



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

Distr.: General
19 June 2020

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-seventh session of the Committee against Torture (22 July–9 August 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. 477/2011²

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. Subsequent to a meeting with the Ambassador and Permanent Representative of Morocco to the United Nations Office and other international organizations in Geneva, held on 6 August 2019, the State party recalled, in a note verbale dated 6 August 2019, the measures taken in good faith by its authorities to implement the Committee's decision.

3. Further to its follow-up observations dated 8 January 2019, the State party referred to the request by an investigating judge of the Court of Appeal in Rabat for a second medical examination by a group of medical experts. The experts did not establish whether

* Adopted by the Committee at its sixty-eighth session (11 November–6 December 2019), on 3 December 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-seventh session (CAT/C/67/3), on 6 August 2019, as amended.

² CAT/C/67/3, paras. 2–3.



the complainant had suffered torture or ill-treatment during his detention in 2010. The corresponding medical findings were presented to the complainant on 20 October 2015.

4. As regards the complainant's current detention conditions, he has been placed in an individual cell in the Tiflet 2 prison. The authorities do not consider the complainant's detention regime as solitary confinement. He can enjoy daily walks in the open air, engage in physical activity, obtain food as prescribed by a medical doctor and receive correspondence. The complainant is due to be released from prison on 2 April 2020.

5. He can also enjoy contact with his family, including telephone calls of up to five minutes once a week (the most recent telephone call within Morocco was on 21 June 2019); this was exceptionally extended to up to 15 minutes a week. On 2 August 2019, he called his father in Spain and his sister in Belgium. The complainant can also benefit from family visits; his wife visited him last on 10 June 2019. Moreover, he receives regular visits from the National Human Rights Council of Morocco. The most recent visit of the Council took place on 28 May 2019; the complainant's detention conditions were reviewed and it was recommended that the complainant undergo required dental treatment. In 2019, the complainant had one appointment for dental treatment and six internal-medicine appointments, which confirmed that the complainant's state of health was regular. Finally, the State party refutes any allegations of torture or ill-treatment of the complainant, reiterating that he is incarcerated in regular detention conditions that correspond to international standards.

6. On 23 September 2019, the State party's follow-up observations were transmitted to the complainant's counsel for comments, which were to be submitted by 25 November 2019.

7. In comments dated 22 November 2019, the complainant's counsel informs the Committee that the detention conditions of Mr. Aarrass have not changed since April 2019. He has been held in isolation, as described previously and in the context of a subsequent complaint to the Committee (No. 817/2017). Since February 2019, the complainant has felt exhausted mentally and physically, although a minor improvement has been noticed since the two visits he was permitted over the past three months. However, the complainant has not received correspondence since November 2018, and the prison director admitted that he had not been responsible for that decision. In June 2019, the complainant's morale deteriorated again, as he felt that he was a victim of ill-treatment and discrimination. He is allowed to make telephone calls only twice a week, of up to five minutes each. On 28 June 2019, guards violently terminated a call with his sister. On 25 September 2019, the complainant's sister wrote to the counsel, reporting that her brother remained in isolation, under a strict regime. He could leave the cell for an outdoor walk of up to one hour per day, but only in the absence of other inmates. Although the complainant saw a dentist recently, he was not offered any treatment. In addition, he has allegedly been deprived of seeing a general medical doctor.

8. The counsel further submits that the complainant had been detained since 1 April 2008 and would be released on 2 April 2020, as indicated by the State party. Although the complainant has been tortured and convicted only on the basis of his forced confessions, in which context the Committee found a violation of several of his rights, the State party did not reopen a criminal procedure for the complainant's retrial. Moreover, neither the complainant nor his counsels have ever received the relevant decision of the Court of Cassation, which has not rejected the complainant's confessions obtained under torture, in violation of the Committee's decision in the case. The investigation carried out following the request by the Committee did not meet the requirements of thoroughness, independence or impartiality, as it was undertaken too late, when the physical traces of torture had vanished. The complainant was instead perceived as lacking credibility and did not have access to an independent doctor of his choice. The examination did not collect necessary medical evidence and the file could not be reviewed by the complainant, in disregard of the Istanbul Protocol. In the view of the counsel, the State party has played with words, as it denied that the complainant was being held in solitary confinement, while admitting that he was held in an individual cell and deprived of necessary social contact, including contact with the complainant's Belgian counsels or concerned non-governmental organizations. In addition, the proceedings before the Court of Cassation have gone on for more than four years and the State party did not agree to the complainant's request to be transferred to Belgium. The counsel argues that such protracted isolation in a cell is prohibited under the

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The counsel has urged the Committee to call on the State party to comply with its obligations and commitments and respect the Committee's decision in this case.

