entities in Turkey and/or their activities could have influenced the conclusions made by experienced, independent, and impartial human rights organizations. In addition, according to the State party, the complainant has failed to explain how such entities were implicated in the attack of the Daltepe Köyü village and in his alleged persecution.

4.14 The complainant had affirmed in his appeal to the CAM that his uncle was arrested by the police when he sought information in support of the complainant's asylum proceedings. According to the complainant, his uncle had been ill-treated during his detention and he died as a result of his injuries. At the same time, in the present communication, the complainant has affirmed that his uncle had died after a strange incident with two villagers in July 2003. This new version is an apparent contradiction with the one presented to the CAM.

4.15 The State party fully endorses the conclusions of the FOM and the CAM on the lack of credibility of the complainant's allegations. According to the State party, the complainant's declaration do not indicate existence of serious grounds to believe, in accordance with article 3 of the Convention, that the complainant would be tortured in case of his forcible removal. The complainant's inconsistent statements, as mentioned above, relate to essential points of the present communication.

4.16 The State party therefore concludes that nothing indicates that serious grounds exist to fear that the complainant personally would be exposed to torture in Turkey. His allegations do not establish that his return would expose him to a foreseeable, real, and personal risk of being tortured, and his forcible removal would not be in breach of the State party's obligations under the Convention.

**Complainant's comments on the State party's observations**

5.1 The complainant submitted his comments on 20 May 2009. He contends, first, that his imprisonment was "extra-legal". The Turkish authorities had not "examined his rights" and there had been no legal proceedings whatsoever, and thus, no judicial documents exist.

5.2 According to the complainant, the fact that he had spent seven years in Istanbul prior to his departure, does not establish anything. Many refugees remain in Turkey before leaving the country and it is difficult to leave one's family and collect the money necessary to flee. The complainant alleges that persons in his circumstances live underground for years prior to their departure, and the fact that he had no problems with the authorities while hiding in Istanbul does not indicate anything. In addition, his family only officially registered itself in Istanbul subsequent to his departure.

5.3 The complainant adds that the contradictions in his initial and second interviews in Switzerland were due to the fact that the record of his first and very short interview was not sufficiently precise. Even if he had explained that he had been arrested again and tortured one month after his initial arrest, this does not mean that he had not been arrested in the meantime too. In addition, he was never asked in his first interview for the exact number of his arrests.

5.4 As far as his military service is concerned, the complainant contends that his mother had been contacted by the authorities in this regard but she had refused to receive the convocation issued to him.<sup>g</sup>

5.5 According to the complainant, contrary to the State party's affirmations, the death of his father, four years after the attack on the Daltepe Köyü village, constitutes an indication that a risk, for the complainant, still exists despite the time elapsed.

5.6 As to his torture marks, the complainant admits that such marks could have had a different origin, but, given the time elapsed, no plausible evidence could be provided. However, taking into account his affirmations, it could be concluded that his marks are the consequence of the torture suffered.<sup>h</sup>

5.7 The complainant adds that the rejection of his asylum application in Switzerland has caused him a lot of stress, to the point that he had to seek psychiatric assistance. For more than half a year, since October 2008, the complainant has been under treatment with a psychiatrist.<sup>i</sup>

5.8 The complainant further notes that HADEP was banned by the Turkish authorities in 1997. DEHAP was its successor organization, but it was also banned, in 2005. The political parties' archives having being confiscated, no documents could be obtained.<sup>j</sup>

5.9 Finally, the complainant claims that as far the death of his uncle is concerned, there is no contradiction in his statements. The mysterious "conflict between villagers" is a reference taken directly from the police report in this connection.<sup>k</sup> The complainant reiterated that his uncle died after the authorities attempted to obtain from him information on the complainant's whereabouts.

