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Follow-up Progress Report of the Committee against Torture on Individual Communications

This report compiles information received from State parties and complainants since the 42nd session of the Committee against Torture, which took place from (27 April – 15 May 2009).

Outstanding follow-up replies

The following countries have not responded at all to requests for follow-up information: Canada (with respect to Tahir Hussain Khan, No. 15/1994, adopted on 15 November 1994); and Serbia[1] and Montenegro (in relation to, Dimitrov, No. 171/2000, adopted on 3 May 2005, Danilo Dimitrijevic, No. 172/2000, adopted on 16 November 2005 and Dragan Dimitrijevic, No. 207/2002, adopted on 24 November 2004), and Tunisia (with respect to Ali Ben Salem, No. 269/2005, adopted on 7 November 2007).

STATE PARTY	**CANADA**
CASE	**BACHAN SINGH SOGI, 297/2006**
Nationality and country of removal if applicable	Indian to India

[1] On 11 June 2008, following requests by the Committee to the Republic of Serbia and the Republic of 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.

Views adopted on	16 November 2007
Issues and violations found	Removal - article 3
Remedy recommended	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.
Due date for State party response	28 February 2008
Date of reply	7 April 2009 (The State party had previously responded on 21 October 2008, and 29 February 2008)

State party response

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 Covenant on Civil and Political Rights. However, it had written to the Ministry of Foreign Affairs of India informing it of the Committee's Views, in particular, its request for up-dated information on the complainant.

The State party submitted that the decision to return the complainant was not a matter of "exceptional circumstances", as suggested by the Committee (para. 10.2). It contested the conclusion that the Minister's delegate denied the existence of a risk and that the decision was not motivated. The soundness of this decision was confirmed by the Court of Federal Appeal on 23 June 2006.

The State party contested the Committee's View that its determination that the complainant would not risk torture was based on information which had not been divulged to the complainant. It 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 Covenant on Civil and Political Rights. However, the State party informed the Committee that the law has been amended and that since 22 February 2008, to the extent that the nomination of a "special lawyer" is authorised 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 282/2005 and 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 reiterated 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 compensate. 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 were 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 stated 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 6 days in detention and neither his family nor lawyer new 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 been 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 7 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 2 or 4 days. The complainant has been interrogated in the police station about 6 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 requested 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 requested Canada to take all necessary measures to return the complainant to Canada and to allow him to stay on a permanent bases (as was done in Dar v. Norway, 249/2004) In the alternative, counsel suggested that the State party arrange for a third country to accept the complainant on a permanent basis. Finally, she requested a figure of 368, 250, 00 Canadian dollars by way of compensation for the damages suffered.

State party response

On 21 October 2008, the State party provided a supplementary reply. It denied the author's allegations that his rights were violated by the Canadian authorities during his removal from Canada. It explained that in such circumstances where an individual being returned poses a great threat to security he/she is returned by a chartered rather than commercial airline. The complainant's hands and feet were handcuffed, the handcuffs on his hands were connected to a belt attached to his seatbelt and those on his feet were attached to a security strap. He was held in his chair by a belt around his body. These measures are always taken in cases where there is a very high security risk on a chartered flight. These measures did not prevent him from moving his hands and feet to some extent or from eating or drinking. The authorities offered to change the position of his seat on several occasions but he refused. As to food, the complainant was offered special vegetarian meals but other than apple juice he refused to accept anything. The chemical toilet on the plane had not been assembled and could not be used so "un dispositif sanitaire" was made available to the complainant. At the time of depart there were no female guards aboard the plane. Unfortunately, the complainant could not use the "dispositive 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 Covenant on Civil and Political Rights and has other mechanisms UN 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 response

On 2 February 2009, the complainant's counsel responded to the State party's submission of 21 October 2008. She reiterated arguments previously made and stated 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 stated 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 argued 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 clarified 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 42nd 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.
Further action taken and/or required During the 40th 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 were not 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 "dispositive 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 42nd session (27th April – 15 May 2009), the Committee decided that despite the State party's request not to consider this matter any further under the follow-up procedure, it would again request the State party to contact the Indian authorities to find out the complainant's location and state of well-being. It also reminded the State party of its obligation to make reparation for the violation of article 3 and that serious consideration should be made of any future request by the complainant to return to the State party.
Proposed Committee's Decision **D**uring 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 regrets the State party's refusal to adopt the Committee's recommendations in this regard. It will inform other UN mechanisms dealing with issues of torture of the State party's response. However, in light of the firm refusal by the State party to implement the Decision, the Committee considers that no useful purpose will be served in pursuing the follow-up dialogue with the State party.