9. On 28 November 2019, the counsel's comments were transmitted to the State party for observations, which were to be submitted by 28 January 2020.

10. The follow-up observations and comments have demonstrated a lack of implementation of the Committee's decision. The Committee therefore decided to keep the follow-up dialogue ongoing, and to send a reminder to the State party, emphasizing the need for timely and effective medical examinations of the complainant in line with the Istanbul Protocol, and for ending his solitary confinement and ensuring regular access to a medical doctor. 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. 500/2012³

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.

11. On 13 September 2019, the complainants' counsels submitted to the Committee allegations of additional ill-treatment and reprisals against Rodrigo Ramírez Martínez by the national police on 8 September 2019.

12. On 16 October 2019, the Committee's rapporteur on reprisals sent a request for observations by the State party, which were to be provided by 16 November 2019. Referring to the previous allegations of intimidation and ill-treatment of and hostility and reprisals against the complainants, their family members and counsels, and the letter of enquiry of 23 September 2016 in response thereto, the rapporteur requested the State party to adopt measures of protection to prevent reprisals. The rapporteur also requested the State party to undertake a thorough and effective investigation into the acts of torture, to prosecute and punish the persons found guilty of the violations, and to order the immediate release of the complainants and award them full reparation, as recommended by the Committee in its decision in the case.

13. On 28 November 2019, the complainants' counsels submitted a letter from the Mexican Commission for the Defence and Promotion of Human Rights and the World Organization against Torture, expressing grave concern about the lack of compliance by Mexico with the protection measures requested by the Committee. The counsels requested that some measures be taken to guarantee the moral and physical integrity and safety of the victims, their families and their counsels.

14. The follow-up comments and observations have demonstrated a lack of implementation, while raising concerns about repeated allegations of reprisals. The

³ Ibid., paras. 4–11.

Committee decided to keep the follow-up dialogue ongoing, to send an additional letter from the Chair and the rapporteur on reprisals with a renewed request for protection measures, and to request a meeting with a representative of the Permanent Mission of Mexico to the United Nations Office and other international organizations in Geneva, to be held during the upcoming session of the Committee, in order to seek updates on further measures to fully implement the Committee's recommendations in the above decision. In addition, the Committee decided to publish the lack of implementation of the above decision in its annual report.

C. Communication No. 580/2014⁴

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.

15. On 14 November 2019, the complainant's counsel submitted that pursuant to a Supreme Court ruling dated 15 November 2017, the complainant, who was in police custody, was deported to Turkey, in April 2018. In the proceedings before the Danish courts, the complainant had claimed that his forcible removal, in disregard of the Committee's interim measures, would constitute a serious violation of the State party's obligations under article 22 of the Convention.

16. The remaining proceedings before the Danish courts were discontinued in December 2018, as the complainant had at that time already been deported to Turkey and further proceedings to stop his deportation were rendered moot. Since his deportation, the complainant was able to contact his counsel in Denmark. He has claimed that upon his arrival to Turkey, he was handed over by the Danish police to the Turkish police, which placed him directly in prison, where he was tortured. Subsequently, he was transferred to a military facility where he is serving military service against his will. Although he is Kurdish, he may be forced to fight against the Kurdish people. The complainant holds that the decision handed down by the Danish Refugee Council on 17 March 2016 was in violation of the Convention, as was his removal in disregard of the Committee's decision.

17. On 25 November 2019, the counsel's comments were transmitted to the State party for observations, which were to be received by 27 January 2020.

18. The follow-up observations and comments have demonstrated a lack of implementation of the Committee's decision. 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.

D. Communication No. 586/2014

R.G. et al. v. Sweden

Decision adopted on:	25 November 2015
Violation:	Article 3

⁴ See CAT/C/62/3, paras. 18–20.

R.G. et al. v. Sweden

Remedy: The Committee concluded that the removal 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 from the date of the transmittal of the decision, of the steps it had taken in response to the observations in the decision.

19. On 7 March 2016, 7 June 2018 and 18 June 2019, the State party submitted that the Swedish Migration Agency decided, on 13 January 2016, to grant the complainants permanent residence permits in Sweden. On 8 January 2016, the Committee's decision was published in the Lifos database of the Migration Agency, and subsequently on a human rights website. Consequently, the State party has concluded that no further follow-up of the Committee's decision should be necessary and has requested a closure of the follow-up dialogue.

20. On 21 November 2019, the complainants' counsel agreed with the State party's request to close the follow-up dialogue, since the complainants had been granted permanent residence in Sweden.

21. The follow-up observations and comments have demonstrated full implementation of the Committee's decision. The Committee decided to close the follow-up dialogue, with a note of satisfactory resolution.

E. Communication No. 606/2014⁵

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 and 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.