5.10 On 18 June 2009, the complainant submitted a copy of a medical report on his health status prepared by a psychiatrist on 3 June 2009. According to the medical expert the complainant is highly traumatized, has panic attacks, is very depressed and has post-traumatic stress disorder, and his state has significantly deteriorated.<sup>l</sup>

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6. Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee further notes that it is uncontested that domestic remedies have been exhausted and that the State party does not challenge the admissibility of the communication. Accordingly, the Committee finds the complaint admissible and proceeds with its consideration on the merits.

### **Consideration on the merits**

7.1 The issue before the Committee is whether the complainant's removal to Turkey would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

7.2 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Turkey, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned. The Committee reiterates that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its general comment No. 1 on the implementation of article 3, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion". However, the risk does not have to meet the test of being "highly probable", but it must be personal and present.<sup>m</sup> In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.<sup>n</sup> Furthermore, the Committee observes that considerable weight will be given, in exercising the Committee's jurisdiction pursuant to article 3 of the Convention, to findings of facts that are made by organs of the State party concerned.

7.4 In the present case, the Committee considers that the facts as presented do not permit it to conclude that the complainant would be at personal, foreseeable, present and real risk of torture in case of his return to Turkey. In reaching this conclusion, the Committee has noted that the attack — which is, according to the complainant, the main cause of the authorities' attention on him — has taken place in 1993, i.e. a long time ago, while he has not sufficiently explained its relevance in the current situation. It also has noted the complainant's allegations on the tortures suffered, in 1993, and his failure to produce a recent medical certificate on the matter. It also notes the allegations that the father and the uncle of the complainant had been persecuted by the authorities in an attempt to locate him and they had allegedly lost their lives as a consequence. In this respect, the Committee notes that at the same time, however, other members of the complainant's family, including the complainant himself, have lived in Istanbul for many years, after the alleged attacks in 1993. The Committee has also noted that the complainant has also alleged that in Turkey, he would be at risk to be enrolled in the army and would have no

protection there, but it does not consider that this has been sufficiently substantiated, so as to be of pertinence and to be taken into account in the evaluation of the risk for the complainant in the present case.

7.5 The Committee has finally noted the conclusions of the psychiatric expert as submitted by the complainant subsequent to the registration of his communication. However, it is of the opinion that the very fact that the complainant suffers, at present, from psychological problems as reported by a medical expert, cannot be seen as constituting sufficient grounds to justify an obligation, for the State party, to refrain from proceeding with the complainant's removal to Turkey.

7.6 In light of all the above, the Committee is not persuaded that the facts as submitted are sufficient to conclude that the complainant would face a foreseeable, real and personal risk of being subjected to torture if returned to Turkey. Accordingly, the Committee concludes that the complainant's removal to that country would not constitute a breach of article 3 of the Convention.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Turkey by the State party would not constitute a breach of article 3 of the Convention.

#### Notes

- <sup>a</sup> The complainant provides photographs of his legs and arms, which disclose a number of scars.
- <sup>b</sup> According to the complainant, the report on the circumstances of his uncle's death states that his uncle was injured but he was first transported to the police station, and was transferred to a hospital only later, and he had died during the transportation. No explanation on the reasons not to take the uncle directly to the hospital were provided in the report, and, at the same time, his uncle's aggressors had allegedly been released shortly afterwards by the police.
- <sup>c</sup> Called Federal Office for Refugees at that time.
- <sup>d</sup> The complainant invokes a report by the Geneva Centre for the Democratic Control of Armed Forces and a report of Amnesty International of 1996. He adds that two Turkish attorneys have tried to get information about the 1993 Daltepe incident from both the TIHV (Human Rights Foundation of Turkey) and IHD (Human Rights Association) and had recently learned that there was no relevant information in the archives of these organizations.
- <sup>e</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44, (A/53/44), annex IX.*
- <sup>f</sup> The State party notes that in communication No. 112/1998, *H.D. v. Switzerland*, the Committee noted, inter alia, that the complainant had never been the object of prosecution on specific facts or that the proceedings in question were not directed personally against him but rather against his relatives, who were members of the PKK. The Committee further noted that nothing indicated that the complainant had collaborated with PKK members after his departure from Turkey, or that he or his relatives had been intimidated by the authorities (para. 6.5). In another case, *K.M. v. Switzerland*, the Committee considered that nothing indicated that the complainant had collaborated with the PKK after his departure from Turkey (communication No. 107/1998, para. 6.6).
- <sup>g</sup> The complainant explains that it is probable that a record on this matter was placed in his family register, and that, at present, he is trying to obtain a copy of the register in question.
- <sup>h</sup> The complainant adds that several weeks ago, he had sought to pass a medical examination in the Ambulatorium für Folter-und Kriegsopfer at Zurich University Hospital, but he was not given an appointment.
- <sup>i</sup> The complainant adds that a report of the medical doctor in question would be presented to the Committee.
- <sup>j</sup> The complainant adds that he still expects written information from the two Turkish attorneys (see para. 4.12 above) from TIHV and IHD. In any case, the lawyers have allegedly indicated that IHD possesses no information on the Daltepe Köyü incident.



