



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*

A. Introduction

1. The present report is a compilation of information from States parties and complainants that has been received and processed since the sixty-eighth session of the Committee against Torture in the framework of the Committee's follow-up procedure on decisions relating to communications submitted under article 22 of the Convention.¹ The present report is based exclusively on the information submitted, reflecting at least one round of exchanges with the State party and the complainant(s) and/or counsel.

B. Communications

Communication No. 637/2014

Gabdulkhakov v. Russian Federation (CAT/C/63/D/637/2014)

Date of adoption of
decision: 17 May 2018

Violation: Article 2 (1), read in conjunction with article 1, and articles 12,
13 and 15

Remedy: The Committee urged the State party to provide the complainant with an effective remedy, including: (a) conducting an impartial investigation into the complainant's allegations, with a view to the prosecution, trial and punishment of anyone found to be responsible for acts of torture – the investigation was to include a medical examination of the complainant, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol); (b) providing the complainant with a retrial, in accordance with the principle laid out in article 15 of the Convention; (c) providing the complainant with redress and the means of rehabilitation for the acts of torture committed; and (d) preventing the recurrence of any such violations in the future. The Committee urged the State party to inform it, within 90 days of the date of transmittal of the decision, of the measures it had taken in response to the findings.

* Adopted by the Committee at its seventy-first session (12–30 July 2021), on 13 July 2021.

¹ The preceding follow-up report on decisions relating to communications submitted under article 22 of the Convention (CAT/C/68/3) was adopted by the Committee at its sixty-eighth session, on 3 December 2019, as amended.



2. On 11 September 2020, the complainant informed the Committee that, according to a letter he received on 4 October 2018, the Prosecutor General's Office had refused to initiate supervisory proceedings in his case that would allow the implementation of the Committee's decision. Moreover, the investigation committee, in a letter dated 9 October 2018, informed the complainant that it did not consider it necessary to take any action with regard to the decision of the Committee against Torture. According to the complainant, in 2017, the investigation committee had conducted an inquiry procedure into his torture complaint, however it had refused to open a criminal investigation after questioning only the police officers and investigators against whom the complainant had lodged his complaint.

3. The complainant notes that on 11 August 2020, he was questioned by Federal Security Service agents about an alleged attack on special security forces, which had occurred in 2000, and was told that he was being questioned because of the complaint he had submitted to the United Nations. He submits that even though he is not connected to the attack, the agents who questioned him tried to force him to confess to the attack and made him take a polygraph test.

4. On 10 November 2020, the State party informed the Committee that it had disseminated the Committee's decision to the domestic courts for information and made it available on the website of the Supreme Court. With regard to the alleged violations found by the Committee in the complainant's case, the State party submits that the Prosecutor General's Office and the Supreme Court have analysed the case and found no violations of the complainant's rights. The State party notes that the complainant's repeated allegations of bodily injuries unlawfully caused by law enforcement officers have been examined by the courts and were dismissed. It has been ascertained that the complainant's injuries were caused by the police at the time of the complainant's arrest due to his resistance, however the police did not exceed the powers provided for in the law.

5. On 26 February 2021, the complainant's comments and the State party's observations were transmitted to the respective parties for comments, which are to be provided by 28 June 2021.

6. 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.

Communication No. 681/2015²

M.K.M. v. Australia (CAT/C/60/D/681/2015)

Date of adoption of decision: 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.

7. On 26 October 2020, the complainant's counsel informed the Committee that despite the Committee's decision, the State party considered that the complainant's involuntary removal could go ahead. According to the counsel, the only reason the complainant has not already been removed from the State party is that removals to Afghanistan have been on hold since October 2017. Therefore, the removal is still pending and the complainant has been left illegally in the community, and can be detained at any time the State wishes.

² For previous follow-up information relating to this communication, see CAT/C/64/2, paras. 22–24.

8. On 4 November 2020, the Committee sent the State party a note verbale, signed by the Chair and the Rapporteur for follow-up on decisions adopted under article 22, bringing the State party's attention to the allegations of a risk of removal of the complainant and recalling that doing so would violate the State party's obligations under the Convention.