CASE	**FALCON RIOS, 133/1999**
Nationality and country of removal if applicable	Mexican to Mexico
Views adopted on	30 November 2004
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party.
Remedy recommended	Relevant measures
Due date for State party response	None
Date of reply	Date of reply on 9 July 2009 (had previously responded on 9 March 2005, 17 May 2007, and 14 January 2008).

State party 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 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 would 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 Canadian identity card and assurance 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 probably that he would escape his return if let go. 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 7 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 signing a declaration of voluntary departure. In light of the above, the State party requests that the consideration of this case be discontinued under the follow-up procedure.
Further action taken and/or required On 13 July 2009, the State party's submission was sent to the complainant with a deadline of two months for comments that is no later than 14 September 2009. No response has been received.
Proposed Committee's Decision Given the complainant's voluntary return to Mexico, the Committee decides to discontinue consideration of this case under the follow-up procedure.

STATE PARTY	**SPAIN**
CASE	**BLANCO ABAD, 59/1996**

Nationality and country of removal if applicable	N/A
Views adopted on	14 May 1998
Issues and violations found	Promptness in examining complaints and impartial investigation – Articles 12 and 13
Interim measures granted and State party response	N/A
Remedy recommended	Relevant measures
Due date for State party response	August 1998
Date of reply	25 May 2009 and 23 January 2008 (State party says provided in 1998 no record)

State party response

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.

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 para. 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.

Complainant's comments

Date has not expired.

Further action taken/or required

The State party's submission was sent to the complainant on 7 October with two months for comments that is, not later than 7 December 2009.

Proposed Committee's Decision

The Committee may wish to wait for a response from the complainant before considering this case any further. The follow-up dialogue is ongoing.

CASE	**KEPA URRA GURIDI, 212/2002**
Nationality and country of removal if applicable	N/A
Views adopted on	17 May 2005
Issues and violations found	Duty to prevent torture, to impose appropriate punishment and to provide compensation to cover all of the suffering of the complainant - Articles 2,4 and 14
Interim measures granted and State party response	N/A
Remedy recommended	To ensure in practice that persons responsible for acts of torture are appropriately punished, to ensure that the author receives full redress and to inform it, within 90 days from the date of the transmittal of this decision, of all steps taken in response to the views.
Due date for State party response	August 2005
Date of reply	23 January 2008

State party response

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 judgment 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.

Complainant's response

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 Sanchez 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 Maria 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 fora, 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.	
Further action taken/or required	The complainant's submission was sent to the State party on 22 June 2009, who was given a deadline of two months for comments.
Proposed Committee's Decision	The follow-up dialogue is ongoing

STATE PARTY	**TUNISIA**
CASE	**M'BAREK, 60/1996**
Nationality and country of removal if applicable	Tunisian
Views adopted on	10 November 1999
Issues and violations found	Failure to investigate - articles 12 and 13.
Interim measures granted and State party response	None
Remedy recommended	The Committee requests the State party to inform it within 90 days of the steps taken in response to the Committee's observations.
Due date for State party response	22 February 2000
Date of reply	15 April 2002

State party response

The State party challenged the Committee's decision See first follow-up report (CAT/C/32/FU/1). During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party.

Complainant's comments

On 27 November 2008, the complainant informed the Committee *inter alia* that an official request to exhume the deceased's body had been lodged with the judicial authorities but that since May 2008, he had not received any indication as to the status of his request. He encouraged the Rapporteur on Follow-up to Views to pursue the question of implementation of this decision with the State party.

State party's response

On 23 February 2009, the State party responded to the information contained in the complainant's letter of 27 November 2008. It informed the Committee that it could not pursue the complainant's request to exhume the body as this matter has already been considered by the authorities and no new information has come to light to justify such a reopening. On the criminal front, the State party reiterated its arguments submitted prior to the Committee's decision that proceedings were opened on three occasions, the last time pursuant to the registration of the communication before the CAT, and each time, as there was insufficient proof, the case was discontinued. On the civil front, the State party reiterated its view that the deceased father pursued a civil action and received compensation for the death of his son following a traffic accident. The reopening of an investigation in which a death by involuntary homicide was declared following a road traffic accident upon which a civil claim had been brought would go against the principle of, "l'authorité 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 stated that he was unaware until he read the submission that their request for an exhumation of the body had been rejected. He submitted 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 submitted 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 requested 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 requested 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, the it submits that the Minister for Justice and Human Rights has availed of 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 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 response