<sup>k</sup> A copy of the report in question, in Turkish and German, is submitted to the Committee.

<sup>l</sup> It transpires from the report that the complainant was in psychiatric care from 7 to 27 March 2009.

<sup>m</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44*, (A/53/44), annex IX.

<sup>n</sup> See, inter alia, communications No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005, and No. 226/2003, *T.A. v. Sweden*, decision adopted on 6 May 2005.

## **B. Decision on admissibility**

### **Communication No. 307/2006: *E.Y. v. Canada***

<i>Submitted by:</i>	E.Y. (represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Canada
<i>Date of complaint:</i>	29 October 2006 (initial submission)

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

*Meeting on 4 November 2009,*

*Having concluded* its consideration of complaint No. 307/2006, submitted to the Committee against Torture on behalf of E.Y. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all information made available to it by the author of the communication, his counsel and the State party,

*Adopts* the following:

### **Decision under article 22, paragraph 7, of the Convention against Torture**

1.1 The complainant is E.Y., an Iraqi national born in 1964, currently facing deportation from Canada to Iraq. He claims that his return to Iraq would constitute a violation by Canada of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel, Mr. Byron E. Pfeiffer.

1.2 On 30 October 2006, the complainant asked the Committee to request the State party to stay the removal order against him, pending the Committee's final decision on his complaint. On 31 October 2006, the Committee, through its Rapporteur for new complaints and interim measures, transmitted the complaint to the State party, without requesting interim measures of protection under rule 108, paragraph 1, of its rules of procedure.

### **Factual background**

2.1 The complainant was conscripted into the Iraqi military service (the "Republican Guards") in 1983, when Iraq was at war with the Islamic Republic of Iran. One month after his release from military service on 1 July 1990, he was again called to serve in the military, following the Iraqi invasion of Kuwait. He deserted the Republican Guards in or about April 1991 and went into hiding in Iraq. He later left Iraq for Canada, via Jordan and Morocco. On 15 February 1996, he arrived in Montreal, Canada, and immediately filed an application for refugee protection.

2.2 On 2 July 1996, the complainant submitted his Personal Information Form in support of his refugee claim. In the form, he claimed that he had deserted the Republican Guards during the war in Kuwait and returned to military service after an amnesty for deserters had been issued. However, the amnesty was not respected, and he was taken by the Military Security Police to their headquarters, where he was allegedly interrogated and

tortured for one week. He was subsequently returned to his unit to await trial. Fearing that the trial would result in a death sentence, he escaped again. After learning that a verdict had been sent to his military unit to execute him, he moved from one place to another in Iraq for three years before he fled the country.

