



# 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-third session of the Committee against Torture (23 April–18 May 2018), and is presented in the framework of the Committee's follow-up procedure on decisions relating to communications submitted under article 22 of the Convention.<sup>1</sup>

#### A. Communication No. 327/2007<sup>2</sup>

*Boily v. Canada*

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

2. On 18 July 2018, the complainant's counsel again requested the Committee to intervene in order to ensure that Canada abided by the decision rendered by the Committee in the complainant's favour. He reiterated that the decision had been ignored by both the previous and the current governments of the State party, notwithstanding several

\* Adopted by the Committee at its sixty-fourth session (23 July–10 August 2018) on 7 August 2018.

<sup>1</sup> The preceding follow-up report on decisions relating to communications submitted under article 22 of the Convention (CAT/C/63/3) was adopted by the Committee at its sixty-third session, on 15 May 2018, as amended.

<sup>2</sup> CAT/C/60/4, paras. 5–9.



reminders.<sup>3</sup> He claimed that the absence of remedies for the complainant, and of the necessary revision of the system of diplomatic assurances, undermined the reputation and credibility of the Committee.

3. Emphasizing the urgency of the complainant's situation, given his age (74 years) and exposure to serious sequels of the acts of torture he had been subjected to in Mexico, following his removal from Canada, the complainant's counsel strongly objected to the status quo.

4. The Committee decided to keep the follow-up dialogue open and to request a meeting with a representative of the Permanent Mission of Canada to the United Nations Office and other international organizations in Geneva during its sixty-fifth session (12 November–7 December 2018) to enquire about the measures taken to implement the Committee's decision in the present case, following the adoption of the International Transfer of Offenders Act.

## **B. Communication No. 477/2011<sup>4</sup>**

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*Aarrass v. Morocco*

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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 of the date of transmittal of the decision, of the measures that it had taken in accordance with the observations, 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).

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5. In the light of the absence of recent updates by the State party on the implementation of the above decision, the Committee requested a meeting with a representative of the Permanent Mission of Morocco to the United Nations Office and other international organizations in Geneva, scheduled for 3 August 2018, to discuss possible measures to be taken by the State party's authorities to implement the Committee's decision in the present case. However, no response was received to the Committee's request or its reminder.

6. The Committee decided to keep the follow-up dialogue ongoing, and to send a letter of reminder for observations by the State party on the implementation of the Committee's decision in the present case.

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<sup>3</sup> On 27 September 2016, the complainant's counsel requested an immediate transfer of the complainant back to Canada, given the rapidly deteriorating state of health of the complainant, to serve the remainder of his sentence there. The complainant also submitted that Mexico had consented to his transfer back to Canada as of 31 May 2016 but that, despite the urgency of the situation, the State party had failed to repatriate him because the Minister of Public Safety was waiting for the "necessary paperwork". In the light of the foregoing, the complainant urged the Committee to find out whether Canada intended to abide by its decision and, if so, when he would be repatriated. On 6 April 2017, the State party submitted that it had actively cooperated in reviewing the request for the complainant's transfer back to Canada. On 21 March 2017, Canada reportedly approved the complainant's request by way of adopting the International Transfer of Offenders Act, which was intended to facilitate the administration of justice, rehabilitation and social reintegration of offenders.

<sup>4</sup> CAT/C/63/3, paras. 5–6.

### C. Communication No. 500/2012<sup>5</sup>

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*Ramírez Martínez et al. v. Mexico*

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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 fair and adequate compensation to the complainants and their families and provide rehabilitation. The Committee also reiterated the need to repeal the provision concerning preventive custody in domestic legislation, and to ensure that military forces were not responsible for law and order.

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7. Given the absence of updated information from the national authorities on the measures taken to implement the Committee's decision in the present case, which were due by 14 July 2018, as agreed during the meeting, held on 14 May 2018, between the Chair of the Committee and the Permanent Representative of Mexico to the United Nations Office and other international organizations in Geneva, the Committee sent a reminder on 31 July 2018 for observations by the State party.

8. The Committee decided to keep the follow-up dialogue ongoing, and to send a letter of reminder for observations by the State party on the implementation of the Committee's decision in the present case.

### D. Communication No. 531/2012

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*L.A. v. Algeria*

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Decision adopted on:	12 May 2016
Violation:	Article 13
Remedy:	The Committee concluded that the State party had failed to fulfil its responsibility under article 13 of the Convention to guarantee the complainant's right to lodge a complaint about the alleged intimidation and threats against him as a judge carrying out his functions, and urged the State party to: (a) conduct an independent, transparent and effective investigation into the events in question; (b) take all necessary measures to prevent any threats or acts of violence to which the complainant and his family might be exposed, in particular as a result of having lodged the present complaint; and (c) inform the Committee, within 90 days of the date of transmittal of the decision, of the steps it had taken in response to the views expressed in the Committee's decision.

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9. On 30 June 2017, the complainant submitted that the State party had ignored the Committee's recommendations, pointing out the absence of an inquiry into the alleged acts of torture and intimidation, and requested the Committee to mandate its Rapporteur for follow-up to decisions under article 22 to reach out to the State party for it to implement the Committee's decision in the present case, and afford him legal assistance, as required.

