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

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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-fifth session of the Committee against Torture (12 November–7 December 2018) in the framework of its follow-up procedure on decisions relating to communications submitted under article 22 of the Convention.[1]

A. Communication No. 327/2007[2]

Boily v. Canada	
Decision adopted on:	14 November 2011
Violation:	Articles 3 and 22
Remedy:	The Committee requested that the State party, in accordance with its obligations under article 14 of the Convention, provide effective redress, including by: (a) compensating the complainant for the violation of his rights under article 3; (b) providing as full a rehabilitation as possible by providing, inter alia, medical and psychological care, social services and legal assistance, including reimbursement for past expenditures, future services and legal expenses; and (c) reviewing its system of diplomatic assurances with a view to avoiding similar violations in the future.

2. On 4 March 2019, the State party recalled its initial follow-up submission dated 4 April 2012, in which it had contested the allegations of torture of the complainant and had indicated that it did not intend to compensate or rehabilitate the complainant. The State party submitted additional observations dated 6 April 2017 and 7 September 2018. In those reports, the State party reports that the complainant was transferred to Canada in June 2017, where he continued to serve his sentence until a conditional release in December 2017.

3. The State party notes that it generally respects the mandate and decisions of the Committee. However, in this case, it does not share the Committee's views. The State party

* Adopted by the Committee at its sixty-sixth session (23 April–17 May 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-fifth session (CAT/C/65/3), on 6 December 2018, as amended.

[2] CAT/C/65/3, paras. 2–7.

contests the complainant's allegations of torture. As a result, there is no need for reparation, unless otherwise decided by the competent Canadian courts. The State party invites the Committee to await the outcome of a compensation claim that is pending before the Federal Court of Canada, the recourse to which had been questioned, prior to seeking further updates from the State party.

4. On 27 March 2019, the State party's submission was transmitted to the complainant's counsel for comments, which are to be provided by 27 May 2019.

5. The Committee decided to keep the follow-up dialogue ongoing and to request, in line with its previous decision, regular updates from the State party on the status of the implementation of the Committee's decision before each session, until a satisfactory resolution was reached. The follow-up observations and comments have demonstrated partial implementation.

B. Communication No. 464/2011

K.H. v. Denmark	
Decision adopted on:	23 November 2012
Violation:	Article 3
Remedy:	The Committee found that by rejecting the complainant's asylum request without seeking further investigation on his claims or ordering a medical examination, the State party had failed to determine whether there were substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned. Accordingly, it concluded that the complainant's removal to Afghanistan by the State party would constitute a breach of article 3 of the Convention. It invited the State party to inform it, within 90 days from the date of the transmittal of its decision, of the steps taken in response to the observations in the decision.

6. On 1 April 2019, the State party recalled its request for closure of the follow-up procedure, dated 29 April 2013.

7. On 8 May 2019, the Secretariat informed the State party and the complainant's counsel that the State party's request for closure of the follow-up procedure would be considered during the sixty-sixth session of the Committee, as no comments had been received from the counsel in regard to the State party's information that the complainant had been granted a residence permit in Denmark. However, the Committee had already decided, at its fiftieth session, to close the follow-up dialogue with a note of satisfactory resolution.

8. The Committee decided to inform the State party and the complainant that the Committee had decided to close the follow-up dialogue at its fiftieth session, with a note of satisfactory resolution, as the complainant had been granted a residence permit in Denmark. The follow-up observations have demonstrated full implementation.

C. Communication No. 477/2011[3]

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).

9. On 11 January 2019, the State party submitted follow-up observations in Arabic.

10. On 20 February 2019, the State party's observations were transmitted to the complainant's counsel for comments, which were to be received by 22 April 2019.

11. In line with the decision taken by the Committee at its sixty-fifth session to keep the follow-up dialogue ongoing, given the absence of meaningful progress in 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 during the sixty-seventh session, with a view to discussing further measures that could be taken by the State party's authorities to implement the Committee's decision. The follow-up observations and comments have demonstrated a lack of implementation. The Committee decided to express concerns about the lack of implementation of the above decision in its annual report.

D. Communication No. 500/2012[4]

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.

