



United Nations

Report of the Committee against Torture

**Forty-ninth session
(29 October–23 November 2012)**

**Fiftieth session
(6–31 May 2013)**

**General Assembly
Official Records
Sixty-eighth session
Supplement No. 44 (A/68/44)**

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Note

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I. Organizational and other matters

A. States parties to the Convention

1. As at 31 May 2013, the closing date of the fiftieth session of the Committee against Torture (hereinafter referred to as “the Committee”), there were 153 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”). The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.

2. The list of States which have signed, ratified or acceded to the Convention is contained in annex I to the present report. The list of States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention is provided in annex II. The States parties that have made the declarations provided for in articles 21 and 22 of the Convention are listed in annex III.

3. The text of the declarations, reservations or objections made by States parties with respect to the Convention may be found on the United Nations website (<http://treaties.un.org>).

B. Sessions of the Committee

4. The Committee against Torture has held two sessions since the adoption of its previous annual report. The forty-ninth session (1094th to 1133rd meetings) was held at the United Nations Office at Geneva from 29 October to 23 November 2012, and the fiftieth session (1134th to 1169th meetings) was held from 6 to 31 May 2013. An account of the deliberations of the Committee at these two sessions is contained in the relevant summary records (CAT/C/SR.1094–1169).

C. Membership and attendance at sessions

5. The membership of the Committee remained the same during the period covered by the report. The list of members with their term of office appears in annex IV.

D. Agendas

6. At its 1094th meeting, on 29 October 2013, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/49/1) as the agenda of its forty-ninth session.

7. At its 1134th meeting, on 6 May 2013, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/50/1) as the agenda of its fiftieth session.

E. Participation of Committee members in other meetings

8. During the period under consideration, Committee members participated in different meetings organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR):

(a) The twenty-fourth Meeting of chairpersons of the human rights treaty bodies, held in Addis Ababa from 25 to 29 June 2012, was attended by Ms. Felice Gaer (Vice-Chairperson), representing the Committee;

(b) The panel discussion on the issue of intimidation or reprisal against individuals and groups cooperating with the United Nations, convened by the Human Rights Council in Geneva on 13 September 2012, was attended by Mr. Claudio Grossman (Chairperson);

(c) The expert consultation on gender and religious freedom, held in Geneva on 17 and 18 January 2013 by the Working Group on the issue of discrimination against women in law and in practice and the Special Rapporteur on freedom of religion or belief, was attended by Ms. Gaer;

(d) The International Expert Conference on independent mechanisms to investigate torture in Kazakhstan, Kyrgyzstan and Tajikistan, held in Almaty, Kazakhstan, on 22 February 2013, was attended by Mr. Xuexian Wang (Vice-Chairperson);

(e) A panel discussion on preventing torture and ill-treatment in health-care settings, held in Geneva on 5 March 2013, was attended by Mr. Alessio Bruni;

(f) The twenty-fifth Meeting of chairpersons of human rights treaty bodies, held in New York from 20 to 24 May 2013, was attended by Mr. Grossman, who was elected chairperson of the Meeting.

9. In the context of the treaty body strengthening process:

(a) Mr. Grossman participated in the informal consultations for the intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system held in New York from 16 to 18 July 2012;

(b) Ms. Gaer participated in the informal consultations for the intergovernmental process on the strengthening of the treaty body system held in New York on 19 and 20 February 2013;

(c) Ms. Gaer participated in the informal consultations of the intergovernmental process on the strengthening of the treaty body system held in New York on 11, 12, 16 and 17 April 2013;

(d) Mr. Bruni participated in the informal consultations for the intergovernmental process on the strengthening of treaty body system held in Geneva on 19 April 2013.

F. Oral report of the Chairperson to the General Assembly

10. Further to the invitation to the Chairperson of the Committee to present an oral report on the work of the Committee and to engage in an interactive dialogue with the General Assembly at its sixty-seventh session under the sub-item entitled "Implementation of human rights instruments" (General Assembly resolution 66/150, para. 29), the Chairperson of the Committee presented an oral report to the General Assembly at its sixty-seventh session on 23 October 2012. The oral report may be found on the OHCHR website (<http://www2.ohchr.org/english/bodies/cat/index.htm>).

G. Activities of the Committee in connection with the Optional Protocol to the Convention

11. As at 31 May 2013, there were 68 States parties to the Optional Protocol (see annex V). As required by the Optional Protocol to the Convention, on 14 November 2012, a joint meeting was held between the members of the Committee and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter “the Subcommittee on Prevention”). Both the Committee and the Subcommittee on Prevention (membership of the Subcommittee on Prevention is included in annex VI) further discussed the strengthening of the modalities for cooperation, such as the mutual sharing of information, taking into account confidentiality requirements.

12. A further meeting was held between the Committee and the Chairperson of the Subcommittee on Prevention on 16 May 2013, at which the latter submitted to the Committee the sixth public annual report of the Subcommittee (CAT/C/50/2). The Committee decided to include it in the present annual report (see annex VII) and to transmit it to the General Assembly.

Postponement of the establishment of the national preventive mechanism of Romania

13. The Committee received a request from Romania under article 24, paragraph 2, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, requesting an additional two-year extension of the postponement of the establishment of its national preventive mechanism (NPM), further to its declaration upon ratification that it would postpone the establishment of an NPM for three years, in accordance with article 24, paragraph 1, of the Optional Protocol.

14. At its forty-ninth session, on 23 November 2012, the Committee took a decision (see annex VIII), after consulting on the matter with the Subcommittee on Prevention, to accept the request of the State party and to invite it to the next session of the Committee in May 2013 (fiftieth session) to present status reports on the establishment of the NPM and on the progress made to submit its long overdue second periodic report to the Committee.

15. At its fiftieth session, on 13 May 2013, the Committee met, in public, with a delegation of Romania to discuss the postponement of the entry into force of its NPM and to hear the reasons why its long overdue report had not yet been submitted to the Committee. The delegation informed the Committee that the State party would make the utmost effort to ensure that the NPM would enter into force by the end of 2014, the delay being that the law had not yet been adopted. As regards its report to the Committee, the delegation stated that it would be submitted by September 2013, under the optional reporting procedure that the State party had accepted, which facilitated the preparation of the report. The Committee requested that the information on the NPM, in particular the schedule for its entry into force, be submitted in writing within six weeks, for presentation to the Subcommittee on Prevention.

H. Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture

16. A joint statement with the Subcommittee on Prevention, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

was adopted to be issued on 26 June 2013, the United Nations International Day in Support of Victims of Torture (see annex IX to the present report).

I. Informal meeting with the States parties to the Convention

17. At its fiftieth session, on 10 May 2013, the Committee held an informal meeting with States parties to the Convention, which was attended by representatives of 25 States parties. The Committee and the States parties discussed the following issues: the methods of work of the Committee; the optional reporting procedure of the Committee, which consists of lists of issues to be transmitted prior to the submission of periodic reports; the Guidelines on independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines); the treaty body strengthening process; the examination of States in the absence of a report; and the issue of reprisals.

J. Participation of non-governmental organizations

18. At its fiftieth session, on 13 May 2013, the Committee held an informal meeting with representatives of 12 non-governmental organizations (NGOs) that usually provide information to the Committee, and discussed the following issues: the methods of work of the Committee; the mandate of the rapporteurs on reprisals; the treaty body strengthening process; the optional reporting procedure, including the need for guidelines for the procedure and the posting of relevant information received from NGOs on the Committee's website; the review of the Standard Minimum Rules for the Treatment of Prisoners; the criteria for the selection of subjects for general comments (a proposal was made for a future general comment, on either article 3 or article 15 of the Convention); the cooperation between the Committee against Torture and the Subcommittee on Prevention; and the involuntary treatment of persons with disabilities.

19. The Committee has long recognized the work of NGOs and met with them in private, with interpretation, on the day immediately before the consideration of each State party report under article 19 of the Convention. The Committee expresses its appreciation to the NGOs for their participation in these meetings and is particularly appreciative of the attendance of national NGOs which provide immediate and direct information.

K. Participation of national human rights institutions

20. Similarly, the Committee has long recognized the work of national human rights institutions (NHRIs); Country Rapporteurs, together with any other Committee member wishing to attend, have met with the representatives of the NHRIs, if requested and required, before the consideration of each State party report under article 19 of the Convention. The Committee expresses its appreciation to the NHRIs for the information it receives from these institutions, and looks forward to continuing to benefit from the information it derives from these bodies, which has enhanced its understanding of the issues before the Committee.

L. General comment on article 14 of the Convention

21. At its forty-ninth session, further to its work developed during past sessions, especially by the informal working group on the right to reparation established at the forty-

fourth session of the Committee, composed of Ms. Gaer, Mr. Abdoulaye Gaye, Mr. Grossman and Ms. Nora Sveaass,¹ after a public consultation held with stakeholders on 22 November 2011 and taking into account the numerous written comments submitted by States parties, United Nations entities, NGOs and others, the Committee, after a final reading of the text, adopted a general comment on the implementation of article 14 by States parties (see annex X). The general comment may also be found on the OHCHR website (<http://www2.ohchr.org/english/bodies/cat/comments.htm>).

M. Reporting guidelines

22. At its forty-ninth and fiftieth sessions, the Committee, due to its very heavy workload, had no time to continue to discuss the revision of its reporting guidelines in the light of the optional reporting procedure (“list of issues prior to reporting”).

N. General Assembly resolution 67/232

23. At its fiftieth session, the Committee welcomed General Assembly resolution 67/232 of 24 December 2012, in which the Assembly authorized the Committee to continue to meet for an additional week per session as a temporary measure, with effect from May 2013 until the end of November 2014, in order to address the backlog of reports of States parties and individual complaints awaiting consideration, further to its request to the General Assembly for appropriate financial support to this effect.

24. At the same session, the Committee continued to discuss measures to improve the effectiveness of its working methods and costs in order better to manage its workload and programmes of work. Along these lines, it decided, inter alia, that it will continue to evaluate the optional reporting procedure and to encourage States parties to report under the procedure, including in its concluding observations.

O. Examination of reports

25. In the light of General Assembly resolution 67/232 authorizing it to continue to meet for an additional week per session as a temporary measure, the Committee decided, at its fiftieth session, to continue to examine eight State parties’ reports at its May session and nine at its November session, maintaining a dialogue with representatives of States parties of five hours per report.

P. Special report requested from the Syrian Arab Republic

26. Further to the special follow-up report requested from the Syrian Arab Republic in May 2012 (see CAT/C/SYR/CO/1/Add.2), the Committee regrets the absence of information received from the State party during the period under consideration. For more detailed information, please see chapter IV of the present report.

¹ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 44 (A/65/44), chap. I, para. 27.*

Q. Rapporteurs on reprisals

27. At its forty-ninth session, the Committee decided to adopt a mechanism to prevent, monitor and follow up cases of reprisal against civil society organizations, human rights defenders, victims and witnesses after their engagement with the treaty body system, further to the recommendation made by the United Nations High Commissioner for Human Rights in her report on the strengthening of the human rights treaty bodies (A/66/860, pp. 68–69).