9. On 30 March 2021, the State party reiterated its follow-up observations of 18 August 2017 that the return of the complainant to Afghanistan would not constitute a violation of article 3 of the Convention. It further informed the Committee that the complainant had been living in Australia unlawfully since his bridging visa had expired on 21 December 2018. On 1 March 2019, 4 March 2020 and 15 June 2020, the complainant lodged applications for a new bridging visa, however the applications were deemed invalid pursuant to section 46A of the Migration Act, which imposed a statutory bar to making further visa applications. On 19 August 2019, the complainant's representative had requested the Minister for the Department of Home Affairs to intervene to lift the statutory bar to enable the complainant to make further visa applications. The request was assessed as not meeting the ministerial guidelines and was not referred to the Minister for consideration. As a result, the complainant remained on a removal pathway.

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 consider further steps in the light of the State party's observations.

Communication No. 729/2016³

I.A. et al. v. Sweden (CAT/C/66/D/729/2016)

Date of adoption of decision: 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 of the date of the transmittal of the decision, of the steps it had taken in response to the observations in the decision.

11. On 26 November 2020, the complainants' counsel submitted that in view of the State party's earlier observations and the complainants' expulsion order becoming statute-barred on 11 May 2019, he considered the case to be settled in a satisfactory manner.

12. 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.

Communication No. 817/2017

Aarrass v. Morocco (CAT/C/68/D/817/2017)

Date of adoption of decision: 17 March 2017

Violation: Articles 16 and 2 (1), read in conjunction with articles 1 and 11, and article 14

³ For previous follow-up information relating to this communication, see CAT/C/68/3, paras. 27–31.

Aarrass v. Morocco (CAT/C/68/D/817/2017)

Remedy: 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 to respond to the observations. Such steps must include the return of the complainant to the group regime in a prison closer to his family, the opening of an impartial and thorough investigation into the complainant's allegations, and the provision of full, adequate and fair compensation to the complainant for all the violations of the Convention that had been found and the consequences that they had had for the complainant.

13. In a communication dated 8 May 2020, the State party informed the Committee that the complainant had been released from prison on 2 April 2020, after serving his 12-year sentence. The State party notes that an investigation had been launched on 18 June 2018 by the judicial police in Tiflet into the allegations made by the complainant concerning the conditions of his detention. On 8 November 2018, the Rabat Court of Appeal instructed the national criminal police brigade to take over the investigation. The brigade established that the complainant's incarceration conditions had been normal and similar to those of other inmates. A medical report, submitted by the prison doctor on 6 March 2019, showed that the complainant had not been subjected to any medical negligence and that, on the contrary, he had benefited from adequate follow-up both within and outside the prison. It was noted in the report that the complainant had on several occasions declined to attend external medical appointments after refusing to submit to necessary security measures provided for by the law, such as wearing prison clothing and handcuffs. On the basis of the above, the public prosecutor at the Rabat Court of Appeal decided to close the investigation for lack of evidence. The complainant was informed of that decision on 15 June 2019.

14. The State party notes that on 28 January 2019, the complainant submitted a second complaint to the prosecutor at the court of first instance in Tiflet with new allegations of ill-treatment and reprisals by Tiflet 2 prison officials. On 15 February 2019, the deputy public prosecutor visited the prison to conduct a formal hearing on the complaint. However, the complainant refused to leave his cell, without providing a valid reason, which prevented the hearing from taking place. Also in February, the director of the Tiflet 2 prison submitted a letter to the prosecutor of the court of first instance in Tiflet, noting that the complainant had again refused to attend medical appointments scheduled for him outside of the prison and had claimed that his health was in order and that he did not need external consultations.

15. The State party reiterates that the conditions of the complainant's detention in Tiflet 2 prison had been in accordance with Law No. 23/98 on the organization and functioning of prison facilities and that he had been held in a single cell that had met international standards in terms of surface area, light, ventilation and sanitary conditions and that had been equipped with a television set with access to 12 channels, including sports. The complainant was allowed daily one-hour walks, had access to a shower twice a week and was fed a balanced diet.

16. With regard to the complainant's right to receive visits, the State party submits that because his family lived abroad, the complainant was allowed to receive visits beyond the days permitted for family visits. The last visit received by the complainant was from his wife on 20 January 2020, which lasted one hour. He had also received visits in 2018 from Lahcen Dadssi, a lawyer who is a member of the Bar in Rabat, and Nicolas Cohen, a lawyer registered in Paris. Moreover, the National Human Rights Council, an independent national institution accredited with A status, has made several visits to the complainant, the last being on 28 May 2019.