12. On 30 January 2019, the State party submitted follow-up information. It reports that criminal investigations were reopened in 2016 in order to bring the perpetrators of torture to

[3] Ibid., paras. 8–9.
[4] Ibid., paras. 10–11.

justice. However, no significant progress in establishing their accountability has been achieved. The State party notes that evidence in the form of voice recordings has been requested from the military Public Prosecutor's office. As regards compensation to victims, their names have been entered into the National Registry of Victims and can therefore receive compensation. Nonetheless, the victims have not received any compensation to date, other than legal assistance, and no further explanation in that regard has been provided. No updated information has been provided on the two victims who had been sent back to prison shortly after their release. The State party's submission does not contain an update on the medical treatment required by the victim who suffered hearing loss in one ear as a result of torture, and updated information on the reform of military jurisdiction is also lacking.

13. On 20 February 2019, the State party's observations were transmitted to the complainants' counsels for comments, which were to be provided by 11 April 2019.

14. On 12 April 2019, the complainants' counsels requested the Committee to: (a) require the State party to submit information on the measures taken to comply with the recommendations in the above decision; (b) call on the State party, through the Committee's rapporteur on reprisals, to safeguard the physical and moral integrity of and refrain from any reprisals or retaliation against the complainants, their families and legal representatives; and (c) appoint one or several of its members to proceed with a confidential investigation into the follow-up to its previous visit to Mexico in 2001, in accordance with article 20 of the Convention.

15. Noting that the follow-up to the above decision was part of a dialogue during the examination of the seventh periodic report by the State party, the Committee decided to keep the follow-up dialogue ongoing, and to send out a letter by the Chair of the Committee requesting the State party to ensure full implementation of the above decision, and to refrain from any further reprisals against the complainants, their families and legal representatives. The Committee also decided to consider further steps in the light of the State party's response. The follow-up observations and comments have demonstrated a lack of implementation.

E. Communication No. 580/2014[5]

F.K. v. Denmark	
Decision adopted on:	23 November 2015
Violation:	Articles 3, 12 and 16
Remedy:	The Committee 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 complainant to Turkey or to any other country where he ran a real risk of being expelled or returned to Turkey. The Committee also found that the State party had violated the requirements of article 12, read in conjunction with article 16, of the Convention.

16. Given the absence of counsel's comments on the State party's observations of December 2017, and the State party's status request dated 1 April 2019, a reminder for counsel's follow-up comments was sent on 8 May 2019, which are to be provided by 8 July 2019.

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

[5] CAT/C/62/3, paras. 18–20.

F. Communication No. 606/2014[6]

Asfari v. Morocco	
Decision adopted on:	15 November 2016
Violation:	Articles 1 and 12–16
Remedy:	The Committee was of the view that the State party had an obligation to: (a) provide the complainant with a remedy, including fair and adequate compensation and the means for as full rehabilitation as possible; (b) initiate an impartial and thorough investigation of the alleged events, in full conformity with the requirements of the Istanbul Protocol, in order to establish accountability and bring those responsible for the complainant's treatment to justice; and (c) refrain from any pressure, intimidation or reprisals against the physical or moral integrity of the complainant or his family, which would otherwise violate the State party's obligations under the Convention to cooperate with the Committee in good faith, to facilitate the implementation of the provisions of the Convention and to allow family visits of the complainant in prison.

18. On 5 December 2018, the State party responded to the allegations of reprisals, including the limitations placed on visits of the complainant's family members, and the ban on the entry of Claude Mangin-Asfari into the territory of Morocco.

19. On 11 January 2019, the State party submitted follow-up observations in Arabic.

20. On 20 February 2019, the State party's observations were transmitted to the complainant's counsels for comments, which were to be provided by 22 April 2019.

21. On 17 April 2019, the complainant's counsels reported that Ms. Mangin-Asfari had been allowed to enter to Morocco on 14 January 2019, after a ban lasting 30 months. She had been permitted to visit the complainant in prison on 14 and 15 January 2019. It was noted that the complainant continued to suffer from various restrictions in detention, perceived as reprisals against him.

22. On 13 May 2019, the counsels' comments were transmitted to the State party for observations, which are to be provided by 15 July 2019.