28. The Committee recalls that, under article 13 of the Convention, “each State party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities” and that “steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given”. States parties should adopt all necessary measures to prevent any form of reprisals against persons because of their engagement with the Committee. When reprisals occur, they should be fully investigated and prosecuted and those found responsible should be punished accordingly. Victims of reprisals should receive appropriate forms of protection and redress.

29. The Committee, at its forty-ninth session, decided to establish two rapporteurs on reprisals, one for reprisals under article 19 of the Convention and one for reprisals under article 22. It designated Mr. George Tugushi as rapporteur for reprisals under article 19 and Mr. Bruni for reprisals under article 22. A rapporteur for reprisals under article 20 will be designated at a later stage. Guidelines for the execution of the mandates of the rapporteurs will be discussed and adopted in future sessions.

30. At its fiftieth session, the Committee received information with regard to allegations of reprisals under article 19 concerning the Russian Federation. Letters on allegations of reprisals were sent to the State party on 17 and 28 May 2013. The Committee also decided to establish a dedicated webpage to post the letters on allegations of reprisals of the rapporteurs as well as the respective replies of States parties (<http://www2.ohchr.org/english/bodies/cat/reprisalsLetters.htm>).

R. Treaty body strengthening process

31. At its forty-ninth session, the Committee adopted a statement on the report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies (see annex XI). It welcomed the report of the High Commissioner (A/66/860), published in June 2012, and expressed its appreciation for the efforts of the High Commissioner following an extensive participatory process involving all the system’s stakeholders. The Committee stressed that efforts to strengthen the treaty body system, including adequate resourcing, were essential for the effective functioning of a system based on treaty obligations and assessments of compliance by independent supervisory bodies composed of independent experts. It noted that a majority of the proposals made had already been implemented by the Committee, including the simplified reporting procedure, which it initiated in 2007 through its new optional reporting procedure of lists of issues prior to reporting.²

² *Official Records of the General Assembly, Sixty-second Session, Supplement No. 44 (A/62/44)*, para. 23.

32. At its forty-ninth session, the Committee adopted a statement on the Guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines) (see annex XII). It welcomed the initiative taken by the twenty-third and twenty-fifth meetings of the chairpersons of treaty bodies in which the chairpersons prepared these Guidelines and recommended that each Committee consider them. It noted that the Committee has already set a high standard of independence and impartiality for its members in its rules of procedure (CAT/C/3/Rev.5), namely its rules 15 and 73.

33. At its fiftieth session, the Committee reiterated its strong support for the independence and impartiality of members of the human rights treaty bodies, as affirmed in the Addis Ababa guidelines, and adopted a decision to amend its rules of procedure, in order to annex these guidelines thereto (annex XIII).

34. At the fiftieth session of the Committee, on 22 May, Mr. Bruni, Mr. Satyabhooshun Gupta Domah, Ms. Gaer (as Chairperson) and Ms. Sveaass participated in a video conference with the co-facilitators of the treaty body strengthening process, who are based in New York. The Committee members emphasized the importance of the independence of treaty body members, their competence to establish their own rules of procedure and working methods, their strong engagement in the treaty body strengthening process and their support of the process, as well as the efforts they had undertaken to improve the functioning of the treaty body system, including by pioneering new methodologies to facilitate State party reporting, such as the optional reporting procedure (list of issues prior to reporting), constituting the simplified reporting procedure.

S. Rules of procedure

35. Further to its decision taken with regard to the Addis Ababa guidelines, the Committee decided, at its fiftieth session, to amend rules 14, 15 and 109 of its rules of procedure (see annex XIV), in order to strengthen the independence and impartiality of its members, including by modifying the solemn declaration for new members and reinforcing the obligatory non-participation or non-presence of a member during the examination of individual complaints. The consolidated amended rules of procedure may be found on the OHCHR website.

T. Twenty-fifth anniversary of the Committee

36. At its fiftieth session, on 7 May 2013, the Committee celebrated its twenty-fifth anniversary at Palais des Nations, in Geneva. On that occasion, the Committee organized an event to provide it with the opportunity to interact with various stakeholders in order to take stock of the experience of and progress made by the Committee in discharging its mandate, as well as to look into the implementation of the provisions of the Convention by States parties. The event brought together States parties to the Convention, United Nations mechanisms and other intergovernmental bodies, non-governmental organizations, academics and other interested parties.

37. The event was divided into two panel discussions; one to identify the main achievements of the Committee, as well as the constraints and challenges it is facing, and another to reflect on the obligations of State parties to provide redress for victims of torture, in the light of the recent adoption of general comment No. 3 (2012) on the implementation of article 14 by States parties. High-level international experts made presentations for each of the panel discussions, followed by plenary discussions. The programme of the ceremony and the text of the presentations may be found on the OHCHR website.

II. Submission of reports by States parties under article 19 of the Convention

38. During the period covered by the present report, 17 reports from States parties under article 19 of the Convention were submitted to the Secretary-General. Initial reports were submitted by Andorra, Burkina Faso, Holy See, Mozambique, Sierra Leone and Thailand. Second periodic reports were submitted by Kenya and Montenegro. Third periodic reports were submitted by Belgium, Lithuania and Uruguay. A combined third and fourth periodic report was submitted by the Bolivarian Republic of Venezuela. A fourth periodic report was submitted by Cyprus. A combined fourth and fifth periodic report was submitted by Croatia. A combined fifth and sixth periodic report was submitted by Portugal. A sixth periodic report was submitted by Ukraine. A combined sixth and seventh periodic report was submitted by Sweden.

39. As at 31 May 2013, the Committee had received a total of 349 reports and had examined 327; there were 26 States parties with overdue initial reports and 42 States parties with overdue periodic reports (see annex XV).

A. Invitation to submit periodic reports

40. Further to its decision taken at its forty-first session,³ the Committee continued, at its forty-ninth and fiftieth sessions, to invite States parties, in the last paragraph of the concluding observations, to submit their next periodic reports within a four-year period from the adoption of the concluding observations, and to indicate the due date of the next report in the same paragraph.

41. In addition, further to its decision taken at its forty-seventh session,⁴ the Committee continued, at its forty-ninth and fiftieth sessions, to invite States parties to accept, within one year from the adoption of their concluding observations, to report under the optional reporting procedure, or, if a State party has already accepted to report under this procedure, to indicate that the Committee will submit to the State party, in due course, a list of issues prior to the submission of its next periodic report.

B. Optional reporting procedure

42. The Committee welcomes the fact that a high number of States parties have accepted this optional reporting procedure, which consists of the preparation and adoption of a list of issues to be transmitted to States parties prior to the submission of a State party's periodic report (known as the list of issues prior to reporting – LOIPR). This procedure aims at assisting States parties to fulfil their reporting obligations, as it strengthens the cooperation between the Committee and States parties.⁵ While the Committee understands that the adoption, since 2007, of lists of issues prior to reporting facilitates States parties' reporting obligations, it nonetheless wants to emphasize that this new procedure of drafting lists of issues prior to reporting has increased the Committee's workload substantially, as their preparation requires more work than the traditional lists of issues following the submission

³ *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 44 (A/64/44)*, para. 26.

⁴ *Ibid.*, *Sixty-seventh Session, Supplement No. 44 (A/67/44)*, para. 33.

⁵ *Ibid.*, *Sixty-sixth Session, Supplement No. 44 (A/66/44)*, paras. 28–35.

of a State party's report. This is particularly significant in a Committee with such a small membership.

43. Further to its decision to continue with this procedure for a new four-year reporting cycle,⁶ the Committee decided, at its forty-ninth session, to invite the following 18 States parties to report under this procedure for their report due in 2014: Austria, Bosnia and Herzegovina, Brazil, Cambodia, Cameroon, Ecuador, Ethiopia, France, Hungary, Jordan, Libya, Liechtenstein, Mongolia, Saudi Arabia, Switzerland, Syrian Arab Republic, Turkey and Yemen.

44. At its forty-ninth session, the Committee adopted lists of issues prior to reporting with regard to nine States parties that expressly accepted the invitation to submit their next report, due in 2014, under this procedure: Austria, Bosnia and Herzegovina, Cambodia, Ecuador, Jordan, Liechtenstein, Mongolia, Switzerland and Turkey. Cameroon, Ethiopia, France, the Syrian Arab Republic and Yemen did not respond to the invitation. The updated information relating to the procedure is available from a dedicated webpage (<http://www2.ohchr.org/english/bodies/cat/reporting-procedure.htm>).

45. At its fiftieth session, the Committee decided, as regards reports due in 2015, to prepare lists of issues prior to reporting for the following 11 States parties that had already accepted the procedure: Belarus, Bulgaria, Finland, Germany, Ireland, Kuwait, Mauritius, Monaco, Morocco, Paraguay and Slovenia. At the same session, it adopted those lists of issues prior to reporting, with the exception of those for Belarus, Germany and Ireland, which will be adopted at the fifty-first session. Bahrain, Djibouti and Madagascar did not respond to the invitation. Namibia and Sri Lanka did not accept to report under the procedure. The updated information relating to the procedure is available from a dedicated webpage (<http://www2.ohchr.org/english/bodies/cat/reporting-procedure.htm>).

46. Finally, the Committee decided to send reminders to the following States parties indicating that it was expecting to receive their reports under this procedure, as they had accepted to report under it in 2011: Bahrain, Benin, Denmark, Georgia, Italy, Luxembourg and the United States of America.

C. Preliminary evaluation of the optional reporting procedure

47. At its forty-ninth and fiftieth sessions, the Committee discussed its optional reporting procedure on the basis of the report it requested the secretariat to prepare⁷ on the status of the optional reporting procedure (CAT/C/47/2), which included information on new developments relating to the procedure and possible options for its revision.

48. Taking note of and expressing appreciation for the report of the secretariat, which also contained proposals for the next reporting cycle (2013–2016), the Committee decided to continue to discuss the evaluation of its optional reporting procedure during its next sessions.

D. Reminders for overdue initial and periodic reports

49. At its fiftieth session, the Committee decided to send reminders to all States whose initial reports were overdue as well as to all States parties whose periodic reports are four or more years overdue.

⁶ Ibid., para. 36.

⁷ Ibid., chap. I, para. 38.

50. The Committee drew the attention of these States parties to the fact that delays in reporting seriously hamper the implementation of the Convention in the States parties and the Committee in carrying out its function of monitoring such implementation. The Committee requested information on the progress made by these States parties regarding the fulfilment of their reporting obligations and on any obstacles that they might be facing in that respect. It also informed them that, according to rule 67 of its rules of procedure, the Committee might proceed with a review of the implementation of the Convention in the State party in the absence of a report, and that such review would be carried out on the basis of information that may be available to the Committee, including sources from outside the United Nations.