17. With regard to mail and telephone calls, the State party notes that the complainant has been able to send and receive mail in accordance with the legal and regulatory provisions in force. He was also able to communicate with his family by telephone once a week for a period of 15 minutes. On 17 February 2020, he was allowed to make a second telephone call, for 5 minutes, during the same week to inquire about his father's state of health. During the

pandemic, the prison administration allowed the complainant to receive three telephone calls per week.

18. Finally, regarding the complainant's medical condition, the State party notes that he was subject to regular medical monitoring. On 21 February 2018, the complainant underwent a complete medical check-up, which revealed that he was in good health. In 2019, he received 11 medical consultations for common ailments. In 2020, he was seen by prison doctors twice, the last visit being on 28 January 2020 when he was prescribed and given treatment for symptoms in connection with a request for an ophthalmology consultation. When released on 2 April 2020, the complainant had his temperature checked and was provided with masks, gloves, disinfectant gel and a medical document certifying that he was in good overall health.

19. On 13 May 2020, the State party's observations were transmitted to the complainant's counsel for comments, which were to be provided by 14 September 2020.

20. On 14 September 2020, the complainant submitted his comments on the State party's observations. He recalls that the Moroccan Organization for Human Rights requested that the complainant be transferred to Belgium to serve his sentence. On 25 September 2018, the Belgian authorities had informed the parties that the Minister of Justice of Belgium had authorized such transfer and that it was up to the Moroccan authorities to make it happen. Fearing reprisals, the complainant's counsel requested that Belgium directly send a reminder to the State party about the transfer request, which was done in April 2019. However, the State party never responded to the request.

21. With regard to his dental health, the complainant submits that on 7 February 2020, the National Human Rights Council informed his counsel that he had requested dental treatment. On 12 February 2020, the Council clarified that the request had been for new dentures, the cost of which was not covered by the prison administration. Since the complainant himself did not have the financial means to pay for new dentures, the dental care was never provided. The complainant notes that his dentures had previously been replaced in Spain for a cost of 55 euros, thus it was unreasonable for the prison administration to deny him, due to lack of financial means, dental care that was necessary for him to be able to eat normally. However, the prison dentist signed off on a document certifying that the complainant's current dentures were in good working order. According to the complainant, this shows the Council's inability to act to improve the conditions of detention for the complainant and his health.

22. The complainant submits that he never refused to be examined by doctors outside of the prison. On the contrary, he always insisted on consultations with relevant specialists. In addition to his request to see a dentist, he had transmitted a request to the National Human Rights Council to be examined by an ophthalmologist and a dermatologist. The complainant further notes that there was only one doctor for two prisons, Tiflet 1 and Tiflet 2, thus the doctor was rarely available when medical attention was necessary. Often guards or a nurse distributed painkillers when someone complained of pain.

23. The complainant rejects the State party's observations that he refused to attend medical appointments outside of the prison. According to him, there was one episode when he refused to receive medical care. He was brought into a small, dirty and cramped room where the doctor was sitting on a sack of fruit. When he saw that the doctor was not wearing gloves and there was no sink where he could wash his hands, the complainant refused to allow a blood test and demanded to be taken to the infirmary. His request was refused due to the particular detention regime.

24. The complainant notes that after his release on 2 April 2020, Spain refused to allow him to join his family in Melilla. Due to the pandemic, no repatriation was possible to Belgium at that time. After the State party agreed to let Belgian-Moroccan dual nationals leave for Belgium for medical or humanitarian reasons, on 24 April 2020, the complainant was placed on the list of Belgian nationals for whom a priority humanitarian repatriation was required. This list was transmitted to the State party authorities. However, the State party did not agree to allow the complainant to leave its territory. Although the complainant's counsel wrote to the National Human Rights Council, the State party's consul in Belgium, King Mohamed VI and the Ministry of Foreign Affairs of Morocco, only the Council responded, informing counsel that it had written a letter to the Ministry for Foreign Affairs. The

complainant submits that he was allowed to leave the country only on 15 July 2020, after three and a half months of intense and unjustifiable suffering.

25. The complainant reports that now that he is back in Belgium, he plans to undergo an examination conducted by the International Rehabilitation Council for Torture Victims and is currently raising money for it. Meanwhile, he is seeing various medical specialists for his various ailments, including a general practitioner, a dentist, a dermatologist, an ophthalmologist and a psychologist.