22. Subsequent to a meeting with the Ambassador and Permanent Representative of the Permanent Mission of Morocco to the United Nations Office and other international organizations in Geneva, held on 6 August 2019, the State party reiterated, in a note verbale dated 6 August 2019, its previous follow-up observations of 31 July 2018 and 8 January 2019.

⁵ CAT/C/67/3, paras. 12–13.

23. The State party informed the Committee that Ennaâma Asfari had refused to cooperate with judicial authorities when they tried to investigate the complainant's allegations of torture. As concerns detention conditions, Mr. Asfari is held in Kenitra prison in an individual cell, and not in solitary confinement, as he is in contact with other inmates. He can also receive family visits, the most recent of which was a visit by his brother and sister-in-law on 26 June 2019, have telephone calls, watch television in his cell and have access to newspapers. The State party denied that the complainant or his wife, Claude Mangin, had faced any reprisals. It reiterated that Ms. Mangin was allowed to visit her husband on 14 and 15 January 2019, as an exceptional measure, although she had been prohibited from entering Morocco since 2016. During her visit to the prison, Ms. Mangin was accompanied by a member of the National Human Rights Council. When in Morocco, from 13 to 16 January 2019, Ms. Mangin could move freely.

24. The State party also refuted the allegations of reprisals raised in the context of a film about Ms. Mangin's husband presented in Strasbourg as outside its jurisdiction and going beyond the purpose of a follow-up dialogue. The State party added that biased allegations can influence the Committee in terms of assessing follow-up to the decision.

25. On 23 September 2019, the State party's observations were transmitted to the complainant's counsel for comments, which were to be submitted by 25 November 2019.

26. The follow-up observations and comments have demonstrated a lack of implementation. The Committee therefore decided to keep the follow-up dialogue ongoing and, given the absence of meaningful progress in the implementation of the above decision, to request Morocco to allow for a follow-up visit to monitor the lack of implementation of its decision in this case, including with regard to the detention conditions of the complainant, and 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 that effect, to be held during the upcoming session of the Committee. In addition, in line with an earlier decision, the Committee will publish the lack of implementation of the above decision in its annual report.

F. Communication No. 729/2016

I.A. et al. v. Sweden

Decision adopted on: 23 April 2019

Violation: Article 3

Remedy: The Committee concluded that the removal of the complainant and his two children 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 to refrain from forcibly returning the complainant and his two minor children to the Russian Federation or to any other country where there was a real risk of them being expelled or returned to the Russian Federation. The Committee invited the State party to inform it, within 90 days from the date of the transmittal of the decision, of the steps it had taken in response to the observations in the decision.

27. On 26 August 2019, the State party reiterated that the complainants' expulsion decision had become statute barred on 11 May 2019, and also reiterated the legal consequences of that development.

28. In addition, the complainants were registered as absconded by the Swedish Migration Agency on 9 December 2016. Thereafter, the French and Danish authorities, respectively, have informed the Swedish Migration Agency that the complainants had been found in those countries, first in Denmark, then in France. According to Regulation No. 604/2013 of the European Parliament and of the Council of 26 June 2013 (the Dublin III Regulation), the French and Danish authorities requested that the complainants be transferred to Sweden. The requests were accepted by the Swedish Migration Agency on 16 June 2017. However, the transfer has not taken place, as the complainants have absconded

yet again. Currently, there is no pending request for asylum or any other permit regarding the complainants before the Swedish Migration Agency.

29. The whereabouts of the complainants are unknown to the Swedish authorities. Accordingly, the Swedish Migration Agency has informed the Government that in light of the above, and the fact that the complainants' expulsion decision became statute-barred on 11 May 2019, it has taken note of the Committee's decision regarding the complainants and the decision has been registered in their respective case files. Should the complainants return to Sweden, and contact the Swedish Migration Agency, the decision of the Committee will be duly noted. In addition, the Committee's decision has been published in the Lifos database and distributed to the concerned authorities. Consequently, the State party has requested closure of the follow-up dialogue as it has furnished all required information.

30. On 7 November 2019, the State party's observations were transmitted to the complainants' counsel for comments, which were to be provided by 7 January 2020.

31. The follow-up observations have demonstrated compliance with the Committee's decision. The Committee decided to keep the follow-up dialogue ongoing and to consider the counsel's comments, if any, with a view to closing the follow-up dialogue.

G. Communication No. 742/2016⁶

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.

32. On 22 August 2019, the complainant's counsel 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.

33. The follow-up comments and observations have demonstrated full implementation. The Committee decided to close the follow-up dialogue, with a note of satisfactory resolution.

H. Communication No. 758/2016⁷

Harun v. Switzerland

Decision adopted on: 6 December 2018

Violation: Article 3

⁶ Ibid., paras. 16–18.