E. Examination of measures taken by a State party in the absence of a report

51. Further to its decision to send reminders to all States parties whose initial reports are overdue,⁸ the Committee decided, at its forty-ninth session, to take action with regard to States parties whose initial reports were long overdue. Noting that the initial report of Guinea had been overdue since 8 November 1990 — at more than 22 years, the most overdue of all initial reports — the Committee decided to mandate the Chairperson of the Committee to meet with the permanent representative to the United Nations office at Geneva to raise this issue. The State party agreed to submit its initial report before the fifty-first session of the Committee, which opens on 28 October 2013. If not received by that date, pursuant to article 67 of its rules of procedure, the Committee would conduct at its fifty-second session, in May 2014, an examination, in the absence of a report, of the measures taken by Guinea to implement the provisions of the Convention in its territory.

⁸ *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 44 (A/64/44)*, paras. 28–29.

III. Consideration of reports submitted by States parties under article 19 of the Convention

A. Examination of reports submitted by States parties

52. At its forty-ninth and fiftieth sessions, the Committee considered reports submitted by 17 States parties, under article 19, paragraph 1, of the Convention, and adopted 17 sets of concluding observations. The following reports were before the Committee at its forty-ninth session and it adopted the respective concluding observations:

<i>State party</i>	<i>Report</i>		<i>Concluding observations</i>
Gabon	Initial	CAT/C/GAB/1	CAT/C/GAB/CO/1
Mexico	Combined fifth and sixth periodic reports	CAT/C/MEX/5-6	CAT/C/MEX/CO/5-6
Norway	Combined sixth and seventh periodic reports	CAT/C/NOR/6-7	CAT/C/NOR/CO/6-7
Peru	Combined fifth and sixth periodic reports	CAT/C/PER/6	CAT/C/PER/CO/5-6
Qatar	Second periodic report	CAT/C/QAT/2/Rev.1	CAT/C/QAT/CO/2
Russian Federation	Fifth periodic report	CAT/C/RUS/5	CAT/C/RUS/CO/5
Senegal	Third periodic report	CAT/C/SEN/3	CAT/C/SEN/CO/3
Tajikistan	Second periodic report	CAT/C/TJK/2	CAT/C/TJK/CO/2
Togo	Second periodic report	CAT/C/TGO/2	CAT/C/TGO/CO/2

53. The following reports were before the Committee at its fiftieth session, and it adopted the following concluding observations:

<i>State party</i>	<i>Report</i>		<i>Concluding observations</i>
Bolivia (Plurinational State of)	Second periodic report	CAT/C/BOL/2	CAT/C/BOL/CO/2
Estonia	Fifth periodic report	CAT/C/EST/5	CAT/C/EST/CO/5
Guatemala	Combined fifth and sixth periodic reports	CAT/C/GTM/5-6	CAT/C/GTM/CO/5-6
Japan	Second periodic report	CAT/C/JPN/2	CAT/C/JPN/CO/2
Kenya	Second periodic report	CAT/C/KEN/2	CAT/C/KEN/CO/2 and Corr.1
Mauritania	Initial periodic report	CAT/C/MRT/1	CAT/C/MRT/CO/1

<i>State party</i>	<i>Report</i>	<i>Concluding observations</i>
Netherlands	Combined fifth and sixth periodic reports CAT/C/NLD/5-6	CAT/C/NLD/CO/5-6
United Kingdom of Great Britain and Northern Ireland	Fifth periodic report CAT/C/GBR/5	CAT/C/GBR/CO/5

54. In accordance with rule 68 of the rules of procedure of the Committee, representatives of each reporting State were invited to attend the meetings of the Committee when their report was examined. All of the States parties whose reports were considered sent representatives to participate in the examination of their respective reports. The Committee expressed its appreciation for this in its concluding observations.

55. Two Country Rapporteurs were designated by the Committee for each of the reports considered. The list appears in annex XVI to the present report.

56. In connection with its consideration of reports, the Committee also had before it:

(a) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/4/Rev.3);

(b) General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19 of the Convention (CAT/C/14/Rev.1).

57. The Committee has been issuing lists of issues for periodic reports since 2004. This resulted from a request made to the Committee by representatives of the States parties at a meeting with Committee members. While the Committee understands the wish of States parties to have advance notice of the issues likely to be discussed during the dialogue, it nonetheless must point out that the drafting of lists of issues has increased the Committee's workload. This is particularly significant in a Committee with such a small membership.

B. Concluding observations on States parties' reports

58. The text of concluding observations adopted by the Committee with respect to the above-mentioned reports submitted by States parties is reproduced below.

59. Gabon

(1) The Committee against Torture considered the initial report of Gabon (CAT/C/GAB/1) at its 1110th and 1113th meetings (CAT/C/SR.1110 and 1113), held on 8 and 9 November 2012, and adopted the following concluding observation at its 1127th meeting (CAT/C/SR.1127) on 20 November 2012.

A. Introduction

(2) The Committee welcomes the initial report of Gabon, but notes that it is not entirely in compliance with the reporting guidelines and regrets that it was submitted 11 years late.

(3) The Committee appreciates the open and constructive dialogue that was held with the State party's high-level delegation, as well as the responses provided orally during the Committee's consideration of the report.

B. Positive aspects

(4) The Committee notes with appreciation that the State party has acceded to or ratified the following international instruments:

(a) The International Convention for the Protection of All Persons from Enforced Disappearance (19 January 2011);

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (22 September 2010);

(c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (8 October 2010);

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (21 September 2010);

(e) The Convention on the Rights of Persons with Disabilities (17 September 2007);

(f) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (10 September 2007);

(g) The United Nations Convention against Transnational Organized Crime (10 December 2004);

(h) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (5 November 2004); and

(i) The Rome Statute of the International Criminal Court (20 September 2000).

(5) The Committee takes note with appreciation of the State party's efforts to revise its legislative framework by means of, inter alia:

(a) The adoption of the Code of Criminal Procedure (Act No. 36/10 of 25 November 2010);

(b) The adoption of Act No. 3/2010 of 2010, which abolished the death penalty;

(c) The adoption of Act No. 0038/2008 of 29 January 2009, which is designed to combat and prevent the practice of female genital mutilation; and

(d) The adoption of Ordinance No. 013/PR/2010 of 9 April 2010 on the status of the national police force, article 135 of which establishes two categories of culpable police action (disciplinary breaches and misconduct).

(6) The Committee welcomes the creation of a national committee in January 2007 to prepare human rights reports for Gabon, as well as the signing of the Multilateral Cooperation Agreement to Combat Trafficking in Persons, Especially Women and Children, in West and Central Africa and the adoption of a resolution on combating trafficking in children. The Committee also takes note with appreciation of the State party's cooperation with the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, who visited Gabon from 14 to 18 May 2012.

C. Principal subjects of concern and recommendations

Definition of torture

(7) The Committee is concerned by the fact that the references to torture made in article 1, paragraph 1, of the Constitution and in article 253 of the Criminal Code of Gabon do not set out a definition of torture, which should include acts involving the infliction of mental

pain or suffering. Nor is the offence of torture defined anywhere else in the State party's criminal legislation, which is clearly in breach of its obligations under the Convention (art. 1).

The State party has an obligation to revise its legislation, particularly its Criminal Code, with a view to adopting a definition of torture which, in accordance with article 1 of the Convention, includes acts involving the infliction of mental pain or suffering, along with a provision that specifically criminalizes it. The State party should also ensure that the Criminal Code sets out appropriate penalties for acts of torture.

Criminalization of attempted torture

(8) The Committee is concerned by the fact that the provisions contained in articles 46 and 47 of the Code of Criminal Procedure that refer to the Attorney General's ability to lay charges and initiate legal action do not explicitly criminalize either attempts to commit torture or acts which constitute complicity or participation in torture and therefore are not in full compliance with article 4 of the Convention (art. 4).

The State party should make the necessary modifications in its Criminal Code to explicitly criminalize attempts to commit torture and acts constituting complicity or participation in torture and to define them as acts of torture, in accordance with article 4 of the Convention, and to establish appropriate penalties for that offence.

Direct application of the Convention by domestic courts

(9) While taking note of the fact that the State party's delegation has indicated that domestic courts can refer to the Convention for information purposes, the Committee is nonetheless concerned by the lack of detailed information about the status of the Convention in the State party's domestic legal system. It is also concerned by the lack of information on cases in which the Convention has been applied by the courts of the State party or has been invoked before them (art. 2).

The State party should clarify the nature of the Convention's status in its domestic legal system. It should ensure that public officials, judges, magistrates, prosecutors and attorneys receive training that covers the provisions of the Convention so that they are in a position to invoke the rights set forth in the Convention directly before the courts of the State party and to assert those rights before the courts. The State party should also provide the Committee with specific, representative examples of cases in which the Convention has been applied directly by the courts or has been invoked before them.

Fundamental legal safeguards

(10) While noting that, under the laws of the State party, persons in detention are protected by fundamental legal safeguards, the Committee is nevertheless concerned by reports that persons held in police custody or in other places of detention are not always given the benefit of the fundamental legal safeguards provided for in articles 53 and 54 of the Code of Criminal Procedure. In accordance with international standards, the safeguards provided for in those articles include access to legal counsel from the outset of the period of detention, access to a physician of the person's choice and the right to notify someone of their choice of the arrest. The Committee notes that the length of time that a person can be held in police custody is limited to 48 hours under the Code of Criminal Procedure, but it remains concerned by the fact that, in certain regions, criminal investigation officers can issue a non-renewable eight-day detention order for the purpose of bringing a person before a judge. The Committee is also concerned by the lack of information on the maximum duration of pretrial detention (art. 2).

The State party should promptly adopt effective measures to ensure that, both by law and in practice, all persons deprived of their liberty have the benefit of all fundamental legal safeguards from the moment that they are taken into custody. These safeguards include the right of every such person to be informed of the reasons for his or her arrest and all charges brought against him or her, to have prompt access to legal counsel and to meet with counsel in private, to be examined by a physician of his or her choice, to notify a friend or family member, to be assisted by a lawyer when being questioned by the police and, if necessary, by an interpreter, to be provided with legal aid if needed, to be brought promptly before a judge and to have the legality of his or her detention reviewed by a court. The State party should amend its legislation in accordance with international standards in order to eliminate the possibility that criminal investigation officers can issue an eight-day detention order.

Order from a superior

(11) The Committee is concerned by the fact that articles 49 and 49 bis of the Criminal Code, which are viewed by the State party as fulfilling its obligation to ensure that an order from a superior or a public authority cannot be invoked as a justification for an act of torture, do not fulfil the obligation set forth in article 2, paragraph 3, of the Convention. The Committee is equally concerned by the fact that articles 12 and 15 of the Code of Criminal Procedure do not provide for sufficient mechanisms or procedures for protecting subordinates from reprisals if they refuse to obey a superior who orders them to commit an act of torture (art. 2).

