



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-fourth session of the Committee against Torture (23 July–10 August 2018), in the framework of its follow-up procedure on decisions relating to communications submitted under article 22 of the Convention.¹

A. Communication No. 327/2007²

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 7 September 2018, the State party made a further submission, in response to the counsel's follow-up information of 18 July 2018, indicating that Canada had approved the complainant's request for his transfer back to Canada on 21 March 2017. The complainant was transferred to Canada in June 2017, where he continued to serve his sentence in a prison facility until his conditional release in December 2017. As the State party stated previously, the complainant had submitted requests for a remedy by the Government of

* Adopted by the Committee at its sixty-fifth session (12 November–7 December 2018).

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-fourth session (CAT/C/64/2), on 7 August 2018, as amended.

² CAT/C/64/2, paras. 2–4.



Canada, seeking compensation for the violations of his rights allegedly suffered during the first week following his extradition to Mexico in August 2008. However, the State party opposed such requests, indicating that it did not intend to compensate or rehabilitate the complainant, unless the remedies sought would be adjudicated by the Canadian courts. The State party also stated that it had carefully considered the Committee's request for a review of its system of diplomatic assurances to prevent future violations. Since there were remedies available in Canada that allowed for a review of diplomatic assurances, the State party did not find it necessary to make further observations at that point. The State party committed to updating the Committee about any decisions on the complainant's pending requests for a remedy, and any impact they might have on the Committee's recommendations in the present case. Finally, the State party affirmed that it took seriously its obligations towards its nationals abroad, including the provision of consular services. It also categorically denounced any use of torture against which it constantly advocated at the international level.

3. The State party's submission was transmitted to the complainant's counsel for comments (by 15 October 2018).

4. On 25 October 2018, the counsel submitted that the State party had attempted to mislead the Committee, as the civil claim submitted by the complainant to the Federal Court could not fully remedy the violation of article 3 of the Convention found by the Committee in the present case, given that the pending claim concerned the absence of monitoring following the complainant's extradition. He reiterated that the State party had not had any intention of respecting the Committee's decision, claiming that it refused to provide any information about any adjustments to its system of diplomatic assurances, invoking a pending litigation before the Federal Court. However, in reality, no changes had been made to the system of diplomatic assurances. The counsel further objected that the State party would resolutely denounce torture, as stated above, by pointing to an example when the Attorney at the Federal Court had considered the acts of torture suffered by the complainant following his extradition "as facts". Therefore, the counsel called on the Committee to denounce the lack of implementation of the Committee's recommendations in the present case, and to hold the State party accountable, also when considering its candidacy for United Nations organs and bodies. He submitted that tolerating such a lack of follow-up would discourage the victims of violations of article 3 of the Convention, and undermine the credibility of the Committee.

5. On 26 November 2018, the counsel's submission was transmitted to the State party for comments (by 26 December 2018).

6. In accordance with the Committee's decision at the sixty-fourth session, the Chair met with a representative of the Permanent Mission of Canada to the United Nations Office and other international organizations in Geneva, and a representative of the government delegation present in Geneva, on 23 November 2018, to discuss the status of implementation of the Committee's decision. Since a compensation claim by the complainant against the Government of Canada was pending before the Federal Court of Canada, without any settlement, and the complainant continued living in the community, reportedly benefiting from rehabilitation programmes, it was agreed that the State party would provide regular updates on the status of implementation of the Committee's recommendations in the present case before each session, until its satisfactory resolution.

7. The Committee decided to keep the follow-up dialogue ongoing and to request regular updates by the State party on the status of implementation of the Committee's decision in the present case before each session, until satisfactory resolution.

B. Communication No. 477/2011³*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, 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 Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

8. 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 December 2018, to discuss possible measures to be taken by the State party's authorities to implement the Committee's decision. In the light of the Committee's decisions taken at the sixtieth and the sixty-fourth sessions, reminders for observations by the State party on the implementation of the Committee's decision in the present case were sent on 6 August and 30 November 2018.

9. The Committee decided to keep the follow-up dialogue ongoing, and to consider further steps in the light of the meeting with the representatives of the Permanent Mission of Morocco of 3 December 2018, and the follow-up updates by the State party, which were requested on 30 November 2018 (by 31 December 2018).

C. Communication No. 500/2012⁴*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 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.

10. Given the absence of updated information from the national authorities on the measures taken to implement the Committee's decision, 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 second reminder on 30 November 2018 for observations by the State party (by 31 December 2018).

³ Ibid., paras. 5–6.

⁴ Ibid., paras. 7–8.