23. The Committee decided to keep the follow-up dialogue ongoing and, given the absence of meaningful progress in the implementation of the above decision, to request a meeting with a representative of the Permanent Mission of Morocco to the United Nations Office and other international organizations in Geneva, to be held during the sixty-seventh session of the Committee, and to discuss further measures that could be taken by the State party's authorities to implement the Committee's decision. It also decided to send out a letter by the Chair of the Committee, requesting the State party to refrain from reprisals against Ennaâma Asfari, while noting positive developments in the form of visits to Mr. Asfari by his wife, and inviting the State party to provide further follow-up observations on the implementation of the remedy. The follow-up observations and comments have demonstrated a lack of implementation. The Committee therefore decided to express concerns about the lack of implementation of the above decision in its annual report.

[6] CAT/C/65/3, paras. 12–25.

G. Communication No. 653/2015

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.

24. On 7 September 2017, the State party submitted that it was not going to accept the Committee's decision and that it would deport the complainants. On 2 November 2018, the State party's follow-up observations were transmitted to the counsel for comments, which were to be provided by 3 December 2018.

25. On 8 May 2019, since no response had been received, the Secretariat sent the first reminder for the counsel's comments, which were to be provided by 8 July 2019.

26. The Committee decided to keep the follow-up dialogue ongoing, and to consider further steps in the light of the comments of the complainants' counsel. The follow-up observations have demonstrated a lack of implementation.

H. Communication No. 742/2016[7]

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.

27. On 8 May 2019, the complainant's counsel confirmed that the complainant's asylum proceedings had been reopened by the authorities of Switzerland, and that the complainant had been interviewed on the merits of his asylum claim on 5 February 2019 by the State Secretariat for Migration. It was noted that the complainant's second interview was scheduled for 21 May 2019. In addition, the domestic asylum proceedings were still ongoing, and there had not been a decision on their merits.

28. On 13 May 2019, the counsel's follow-up submission was transmitted to the State party for observations, which are to be provided by 15 July 2019.

[7] Ibid., paras. 34–36.

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

I. Communication No. 758/2016

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.

30. On 8 May 2019, the complainant's counsel confirmed that the authorities of Switzerland had quashed the expulsion order of 6 August 2014 and had reopened asylum proceedings. However, no measures had been undertaken to date by the authorities in furtherance of the complainant's new asylum proceedings. In particular, he had not been scheduled for an interview or any other procedure aimed at gathering evidence.

31. On 13 May 2019, the counsel's follow-up submission was transmitted to the State party for observations, which are to be provided by 15 July 2019.

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

J. Communication No. 778/2016

Yrusta et al. v. Argentina	
Decision adopted on:	23 November 2018
Violation:	Articles 1, 2 (1) and 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 Roberto Agustín 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.

33. On 20 April 2019, the complainant's counsel submitted that none of the recommendations as contained in the Committee's decision had been implemented by the State party. In particular, the counsel indicated that the investigation into the facts of the case had remained paralysed. The relatives of the victim had neither been involved in establishing the circumstances of his death, nor had they received adequate compensation. The counsel suggested that the Committee request the State party to implement the decision.

34. On 14 May 2019, the counsel's comments were transmitted to the State party for observations, which are to be provided by 14 July 2019, with a view to the State party implementing the Committee's decision.

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

K. Communication No. 811/2017

M.G. v. Switzerland	
Decision adopted on:	7 December 2018
Violation:	Article 3
Remedy:	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. The Committee 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.

36. On 15 March 2019, the State party submitted that a new asylum application had been submitted on behalf of the complainant on 24 January 2019, and that an asylum interview had been scheduled for 5 April 2019. The complainant would be allowed to stay in the territory until the conclusion of the procedure. The State party was of the view that it had implemented the Committee's decision.

37. On 19 March 2019, the State party's observations were transmitted to the complainant's counsel for comments, which are to be provided by 20 May 2019.

38. On 8 May 2019, the counsel submitted that the complainant's asylum proceedings had been reopened by the authorities of Switzerland, and that, on 5 April 2019, the complainant had been reinterviewed on the merits of his case by the State Secretariat for Migration. However, his new asylum proceedings were still pending and no new decision on the merits of the case had yet been taken.

39. On 13 May 2019, the counsel's follow-up submission was transmitted to the State party for observations, which are to be provided by 15 July 2019.

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