United Nations CAT/C/67/3

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
26 September 2019

Original: English

Committee against Torture

Follow-up report on decisions relating to communications submitted under article 22 of the Convention*

Introduction

1. The present report is a compilation of information received from States parties and complainants that has been processed since the sixty-sixth session of the Committee against Torture (23 April–17 May 2019), in the framework of its follow-up procedure on decisions relating to communications submitted under article 22 of the Convention.[1]

A. Communication No. 477/2011

Aarrass v. Morocco	
Decision adopted on:	19 May 2014
Violation:	Articles 2 (1), 11–13 and 15
Remedy:	The Committee urged the State party to inform it, within 90 days from the date of transmittal of the decision, of the measures that it had taken in accordance with the observations set forth in the decision, including the initiation of an impartial and in-depth investigation into the complainant's allegations of torture. Such an investigation must include the conduct of medical examinations in line with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

2. In line with the decision taken by the Committee at the sixty-sixth session to keep the follow-up dialogue ongoing, given the absence of meaningful progress in the implementation of the above decision, the Chair requested a meeting with a representative of the Permanent Mission of Morocco to the United Nations Office and other international organizations in Geneva. The meeting was to be held from 2 to 3 p.m. on 6 August 2019, for the purposes of discussing further measures that could be taken by the State party's authorities to implement the Committee's decision.

* Adopted by the Committee at its sixty-seventh session (22 July–9 August 2019).

[1] The preceding follow-up report on decisions relating to communications submitted under article 22 of the Convention was adopted by the Committee at its sixty-sixth session (CAT/C/66/3), on 16 May 2019, as amended.

3. The follow-up observations and comments have demonstrated a lack of implementation. The Committee therefore decided to keep the follow-up dialogue ongoing, and to consider further steps in the light of the State party's observations. In addition, in line with an earlier decision, the Committee will publish the lack of implementation of the above decision in its annual report.

B. Communication No. 500/2012[2]

Ramírez Martínez et al. v. Mexico

Decision adopted on:	4 August 2015
Violation:	Articles 1, 2 (1), 12–15 and 22
Remedy:	The Committee urged the State party to: (a) launch a thorough and effective investigation into the acts of torture; (b) prosecute, sentence and punish appropriately the persons found guilty of the violations; (c) order the immediate release of the complainants; and (d) award full reparation, including fair and adequate compensation, to the complainants and their families, and provide the complainants with as full a rehabilitation as possible. The Committee also reiterated the need to repeal the provision of preventive custody in domestic legislation, and to bring the Code of Military Justice fully into line with the decisions of the Inter-American Court of Human Rights, in order to ensure that ordinary courts had sole jurisdiction over cases involving human rights violations.

4. On 15 July 2019, the State party submitted the following information. In relation to the investigation of torture, it reports that the Office of the Attorney General in 2015 resumed the investigation into the circumstances of the arrest of Ramiro López Vázquez, Ramiro Ramírez Martínez, Rodrigo Ramírez Martínez and Orlando Santaolaya Villarreal by military personnel.

5. On 12 April 2019, the *amparo* proceedings initiated by the victims against allegedly harmful acts of the Prosecutor's Office specializing in crimes of torture and the experts of the General Coordination of Expert Service were dismissed.

6. The pending investigation initiated by the General Directorate of Crimes Committed by Public Servants deals with the crimes stipulated by the federal law to prevent and punish torture. The Office of the Attorney General is working to determine the responsibility of those who participated in the alleged criminal acts, respecting at all times the rights of the victims. Moreover, a ministerial inspection was carried out, involving experts in forensic photography, at the facilities of the twenty-eighth Infantry Battalion of the Mexican Army, where the victims were probably detained. Likewise, actions were taken regarding the preventive custody (*arraigo*) and sentence related to case No. 27/2015-III by the Second District Court of Criminal Proceedings in the State of Nayarit. In addition, a voice recognition examination was conducted for Ramiro Ramírez Martínez and Orlando Santaolaya Villarreal. The Attorney General of Military Justice of the Ministry of National Defence has carried out pertinent actions for the full identification of those responsible.

7. Regarding the Committee's request for rehabilitation, the four victims have been registered in the National Registry of Victims. They have the right to receive measures of assistance, protection, care and integral reparation provided by the Executive Commission for Victims, in accordance with the Law on Assistance to Victims. Moreover, the Mexican Commission for the Defence and Promotion of Human Rights, representing the victims, submitted a proposal for reparation of the victims, which is pending before the Interdisciplinary Evaluation Committee of the Executive Commission for Victims.

[2] Ibid., paras. 12–15.

8. Furthermore, Rodrigo Ramírez Martínez and Ramiro López Vázquez have received psychological assistance; however, it was suspended owing to their absence. The assistance can be resumed at any time. Mr. López Vázquez has received various types of medical assistance at the Integral Care Centre in the State of Baja California. Orlando Santaolaya Villarreal requested a health assessment from the Social Readaptation Centre "El Hongo II", which confirmed that he did not require urgent attention, but it could be provided upon request.