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

D. Communication No. 606/2014⁵

Asfari v. Morocco

Decision adopted on: 15 November 2016

Violation: Articles 1 and 12–16

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

12. On 19 September 2018, Action by Christians for the Abolition of Torture (France), Ancile (a law firm) and the International Service for Human Rights submitted their comments on the State party's observations of 31 July 2018, reiterating their call to the Committee to request that the State party take measures to prevent and remedy acts of reprisals against the complainant, and to prevent further violations of the Convention. The complainant's counsels opposed the State party's lack of implementation in good faith of the decision by its authorities. Instead, the State party continued to challenge the Committee's decision (for perceived inadmissibility and lack of merits).

13. The counsels recalled that the State party had continued to deny to Mr. Asfari the status of victim of torture, pointing out the shortcomings of his retrial by the Court of Appeal in Rabat between 26 December 2016 and 19 July 2017.⁶ The counsels explained why the complainant refused to be subjected to a medical examination, which could not be considered independent. The forced confessions of the accused during the trial had even been the subject of a communication addressed to several special procedures of the Human Rights Council.

14. In addition, the counsels reminded the Committee that Mr. Asfari was still under judicial investigation for "defamation", "slander", "insulting a public agent" and "fraud to incite false testimony, complicity and public threat", on the basis of a complaint that had been filed by the Ministry of the Interior in March 2014. Mr. Asfari was officially informed of this complaint only on 13 December 2017, when he was taken to court for questioning by an investigating judge. Mr. Asfari refused to be interrogated in the absence of his lawyer, Ms. Jamaï. The judge postponed the interrogation until 20 December 2017. On that day, Mr. Asfari was once again taken to court. His lawyer was informed of the hearing by the complainant's wife, and the complainant did not receive any summons either on 13 or 20 December 2017. The counsels added that the investigating judge had agreed to postpone the interrogation until 4 January 2018, to allow Ms. Jamaï time to study the file. Mr. Asfari was brought before the investigating judge on 4 January 2018, while his French lawyer, Joseph Leonora, could not be present. He had not received a new summons since then. The

⁵ Ibid., paras. 12–21.

⁶ The complainant's counsels refer to their earlier submissions on the matter of 3 March 2017 and 6 November 2017.

counsels considered that the delay of more than three and a half years between the filing of the complaint by the Ministry of the Interior and the summons of Mr. Asfari for interrogation was quite unreasonable and reflected the use of the judicial proceedings by the Moroccan authorities to exert pressure and serve as retaliation against Mr. Asfari. There had been no further developments in that procedure since the beginning of 2018.

15. The counsels also indicated that, shortly before his placement in solitary confinement on 13 February 2018, Mr. Asfari had made known to the other Western Saharan political prisoners of Gdeim Izik his intention to conduct a hunger strike to demand that they be held in Laâyoune prison located in the occupied territory, suggesting to the other Western Saharan detainees to do the same. From 13 February to 13 March 2018, Mr. Asfari was put in a cold and humid cell with only three blankets. He was searched every day in a humiliating manner and was not allowed to receive a visit by his brother, who lodged a complaint with the prison administration on 15 February 2018. Even his lawyer, Ms. Jamaï, was denied permission to visit him by the prison administration. Later on, the Director of the Central Penitentiary Administration accused Mr. Asfari of being the instigator of the hunger strike by Western Saharan political prisoners that took place in several prisons at the end of February 2018. Mr. Asfari was informed that prison officers had told other prisoners in Gdeim Izik and their families that Mr. Asfari was responsible for the deterioration of their detention conditions, in an attempt to break the strong solidarity among that group of political prisoners.

16. On 12 February 2018, Olfa Ouled and Ingrid Metton, the French lawyers of Mr. Asfari were banned from entering Moroccan territory when they came to visit him and his co-defendants, all of whom were implicated in cassation proceedings against their last conviction by the Court of Appeal of Rabat. Interrogated by the police on leaving their aeroplane from France, the two lawyers were forced to spend the night at the airport under police supervision and then departed on a plane bound for France the next day. Ms. Metton sent a communication to the Special Rapporteur on the independence of judges and lawyers.

17. As regards family visits, guaranteed by the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela rules) (rule 58), Mr. Asfari clarified that only family members with the same name as himself, that is his three brothers and his wife, were allowed to visit him. Other members of his family (e.g. cousins, uncles or aunts) could not. That rule only applied after his arrival at Kenitra prison in March 2018. Since then, two aunts, two uncles and various cousins (some from abroad) had been denied the right to visit him. In the second part of the State party's comments, it was stated that Mr. Asfari had benefited, up until 12 October 2017, from 46 visits, involving 75 visitors in total. However, throughout the trial before the Court of Appeal in Rabat in 2017, the prison authorities authorized group visits during which the prisoners of Gdeim Izik were gathered in a room to receive a visit from their families present in Rabat for the trial. Those visits were not individual and were rare.