26. The complainant draws the Committee's attention to the fact that despite the Committee's findings of numerous violations of the Convention in his case, the State party refused to release him, keeping him in solitary confinement, and refused to allow his transfer to Belgium to serve the remainder of his sentence. He notes that there was no impartial or thorough investigation of his claims, and no kind of compensation was offered to him.

27. According to the complainant, the State party does not provide any justification for classifying him as category A inmate, which resulted in his prolonged isolation. He also notes that this is the first time that the State party has acknowledged the two complaints submitted by him with allegations of ill-treatment. However, the complaints were not investigated appropriately, because his claims against the prison director and doctor were rejected based on statements made by the very people against whom the complainants were submitted and no other witnesses or medical experts were questioned. The complainant notes that he was not informed about the investigations, was not provided with counsel, and was not given any opportunity to participate. He submits that he requested to be assisted by counsel and not a prosecutor, thus he once refused to meet with a prosecutor because he did not know if the prosecutor had come to defend or investigate him.

28. The complainant notes that in 2017 he had a meeting with a prosecutor in the Tiflet 2 prison and was able to show her the conditions of his detention and that he was kept alone in a long corridor of 38 cells. At that time the prosecutor refused to look at the showers, which had only cold running water and mould on the walls, from which the complainant had contracted a fungal infection on his feet.

29. The complainant submits that the restrictions imposed on him with regard to contacts with his family and the outside world in general were not justified and were used as means of pressure and reprisals for submitting his previous complaint,⁴ and speaking out about the ill-treatment to which he had been subjected. He notes that even after he was released, the State party deliberately refused to allow him to leave Morocco, despite the request by Belgium and lack of any epidemiological risk that would prohibit his departure. The complainant believes that by doing this the State party wanted to continue to humiliate him and to further cause him mental and physical suffering. He notes that in the coming months he will arrange for a comprehensive medical report on the consequences of the torture he suffered during his detention.

30. On 19 February 2021, the complainant's submission was transmitted to the State party for observations, which were to be provided by 21 June 2021.

31. On 1 March 2021, the complainant submitted a copy of a medical examination report conducted in Belgium on 10 February 2021. He notes that the report corroborates his claims about torture he suffered in the State party. Namely, it refers to problems related to the lack of dental treatment (the complainant had to have eight teeth pulled out and his dentures replaced), problems with vision, pain in his joints due to dampness and beatings, skin problems due to fungus, and psychological after-effects. The complainant submits that he is currently living in very precarious conditions, dependent on State aid. He is unable to work. He notes that it would be highly beneficial for him, both symbolically and psychologically, and in order to improve his living conditions, if the State party were to respect the decision rendered by the Committee and agree to provide him with adequate compensation.

32. On 20 May 2021, the complainant's submission was transmitted to the State party for observations, which were to be provided by 20 July 2021.

⁴ *Aarrass v. Morocco* (CAT/C/52/D/477/2011).

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

Communication No. 818/2017

E.L.G. v. Spain (CAT/C/68/D/818/2017)

Date of adoption of decision:	26 November 2019
Violation:	Article 2 (1), read in conjunction with 16; article 11, read alone and in conjunction with article 2; and article 16
Remedy:	The Committee urged the State party to: (a) provide the complainant with full and adequate redress for the suffering inflicted on her, including compensation for material and moral damages and means of rehabilitation; and (b) take the necessary measures, including the adoption of administrative measures against those responsible, and give precise instructions to police officers at police stations, to prevent the commission of similar offences in the future. 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. In a communication dated 20 July 2020, the State party informed the Committee that the National Police had a code of ethics that regulated and promoted democratic values and the protection of human rights, equality and non-discrimination. The law on the National Police staff regime requires, among other things, that officers adhere to the Constitution and serve with loyalty and impartiality in compliance with the principles contained in the Declaration on the Police of the Parliamentary Assembly of the Council of Europe and the Code of Conduct for Law Enforcement Officials adopted by the General Assembly of the United Nations. In line with this, in 2018, the National Police established two national offices, one for human rights and one for gender equality. The national human rights office focuses on defining policies and actions in the work of the police to increase society's confidence in that work, while the national office for gender equality focuses on analysing the situation of women in the police force. In terms of training, all courses for the National Police force dedicate training space specifically to promote ethical and democratic values and principles, with special attention paid to the protection of human rights. Also, the National Police has established a network of 32 human rights contact points who ensure awareness of and adherence to human rights standards among members of the force.