The State party should guarantee, both by law and in practice, a subordinate's right to refuse to carry out an order from a superior that is in breach of the Convention. It should also make certain that, in full conformity with article 2, paragraph 3, of the Convention, the execution of such an order is not accepted as a justification for torture. The State party should put mechanisms or procedures into place for protecting a subordinate from reprisals if he or she refuses to carry out an order from a superior that is in breach of the Convention.

National Human Rights Commission

(12) The Committee takes note of the fact that the State party has established the National Human Rights Commission in accordance with Act No. 19/2005 of 3 January 2006 and Decree No. 303/PR/MCAEPRDH of 31 March 2008, which sets forth the procedure to be used for designating the Commission's members. The Committee is concerned, however, by the fact that the Commission does not yet have offices. In addition, the Commission does not have sufficient financial and human resources, lacks safeguards that would ensure its members' independence and is not accredited with the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (art. 2).

The State party should, as a matter of urgency, take steps to ensure that the National Human Rights Commission is functioning as it should, to guarantee its independence, and to provide it with the financial and human resources that it needs to discharge its mandate in full compliance with the Principles relating to the status of national institutions (Paris Principles, General Assembly resolution 48/134). The State party should also apply to the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights for accreditation of the National Human Rights Commission.

National mechanism for the prevention of torture

(13) The Committee regrets that the State party has not established a national preventive mechanism since its ratification of the Optional Protocol to the Convention against Torture

and Other Cruel, Inhuman or Degrading Treatment or Punishment on 22 September 2010 (art. 2).

The State party should adopt appropriate measures as soon as possible, in consultation with all stakeholders, to establish a national preventive mechanism in accordance with article 3 of the Optional Protocol and to provide it with the financial and human resources that it needs in order to perform its functions effectively on an entirely independent basis in accordance with article 18, paragraph 3, of the Optional Protocol and guidelines Nos. 11 and 12 of the Subcommittee on Prevention of Torture.

Judicial reform

(14) While taking note of the additional information provided by the State party, the Committee is concerned by the information contained in paragraph 11 of the State party's initial report concerning breaches and misconduct on the part of judicial officials, including "corruption, ... fraudulent removals of evidence from files; paroles for frivolous reasons of dangerous criminals without guarantee that they will appear in court; ... disappearances of files removed by judges or court officials; disappearances of sealed documents and other evidence". These breaches are serious enough to impede the investigation of complaints of torture, the taking of evidence of torture, the progress of inquiries and trials, and the punishment of guilty parties. They may also prevent the parties concerned from fully enjoying rights set out in the Convention and may hinder the proper administration of justice. The Committee is also disturbed by the absence of safeguards for the protection of the effective independence of the judiciary, the obsolete nature of the legislation governing the conduct of judges, the lack of qualified personnel, the absence of systematic investigations and the failure to punish judges who commit such breaches, all of which may hamper the effective administration of justice as a means of combating torture (art. 2).

The State party should:

(a) Pursue the reform of the judicial system that it has initiated in order to improve the performance of the judiciary and strengthen its institutional structure;

(b) Guarantee and strengthen the effective independence of judges, ensure their security of tenure, improve the legislation governing their conduct, increase the number and quality of available human-resource capacities and provide judges with improved training (including in-service training) while taking into account the actual situation in the State party and the provisions of the Convention; and

(c) Reinforce the measures in place for countering judicial misconduct, particularly corruption in all its forms, which may hinder the progress of inquiries and of independent, impartial and appropriate legal proceedings against perpetrators of torture and interfere with the conviction of guilty parties. The State party should, in particular, carry out inquiries, bring guilty parties before the Disciplinary Council and impose suitable penalties upon them.

Non-refoulement of undocumented foreign nationals

(15) While taking note of the information provided by the State party regarding the removal of undocumented foreign nationals from Minkébé in June 2011 as provided for in Gabonese legislation, under which persons may be removed from Gabonese territory if they undermine public order or national security or have not respected the conditions of their stay in the country as established by law, the Committee is concerned by the lack of information on the manner in which these foreign nationals were removed and, in particular, wishes to know whether the decision to remove them was taken on an individual or collective basis, whether they had an opportunity to appeal that decision and what the outcome has been. The Committee is also concerned about the lack of information

concerning the observance of the principle of non-refoulement during the removal of these foreign nationals (art. 3).

The State party should ensure that no one, including persons in an irregular situation who are in Gabonese territory, is expelled, extradited or returned to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. It should take all necessary steps to ensure that the principle of non-refoulement is upheld under all circumstances, including situations similar to those found in Minkébé, in accordance with its international obligations under article 3 of the Convention, that decisions taken in this regard are arrived at following an examination of each individual case, rather than on a collective basis, and that the persons concerned have an opportunity to appeal such decisions.

Training

(16) While taking note of the information furnished by the State party regarding the training on citizens' fundamental rights that is provided to law enforcement officers, prison security staff, police investigators and newly appointed judges, the Committee is concerned by the fact that this training is not given to all persons involved in the application of the law and medical personnel who work with prisoners. Sufficient outreach and awareness-raising activities are also lacking. The Committee is equally concerned by the lack of information on the impact that such training has had in combating torture and ill-treatment and on its evaluation. Finally, it notes with concern that the State party has not indicated whether or not this training covers the application of the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Istanbul Protocol) (art. 10).

The State party should reinforce the training programmes that it offers to civilian law enforcement officers and military personnel. It should also provide that training to medical personnel, public officials and other persons who may be involved in matters pertaining to the custody, questioning or treatment of persons subject to any form of arrest, detention or imprisonment. It should assess the effectiveness of the training that is being offered and make certain that the Istanbul Protocol is covered in its training programmes. It should, in addition, carry out public awareness campaigns regarding the prevention of torture.

Prison conditions

(17) The Committee has taken note of the State party's efforts to improve prison conditions, including its plan to build new prisons and renovate older ones, and its undertaking to significantly reduce overcrowding in its prisons starting in late 2012. It is nonetheless concerned about those conditions, particularly with regard to hygiene and access to health care and to adequate food. It is, in addition, concerned about the high rate of overcrowding, especially in Libreville Central Prison, and by reports that the principle whereby different categories of inmates are to be held separately is not always observed in prisons located in rural areas. The Committee is also concerned about the lack of information on the enforcement of the law adopted on 26 December 2009 that provides for improved monitoring of persons serving their sentences and better prison management, as well as about the absence of specific information on complaints filed by prisoners and on how those complaints have been processed (arts. 11 and 16).

The State party should redouble its efforts to improve prison conditions and to ensure that they conform to the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the Economic and Social Council in its resolutions 663 C (XXIV) and 2076 (LXII). To this end, it should:

(a) Significantly reduce prison overcrowding, especially in Libreville Central Prison, through a greater use, in particular, of non-custodial measures as outlined in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

(b) Reduce the duration of pretrial detention and release prisoners who have served most of their prison sentences and whom the relevant authorities consider to be ready to rejoin society;

(c) Ensure that, in accordance with international standards, minors are separated from adults, remand prisoners are separated from convicted prisoners, and women are separated from men, particularly in rural prisons;

(d) Ensure that prisoners have genuine access to a means of filing a complaint regarding their conditions of detention and/or ill-treatment and that impartial, independent investigations into such complaints are promptly carried out;

(e) Bring its sentencing policy regarding minors into line with international standards; and

(f) Guarantee access to health care and to an adequate daily diet.

Juvenile justice

(18) While noting that the State party has introduced a new juvenile justice regime with the adoption of Judicial Protection of Minors Act No. 39/2010 of 25 November 2010 and the promulgation of Decree No. 0806/PR of 25 November 2010, which establishes special provisions regarding pretrial detention and the age of criminal responsibility, the Committee regrets that the amended legislation does not include a scheme of non-custodial sentences for minors (arts. 2, 10 and 16).

The State party should:

(a) Incorporate non-custodial measures into the justice system for minors in conflict with the law;

(b) Ensure that minors are not held in detention except as a last resort and for the shortest amount of time possible;

(c) Ensure that minors who have been deprived of their liberty have the benefit of all legal safeguards and that convicted minors are held separately from adults, men are held separately from women, and remand prisoners are held separately from convicted prisoners, in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by the General Assembly in its resolution 40/33 of 29 November 1985, and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), adopted by the General Assembly in its resolution 45/112 of 14 December 1990.

The State party should also train a sufficient number of qualified staff members to handle the caseload in the juvenile justice system.

Human trafficking

(19) The Committee takes note of the numerous legislative, institutional and awareness-raising measures adopted by the State party to prevent and combat human trafficking. Nevertheless, the Committee is concerned by the persistence in the State party of the practice of trafficking in persons, including children (30.6 per cent), as forced labour and for purposes of sexual exploitation. The Committee is equally concerned by the fact that the measures in place to combat trafficking fall short of what is needed, given, for example: the

fact that Act No. 09/2004 does not penalize all forms of human trafficking and does not penalize trafficking of persons over 18 years of age; the absence of specific data on the extent of trafficking; the lack of regulations on victim assistance; the lack of qualified investigators; the absence of information on the complaints that have been filed and their outcome; the lack of sufficient funding for shelters; and the existence of some degree of impunity for those responsible (arts. 2, 12, 13, 14 and 16).

The State party should:

(a) **Ensure the effective enforcement, in full compliance with the Convention, of existing anti-trafficking laws;**

(b) **Amend Act No. 09/2004 so that it also criminalizes trafficking in persons over the age of 18, as well as all forms of trafficking, particularly trafficking of persons as forced labour and for purposes of sexual exploitation or servitude;**

(c) **Conduct a study to determine the actual extent of human trafficking in the State party and the relevant causal factors;**

(d) **Put an end to impunity by conducting systematic investigations into allegations of trafficking, prosecuting perpetrators and imposing appropriate punishments upon them;**

(e) **Offer victims protection, sufficient compensation and rehabilitation services as necessary and step up its awareness campaigns;**

(f) **Train investigators and other personnel who come into contact with trafficking victims, including immigration service staff, and provide shelters with sufficient funding.**

Ritual crimes

(20) The Committee takes note of the information provided by the State party on the steps taken to put an end to ritual crimes. Nonetheless, the Committee remains concerned about the persistence of ritual crimes involving children in the State party. The Committee is also concerned by the lack of accurate, detailed information on the scale of this problem, the investigations undertaken, the legal proceedings initiated, the trials held, the sentences handed down to perpetrators of such crimes, the redress offered to victims and awareness-raising measures (arts. 2, 12, 13, 14 and 16).

The State party should, as a matter of urgency, adopt preventive and protective measures with regard to ritual crimes. It should carry out a study to determine the scale of the problem and step up its efforts to raise the population's awareness of it. The State party should continue to conduct investigations, to prosecute, bring to justice and punish those guilty of such crimes and to inform the Committee about the outcomes of the judicial action taken in cases now pending. In addition, the State party should take steps to provide redress, compensation or rehabilitation services to victims.