18. As concerns medical assistance in prison, Mr. Asfari was only entitled to a dental consultation. The doctor tried to pull out a tooth instead of treating it, which Mr. Asfari refused. He had no appointments for intestinal pain, a pulmonary allergy or for headaches. Mr. Asfari also suffered from a severe myopia. His glasses were no longer suitable, which caused further deterioration in his vision. He had been asking, without success, for a year and a half to see an ophthalmologist.

19. The counsels also objected to the State party's assertion that its National Council for Human Rights regularly visited the detainees at Gdeim Izik. The complainant had not been visited by the National Council since the hunger strike among prisoners in March and April 2016. He would also refuse such a visit as he believed that the National Council was in no way independent regarding the question of human rights in Western Sahara.

20. The counsels further stated that, as indicated to the Committee, Mr. Asfari's wife, Ms. Mangin-Asfari, had been refused entry to Morocco four times and had not been able to meet her husband since October 2016. From 18 April to 17 May 2018, Ms. Mangin-Asfari had been on hunger strike to protest against the authorities' continued refusal to allow her entry into Moroccan territory and to visit her husband in detention. According to the State party, the National Council would have found that Mr. Asfari was being held under the

same conditions as the other prisoners. However, Mr. Asfari, like his fellow Western Saharan prisoners, was deprived of access to the gym and the library.

21. With regard to the entry ban on Ms. Mangin-Asfari, the counsels reiterated that it represented a reprisal against both Mr. Asfari and his wife, punishing them for having reported the violations of Mr. Asfari's fundamental rights to the Committee and, more generally, for their activism in favour of defending the rights of the Western Saharans. In its letter to the Committee dated 31 July 2018, the State party considered their action as a hostile campaign against the Moroccan authorities.

22. In that connection, the State party stated that it had no objection to allowing Ms. Mangin-Asfari to enter the country if she respected, in particular, the "national constants of federalism". That was an obvious reference to the ban on the assertion that Western Sahara did not belong to Moroccan territory, as had been recognized by the United Nations and the International Court of Justice. The State party's authorities had for decades been employing various means to silence the human rights defenders working on the situation of Western Sahara: torture, arbitrary detention, unfair trials, and police and judicial harassment, as had been the case with Mr. Asfari, and a ban on access to Western Sahara. In recent years, 169 persons (parliamentarians, journalists and human rights defenders) of 15 different nationalities had been banned from entering or expelled from Western Sahara. In those circumstances, the entry ban on Ms. Mangin-Asfari and the denial of visiting rights to see her husband constituted reprisals against Mr. Asfari and his wife, as well as a violation of their freedom of expression.

23. Finally, the counsels requested that the Committee: remind Morocco of its obligation to respect in good faith the decision of the Committee; keep the counsels informed of any follow-up by the Committee and the State party; and reiterate its request that the State party ensure adequate conditions of detention of Mr. Asfari and his fellow Western Saharan detainees, and allow for the visits of Mr. Asfari's family, in particular of his wife, Ms. Mangin-Asfari.

24. On 24 October 2018, the counsels' submission was transmitted to the State party for observations, by 26 November 2018. The State party submitted its latest follow-up observations on 5 December 2018.⁷

25. The Committee decided to keep the follow-up dialogue open and, while noting the State party's response of 31 July 2018 and the outcomes of a meeting with the representatives of the Permanent Mission of Morocco of 3 December 2018, to send out a second letter requesting the State party to refrain from reprisals against Mr. Asfari and his wife, recalling the need to respect the Committee's decision in the present case in its entirety (para. 15 (a), (b) and (c)).

⁷ The latest submission by the State party, made on the evening of 5 December 2018, was not available when the present report was adopted. Its contents will be assessed in the subsequent follow-up report.

E. Communication No. 634/2014⁸

M.B. et al. v. Denmark

Decision adopted on: 25 November 2016

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 complainants to the Russian Federation or to any other country where there was a real risk of their being expelled or returned to the Russian Federation.

26. On 21 August 2018, the State party recalled its submission of 29 November 2017, including the observations on the counsel's comments of 12 June 2017, which indicated that the complainant had admitted that he was rightfully a national of Kazakhstan. Subsequently, a meeting took place on 4 December 2017 between the Committee and representatives of the Permanent Mission of Denmark to the United Nations Office and other international organizations in Geneva, during which the implementation of the Committee's decision was discussed. Having submitted its additional follow-up observations dated 29 November 2017, the State party was of the opinion that full effect had been given to the decision adopted by the Committee on 25 November 2016.

27. On 11 October 2018, the State party's submission was transmitted to the complainant's counsel for comments (by 10 November 2018).

28. On 25 October 2018, the counsel submitted that she did not have further comments regarding the State party's follow-up submission, indicating that she had been informed by the Danish Police on 25 October 2018 that the complainants had been missing since 16 January 2018 and that their whereabouts were unknown.