35. The State party notes that to ensure a wide dissemination of the Committee's decision, the text has been made available on the website of the Ministry of Justice. At the same time, the State party recalls that the functions of the Committee do not include a review of domestic judicial decisions and that the principle of separation of powers and judicial independence should be respected. It recalls that the judicial proceedings in the case at hand have been concluded, which was confirmed on 16 March 2015 by the Constitutional Court when it rejected the complainant's *amparo* appeal. The State party submits that it cannot but respect the decision of its judicial bodies.

36. On 4 November 2020, the State party's observations were transmitted to the complainant's counsel for comments, which were to be provided by 4 March 2021.

37. On 26 February 2021, the complainant's counsel submitted his comments on the State party's observations. He notes that in its observations, the State party acts in bad faith and rejects the Committee's recommendations. According to counsel, it is possible to provide the complainant with redress and the police with necessary instructions without overturning any judicial decisions. One way to proceed could be by continuing administrative investigation against those who are responsible. He further notes that in the past there have been domestic cases involving reparations to victims of human rights violations through commissions and other means, and the Constitutional Court considered them constitutional in its rulings.

38. The complainant's counsel refers to the Committee's concluding observations on the State party's sixth periodic report,⁵ in which the Committee recommended that the State party take effective measures to prevent the disproportionate use of force by law enforcement officials and ensure that there were clear and binding rules governing the use of force. He notes that the State party has not mentioned this recommendation in any of its responses since then, which is why it is essential that in the present case the State party provides precise instructions to police officers at police stations to prevent the commission of similar offences in the future. The complainant's counsel requests the Committee to continue to follow up on its decision, to request information on steps taken by the State party to implement the decision, to meet with representatives of the State party to promote compliance with the decision and, if necessary, to visit the State party.

39. On 8 March 2021, the complainant's comments were transmitted to the State party for observations, which were to be provided by 8 July 2021.

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

Communication No. 852/2017

Zentveld v. New Zealand (CAT/C/68/D/852/2017)

Date of adoption of decision: 4 December 2019

Violation: Articles 12, 13 and 14

Remedy: The Committee urged the State party to: (a) conduct a prompt, impartial and independent investigation into all allegations of torture and ill-treatment made by the complainant including, where appropriate, the filing of specific torture and/or ill-treatment charges against the perpetrators and the application of the corresponding penalties under domestic law; (b) provide the complainant with access to appropriate redress, including fair compensation and access to the truth, in line with the outcome of the investigation; (c) make public the present decision and disseminate its content widely, with a view to preventing similar violations of the Convention in the future. 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.

41. On 3 April 2020, the State party informed the Committee that in response to the Committee's decision, the New Zealand Police, as the competent national authority, has committed to a prompt, independent and impartial investigation of the allegations advanced by the complainant. The police have undertaken an extensive file review of the previous investigations relating to the Child and Adolescent Unit at Lake Alice Hospital. A three-phase investigation plan has been developed and put into action. Further, to help vouchsafe the independence and impartiality of the exercise, staff who have been involved in prior Lake Alice Hospital investigations are not being used to investigate the current or any future complaints.

42. In phase one of the investigation plan, the police will assess the scope of the allegations that might be investigated and continue to search for relevant documents held in other agencies, notably the Ministry of Health and the Crown Law Office. This phase will include examining statements on file from former Lake Alice Hospital staff, to determine who it may be appropriate to approach to further assist the investigation. The police are accordingly focused on the Crimes Act of 1961 to address the allegations of ill-treatment that have been raised by the complainant. The police consider that the allegations of an

⁵ CAT/C/ESP/CO/6.

electroconvulsive therapy machine being applied to patients' genitals could reach the threshold of an indecent assault under the Crimes Act. It is those aspects of the complaint that the police are focused on investigating, along with other analogous complaints.

43. In phase two of the investigation plan, the police will conduct interviews and analyse the evidence obtained. The police have employed a specialist analyst, who will work alongside detectives, to complete this work. The police will source evidence from any person who steps forward as a potential victim (that is, not treating any single victim's evidence as being representative). The police have knowledge of 11 former Lake Alice Hospital patients who have alleged the use of electroconvulsive therapy on their genitals. Three of those people are deceased, leaving eight individuals to be located. Once located, approaches will be made to see if they wish to be interviewed by detectives who are specially trained in evidential interviewing for sensitive personal crimes, so that their allegations can be recorded more formally and comprehensively. The police have also identified additional former patients who believe the electroconvulsive therapy they received at Lake Alice Hospital was not therapeutic, but rather given as a punishment. The police will consider approaching these former patients, to ascertain whether they wish to take part in evidential interviews to document their alleged victimization. These interviews could then form the basis for further police action.