Female genital mutilation

(21) While taking note of the measures adopted by the State party, particularly Act No. 0038/2008 of 29 January 2009, which is designed to combat and prevent female genital mutilation, as well as the information provided by the State party's delegation on the reasons underlying this practice, the Committee remains concerned by the fact that girls continue to be subjected to female genital mutilation in the State party. It is equally concerned by the absence of detailed information on the complaints that have been filed and the investigations conducted into those complaints, on the legal proceedings brought

against those responsible for this practice and on the penalties imposed upon them (arts. 2, 12, 13, 14 and 16).

The State party should strengthen its laws and other measures for the prevention and elimination of the practice of female genital mutilation by, inter alia, ensuring that its existing laws on the subject are effectively enforced in accordance with the Convention. To this end, it should assist victims to file complaints, conduct the corresponding investigations, prosecute those responsible, impose appropriate penalties upon the guilty parties and provide victims with appropriate redress, compensation or rehabilitation services. It should also increase the scope of campaigns to raise awareness, particularly among families, of the harmful effects of this practice.

Complaints of torture

(22) The Committee is concerned by the fact that article 31 of the Code of Criminal Procedure is not in line with article 12 of the Convention, inasmuch as article 31 provides for the opening of an inquiry into allegations of torture and the initiation of judicial investigation proceedings “if the victim requests that these steps be taken in accordance with the laws in force”. The Committee is equally concerned by the absence of a specific mechanism for filing complaints of torture committed by police officers and/or in any place of detention, including prisons. The Committee has some concerns as to the independence and impartiality of inquiries into allegations that members of the police force have committed acts of torture in view of the fact that, as provided for in article 3 of the Code of Criminal Procedure, they may be conducted by criminal investigation police officers (arts. 12 and 13).

The State party should revise its Code of Criminal Procedure so that a prompt, impartial inquiry can be opened ex officio where there is reason to believe that an act of torture has been committed in any territory under its jurisdiction. It should establish an independent mechanism for lodging complaints against members of the police force and ensure that prompt, impartial, independent investigations into such complaints are conducted. The State party should also take the necessary steps to enable victims of torture, including those in detention, to file complaints without fear of reprisal and to ensure that such complaints are investigated promptly and impartially.

Redress, compensation, rehabilitation

(23) While noting that a complainant can bring a civil suit for compensation for harm suffered as the result of a crime or offence under article 2 of the Code of Criminal Procedure, the Committee regrets the absence of precise, detailed information about the mechanisms available in the State party for seeking fair and adequate compensation, including rehabilitation services, for victims of torture, including those who have not entered a claim for redress. The Committee is equally concerned by the lack of information about cases involving torture or ill-treatment in which the State party has paid out compensation in order to redress harm suffered by victims of torture or has provided rehabilitation services, where necessary (art. 14).

The State party should clarify its legislation and ensure that it provides guarantees that will allow victims of torture to claim and receive fair and adequate compensation, particularly in cases where public officials are implicated, and that it offers them rehabilitation services in accordance with article 14 of the Convention. It should supply the Committee with detailed statistics on the cases in which the State party has compensated victims of torture or ill-treatment and on the exact amounts of compensation paid to them.

The Committee draws the State party's attention to its recently adopted general comment on the implementation of article 14 (CAT/C/GC/3), which clarifies the content and scope of States parties' obligations with respect to the provision of full redress to victims of torture.

Confessions made under duress

(24) The Committee is concerned by the fact that while, according to the information provided by the State party in its report, the freedom to provide evidence does not encompass illegal means, there is no clearly stated provision in its criminal legislation that explicitly prohibits the courts from admitting evidence or confessions obtained under torture (art. 15).

The State party should amend its legislation in order to make it clear that confessions, statements and other evidence obtained through torture or ill-treatment may not be invoked as evidence in legal proceedings, except against a person accused of torture as evidence that the statement was made. The State party should investigate all allegations that confessions have been obtained under torture and ensure that the guilty parties are prosecuted and punished. It should review cases that were based on confessions made under torture or ill-treatment, take appropriate remedial action and inform the Committee of its findings.

Corporal punishment inflicted upon children

(25) While taking note of the information provided by the State party's delegation which indicates that children are safeguarded by the Minors Protection Code, by the law on domestic, school-related and institutional violence and by the awareness campaigns conducted in Libreville, Owendo, Makokou and Oyem on the worst forms of corporal punishment inflicted upon schoolchildren, the Committee is concerned by reports indicating that corporal punishment continues to be practised in homes and schools (art. 16).

The State party should take steps to ensure the effective enforcement of its legislation in order to make certain that corporal punishment is not practised under any circumstances. It should also step up its campaigns aimed at raising public awareness about the harmful effects of corporal punishment and about the fact that it is prohibited.

Data collection

(26) The Committee regrets that it does not have full, reliable information on complaints, inquiries, trials and convictions relating to acts of torture or ill-treatment committed by law enforcement personnel or prison staff. It also regrets the fact that it does not have full, reliable information on human trafficking, juvenile justice, corporal punishment, female genital mutilation, or victim compensation and rehabilitation.

The State party should compile statistics that can be used to assess the application of the Convention at the national level. These statistics should include figures on the complaints filed, investigations conducted, legal proceedings pursued and convictions handed down in cases involving torture or ill-treatment committed by members of the police force or prison staff. Statistics should also be provided on cases of human trafficking, juvenile justice, corporal punishment, female genital mutilation, the redress provided to victims in the form of compensation and the means of rehabilitation made available to them.

(27) The Committee recommends that the State party make the declarations provided for in articles 21 and 22 of the Convention in order to recognize the competence of the Committee to receive and consider communications.

(28) The State party is invited to widely disseminate the report that it has submitted to the Committee, as well as these concluding observations, in the appropriate languages through official websites, the media and non-governmental organizations.

(29) The Committee urges the State party to provide it with information by 23 November 2013 on the action taken in response to the recommendations set forth by the Committee in paragraphs 8, 10, 17 (a) and (e), and 22 of these concluding observations concerning: (a) the criminalization of torture; (b) the fundamental safeguards in place for the protection of persons held in police custody; (c) prison conditions; and (d) the prosecution and punishment of perpetrators of acts of torture and ill-treatment.

(30) The Committee invites the State party to submit its second periodic report by 23 November 2016. To this end, it invites the State party to agree, by 23 November 2013, to use the optional reporting procedure, which consists of the transmittal by the Committee of a list of issues prior to the submission of its report. As provided for in article 19 of the Convention, the State party's responses to that list of issues would constitute its next periodic report.

60. **Mexico**

(1) The Committee against Torture considered the combined fifth and sixth periodic reports of Mexico (CAT/C/MEX/5-6) at its 1098th and 1101st meetings (CAT/C/SR.1098 and 1101), held on 31 October and 1 November 2012, and adopted the following conclusions and recommendations at its 1118th, 1120th and 1121st meetings (CAT/C/SR.1119, 1120 and 1121), held on 14 and 15 November 2012.

A. Introduction

(2) The Committee welcomes the fact that Mexico has submitted its combined fifth and sixth periodic reports in response to the list of issues prior to reporting (CAT/C/MEX/Q/5-6). It is grateful that the State party agreed to submit its periodic report pursuant to the new optional reporting procedure because this paves the way for closer cooperation between the State party and the Committee and for a more focused consideration of the report and dialogue with the delegation.

(3) The Committee appreciates the open and constructive dialogue held with the State party's delegation and the information provided during its consideration of the report.

B. Positive aspects

(4) The Committee notes with satisfaction that, since the consideration of the State party's fourth periodic report, it has ratified the following international instruments:

(a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (September 2007);

(b) The Convention on the Rights of Persons with Disabilities and its Optional Protocol (December 2007);

(c) The International Convention for the Protection of All Persons from Enforced Disappearance (March 2008).

(5) The Committee welcomes the fact that in May 2010 the State party made public the report on the September 2008 visit of the Subcommittee on Prevention of Torture to Mexico (CAT/OP/MEX/1), together with the Mexican authorities' response to the Subcommittee's recommendations and questions (CAT/OP/MEX/1/Add.1).

(6) The Committee takes note of the steps taken by the State party to modify its legislation, in particular:

- (a) The adoption of the General Act on Women's Access to a Life Free from Violence in 2007 and of its implementing regulations in 2008;
- (b) The constitutional reform of the criminal justice and public security system of 18 June 2008, which is designed to introduce a new, adversarial criminal justice system;
- (c) The promulgation of the Refugees and Supplementary Protection Act and the Migration Act in 2011;
- (d) The constitutional reform dealing with human rights of 10 June 2011, which accords the status of a constitutional right to all human rights guaranteed under international treaties ratified by the State party;
- (e) The promulgation of the General Act for the Protection, Punishment and Eradication of Human Trafficking Offences and for Victim Protection and Assistance in 2012;
- (f) The promulgation of the Human Rights Defenders and Journalists Protection Act in 2012.

(7) The Committee also applauds the steps taken by the State party to modify its policies and procedures in order to afford greater protection for human rights and to apply the Convention. In that respect, it takes note, in particular, of the following measures:

- (a) The adoption of the National Human Rights Programme for 2008–2012;
- (b) The adoption of the Prison Administration Strategy for 2008–2012;
- (c) The approval of the National Programme for the Prevention and Punishment of Human Trafficking for 2010–2012.

C. Principal subjects of concern and recommendations

Definition and crime of torture

(8) The Committee notes that the Federal Act for the Prevention and Punishment of Torture still does not fully reflect the definition of torture set forth in article 1 of the Convention. It notes that, in most cases, the definition of the crime of torture and the punishments established for it at the State level do not fully conform to articles 1 and 4 of the Convention. In the State of Guerrero, the definition of the offence of torture is still set forth in a law that is not part of the Criminal Code, as observed by this Committee in its preceding concluding observations (CAT/C/MEX/CO/4). The Committee does, however, also take note of the existence of four proposed amendments to the Criminal Code concerning the non-applicability of statutory limitations to a number of serious crimes, including torture (arts. 1 and 4).

In the light of its preceding concluding observations, the Committee urges the State party to:

- (a) Amend the Federal Act for the Prevention and Punishment of Torture so that the definition of torture which figures in article 3 of that law encompasses all the elements that are contained in article 1 of the Convention, including: (i) acts of torture committed by a third person at the instigation of or with the consent or acquiescence of a public official; and (ii) acts of torture committed for any reason based on discrimination of any kind;**
- (b) Ensure that, at the state level, the definition of the offence of torture conforms to the definition set forth in article 1 of the Convention and that it is punishable by appropriate penalties which take into account its grave nature, as established in article 4 of the Convention;**

(c) **Incorporate the crime of torture into the Criminal Code of the State of Guerrero;**

(d) **Ensure that the crime of torture is not subject to a statute of limitations.**

Fundamental legal safeguards

(9) While taking note of the publication in April 2012 of protocols on the use of force, the preservation of evidence and the appearance before a judge of persons brought into custody, the Committee is concerned by reports that, in practice, the State party does not make sure that all persons who are being held in custody have the benefit of all fundamental legal safeguards from the outset of their detention. The Committee is concerned by reports that detainees are often denied prompt access to a lawyer and an independent medical examination, the right to notify a family member of their arrest and the right to be brought before a judge without delay. The Committee regrets that it has not been furnished with official information regarding any disciplinary action or criminal proceedings relating to cases of unjustified delays in handing persons over to the Prosecution Service following their arrest (art. 2).