2.3 On 7 October 1996, the complainant's claim for refugee protection was heard by the Refugee Division of the Immigration and Refugee Board, which was competent only to consider whether he was a Convention refugee as defined in the 1951 Convention relating to the Status of Refugees.<sup>a</sup> The Board informed the Minister of Citizenship and Immigration and the complainant that he was excluded from refugee protection by virtue of Article 1 F of the Refugee Convention.<sup>b</sup>

2.4 On 3 September 1997, the Board determined that the complainant was not a Convention refugee, arguing that his oral testimony lacked credibility, in particular his claim that, as a member of the Republican Guards, he had never fired on the enemy, killed anyone, or dealt with prisoners of war or Iranian civilians; the contradictory description of his role in the Iraqi city of Najaf in March 1991 and of the timing of his desertion; and his implausible claim that, as a deserter sentenced to death, he was able to live with his mother in Baghdad and work for more than three years before leaving Iraq. The Board also considered that the crushing of the uprising against Saddam Hussein by Republican Guards in Najaf in 1991 amounted to crimes against humanity within the meaning of Article 1 F (a) of the Refugee Convention. Based on his rank and lengthy tenure with the Republican Guards, the complainant was aware of the organization's methods and supported its objectives. Even assuming that he deserted after three days in Najaf, he would have participated in the indiscriminate bombing of the city. He therefore was complicit in the crimes against humanity committed by the Guards and excluded from refugee protection.

2.5 The complainant's application dated 22 September 1997 for leave to apply for judicial review was denied by the Federal Court on 22 January 1998.

2.6 On 17 August 1998, the complainant applied for permanent residence on the basis of humanitarian and compassionate grounds, alleging that his life and physical security would be in danger if he was returned to Iraq. His application was examined by a specialized officer for risk assessment under the former Post-Determination Refugee Claimants in Canada (PDRCC) class. The officer determined that the complainant would not be at risk of life, extreme sanctions or inhuman treatment upon return to Iraq. On 28 June 1999, the complainant's application was dismissed.

2.7 The complainant did not request leave to apply to the Federal Court for judicial review of the decision on his humanitarian and compassionate application.

2.8 On 14 August 1999, the complainant married a Canadian citizen, who filed an application to sponsor his immigration to Canada on 20 August 1999. On 6 March 2002, Citizenship and Immigration Canada informed the complainant that his sponsored application for permanent residence had been refused on the basis that he was inadmissible to Canada, since there were reasonable grounds to believe that he had participated in crimes against humanity. His wife's appeal to the Immigration Appeal Division was dismissed on 5 July 2004, under Section 64 of the Immigration and Refugee Protection Act, for lack of jurisdiction to hear her spousal sponsorship appeal with respect to a person found to be inadmissible in Canada.

2.9 On 18 November 2004, the complainant filed an application for a Pre-Removal Risk Assessment (PRRA) pursuant to Section 112 of the Immigration and Refugee Act. In his PRRA application form, he claimed that after the change of regime in Iraq, he was no longer at risk of life and cruel or unusual treatment upon return to Iraq because he had deserted the military, but because he was a Sunni Muslim who had served in the

Republican Guards under Saddam Hussein. Abu Ghraib prison in Baghdad was full of former members of the Republican Guards.

2.10 On 21 January 2005, the complainant was informed that his PRRA application had been rejected, since he had been determined not to be at personal risk to his life or of torture or cruel and unusual treatment or punishment if returned to Iraq. The PRRA officer observed that the complainant's name did not appear on the list of most wanted persons in Iraq. His fear of return based on his desertion from the army no longer had an objectively identifiable basis after the fall of Saddam's regime. That the complainant was a Sunni Muslim and former member of the Republican Guards was not by itself a reason that the Coalition forces would consider him an enemy or a terrorist to be imprisoned. On the contrary, former members of the Republican Guards were permitted to work in the civil service or to join the armed forces of the new government. Given his low profile, there were no grounds to believe that the complainant would be the victim of acts of vengeance. The general instability in Iraq affected all Iraqis and was not personal to the complainant.