9. In addition, the State party emphasizes that the Executive Commission for Victims has provided legal advice to the victims and their relatives. Regarding the alleged harassment and criminalization of the victims, the State party admits that no investigation has been initiated. However, the victims may submit a complaint to the Ministry of Justice, if necessary. The State party has also maintained regular contact with the representatives of the victims and to date, two meetings have been organized with the Executive Commission. Finally, the State party reaffirms that it will take further measures to fully implement the Committee's recommendations in the above decision, and will provide further updates.

10. On 6 August 2019, the State party's observations were transmitted to the complainants' counsels for comments, which are to be provided by 6 October 2019.

11. The follow-up observations and comments have demonstrated partial implementation. The Committee decided to keep the follow-up dialogue ongoing and to consider further steps in the light of the responses provided by of the complainants' counsels.

C. Communication No. 606/2014[3]

Asfari v. Morocco	
Decision adopted on:	15 November 2016
Violation:	Articles 1 and 12–16
Remedy:	The Committee urged the State party to: (a) provide the complainant with fair and adequate compensation, including the means for the fullest rehabilitation possible; (b) initiate a thorough and impartial investigation into the incidents in question, in full conformity with the guidelines of the Istanbul Protocol, with a view to bringing those responsible for the victim's treatment to justice; (c) refrain from any form of pressure, intimidation or reprisals likely to harm the physical and moral integrity of the complainant or his family, which would otherwise constitute a violation of the State party's obligations under the Convention to cooperate with the Committee in good faith in the implementation of the provisions of the Convention, and to enable the complainant to receive visits from his family in prison; and (d) to inform it within 180 days from the date of transmittal of the decision about the steps taken.

12. In line with the decision taken by the Committee at its sixty-sixth session to keep the follow-up dialogue ongoing, given the absence of meaningful progress in the implementation of the above decision, the Chair requested a meeting with a representative of the Permanent Mission of Morocco to the United Nations Office and other international organizations in Geneva. The meeting was to be held from 2 to 3 p.m. on 6 August 2019, for the purposes of discussing further measures that could be taken by the State party's authorities to implement the Committee's decision. The Chair of the Committee also requested the State party to refrain from reprisals against Mr. Asfari, while noting positive developments in the form of visits to Mr. Asfari by his wife. The Chair also invited the State party to provide further follow-up observations on the implementation of the remedy.

[3] Ibid., paras. 18–23.

13. The follow-up observations and comments have demonstrated a lack of implementation. The Committee decided to keep the follow-up dialogue ongoing, and to consider further steps in the light of the State party's observations. In addition, in line with an earlier decision, the Committee is to publish the lack of implementation of the above decision in its annual report.

D. Communication No. 653/2015[4]

A.M.D. et al. v. Denmark

Decision adopted on:	12 May 2017
Violation:	Article 3
Remedy:	The Committee concluded that the deportation of the complainants to the Russian Federation would constitute a violation of article 3 of the Convention. It was of the view that the State party had an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainants to the Russian Federation or any other country where they ran a real risk of being expelled or returned to the Russian Federation. The Committee invited the State party to inform it, within 90 days of the date of the transmittal of the decision, of the steps it had taken in response to the observations in the decision.

14. On 16 May 2019, the counsel apologized for the lack of a reply to the Secretariat's requests for follow-up comments, indicating that she had no further comments to make. The counsel, however, admitted that her clients had left Denmark, and that she was unaware of their current whereabouts.

15. The follow-up observations and comments demonstrated a lack of implementation. The Committee decided to close the follow-up dialogue, despite an unsatisfactory resolution, as the State party had decided not to implement the decision, having deported the complainants.

E. Communication No. 742/2016[5]

A.N. v. Switzerland

Decision adopted on:	3 August 2018
Violation:	Articles 3, 14 and 16
Remedy:	The Committee was of the view that the State party had an obligation to refrain from forcibly returning the complainant to Italy and to continue complying with its obligation to provide the complainant, in full consultation with him, with rehabilitation through medical treatment. It invited the State party to inform it, within 90 days from the date of the transmittal of the decision, of the steps taken in response to the observations in the decision.

16. On 25 June 2019, the State party submitted that the State Secretariat for Migration had recognized the complainant as a refugee on 20 June 2019, which entitled him to reside in Switzerland and to seek employment.

[4] Ibid., paras. 24–26.
[5] Ibid., paras. 27–29.

17. On 5 August 2019, the State party's follow-up observations were transmitted to the counsel for comments, which are to be provided by 5 October 2019.

18. Since the counsel's response to the State party's observations was pending, the Committee decided to keep the follow-up dialogue ongoing, and to consider further steps in the light of the counsel's comments. The follow-up observations and comments have demonstrated full implementation.