The State party should adopt effective measures without delay to ensure that, from the moment that any person is deprived of his or her liberty, he or she has the benefit, in practice, of all fundamental legal safeguards, including those mentioned in paragraphs 13 and 14 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties.

Allegations of torture and arbitrary detention

(10) The Committee is concerned by reports of an alarming increase in the use of torture during the interrogation of persons who have been arbitrarily detained by members of the armed forces or State security agencies in the course of joint operations to combat organized crime. It is gravely concerned by consistent reports that, before detainees are handed over to the Prosecution Service, they are tortured and mistreated in order to force them to confess and make self-incriminating statements which are later used to cover up irregularities committed during their detention (arts. 2, 11 and 15).

The State party should:

(a) **Ensure that, when persons are arrested, they are promptly brought before a judge or handed over to the Prosecution Service in accordance with article 16 of the Constitution of Mexico and that allegations concerning the perpetration of torture or ill-treatment by members of the armed forces or State security agencies are investigated and that those responsible are punished;**

(b) **Restrict the use of arrest in *flagrante delicto* to the exact moment when an offence is being committed and do away with the use of arrest in *quasi-flagrante delicto*;**

(c) **Ensure that members of security forces and their vehicles are properly identified;**

(d) **Ensure that all suspects in a criminal investigation are registered without delay in the appropriate custody logbook, that the entries in custody logbooks are closely monitored and that consideration is given to the establishment of a central register for all persons held in official custody;**

(e) **Adopt the necessary measures to ensure that all persons deprived of their liberty have genuine access to an immediate remedy for challenging the legality of their detention.**

Arraigo penal (pre-charge detention)

(11) The Committee notes with concern that, the recommendations that it made in its previous concluding observations notwithstanding, the State party accorded constitutional status to the procedure of *arraigo* in 2008. Provision for this procedure is also made in the laws of some states, such as the State of Jalisco. The Committee is concerned by documented reports of torture and ill-treatment of persons deprived of their liberty under *arraigo* orders, in some cases in military facilities. Despite the delegation's assurances that fundamental safeguards are complied with in these cases, the Committee notes with concern that recommendation No. 2/2011 of the Human Rights Commission of the Federal District indicates otherwise, inasmuch as, in that recommendation, the Commission decries the undue restriction of fundamental rights, failures to monitor persons being held in *arraigo* detention, the lack of effective oversight of the Prosecution Service and the absence of criteria for ensuring that the principle of proportionality is respected when determining the duration of *arraigo* detention. The Committee observes that the remedy of *amparo* is ineffective in cases of *arraigo* detention. It also observes that *arraigo* detention has been conducive to the admission into evidence of confessions presumably obtained under torture (arts. 2 and 11).

In the light of article 2, paragraph 2, of the Convention, the Committee reiterates its recommendation that the State party eliminate the procedure of *arraigo* (pre-charge detention) from its legislation and its practices at both the federal and the state levels.

Enforced disappearance

(12) The Committee is concerned by the increasing number of enforced disappearances that are apparently being committed by public authorities or by criminal or private groups acting with the direct or indirect support of Government officials in such states as Coahuila, Guerrero, Chihuahua, Nuevo León and Tamaulipas, as reported by the Working Group on Enforced or Involuntary Disappearances (A/HRC/19/58/Add.2, paras. 16 to 31), (art. 2).

The Committee urges the State party to continue to act upon the recommendations made by the Working Group and, in particular, to:

- (a) **Adopt a general law on enforced disappearance;**
- (b) **Ensure that the states and the Federal District establish legal definitions of the offence of enforced disappearance and set penalties for that offence which are in line with the corresponding international standards;**
- (c) **Ensure that enforced disappearances are investigated promptly, thoroughly and effectively, that suspected perpetrators are tried and that the penalties imposed upon the guilty parties are commensurate with the gravity of the offence;**
- (d) **Ensure that all victims who have suffered harm as the result of an enforced disappearance have access to information on the fate of the disappeared person and to reparation, which includes the right to just and appropriate compensation;**
- (e) **Adopt the necessary measures to resolve the cases pending before the Working Group on Enforced or Involuntary Disappearances.**

Impunity and violence against women

(13) The Committee is concerned by reports that women continue to be the victims of gender-based murders and disappearances, especially in the States of Chihuahua, Jalisco, México and Nuevo León. While noting that major strides have been made in terms of the establishment of legal and institutional means of combating this phenomenon and other forms of violence against women, including femicide, the Committee is concerned by

indications that the new legal framework is not being fully applied by many states. The Committee also takes note with regret of the persistence of impunity for serious acts of violence against women, including those committed in 2006 in San Salvador Atenco, as recently pointed out by the Committee on the Elimination of Discrimination against Women (CEDAW/C/MEX/CO/7-8, paras. 18 and 19) (arts. 2, 12, 13 and 16).

The Committee urges the State party to redouble its efforts to prevent and combat violence against women, including gender-based murders and disappearances, to punish the perpetrators of such violence and to adopt all necessary measures to give full effect to the decisions of the Inter-American Court of Human Rights in this connection, including its judgement of 16 November 2009 in the case of *González et al. ("Cotton Field") v. Mexico*.

Human rights defenders and journalists

(14) While taking note of the recent promulgation of the Human Rights Defenders and Journalists Protection Act, the Committee remains seriously concerned at the large number of murders, disappearances and acts of intimidation and harassment committed against such persons. It is also concerned by reports of widespread impunity for these crimes and notes that, while most of them are attributed to criminal organizations, in some cases there have been indications that members of security forces may be implicated. In light of this situation, the Committee regrets that the State party has not provided it with specific information on the outcomes of investigations and criminal proceedings that are now under way (arts. 2, 12, 13 and 16).

The Committee urges the State party to:

(a) **Take the necessary steps to guarantee the safety and physical integrity of human rights defenders and journalists by protecting them against any acts of intimidation or violence that they may face in the course of their activities;**

(b) **Expedite the establishment of the protective mechanism provided for in the Human Rights Defenders and Journalists Protection Act;**

(c) **Take steps to carry out prompt, thorough and effective investigations into any and all acts of intimidation or violence directed at human rights defenders and journalists and to prosecute those responsible and punish them in a manner that is commensurate with the gravity of their acts.**

Confessions obtained under duress

(15) While taking note of constitutional guarantees relating to the inadmissibility of evidence obtained in a manner that violates fundamental rights, the Committee regrets that some courts continue to accept confessions that have apparently been obtained under duress or through torture by invoking the principle of "procedural immediacy". The Committee considers the case of Israel Arzate Meléndez to be an emblematic illustration of the persistence of such practices even in jurisdictions in which the new criminal justice system is already in place. The Committee is closely following this case, which is now before the Supreme Court of Mexico (arts. 2, 12, 13, 15 and 16).

The State party should adopt effective measures without delay to:

(a) **Ensure that confessions obtained through torture or ill-treatment are not used as evidence in any proceedings whatsoever, pursuant to article 15 of the Convention;**

(b) **Ensure that an independent medical examination is performed whenever a suspect requests the court to order such an examination and that a prompt and impartial investigation is undertaken whenever there are reasonable grounds for**

believing that an act of torture has been committed, particularly when the only evidence against the defendant is a confession. In such cases, the burden of proof must not be borne by the alleged victim;

(c) Ensure that cases in which persons have been found guilty solely on the basis of confessions are reviewed, since many of those convictions may have been based on evidence obtained through torture or ill-treatment, and ensure that, when appropriate, prompt and impartial investigations into such cases are carried out and suitable corrective measures are taken;

(d) Continue to implement training programmes on the new criminal justice system for persons involved in the administration of justice.

Impunity for acts of torture and ill-treatment

(16) The Committee takes note with concern of information provided by the State party which indicates that verdicts have been handed down in only 6 trials for the offence of torture since 2005, in addition to 143 trials for the offence of abuse of authority, 60 for misuse of public office and 305 for unauthorized exercise of public authority. The Committee regrets that the information provided to it does not include disaggregated statistics for the reporting period on the number of complaints filed with the relevant bodies or specific data on the penalties imposed or on the compensation actually granted. The Committee is also concerned by reports that document allegations of complicity between public prosecutors and police investigators. It is also concerned by reports that public prosecutors and, on occasion, judges themselves disregard defendants' claims that they have been tortured or classify the acts in question as constituting less serious offences. Finally, the Committee regrets the lack of specificity of the information provided to it concerning the action taken to give effect to the recommendations made by the National Human Rights Commission (arts. 12 and 13).

The Committee urges the State party to:

(a) Reinforce the monitoring and oversight of the State party's security forces and agencies by, in particular, setting up an effective, independent and accessible system for receiving complaints and for investigating reports of torture or ill-treatment promptly, thoroughly and impartially. Such investigations should be carried out by an independent agency that is not subordinate to the executive branch. Any alleged corruption in this connection should be immediately investigated and, if grounds for it are found to exist, those responsible should be prosecuted;

(b) Ensure that complaints are made in writing and are properly investigated and that alleged victims are examined immediately by a forensic physician;

(c) Initiate investigations ex officio whenever there are reasonable grounds for believing that an act of torture has been committed;

(d) Ensure that, in cases of alleged torture or ill-treatment, suspects are suspended from duty immediately and remain suspended for the duration of the investigation, especially if there is a risk that they might otherwise repeat the alleged acts or obstruct the investigation;

(e) Prosecute the alleged perpetrators of acts of torture or ill-treatment and, if they are found guilty, ensure that their sentences are commensurate with the gravity of their acts;

(f) Create a centralized register of reports of torture and ill-treatment.

Application of the Istanbul Protocol in investigations of torture and ill-treatment

(17) The Committee applauds the State party's efforts to increase the training it provides regarding the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) and to expand the scope of its practical application by having the Office of the Attorney General of Mexico and a number of the offices of attorneys general at the state level prepare medical/psychological reports. However, it notes with concern that the application of the Protocol is still infrequent and in many cases is the exception to the rule. While taking note of the State party's intention to enhance the technical autonomy of official medical experts by establishing a forensic medical service within the Attorney General's Office, the Committee remains concerned by information which indicates that official experts frequently fail to mention or attach little importance to physical and psychological signs of torture or ill-treatment in their reports. The Committee is also concerned by reports that members of security forces have been present during medical examinations (arts. 12 and 13).