44. In phase three of the investigation plan, the police will focus on Dr. Selwyn Leeks as a person of interest, preparing a summary of evidence gained from phases one and two of the investigation, and reaching out to Dr. Leeks to gauge his preparedness to engage with police detectives. The police anticipate then being in a position to send the accumulated evidence to the Crown Law Office for its assessment and advice. The Crown Law Office will be asked whether the relevant threshold for criminal charges has been reached, and whether the extradition of Dr. Leeks from Australia would be an available option.

45. The State party submits that in line with its core commitment to provide victim-centric services, the police have also committed to keep the complainant (and others who have alleged criminal mistreatment during their time at Lake Alice Hospital) updated about the progress of its ongoing investigative work. While there has already been media reporting associated with the Committee's decision, options will also be explored to make the decision more widely available.

46. On 15 April 2020, the State party's observations were transmitted to the complainant's counsel for comments, which were to be provided by 17 August 2020.

47. On 13 July 2020, the complainant's counsel responded that the State party has done the right thing by directing a new police investigation into matters concerning what happened at the Child and Adolescent Unit of Lake Alice Hospital and that the complainant has supplied information and documents to assist the police in its investigation. He also welcomed the State party's decision that no staff who had been involved in prior Lake Alice Hospital investigations would be used to investigate the current or any future complaints. At the same time, the complainant's counsel submits that no one in the Crown Law Office who previously worked on Lake Alice Hospital cases from 1994 onward should be part of any evaluation of the new police investigation. To do otherwise would mean a conflict of interest, as Ministry of Health and Crown Law Office counsel have previously worked to defend the Government's position regarding claims from Lake Alice Hospital abuse victims, including their rather large defence against the complaint on behalf of the complainant to the Committee.

48. With regard to the publicity of the decision, the complainant's counsel notes that the suggestion that there be a notice put on the police website is limited and would not make the decision widely known. Considering that the children at Lake Alice Hospital were wards of the State and were subjected to psychiatric treatment against their will, the two key government departments that should be making this decision widely known are the Ministry of Health and the Ministry for Children (Oranga Tamariki). Because the police were involved with two previous investigations, they should also make the decision known, as should the Human Rights Commission and the Ministry of Justice.

49. He further notes that the State party should urge the Medical Council of New Zealand to make the Committee's decision known through its media channels, given that Dr. Leeks

was under its authority as a practitioner until 1999. He left New Zealand in 1978 under a shroud of controversy yet went on to practise in Victoria, Australia. He later resigned from the Medical Council register in 1999 at the time a class action suit was being launched on behalf of over 50 former Lake Alice Hospital patients. This meant he avoided any medical inquiry in New Zealand and ensured his continued practice in Victoria, Australia. Dr. Leeks later resigned his practising certificate in 2006 in Australia on the eve of the Medical Practitioners Board of Victoria formal hearing. Owing to Dr. Leeks' resignation, the Board subsequently decided to discontinue its formal hearing. According to the complainant's counsel, this case highlights the need for legislation change regarding the Medical Council's jurisdiction to pursue a practitioner even if he or she resigns from practice, and to not use any doctor's resignation as an excuse not to investigate charges of misconduct. The Medical Council of New Zealand should be urged by the Government to not only display this landmark decision of the Committee but to undertake a legislation change to no longer allow a practitioner to resign to avoid any medical inquiry or to escape its jurisdiction. This would go some way to ensure that such events cannot happen in the future and would help preserve the integrity of the medical profession. Lastly, the complainant's counsel notes that no one in the Government of New Zealand has contacted the complainant or his representatives since the Committee's decision was issued at the end of 2019, even after written requests to make contact through the Prime Minister's office and the Minister of Health.

50. On 25 September 2020, the comments of the complainant's counsel were transmitted to the State party for observations, which were to be provided by 25 January 2021.