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<sup>5</sup> Ibid, paras. 7–9.

10. On 27 July 2018, the complainant's submission was transmitted to the State party for observations within 30 days (by 27 August 2018).

11. The Committee decided to keep the follow-up dialogue open and to consider further steps in the light of the information to be received from the State party.

## E. Communication No. 606/2014<sup>6</sup>

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*Asfari v. Morocco*

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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 to the complainant in prison.

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12. On 6 July 2018, Action by Christians for the Abolition of Torture (France) and the International Service for Human Rights called on the Committee to request that the State party take measures of protection to prevent and remedy acts of reprisals against the complainant, and to prevent further violations of the Convention. The complainant's counsels submitted that Mr. Asfari had been subject to repeated reprisals since his conviction had been confirmed by a civilian appeals court in July 2017, on the basis of forced confessions signed by him and the other defendants under duress. Moreover, no thorough and impartial investigation has been conducted into the allegations of torture.

13. The Committee was also informed that, since October 2016, Mr. Asfari's wife, Ms. Mangin-Asfari, had been refused entry to Morocco on four occasions and had not been able to meet her husband since then. Between 18 April and 17 May 2018, Ms. Mangin-Asfari went on a hunger strike to protest against the authorities' continued refusal to allow her entry into Moroccan territory and to visit her husband in detention.

14. Given the gravity of the allegations, the Committee's Rapporteur on the issue of reprisals and the Rapporteur on follow-up to decisions under article 22 addressed a letter to the State party, dated 13 July 2018, requesting the State party to provide explanations by 25 July 2018 as to the current situation of Mr. Asfari and the visits by his family in prison. In accordance with the Committee's decision, the State party was requested to refrain from any form of punishment or reprisals against Mr. Asfari and his family, to adopt the necessary measures of protection to ensure the physical and moral integrity of the complainant, his relatives and their representatives in accordance with articles 13 and 19 of the Guidelines against Intimidation or Reprisals (San José Guidelines), and to generally implement the Committee's recommendations in the above decision.

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<sup>6</sup> Ibid., paras. 13–14.

15. Moreover, the Committee's rapporteurs requested a meeting with a representative of the Permanent Mission of Morocco to the United Nations Office and other international organizations in Geneva, scheduled for 3 August 2018, to discuss possible measures to be taken by the State party's authorities in implementing the Committee's decision in the present case. However, there was no response to the Committee's request or its reminder.

16. On 31 July 2018, the State party submitted that its previous correspondence of 9 February and 28 November 2017 had pointed out, *inter alia*, new juridical developments in the context of follow-up to the Committee's decision in the present case. Responding to the Committee's letter of 13 July 2018, the State party categorically rejected the reported allegations of reprisals against the complainant or his family since his renewed sentence by the civilian jurisdiction of 19 July 2017. It submitted that the complainant was serving his sentence, pursuant to Law No. 23/98 on the organization and functioning of penitentiary institutions, while enjoying all his rights without restriction or discrimination.

17. The State party further submitted that, on 14 March 2018, the complainant had been transferred from El Arjat 1 to Kenitra prison. He had been subject to solitary confinement (between 13 February and 13 March 2018) for disciplinary offences, including the possession of three mobile telephones, a knife, three memory cards, a SIM card, and for verbal threats against the director and personnel of the penitentiary institution. During that period, the family visits had to be restricted, as stipulated by the law. However, he continued to enjoy other rights as a detainee, without restriction. Since his transfer to Kenitra prison, he had received family visits on a regular basis, which had never been refused. When in Kenitra, he had received eight visits from two of his brothers,<sup>7</sup> who brought him newspapers, magazines and books he could keep. Mr. Asfari was also allowed to freely communicate with his legal counsels; the last visit took place on 21 March 2018. Furthermore, he could regularly make telephone calls to his relatives.

18. According to the information provided by the State party, Mr. Asfari could also benefit from regular medical examinations and receive adequate treatment prescribed by a doctor. Moreover, the National Council for Human Rights, functioning as an independent national institution, closely followed the detention conditions of those imprisoned in the context of dismantling the Gdeim Izik camp (in Western Sahara), by carrying out regular visits upon receiving complaints of inadequate conditions from the detainees concerned. The National Council for Human Rights observed that the complainant enjoyed conditions identical to those enjoyed by other detainees. In particular, the complainant's wife had repeatedly requested the National Council for Human Rights to assess the detention conditions of her husband.

19. Finally, as concerns the refusal by the Moroccan authorities to allow entry by the complainant's wife (a French national) into the country's territory, the State party submitted that Ms. Mangin-Asfari had been subject to an expulsion decision since 19 October 2016, in accordance with Law No. 02.03. Her activities had been perceived as manifestly threatening national security. Such an administrative measure was not in any way related to the fact of her being the spouse of Mr. Asfari and should therefore not be perceived as an act of reprisal. The State party's authorities claimed that they did not have, in principle, any objections to allowing her to enter the country and to visit her husband in prison, once she respected the national law in force, including the federal structure of the country.