The State party should adopt all measures necessary to ensure that all persons taken into custody undergo thorough, impartial medical examinations. In order to ensure the quality and accuracy of forensic evaluations, the State party should:

(a) **Ensure that examinations are conducted in such a way as to uphold the principles of confidentiality and privacy;**

(b) **Ensure that medical experts use forms that are in line with annex IV of the Istanbul Protocol when preparing their evaluations and that they include their interpretation of their findings;**

(c) **Set up a system that permits official medical experts to anonymously request that a more thorough medical examination be performed;**

(d) **Adopt the legislative amendments required in order to accord full evidentiary value to the reports of independent medical experts so as to place them on an equal footing with the reports of official experts designated by attorneys general's offices;**

(e) **Ensure that all persons who are arrested and ask to be examined by an independent physician or an official expert receive copies of their request and the medical report or expert opinion (see the Istanbul Protocol, annex I, paragraph 6 (c)).**

Reform of the military justice system

(18) The Committee takes note of the information provided by the State party regarding the judgement handed down by the Supreme Court on 21 August 2012 in the case of Bonfilio Rubio Villegas, in which it declares, in line with the jurisprudence established by four judgements of the Inter-American Court of Human Rights, that a portion of article 57 of the Code of Military Justice is unconstitutional, thereby establishing that the ordinary courts have sole jurisdiction over cases involving the alleged violation of human rights by military personnel. The Committee regrets that the proposed amendment of the Code of Military Justice has not yet been passed. In addition, while taking note of the fact that military courts have ceded jurisdiction to civilian courts in respect of 231 preliminary investigations and 66 criminal cases, the Committee is troubled by the fact that, between 2007 and June 2011, the Office of the Military Attorney General opened 3,671 investigations into cases involving violations of civilians' human rights, with a total of 15 soldiers being convicted of such violations (art. 2, para. 1).

In line with its earlier recommendations in this regard, the Committee urges the State party to amend its Code of Military Justice, in accordance with the judgements

handed down by the Inter-American Court of Human Rights and the Supreme Court of Mexico, to preclude the possibility that military courts could have jurisdiction over cases involving human rights violations and offences against civilians in which military personnel are involved.

Conditions of detention

(19) While taking note of the information provided by the State party on the effort to reform the prison system and the recent activation of a fund to provide the financing needed to improve prison facilities at the state level, the Committee remains concerned by reports of overcrowding, violence between inmates and inmate self-rule in Mexican prisons and of extortion of inmates' family members. The Committee regrets the fact that it does not have accurate data on the size of the prison population in the various places of detention or up-to-date information on action taken in follow-up to the recommendations of the Subcommittee on Prevention of Torture or to those made by the National Human Rights Commission in its capacity as the national mechanism for the prevention of torture. It also regrets that data is lacking on complaints lodged by inmates or their families and on the outcome of the corresponding investigations (arts. 11, 12, 13 and 16).

The Committee recommends that the State party:

(a) Step up its efforts to alleviate overcrowding in prisons and other places of detention by, in particular, making use of non-custodial penalties as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

(b) Continue to improve the infrastructure of prisons and other places of detention, including juvenile treatment centres, and ensure that conditions of detention in the State party are in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

(c) Develop strategies for reducing violence among inmates and take the necessary steps to put a stop to inmate self-rule in prisons and to the extortion of inmates' family members. The Committee requests the State party to forward to it information on the results of the application of the Prison Administration Strategy for 2008–2012;

(d) Take the necessary steps to bolster the work being done by the National Human Rights Commission as the national mechanism for the prevention of torture by ensuring that its recommendations and those made by the Subcommittee on Prevention of Torture are given full effect.

Criminal juvenile justice system

(20) The Committee is concerned that the Federal Justice for Adolescents Act is still awaiting passage, since this means that a legal and institutional gap continues to exist in the State party. The Committee regrets the lack of precise statistics on the number of minors residing in treatment centres and on those centres' occupation rates. It also regrets that information is lacking on the number of minors arrested in the course of federal operations to combat organized crime and the status of those who have committed federal offences (art. 11).

The Committee urges the State party to:

(a) Approve the Federal Justice for Adolescents Act;

(b) Carry forward the establishment of a comprehensive juvenile justice system at all levels in cooperation, inter alia, with the United Nations Children's Fund (UNICEF);

(c) Use measures involving the deprivation of liberty only as a last resort and for the least amount of time possible and review such measures regularly with a view to their discontinuation;

(d) Compile statistics, disaggregated by sex, age and ethnic origin or nationality, on the number of minors, both at the federal and the state levels, who have been arrested, the reasons for their arrest and the duration of their detention.

Administrative detention of asylum seekers and undocumented migrants

(21) The Committee is concerned by reports of torture and disappearances of migrants present in the territory of the State party. It is also concerned by reports of ill-treatment, overcrowding and substandard conditions of detention in many of the State party's migrant holding centres, where there is a lack of hygiene and insufficient medical care and where men and women are not always held in separate facilities at all times. The Committee notes that effective mechanisms are not in place for the identification and referral of trafficking victims who may be held in these centres. While it applauds the recent promulgation of the Refugees and Supplementary Protection Act and the Migration Act, the Committee regrets that it has not been furnished with detailed statistics on the number of refugees, asylum seekers and other non-citizens in the State party. It also regrets that the data that have been provided on applications for asylum do not correspond to the reporting period and do not include information on the number of persons who have been returned, extradited or expelled (arts. 2, 3, 11 and 16).

The State party should:

(a) Ensure that thorough investigations are carried out into cases involving acts of torture, including disappearances and ill-treatment of refugees, asylum seekers and other foreigners housed in the territory of the State party;

(b) Improve conditions of detention in migrant holding centres.

The Committee also recommends that, in order to fulfil its obligations under article 3 of the Convention, the State party should:

(a) Adopt, without delay, effective measures to ensure that all foreigners within its jurisdiction are treated fairly and have genuine access to legal assistance at all stages of the corresponding procedures;

(b) Expand upon existing identification and referral mechanisms, in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), in order to provide the requisite protection and assistance and to optimize inter-agency coordination;

(c) Set up an effective system for the compilation of data on the status of refugees, asylum seekers and stateless persons present in its territory;

(d) Ratify the Convention on the Reduction of Statelessness and consider the possibility of withdrawing its reservations to articles 17, 26, 31, paragraph 2, and 32 of the Convention relating to the Status of Refugees and to articles 17, 31 and 32 of the Convention relating to the Status of Stateless Persons.

Psychiatric institutions

(22) The Committee is concerned by reports of the ill-treatment that is meted out to persons housed in psychiatric institutions, and it regrets that it does not have information on

the outcome of the corresponding investigations. It is also concerned by reports that describe the conditions in these centres in terms of both maintenance and hygiene as being unsatisfactory. Finally, the Committee has received no information on any protocols governing the use of methods of restraint in psychiatric institutions (arts. 2, 11 and 16).

The State party should:

(a) Ensure that any and all reports of ill-treatment of persons with disabilities who are housed in psychiatric institutions are investigated promptly and impartially and that the alleged perpetrators are brought to trial;

(b) Increase the resources made available for improvements in the relevant facilities in order to meet the patients' basic needs with regard to medical care and good hygiene;

(c) Ensure that independent oversight bodies conduct visits to these centres on a regular basis;

(d) Maximize its controls on the use of methods of restraint based on pre-established procedural protocols;

(e) Promote the introduction of alternative and, in particular, community-based forms of treatment.

Universal jurisdiction

(23) While taking note of article 6 of the Federal Criminal Code, the Committee observes that there is no provision in any of the State party's laws that expressly establishes its universal jurisdiction over acts of torture (arts. 5, 6, 7 and 8).

The State party should introduce provisions into its criminal legislation that establish its jurisdiction over acts of torture in accordance with article 5 of the Convention, including provisions under which the State party may prosecute, in accordance with article 7, foreign nationals who have committed acts of torture outside the State party's territory but who are present in its territory and have not been extradited.

Reparation

(24) The Committee welcomes the introduction of a provision into the Constitution that expressly recognizes the State's duty to redress human rights violations, but regrets that a general law on the subject is not yet in place. It is concerned by the fact that reparation is rarely made to victims of torture or ill-treatment and, in this connection, is disturbed by reports that — the recommendations made by the National Human Rights Commission to the various authorities notwithstanding — the authorities proceed to pay compensation directly to victims, thereby precluding the exercise by those victims of their right to seek redress in court (art. 14).

The State party should step up its efforts to make reparation to victims of torture and ill-treatment by, inter alia, providing fair and adequate compensation and affording the means for as full a rehabilitation as possible. It therefore urges the State party to complete its development of the legislative framework provided for in the Constitution by adopting a law that is in keeping with international standards, including the Convention.

The Committee draws the State party's attention to its recently adopted general comment No. 3 (2012) on the implementation of article 14 by States parties (CAT/C/GC/3), in which it elaborates upon the nature and scope of States parties' obligations to provide full redress to victims of torture.

Training

(25) The Committee takes note of the information furnished by the State party on the training provided to civil servants on the use of the Medical/Psychological Certificate of Possible Torture or Ill-Treatment, which is based on the Istanbul Protocol. It regrets, however, that little information has been supplied on the content of the training programmes on human rights and the prohibition of torture that are administered by the Ministry of Public Security, Ministry of Defence and Ministry of the Navy. It also notes that the State party has not submitted information on how much of an impact these training activities and programmes have had in terms of a reduction in the number of acts of torture or ill-treatment (art. 10).

The State party should:

(a) Continue to provide mandatory training programmes to ensure that all public servants are well versed in the provisions of the Convention and are fully aware that violations will not be tolerated and will be investigated and that those responsible will be prosecuted;

(b) Develop and apply a methodology for assessing how effective its training programmes are in reducing the number of cases of torture and ill-treatment.

(26) The State party is encouraged to ensure that the report that it submitted to the Committee and these concluding observations are widely disseminated, especially in the languages of the indigenous peoples of the State party, through official media and non-governmental organizations.

(27) The Committee requests the State party to provide, by 24 November 2013 at the latest, information on its follow-up to the recommendations set forth in paragraphs 9, 10 (d) and 16 (a) of this document, namely: (a) to ensure or strengthen fundamental legal safeguards for persons held in custody; (b) to conduct prompt, impartial, effective investigations; and (c) to prosecute persons suspected of committing acts of torture or ill-treatment and punishing those found guilty of doing so. The Committee also requests that it be provided with follow-up information on the steps taken to protect human rights defenders and journalists as specified in paragraph 14 (b) above.

(28) The State party is invited to submit its seventh periodic report by 23 November 2016. To that end, and in view of the fact that the State party has agreed to submit its report to the Committee under the new optional reporting procedure, the Committee will provide the State party with a list of issues well in advance of the date set for the submission of its next periodic report.