On 7 September 2009, the complainant welcomes the initiative taken by the State party to

establish the cause of death of the deceased and considers the new actions taken by the State party as a turning point in the investigation of this matter. However, he also raises 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 deceased remains 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 on Follow-up to Decisions met with the Ambassador of the Permanent Mission to discuss follow-up to the Committee's Decisions. The Rapporteur reminded the Ambassador that the State party has contested the Committee's findings in four out of the five cases against it and has failed to respond to requests for follow-up information in the fifth case, Case no. 269/2005, Ali Ben Salem.

As to case no. 291/2006, in which the State party has recently requested re-examination, the Rapporteur explained that there is no procedure either in the Convention or the rules of procedure for the re-examination of cases. With respect to case no. 60/1996, the Rapporteur informed the State party that the Committee decided during its 42nd 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 and that it 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 42nd session, the Committee decided that it should officially request the State party to have the body of the complainant exhumed.

The Committee may wish to thank the State party for the positive information provided in its submissions of 24 and 27 of August 2009 on the follow-up to this case, in particular the State party's willingness to order an exhumation of the deceased remains. It may also wish to request clarification from the State party on whether such an exhumation has already been ordered and if so the modalities for same. It may also wish to indicate to 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 international experts.	
Committee's Decision The follow-up dialogue is ongoing.	
CASE	**SAADIA ALI, 291/2006**
Nationality and country of removal if applicable	N/A
Views adopted on	21 November 2008
Issues and violations found	Torture, prompt and impartial investigation, right to complaint, failure to redress complaint - Articles 1, 12, 13 and 14
Interim measures granted and State party response	N/A
Remedy recommended	The Committee urges the State party to conclude the investigation into the incidents in question, with a view to bringing those responsible for the acts inflicted on the complainant to justice, and to inform it, within 90 days of this decision being transmitted, of any measures taken in conformity with the Committee's Views, including the grant of compensation to the complainant.
Due date for State party response	24 February 2009
Date of reply	26 February 2009
State party response The State party expressed its astonishment at the Committee's decision given that in the State party's view domestic remedies had not been exhausted. It reiterated the arguments set forth in its submission on admissibility. As to the Committee's view that what were described by the State party as "records" of the preliminary hearing were simply incomplete summaries, the State party acknowledged that the transcripts were disordered and incomplete and provided a full set of transcripts in Arabic for the Committee's consideration. In addition, the State party informed the Committee that on 6 February 2009, the judge "d'instruction" dismissed the complainant's complaint for the following reasons: 1. All of the police allegedly involved denied assaulting the complainant. 2. The complainant could not identify any of her alleged aggressors, except the policeman	

who is alleged to have pulled her with force prior to her arrest and this would not in any case constitute ill-treatment.

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

4. One of the witnesses stated that she had attempted to bribe him in return for a false statement against the police.

5. Her own brother denied having had any knowledge of the alleged attack and that she displayed no signs of having been assaulted upon her return from the prison.

6. A witness statement from the court clerk confirmed that her bag was returned intact.

7. Contradictions in the complainant's testimony about her medical report – she said the incident had taken place on 22 July 2004 but the certificate stated 23 July 2004.

8. Contradictions in the complainant's testimony to the extent that she stated in her interview with the judge that she had not made a complaint before the Tunisian legal authorities and her subsequent insistence that she made it through her lawyer, who she did not in fact recognize during the hearing.

The State party provided the law upon which this case was dismissed, made reference to another complaint recently made by the complainant through the OMCT against hospital civil servants, and requested the Committee to re-examine this case.

Complainant's comments

On 2 June 2009, the complainant reiterates 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) with 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.
Further action taken and/or required The Special Rapporteur 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 below. RULE 110 2. If the Committee or the Working Group has declared a complaint inadmissible under article 22, paragraph 5, of the Convention, this decision may be reviewed at a later date by the Committee upon a request from a member of the Committee or a written request by or on behalf of the individual concerned. Such written request shall contain evidence to the effect that the reasons for inadmissibility referred to in article 22, paragraph 5, of the Convention no longer apply. The Committee may wish 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 may also wish to remind the State party of its obligation under the Convention to grant the complainant a remedy in line with the Committee's Decision.
Proposed Committee's Decision The dialogue is ongoing.