20. On 6 August 2018, the State party's observations were transmitted to the complainant's counsels for comments, within 30 days (by 6 September 2018).

21. The Committee decided to keep the follow-up dialogue ongoing, and while noting the State party's response with regard to paragraph 15 (c) of the Committee's decision, to send a letter of reminder for the State party's observations with respect to the full implementation of the Committee's decision in the present case (para. 15 (a), (b) and (c)). In the light of the absence of comprehensive updates by the State party on the implementation of the Committee's decision, the Committee further decided to request a meeting with a representative of the Permanent Mission of Morocco to the United Nations

<sup>7</sup> The visits took place on 20 March, 14 May, 19 June, 21 June, 29 June, 5 July, 13 July and 20 July 2018.

Office and other international organizations in Geneva during its sixty-fifth session (12 November–7 December 2018) to discuss possible measures to be taken by the State party's authorities to implement the Committee's decision in the present case.

## F. Communication No. 681/2015<sup>8</sup>

*M.K.M. v. Australia*

Decision adopted on: 10 May 2017

Violation: Article 3

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 Afghanistan or to any other country where he ran a real risk of being expelled or returned to Afghanistan.

22. On 30 May 2018, the State party referred the Committee to its comprehensive response of 28 August 2017 to the Committee's decision in the present case,<sup>9</sup> emphasizing that it had considered the decision carefully and in good faith. The State party submitted that it considered the communication to be finalized. It reiterated that the complainant remained subject to the domestic migration processes of Australia.

23. During its sixty-third session, on 15 May 2018, the Committee decided to keep the follow-up dialogue open and to request a meeting with a representative of the Permanent Mission of Australia to the United Nations Office and other international organizations in Geneva during the Committee's sixty-fourth session, scheduled for 9 August 2018, to discuss possible measures to be taken by the State party's authorities to implement the Committee's decision in the present case.

24. The Committee decided to keep the follow-up dialogue open, and to consider further steps in the light of the State party's response.

<sup>8</sup> CAT/C/63/3, paras. 15–21.

<sup>9</sup> On 28 August 2017, the State party expressed its disagreement with the Committee's finding that the return of the complainant to Afghanistan would constitute a violation of article 3 of the Convention, not accepting the Committee's view that Australia was obliged to refrain from returning the author to Afghanistan or to any other country where the author ran a real risk of being returned to Afghanistan. It asserted that the complainant had been subject to the domestic migration processes of Australia and could be removed to Afghanistan. The State party expressed the following concerns relating to the Committee's consideration of the communication: the Committee had not consistently applied the test, as provided for in article 3 of the Convention, to its consideration of the complainant's communication; the decision demonstrated a limited application of the legal principles articulated by the Committee to the author's particular circumstances and a limited and selected consideration of country information; the Committee had, erroneously in the view of Australia, stated that the domestic decision makers in Australia had failed to adequately assess, or contest, particular aspects of the author's claims; the Committee had extended the scope of the non-refoulement obligation in article 3 of the Convention to encompass mental health treatment; the Committee had found, without sufficient evidence, that article 1 of the Convention applied in that particular case, including in respect of the alleged conduct of non-State actors; and the Committee had espoused a position on the well-established principle of international law on internal relocation that differed fundamentally from that of other human rights treaty bodies and of Australia.

## G. Communication No. 682/2015<sup>10</sup>

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*Alhaj Ali v. Morocco*

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Decision adopted on: 3 August 2016

Violation: Article 3

Remedy: The Committee concluded that the complainant had sufficiently demonstrated that he faced a foreseeable, real and personal risk of torture if extradited to Saudi Arabia, in violation of article 3 of the Convention. Since the complainant had been in pretrial detention for almost two years, the Committee urged the State party to release him or to try him if charges were brought against him in Morocco.

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25. On 21 May 2018, the complainant's counsel submitted that, according to information provided by the complainant dated 17 May 2018, he had been released from extradition detention on 16 May 2018.<sup>11</sup>

26. The complainant's counsel deplored the particularly serious harm suffered by the complainant as a result of his arbitrary detention, which should be redressed in accordance with chapter IX of 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. The counsel invited the Committee to remind the State party's authorities of their obligation to guarantee to the complainant the right to obtain reparation and to be fairly and adequately compensated.

27. On 28 May 2018, the counsel's comments were transmitted to the State party for observations, by 6 August 2018.

28. On 6 June 2018, the State party submitted that Mr. Alhaj Ali had been released from detention on 16 May 2018, pursuant to decree No. 2.18.379, which annulled the previous extradition decision. The State party did not further elaborate on the complainant's circumstances, nor did it provide information on whether he would receive any compensation, as requested.

29. On 26 June 2018, the State party's observations were transmitted to the complainant's counsel, for information.

30. The Committee decided to close the follow-up dialogue, with a note of satisfactory resolution.

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<sup>10</sup> CAT/C/63/3, paras. 22–29.

<sup>11</sup> The complainant had been kept in extradition detention since 30 October 2014.