2.11 The complainant did not request leave to apply to the Federal Court for judicial review of the PRRA decision.

2.12 On 11 February 2005, a removal order was issued against the complainant. On 19 October 2006, he was informed that his deportation to Iraq via Jordan had been scheduled for 31 October 2006. On 29 October 2006, the complainant requested the enforcement officer to defer his removal until the Committee has taken a final decision on his complaint. By fax dated 30 October 2006, the Canadian Border Services Agency notified the complainant that his request for deferral had been denied.

2.13 On 30 October 2006, the complainant applied for leave to apply to the Federal Court for judicial review of the decision not to defer his removal. However, he did not submit additional documents required to complete his application. The application was still pending at the time of submission of the complaint. He also applied for a stay of removal. On 31 October 2006, the Federal Court dismissed the motion for a stay.

2.14 The complainant failed to appear for his removal from Canada on 31 October 2006. Accordingly, an arrest warrant was issued against him under Section 55 (1) of the Immigration and Refugee Protection Act. The complainant's current whereabouts are unknown.

### **The complaint**

3.1 The complainant claims that his forcible removal to Iraq would constitute a violation by the State party of article 3 of the Convention, as there are substantial grounds for believing that he would be tortured and even killed in present-day Iraq for having been a member of Saddam Hussein's Republican Guards and because he is a Sunni Muslim.

3.2 The complainant contends that the human rights situation is so critical in Iraq that even ordinary people are being tortured and killed. By reference to a report by the United Nations Assistance Mission to Iraq covering the human rights situation between 1 July and 31 August 2006, he submits that torture is widespread in Iraq and that revenge killings continue to take place against those associated with the former regime.

3.3 The complainant emphasizes that he never committed any war crimes or crimes against humanity.

3.4 He submits that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement, and that there are no further remedies available in the State party to prevent the Canadian authorities from returning him to Iraq. He explains that he did not file an application for leave to apply to the Federal Court for judicial review of the PRRA decision of 21 January 2005 because his Canadian

lawyer had advised him that his legal remedies were exhausted. He had four different lawyers before current counsel started to represent him.

#### **State party's admissibility and merits observations**

4.1 On 27 March 2007, the State party challenged the admissibility of the complaint for non-exhaustion of domestic remedies and because it was manifestly unfounded, pursuant to article 22, paragraph 5 (b) and rule 107 (b) and (e) of the Committee's rules of procedure. Subsidiarily, it argues that the complaint is without merit.

4.2 The State party recalls the Committee's jurisprudence<sup>c</sup> that it can only consider complaints that allege, in a substantiated manner, violations of rights protected by the Convention, and submits that the complainant has not substantiated his allegations on even a *prima facie* basis. The allegations made by him before the Committee were substantially the same as those presented to the Canadian authorities in his application for refugee protection. The State party argues that it is not the Committee's role to weigh evidence or re-assess findings of fact made by domestic courts, tribunals or decision makers,<sup>d</sup> unless it can be demonstrated that such findings are arbitrary or unreasonable.<sup>e</sup> The complainant did not claim that the domestic proceedings constituted a denial of justice or were arbitrary or unfair or in any other way deficient, and the material submitted did not support a finding that the decisions of the Canadian authorities suffered from such defects. Rather, the complainant was simply dissatisfied with the outcome of his domestic proceedings and the prospect of his potential deportation from Canada. Accordingly, there were no grounds on which the Committee could consider it necessary to re-evaluate findings of fact, evidence and credibility made by domestic tribunals.

4.3 On domestic remedies, the State party submits that the complainant did not apply for leave to apply for judicial review with respect to the decision dated 28 June 1999 on his humanitarian and compassionate application and the PRRA decision dated 21 January 2005. Moreover, he had failed to submit the required documents to complete his application for leave with regard to the decision dated 30 October 2006 refusing to defer his removal. The State party emphasizes that judicial review is an effective remedy. It concludes that the complainant's failure to seek judicial review with respect to the humanitarian and compassionate and PRRA decisions, or to pursue his current leave application with due diligence, makes his complaint inadmissible for non-exhaustion of domestic remedies.