51. On 29 January 2021, the State party informed the Committee that its decision has been given additional publicity through various local media outlets. Since February 2020, the police have conducted an in-depth investigation into alleged offending at the Child and Adolescent Unit at Lake Alice Hospital. The attention has been focused on a number of former staff, to determine who it may be appropriate to approach to assist with the investigation. Where allegations have involved individuals other than Dr. Leeks, these have been investigated. The State party notes that relevant Crown agencies are continuing to assist the royal commission as it advances work on its case study investigation, and the police investigation is nearing its conclusion.

52. The State party also notes that throughout 2020, the police have maintained open lines of communication with the complainant, primarily through access to a nominated Detective Inspector and Detective Senior Sergeant, who are closely involved with the police's ongoing investigative work. Furthermore, the complainant and the complainant's representative were personally briefed on the progress of the police investigation at a meeting held at Police National Headquarters in late 2020.

53. On 2 March 2021, the State party's observations were transmitted to the complainant's counsel for comments, which were to be provided by 2 July 2021.

54. 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.

Communication No. 854/2017⁶

A v. Bosnia and Herzegovina (CAT/C/67/D/854/2017)

Date of adoption of decision: 2 August 2019

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

⁶ For previous follow-up information relating to this communication, see CAT/C/68/3, paras. 41–44.

A v. Bosnia and Herzegovina (CAT/C/67/D/854/2017)

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.
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55. On 20 January 2020, the complainant's counsel submitted his comments on the State party's observations. He notes that none of the measures of reparation indicated by the Committee in its decision have been implemented. He welcomes the initiative by the Ministry of Human Rights and Refugees to gather proposals from the competent authorities throughout the country and to compile comprehensive information for the Council of Ministers of Bosnia and Herzegovina. He emphasizes the importance of ensuring that the compilation of proposals received by the Ministry is promptly forwarded to the complainant's representatives so that they can formulate their comments and observations.

56. On 20 April 2020, the counsel's comments were transmitted to the State party for observations, which were to be received by 20 August 2020.

57. On 21 January 2021, the complainant's counsel submitted further comments to the Committee. He notes that between the adoption of the decision in August 2019 and March 2020, the State party authorities did not take any steps towards the implementation of the decision. On 25 June 2020, the complainant's representatives (as lead), in cooperation with representatives from the Ministry of Human Rights and Refugees, organized a round-table discussion on the implementation of the Committee's decision. The representatives of the following State institutions participated in the discussion: the Constitutional Court of Bosnia and Herzegovina, the Court of Bosnia and Herzegovina, the Prosecutor's Office of Bosnia and Herzegovina, the Judicial Commission of Brcko District, and the Ministry of Finance and Treasury of Bosnia and Herzegovina. Representatives of the Ministry of Justice of Bosnia and Herzegovina, the Ministry of Justice of the Federation of Bosnia and Herzegovina and the Ministry of Justice of Republika Srpska were invited to the discussion, but did not attend. It is noteworthy that the Ministry of Justice of the Federation of Bosnia and Herzegovina and the Ministry of Justice of Republika Srpska refuse to cooperate with regard to the implementation of the decision, since those are the only two institutions that have not named representatives responsible for the implementation of the decision, as per the request made by the Ministry of Human Rights and Refugees on 8 November 2019. The discussion during the round-table discussion mostly concerned general issues faced by victims in situations similar to that of the complainant, since the participants from the relevant State institutions present insisted on adopting a systemic approach to the implementation of the indicated measures, which would at the same time also enable the complainant to obtain a remedy. After the discussion, the participants agreed upon several conclusions, which are to be interpreted as unofficial guidelines on the desirable methods of implementation of the respective recommendations, and on ways to prevent human rights violations similar to the ones experienced by the complainant.

58. With regard to the conclusions, agreed upon during the round-table discussion, on ensuring adequate and effective compensation, the complainant's counsel submits that round-table participants from relevant institutions stated that enabling the complainant to receive compensation would be possible only through the establishment of a systemic compensation model for all victims. He notes that the new practice applied by criminal courts, which started