Harun v. Switzerland

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.

34. On 22 August 2019, the complainant's counsel submitted that the State Secretariat for Migration had granted asylum to the complainant on 12 August 2019.

35. The follow-up comments and observations have demonstrated full implementation. The Committee decided to close the follow-up dialogue, with a note of satisfactory resolution.

I. Communication No. 778/2016⁸

Yrusta and del Valle Yrusta 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.

36. On 9 October 2019, the State party submitted its observations in response to the follow-up comments by the complainants' counsel dated 27 July 2019, indicating that the alleged harassment against the relatives of the victim, as they were visited at their homes by the police and summoned to testify in the court in Santa Fe, were being investigated by the Office of the Public Prosecutor of Santa Fe Province. However, the State party argued that the witness summons had been necessary to make progress in investigations into the death of Mr. Yrusta. The State party also provided an update on in situ inquiries at cell No. 815 of section VIII of Coronda prison. On the other hand, there is a lack of clarity as to whether the Committee's decision has been made public and whether the victim's relatives have been compensated.

37. On 25 November 2019, the State party's observations were transmitted to the counsel for comments, which were to be provided by 27 January 2020.

38. The follow-up comments and observations 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.

⁷ Ibid., paras. 19–21.

⁸ Ibid., paras. 22–24.

J. Communication No. 811/2017⁹*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 that there would be 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.

39. On 22 August 2019, the complainant's counsel submitted that the State Secretariat for Migration had rejected the complainant's asylum application for the second time, by a decision dated 17 June 2019, finding again that he had not demonstrated that his removal would result in a personal risk of persecution. Since the complainant had married a citizen of Switzerland on 27 February 2019, he was granted a residency permit (permit B).

40. The follow-up comments and observations demonstrated a lack of implementation. The Committee however decided to close the follow-up dialogue, as the case had been resolved.

K. Communication No. 854/2017*A v. Bosnia and Herzegovina*

Decision adopted on: 2 August 2019

Violation: Article 14 (1) in conjunction with article 1 (1)

Remedy: The Committee considered that the State party was required to: (a) ensure that the complainant obtained prompt, fair and adequate compensation; (b) ensure that the complainant received medical and psychological care immediately and free of charge; (c) offer public official apologies to the complainant; (d) comply with concluding observations with respect to establishing an effective reparation scheme at the national level to provide all forms of redress to victims of war crimes, including sexual violence, and to develop and adopt a framework law that clearly defined the criteria for obtaining the status of victim of a war crime, including sexual violence, and set out the specific rights and entitlements guaranteed to victims throughout the State party. 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.

41. On 22 November 2019, the State party submitted that, in relation to the complainant's communication, the Ministry of Human Rights and Refugees had, on 3 December 2018, updated the Council of Ministers of Bosnia and Herzegovina about the

⁹ Ibid., paras. 25–27.

criminal sentence for war crimes against civilians rendered in the present case, including an award for the claim of damages and pecuniary damages granted under the social protection scheme. In that regard, the Council of Ministers had tasked the Ministry to take measures, together with the competent institutions in Bosnia and Herzegovina, to harmonize existing laws with international standards in order to effectively ensure compensation and subsidiary protection for victims of torture, to amend the laws on obligations of the Federation of Bosnia and Herzegovina and the Republika Srpska and to eliminate inadequate case law.

42. Upon receipt of the Committee's final decision in communication No. 854/2017, the Ministry again asked the institutions concerned to: (a) propose amendments to legislation with a view to defining a concept of official public apologies to torture victims, including to the complainant/protected witness in this case; (b) propose legislative amendments to ensure that lawsuits for compensation for non-pecuniary damage related to crimes under international law, especially conflict-related torture and sexual violence, are not subject to any statute of limitations; (c) propose the adoption of new legislation to ensure effective implementation of decisions awarding compensation to victims in criminal proceedings to guarantee compensation is received by victims of torture and violence, in the context of subsidiary liability when the perpetrators are insolvent; and (d) research real possibilities of establishing a State fund for the payment of compensation to victims of torture, including the victims of conflict-related sexual violence, without prejudice to the right of the State to be reimbursed by the offender. Upon receipt of the relevant information, the Ministry will submit a proposal to the Council of Ministers to urgently adopt the law on the rights of torture victims in Bosnia and Herzegovina, covering reparation, restitution, compensation and provision of funds for damages on the grounds of solidarity from the budgets of the Federation of Bosnia and Herzegovina, Republika Srpska and Brcko District, and a concept of public official apologies to torture victims. The Ministry has committed to submitting further updates, as available.

43. On 28 November 2019, the State party's observations were transmitted to the counsel for comments, which were to be submitted by 28 January 2020.

44. The State party's observations 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.