5.1 On the merits, the State party recalls that article 3 of the Convention places the burden upon the complainant to establish substantial grounds, which must go beyond mere theory or suspicion, for believing that he would be personally at risk of being subjected to torture upon return to his country of origin.<sup>f</sup> The general human rights situation in a country was insufficient to establish such a personal risk. It submits that the inconsistencies undermining the credibility of his claim, the lack of evidence that he has been tortured in the past, and his low personal profile as a member of the Republican Guards lead to the conclusion that there are no substantial grounds for believing that the complainant would be personally at risk if he returned to Iraq.

5.2 With regard to the complainant's credibility, the State party argues that his testimony before the Immigration and Refugee Board that he never fired on the enemy, killed anyone or dealt with prisoners of war or Iranian citizens during his eight years with the Republican Guards is implausible, given that he claims to have been promoted three times during that time. Similarly, it was unlikely that, as a Sergeant, he could have abstained from participating in any of the indiscriminate artillery attacks on Najaf, house-to-house arrests, round-ups of clerics, public executions, and massacres of civilians during the three days before he allegedly deserted the army. The date of desertion given before the Board did not coincide with his statement, in his Personal Information Form (PIF), that he deserted during the 1990 Gulf War, since the Najaf uprising occurred *after* the war. Lastly,

the State party reiterates that it was implausible that a deserter who had allegedly been sentenced to death would be able to live with his mother and work in Baghdad for more than three years without facing problems. If in fact he was a “wanted” man, it was implausible that he would be able to obtain a passport issued in his name in 1995 and an exit visa in 1996, as stated in his PIF.

5.3 The State party submits that the complainant has not provided any details or corroborating evidence such as medical reports or scarring of his alleged torture by the Military Security Police in 1992, and thus certainly not in any recent past. Furthermore, torture under the former Saddam Hussein regime could not be taken to suggest that the complainant would still be at risk of torture in present-day Iraq.

5.4 While acknowledging that the human rights situation in Iraq is poor, the State party argues that the pervasive violence and instability alone are insufficient to substantiate the complainant’s allegation that he would face a foreseeable, real and personal risk of torture upon return to Iraq. It cites a similar case,<sup>g</sup> in which the Committee did not consider that the individual’s prospective removal to Iraq would violate article 3 of the Convention, in the absence of additional grounds beyond the problematic country conditions to show that that individual would be personally at risk. The report of the United Nations Assistance Mission to Iraq referred to by the complainant only mentions high-ranking military personnel and air force members as targets of extra-judicial killings. The complainant himself did not have the profile of someone who would be personally at risk in Iraq. Furthermore, he had not shown that he would be at risk in all parts of the country. The mere fact that he might not be able to return to his hometown does not as such amount to torture.<sup>h</sup> Lastly, it was unclear whether the complainant feared torture from State or non-State agents or both.

#### **Complainant’s comments**

6.1 On 30 May 2007, counsel informed the Committee that the complainant had not been in contact with him since 31 October 2006. On the issue of exhaustion of domestic remedies, he submits that he cannot comment on the domestic proceedings relating to the complainant’s refugee claim, humanitarian and compassionate application, spousal sponsorship and PRRA application, as he only represented him in the proceedings concerning the deferral and stay of his removal. After the Federal Court had refused to entertain the complainant’s motion, and no order staying removal had been granted, “there was no rationale for continuing the application in the Federal Court [...],” and no other remedy was available to him. No further explanations on exhaustion of domestic remedies and their availability or effectiveness are offered.

6.2 Counsel submits that it was common knowledge that hundreds of thousands of Iraqis have fled Iraq, “and that the breakdown of civilized life in Iraq is accompanied by horrific violence from not just foreign soldiers, Iraqi police and outside armed men, but from Iraqi privately armed groups and individuals”. Moreover, the situation in Iraq had deteriorated since the complainant’s PRRA in 2004.