F. Communication No. 758/2016[6]

Adam Harun v. Switzerland

Decision adopted on:	6 December 2018
Violation:	Article 3
Remedy:	The Committee considered that the State party had not examined in an individualized and sufficiently thorough manner the complainant's personal experience as a victim of torture and the foreseeable consequences of his forced return to Italy. The Committee therefore concluded that the deportation of the complainant to Italy would constitute a violation of article 3 of the Convention. It invited the State party to inform it, within 90 days from the date of the transmittal of the decision, of the steps taken in response to the observations in the decision.

19. On 18 June 2019, the State party submitted the following information. It reports that the State Secretariat for Migration scheduled an oral hearing of the complainant for 10 July 2019. As indicated on 27 February 2019, the complainant does not run a risk to be removed since the complainant's asylum procedure has been reopened. Moreover, the decision of the State Secretariat for Migration can be appealed to the Federal Administrative Tribunal, with a suspensive effect. The State party therefore considers that it has implemented the Committee's decision in the above case.

20. On 5 August 2019, the State party's follow-up observations were transmitted to the counsel for comments, which are to be provided by 5 October 2019.

21. The follow-up observations and comments have demonstrated partial implementation. The Committee decided to keep the follow-up dialogue ongoing, and to consider further steps in the light of the counsel's comments and the outcomes of the national asylum procedure.

[6] Ibid., paras. 30–32.

G. Communication No. 778/2016[7]

Yrusta et al. v. Argentina	
Decision adopted on:	23 November 2018
Violation:	Articles 1, 2 (1), 11–14
Remedy:	The Committee urged the State party to: (a) conduct a prompt, impartial and independent investigation into all allegations of torture made by Mr. Yrusta; (b) grant the complainants the status of victims; (c) provide the complainants with appropriate redress, including fair compensation and access to the truth; (d) take the necessary steps to provide guarantees of non-repetition; and (e) make public the decision and disseminate its content widely. It requested the State party to inform it, within 90 days from the date of the transmittal of the decision, of the steps taken in response to the observations in the decision.

22. On 27 July 2019, the complainants' counsel submitted the following information. It reports that the relatives of the victim have suffered harassment by the State party. They were visited at their homes by the police and summoned to testify in the court in Santa Fe, which is 400 km away. The counsel was not informed of the summons. At the same time, the prosecutor made no progress in the investigation, adding to the anguish caused by so many years of impunity. In that regard, the counsel suggested that if testimony was required, the prosecutor could travel herself to Córdoba to take the declaration. Alternatively, a statement could be taken by means of judicial assistance, or tickets for public transportation and funds for accommodation could be provided to the complainants as a last resort. Those proposals were made because neither of the two sisters could afford the cost of the journey on her own, and any contribution they could make to the investigation would be minimal. The counsel finally decided that the victim's relatives should not travel and that their witness statements could be presented in Córdoba. He reiterated that the State party had failed to comply with any of the recommendations made: the investigation was not progressing, the decision had not been made public and the victim's relatives had not been compensated.

23. On 6 August 2019, the counsel's comments were transmitted to the State party for observations, which are to be provided by 6 October 2019, with a view to the State party implementing the Committee's decision.

24. The follow-up comments demonstrated a lack of implementation. The Committee decided to keep the follow-up dialogue ongoing, and to consider further steps in the light of the State party's observations.

[7] Ibid., paras. 33–35.

H. Communication No. 811/2017[8]

M.G. v. Switzerland	
Decision adopted on:	7 December 2018
Violation:	Article 3
Remedy:	The Committee concluded that the complainant's deportation to Eritrea would constitute a breach of article 3 of the Convention. Having found a violation of article 3 were the complainant to be returned, the Committee did not consider it necessary to examine the claim under article 16 of the Convention. The Committee considered that the State party was required by article 3 of the Convention to consider the complainant's appeal in the light of its obligations under the Convention and the present observations. The State party was also requested to refrain from expelling the complainant while his request for asylum was being reconsidered. It invited the State party to inform it, within 90 days from the date of the transmittal of the decision, of the steps taken in response to the observations in the decision.

25. Further to the information dated 15 March 2019, the State party submitted the following information. It reports that the State Secretariat for Migration, after an oral hearing of the complainant on 5 April 2019, decided to reject the complainant's asylum application as the complainant had not demonstrated that his removal would result in a personal risk of persecution. Since the complainant married a Swiss citizen on 27 February 2019, the State Secretariat for Migration has not issued a deportation order for him but has requested the cantonal authorities to grant the complainant temporary residence for an initial period of one year from the date of marriage. The State party therefore considers that it has implemented the Committee's decision in the present case.

26. On 5 August 2019, the State party's follow-up observations were transmitted to the counsel for comments, which are to be provided by 5 October 2019.

27. The follow-up observations and comments have demonstrated partial implementation. The Committee decided to keep the follow-up dialogue ongoing, and to consider further steps in the light of the counsel's comments.

[8] Ibid., paras. 36–40.