29. On 5 December 2018, the counsel's follow-up information was transmitted to the State party, for information.

30. The Committee decided to close the follow-up dialogue, despite the absence of a satisfactory resolution, since the complainants had gone missing and the State party and the counsel indicated that they did not wish to submit further follow-up information or comments.

F. Communication No. 701/2015

H.K. v. Australia

Decision adopted on: 10 May 2017

Violation: Article 3

Remedy: The Committee concluded that the return of the complainant to Pakistan would constitute a violation of article 3 of the Convention. 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 Pakistan or to any other country where he ran a real risk of being expelled or returned to Pakistan. It invited the State party to provide information, within 90 days from the date of the transmittal of the decision, of the steps it had taken in accordance with the observations in the present case.

⁸ CAT/C/62/3, paras. 32–34.

31. On 15 August 2017, the State party submitted that it disagreed with the Committee's decision in the present case, as the Committee had not given due weight to the relevant findings of fact made by the State party's national migration authorities, had not explained why it considered the complainant to be at risk of torture in the future and had not reached a conclusion on whether or not the complainant could safely relocate to another location in Pakistan while espousing a position on the well-established international law principle of internal relocation, which fundamentally differed from that of other human rights treaty bodies and of the State party. The State party emphasized that the complainant remained subject to domestic migration processes in Australia.

32. On 2 November 2018, the State party's submission was transmitted to the complainant's counsel for comments (by 2 January 2019).

33. The Committee decided to keep the follow-up dialogue open and to consider further steps in the light of the comments of the complainant's counsel.

G. Communication No. 742/2016

A.N. v. Switzerland

Decision adopted on: 3 August 2018

Violation: Articles 3, 14 and 16

Remedy: The Committee considered that, by deporting the complainant to Italy, the State party would deprive him of his right to rehabilitation, and that that situation would by itself amount, in the circumstances of the complainant, to ill-treatment, in violation of articles 14 and 16 of the Convention. It also noted that the ill-treatment that he would be exposed to in Italy, together with the absence of a stable social environment provided by his brother, would entail a risk of his depressive state worsening to the extent that he would be likely to commit suicide and that, in the circumstances of the case, the ill-treatment could reach a level comparable to torture, in violation of article 3 of the Convention. 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 present decision.

34. On 30 November 2018, the State party submitted that the State Secretariat for Migration annulled on 31 August 2018 its decision of 22 December 2016, regarding the complainant's removal to Italy, in accordance with the Dublin III Regulation,⁹ and decided to carry out instead the national asylum procedure.¹⁰ Since the asylum procedure was currently pending, the complainant was allowed to stay in Switzerland, without any risk of being removed, until the closure of the asylum procedure.

35. On 5 December 2018, the State party's submission was transmitted to the complainant's counsel for comments (by 5 January 2019).

36. The Committee decided to keep the follow-up dialogue ongoing, and to consider further steps in the light of the complainant counsel's comments, as well as the outcomes of the national asylum procedure.

⁹ Regulation No. 604/2013 of the European Parliament and the European Council.

¹⁰ Article 29 of the Dublin III Regulation, in conjunction with article 42 of the Asylum Act of Switzerland.

H. Communication No. 750/2016

R.H. v. Sweden

Decision adopted on: 10 May 2018

Violation: Article 3

Remedy: The Committee concluded that the deportation of the complainant to the Islamic Republic of Iran would constitute a violation of article 3 of the Convention. The Committee was of the view that the State party had an obligation to refrain from forcibly returning the complainant to the Islamic Republic of Iran or to any other country where he ran a real risk of being expelled or returned to the Islamic Republic of Iran. 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 present decision.

37. On 17 August 2018, the State party submitted that, on 4 June 2018, the Migration Agency granted the complainant a residence permit in Sweden until 4 June 2021. According to the Migration Agency's decision, taking into account the Committee's decision in the present case, the complainant had plausibly established that he would run the risk of being subjected to persecution on account of his political views upon return to the Islamic Republic of Iran. Furthermore, it would not be possible for the complainant to seek protection from the authorities or for him to relocate in another part of the country. Accordingly, he was granted refugee status and a residence permit for three years, renewable upon reapplication before its expiry. Moreover, the Migration Agency published the Committee's decision on the Internet in the Lifos database, comprising legal and country of origin information, it distributed the decision to the relevant public authorities for information and would publish the decision on the Government's human rights website. The State party was of the view that it had fully complied with the Committee's decision.

38. On 12 October 2018, the State party's follow-up submission was transmitted to the complainant's counsel for comments, by 12 November 2018.

39. On 7 November 2018, the counsel submitted that, in the complainant's opinion, the State party had taken the necessary steps in order to comply with the Committee's decision.

40. On 9 November 2018, the complainant counsel's comments were transmitted to the State party, for information.

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