6.3 Counsel rejects the State party’s argument that “instability in Iraq affects all Iraqis and all persons present in Iraq, and is not personal to the [complainant]” and that “the pervasive violence and instability in Iraq are not, in and of themselves, sufficient to substantiate the [complainant’s] allegation that he would face a foreseeable, real and personal risk of torture upon being returned to Iraq”. If everyone present in Iraq was affected by such pervasive violence and instability, no person should be returned to that country. Moreover, if violence was pervasive, “it is being experienced in every part of the country”.

6.4 Given the complainant’s past employment in the armed forces of Saddam Hussein, his risk was arguably higher than that of someone unrelated to the former regime. In the

light of the serious human rights situation in Iraq, any person previously associated with Saddam Hussein would be at substantial risk if returned to Iraq, including the complainant.

#### **State party's additional observations**

7.1 On 24 September 2007, the State party reiterated that the complaint is inadmissible because of non-exhaustion of domestic remedies and because it is manifestly unfounded, and in any event without merit. The fact that the complainant's previous counsel failed to advise him to apply for leave to apply for judicial review with respect to the humanitarian and compassionate decision of 28 June 1999 and the PRRA decision of 21 January 2005 did not absolve him from the requirement to exhaust domestic remedies, as errors committed by his privately retained lawyer cannot be attributed to the State party.

7.2 By reference to a decision of the Human Rights Committee<sup>i</sup> that failure to pursue a leave application with due diligence rendered a communication inadmissible, the State party challenges counsel's argument that "there was no rationale for continuing the application" after the Federal Court had dismissed the complainant's motion to stay his removal.

7.3 The State party recalls that counsel misconstrues the requirement for a complainant to establish that he is at personal risk of torture, by arguing that everyone in Iraq, including the complainant, is at risk of torture, since the human rights situation is so poor in Iraq. The Committee's jurisprudence<sup>j</sup> and general comment No. 1 on article 3 established that poor country conditions are not, in and of themselves, sufficient to substantiate the allegation that a complainant would face a foreseeable, real and personal risk of torture upon return to his or her country of origin.

#### **Complainant's additional comments**

8. On 1 October 2008, counsel informed the Committee that he had contacted the complainant through a relative, since the complainant was still hiding and did not want to disclose his whereabouts. The complainant was depressed; his former Canadian wife had divorced him. His mother and sister had left Iraq for Egypt and were afraid to return. His only brother who had stayed in Iraq was assassinated on 3 February 2008 because of his Sunni adherence and name. The complainant therefore had no siblings or parents remaining in Iraq.

#### **Issues and proceedings before the Committee**

9.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

9.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any complaint, unless it has ascertained that the complainant has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of those remedies has been unreasonably prolonged, or that it is unlikely, after a fair trial, to bring effective relief to the alleged victim.

9.3 The Committee takes note of the State party's argument that the complaint should be declared inadmissible under article 22, paragraph 5 (b), of the Convention, as the complainant failed to apply for leave to apply for judicial review of the decision dated 28 June 1999 on his humanitarian and compassionate application and of the PRRA decision dated 21 January 2005, as well as to submit the required documents to complete his application for leave with regard to the decision dated 30 October 2006 refusing to defer his

removal. It also notes that the complainant does not challenge the effectiveness of the remedy of judicial review, although he had an opportunity to do so. In this regard, the Committee recalls that when judicial review is granted by the Federal Court in cases concerning pre-removal risk assessment or humanitarian and compassionate decisions by Citizenship and Immigration Canada, the Federal Court refers the matter back to a different immigration officer of the same decision-making body.<sup>k</sup> However, the Committee also observes that this does not imply that applications for leave or for judicial review are mere formalities that, as a general rule, need not be exhausted by a complainant for purposes of article 22, paragraph 5 (b), of the Convention.<sup>l</sup> Rather, the Federal Court may, in appropriate cases, look at the substance of a case.<sup>m</sup> It may in this context indicate the reasons for which it remits a case back to the body which took the original decision and for which it deems that said decision needs to be reconsidered.<sup>n</sup> The Committee recalls that, while according to its jurisprudence an appeal against a negative decision on a humanitarian and compassionate application is not a remedy that needs to be exhausted,<sup>o</sup> the complainant failed to diligently exhaust remedies with respect to two other negative decisions. In the present case, the Committee does not consider that applications for leave to apply for judicial review of the PRRA and humanitarian and compassionate decisions would have been ineffective remedies in the complainant's case, in the absence of any particular circumstances adduced by him in support of such an assumption.