in 2015, of not only sentencing perpetrators but also obliging them to pay compensation to victims who testified against them has resulted in 18 judgments in conflict-related sexual violence cases so far and a few more are upcoming. The vast majority will have a similar outcome in terms of not being enforceable, given that the accused perpetrators lack or hide the necessary assets. Participants in the round-table discussion concluded that, on the one hand, the Prosecutor's Office of Bosnia and Herzegovina should work on raising the awareness of prosecutors about the importance of investigating the property of a suspect or an accused person, in order to facilitate at a later stage a potential freezing of assets and the payment of the compensation awarded in criminal proceedings to victims and/or injured parties. At the same time, an agreement was reached that there needed to be a systemic solution for ensuring access to effective compensation in cases where the enforcement procedures failed, but no concrete measures were presented by the authorities. It was also emphasized that there was a need to develop guidelines for the establishment of a standardized package of assistance for victims of torture throughout Bosnia and Herzegovina, and for the provision of an integrated service for the package of assistance. Finally, the discussion pointed to the need to ensure that the Ministry of Human Rights and Refugees strengthen the initiative that would lead to a public official apology to the complainant, which could also include apologies to other victims in similar situations.

59. The complainant's counsel remains concerned that at the time of writing none of the measures indicated in the decision of 2 August 2019 had been fully implemented, and therefore calls on the Committee to keep the follow-up dialogue ongoing, and to consider further steps in the light of the State party's activities, including the possibility of meeting with the Permanent Representative of the State party in Geneva to discuss the matter.

60. On 26 February 2021, the counsel's comments were transmitted to the State party for observations, which were to be received by 28 June 2021.

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

Communication No. 882/2018

Calfunao Paillalef v. Switzerland (CAT/C/68/D/882/2018)

Date of adoption of decision: 5 December 2019

Violation: Article 3

Remedy: The Committee considered that the State party was required by article 3 of the Convention to reconsider the complainant's asylum application in the light of its obligations under the Convention and the observations contained in the decision. The State party was also requested to refrain from deporting the complainant while her application for asylum was being considered. 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.

62. On 18 February 2020, the State party informed the Committee that on 11 February 2020, the Secretary of State for Migration had granted the complainant provisional admission and she no longer ran the risk of being returned to Chile. The State party notes that despite the wording, provisional admission can be withdrawn only if a radical political change takes place in the country of origin, namely a lasting change of regime that could lead to a certain elimination of the risk for the complainant. The status can also end if the complainant leaves the State party or obtains a residence permit. On the last point, the State party notes that the complainant can file an application for a residence permit after five years of stay in Switzerland, which is granted on the basis of the person's level of integration and family

situation in particular. Finally, under certain conditions a spouse and minor children can also benefit from a family unification procedure.

63. On 21 April 2020, the complainant informed the Committee that she still had not received her travel documents, which prevented her from accessing the premises of the United Nations and exercising her role as a defender of the rights of her people, coordinating and attending meetings organized by the Human Rights Council, and continuing her research on the history of Mapuche law and international law, which was essential to her work.

64. Both submissions were transmitted to the respective parties for comments on 22 April 2020, which were to be received by 24 August 2020.

65. On 24 August 2020, the complainant's counsel informed the Committee that the complainant had received an F permit. However, according to the complainant's counsel, the permit does not allow her to receive a United Nations badge, which would enable her to access the United Nations premises and carry out her functions as the representative of her people to the United Nations. She has no national identity card and cannot enter the embassy of Chile to obtain one for fear of being arrested. Thus, on 23 June 2020, the complainant requested the State party to issue her a passport for foreigners. The State party has not responded to her request, which is seriously restricting her exercise of freedom of expression and freedom of movement. The complainant's counsel requests that the Committee continue the follow-up dialogue with the State party until it issues travel documents to the complainant, thus enabling her to exercise her functions before the United Nations.

66. The submission of the complainant's counsel was transmitted to the State party on 11 November 2020 for observations, which were to be received by 10 March 2021.

67. On 12 November 2020, the State party noted that the complainant's latest submission and request went beyond the scope of the Committee's decision and invited the Committee to close the follow-up dialogue, since the Committee's decision had been fully implemented.

68. On 25 November 2020, the complainant's counsel informed the Committee that the State party had accepted the complainant's request to issue her a foreigner's passport. However, the passport was issued for only 10 months, from 11 February 2020 to 11 December 2020, which meant that the complainant had to start the cumbersome procedure to extend it as soon as she received it in October 2020. Also, the complainant was not allowed to be assisted by her lawyers. The complainant's counsel urges the Committee to recommend that the State party authorities issue a long-term passport for the complainant and to allow her to use legal assistance during the procedure.

69. The above submissions were transmitted to the State party for information.

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