9.4 As regards the complainant's explanation that he did not file an application for leave to apply for judicial review of the PRRA decision of 21 January 2005 because his then lawyer had advised him that domestic remedies were exhausted, the Committee notes that the complainant has not argued that he was represented by a State-appointed lawyer at the relevant time. It recalls that errors made by a privately retained lawyer cannot normally be attributed to the State party,<sup>p</sup> and concludes that the complainant has failed to advance sufficient elements which would justify his failure to avail himself of the possibility to apply for judicial review of his PRRA decision, or of the humanitarian and compassionate decision of 28 June 1999. Nor has he provided reasons for his failure to complete his application for leave to apply for judicial review of the decision of 30 October 2006 on his request to defer his removal.

9.5 The Committee is therefore of the view that domestic remedies have not been exhausted in accordance with article 22, paragraph 5 (b), of the Convention.

10. Accordingly, the Committee decides:

- (a) That the communication is inadmissible;
- (b) That this decision shall be communicated to the State party and to the complainant.



- <sup>a</sup> Since the entry into force of the Immigration and Refugee Protection Act in June 2002, the Board considers both whether the person is a Convention refugee or a person in need of protection, i.e. a person at risk of torture within the meaning of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or at risk of his life or of cruel and unusual treatment or punishment.
- <sup>b</sup> Article 1 F of the Convention relating to the Status of Refugees (1951) reads: “The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes [...]”
- <sup>c</sup> Communications No. 163/2000, *H.A.S.V. and F.O.C. v. Canada*, para. 6.3; No. 236/2000, *A.T.A. v. Switzerland*, paras. 4.2–4.3; No. 243/2004, paras. 4.2–4.3.
- <sup>d</sup> The State party refers to communication No. 148/1999, *A.K. v. Australia*, para. 6.4.
- <sup>e</sup> Ibid. The State party also refers to communications No. 135/1999, *S.G. v. The Netherlands*, para. 6.6; and No. 223/2002, *S.U.A. v. Sweden*, para. 6.5.
- <sup>f</sup> The State party refers to the Committee against Torture’s general comment No. 1 (1997) on implementation of article 3 of the Convention in the context of article 22 *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44, (A/53/44), annex IX*, paras. 6–8; communication No. 36/1995, *X. v. The Netherlands*, para. 7.2.
- <sup>g</sup> Communication No. 286/2006, *M.R.A. v. Sweden*.
- <sup>h</sup> The State party refers to communication No. 183/2001, *B.S.S. v. Canada*, para. 11.5; communication No. 245/2006, *S.S.S. v. Canada*, para. 8.5.
- <sup>i</sup> Human Rights Committee, communication No. 982/2001, *J.S.B. v. Canada*, para. 7.3.
- <sup>j</sup> The State party refers to communications No. 286/2006, *M.R.A. v. Sweden*; and No. 282/2005, *S.P.A. v. Canada*, para. 7.7.
- <sup>k</sup> See communication No. 133/1999, *Falcon Rios v. Canada*, para. 7.3.
- <sup>l</sup> See communication No. 273/2005, *T.A. v. Canada*, para. 6.3.
- <sup>m</sup> Ibid.
- <sup>n</sup> See, for example, communication No. 183/2001, *B.S.S. v. Canada*, para. 11.6.
- <sup>o</sup> *Falcon Rios v. Canada* (see note 11); communication No. 232/2003, *Mabrouki v. Canada*, para. 6.3.
- <sup>p</sup> Communication No. 284/2006, *R.S.A.N. v. Canada*, para. 6.4.