61. Norway

(1) The Committee against Torture considered the combined sixth and seventh reports of Norway (CAT/C/NOR/6-7) at its 1100th and 1103rd meetings, held on 1 and 2 November 2012 (CAT/C/SR.1100 and 1103), and adopted at its 1123rd meeting (CAT/C/SR.1123), held on 16 November 2012, the following concluding observations.

A. Introduction

(2) The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and to have submitted its periodic report under it, as it improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation. The Committee welcomes the replies to the list of issues submitted within the requested deadline.

(3) The Committee appreciates the open and constructive dialogue with the State party's high-level multisectoral delegation, as well as the additional information and explanations provided by the delegation to the Committee.

B. Positive aspects

(4) The Committee welcomes the State party's ongoing efforts to revise its legislation in order to give effect to the Committee's recommendations and to enhance the implementation of the Convention, including the adoption of:

(a) The Royal Decree of 11 April 2008, providing a comprehensive set of rules for persons staying at a detention centre, including the regulations dealing with conditions for temporary limitation of the rights and freedoms of persons kept at the detention centre, and the Immigration Act of 15 May 2008 on detention centres for foreign nationals, which includes their rights to receive visitors, to have access to health services and to associate with others;

(b) The amendments to the Criminal Procedure Act, which entered into force on 1 July 2008, strengthening the rights of victims in criminal proceedings, in particular for victims of sexual abuse;

(c) The Act of 2009 relating to Crisis Centres and the strengthening of the legal protection of victims of trafficking through the new Immigration Act of 15 May 2008 and the Immigration Regulations of 15 October 2009, entered into force on 1 January 2010.

(5) The Committee also welcomes the efforts made by the State party to amend its policies, programmes and administrative measures in order to ensure greater protection of human rights and give effect to the Convention, including:

(a) The establishment of a supervisory board for the Police Immigration Detention Centre at Trandum in May 2008, with authority to ensure that the rights of foreign nationals are safeguarded at the centre;

(b) The launch of projects and plans designed for police officers, such as "Security and Trust" in 2008 and "Awareness Gives Security" in 2011, to raise awareness about diversity, ethnic minorities and racism;

(c) The measures taken to improve the protection of victims of trafficking, such as the new Plan of Action against Human Trafficking, launched in December 2010.

C. Principal subjects of concern and recommendations

Incorporation of the Convention into domestic law

(6) While noting the State party's explanation with regard to its general principles concerning the transformation of its international obligations into national law and the reasons for incorporating only the most general international instruments in its Human Rights Act, the Committee regrets that the State party has not changed its position with regard to the specific incorporation of the provisions of the Convention into domestic law (art. 2).

The State party should further consider incorporating all provisions of the Convention into domestic law in order to allow the Convention to be directly invoked in court.

Definition of torture

(7) The Committee notes that, despite its previous recommendations, the definition of torture of the Penal Code is not in full compliance with article 1 of the Convention, as it still enumerates only acts based on some specific forms of discrimination instead of referring to any form of discrimination. While noting that the State party is drafting a new

Penal Code, which includes discrimination based on political views and sexual orientation, the Committee regrets the absence of a reference to “any reason based on discrimination of any kind” (art. 1).

The State party should consider amending its current definition of torture in order to include any form of discrimination as an element of the definition of torture.

National human rights institution

(8) While noting the intention of the State party to develop a strategy for the establishment of a national human rights institution that is fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), the Committee expresses its concern that this had not yet occurred (art. 2).

The Committee urges the State party to establish a national human rights institution with a mandate in accordance with the Paris Principles, and provide it with the necessary financial and human resources.

Preventive detention

(9) The Committee expresses its concern regarding the system of preventive detention, in particular concerning the frequency by which it is used as well as, in some cases, its prolonged length. The Committee further notes with regret that minors between 15 and 18 years old may be subject to preventive detention (arts. 2, 11 and 16).

The State party should revise its system of preventive detention, reducing its use to an absolute minimum. Taking into account the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the State party should also consider abolishing the practice of subjecting young offenders to preventive detention, except in exceptional and extraordinary cases according to specific and strict criteria defined by law.

Pretrial detention

(10) The Committee expresses its serious concern with regard to the extensive use of police detention cells for pretrial detention longer than 48 hours and regrets that minors also continue to be subjected to this practice. The Committee regrets further that there is a lack of general and formalized routines on how to handle minors in pretrial detention, as the Norwegian Ombudsman for Children has received reports by several minors describing their stay as “extremely exhausting”, with inadequate follow-up from the child welfare service and health-care services (arts. 11, 12, 13 and 16).

The State party should abolish the widespread use of police detention cells beyond the 48-hour term required by the law. The State party should use pretrial detention of minors as a measure of last resort and should also ensure that child welfare emergency officers are available in all police districts. It should develop clear and foreseeable routines for treatment of minors in police custody and see they are effectively implemented in practice.

Solitary confinement

(11) The Committee regrets the widespread and, in some cases, the prolonged use of solitary confinement, which might constitute a violation of the Convention. While noting with concern that almost one third of the cases concerned prisoners on remand, the Committee regrets that detailed statistics on the use and the length of solitary confinement are not yet available. The Committee also expresses its concern about the existing legal basis for the use of solitary confinement, as it is not formulated with sufficient precision, leaving the possibility for highly discretionary decisions, which prevents the possibility of

administrative or judicial supervision. The Committee regrets that detainees are not always appropriately informed on the grounds for imposition of solitary confinement and that the systems for control and review do not appear to ensure that they enjoy appropriate legal protection (arts. 2, 11 and 16).

In order to ensure full conformity with the Convention and taking into account the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Committee urges the State party to:

- (a) Reduce the use of solitary confinement to the situations that are strictly necessary;**
- (b) Amend its legislative framework in order to limit the use of solitary confinement to exceptional circumstances;**
- (c) Guarantee due process rights of prisoners in decisions concerning solitary confinement;**
- (d) Evaluate and assess the existing practice of the use of solitary confinement and review the existing mechanisms for control and legal remedies;**
- (e) Establish a system in order to provide detailed statistics on the use of solitary confinement and disclose them publicly.**

Violence against women

(12) The Committee welcomes measures being taken to prevent gender-based violence, including the drawing up of the fourth national plan of action to combat domestic violence. Notwithstanding this development, the Committee has received reports on the increasing high rates of violence against women, including rape, and notes, with concern, the low number of complaints, investigations, prosecutions and convictions in rape cases (arts. 2, 12, 13 and 16).

The Committee urges the State party to:

- (a) Adopt a legal definition of rape in the Penal Code which clearly defines rape and other forms of sexual violence as any sexual conduct without the consent of the victim;**
- (b) Strengthen its efforts to prevent violence against women through, inter alia, the effective implementation of the White Paper *Fra Ord til Handling* (From Words to Action) and the establishment of sexual assault centres in each county;**
- (c) Combat practices and prejudices among the law enforcement personnel that constitute a barrier to reporting rape, sexual violence and violence against women;**
- (d) Conduct broader awareness-raising campaigns and training on sexual violence for law enforcement agencies, judges, lawyers and social workers who are in direct contact with the victims and for the public at large, in order to create all the appropriate conditions for victims to report such cases to the authorities;**
- (e) Initiate prompt, effective and impartial investigations concerning all alleged cases of violence against women and prosecute and punish perpetrators in accordance with the seriousness of their acts.**

Mental health care for prisoners

(13) The Committee regrets that prisoners with serious mental health problems are not always provided appropriate psychiatric health care. In particular, the Committee is concerned at the insufficient capacity of in-patient psychiatric wards to accommodate

prisoners with serious mental illnesses and at the severe insufficiency of mental health-care services available and provided to the prisoners within the prison facilities (arts. 11 and 16).

The State party should take all measures to ensure that prisoners with serious mental health problems receive adequate mental health care, by increasing the capacity of in-patient psychiatric wards and providing full access to mental health-care services within all prison facilities.

Use of coercive measures in psychiatric health care

(14) The Committee, while noting the important steps being taken by the State party to reduce and ensure the correct use of coercive measures in mental health institutions, remains concerned at the widespread use of restraints and other coercive methods in psychiatric institutions, as well as at the lack of available statistical data, including on the administration of electroconvulsive treatment (ECT). The Committee is concerned that the provisions of the Mental Health Care Act, allowing for compulsory admission and treatment on the basis of either the “treatment criterion” or the “danger criterion”, leave the possibility for wide discretionary decisions to such an extent that it might lead to arbitrary and unwarranted practice (arts. 2 and 16).

The State party should ensure that every competent patient, whether voluntary or involuntary, is fully informed about the treatment to be prescribed and given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances. The State party should provide clear and detailed regulations on the use of restraints and other coercive methods in psychiatric institutions aiming to reduce the use of restraints substantially. The State party should also establish a system for the collection and publication of uniform statistical information on the use of restraints and other coercive methods, including the incidence of ECT.

Detention of foreign nationals and non-refoulement

(15) The Committee expresses its concern regarding the use of lengthy detention for asylum seekers who enter the State party undocumented. The Committee also regrets the lack of full legal protection for persons fleeing States due to generalized violence who can neither show that they are individually at risk, nor are considered to be at risk of torture if returned, as article 2 of the Aliens Act requires an individualized risk in order for persons to qualify for subsidiary protection in the State party (arts. 3, 11 and 16).

The State party should consider reducing the use and length of detention for asylum seekers who enter the State party undocumented. The State party should also consider refraining from returning foreign nationals to States in situations of internal armed conflict or generalized violence, on humanitarian grounds.

(16) The Committee regrets that the legal safeguards prescribed by law are not always guaranteed to all asylum seekers and foreign nationals pending expulsion, such as the right to information concerning their rights in a language they understand and the right to free legal aid in the case of expulsion. The Committee notes with concern the publishing of a consultation paper by the State party on the possibility to restrict further the right to free legal aid (arts. 3, 11 and 16).

In order to fulfil its obligations under article 3 of the Convention, the State party should guarantee all necessary legal safeguards to ensure the rights of persons facing expulsion or return. The State party should also offer appropriate legal aid to foreigners in all expulsion cases if necessary to safeguard their rights and establish procedures to ensure that foreign nationals are informed of their rights in a language they understand.

Trandum Holding Centre

(17) While welcoming with appreciation the improvement of the facilities at Trandum Holding Centre, the Committee notes the findings of the annual reports of the Supervisory Board for the Police Immigration Detention Centre at Trandum, raising remaining concerns with regard to health and the overall conditions of detention at the centre, in particular with regard to unhealthy sanitary conditions and overcrowding. Furthermore, the Committee notes with concern the increased numbers of detainees at Trandum, as well as the few cases of excessively long duration of detention (arts. 10, 11 and 16).

The State party should ensure that persons are held at Trandum only according to the law and only for the duration prescribed by law. The State party should ensure that all detention conditions are in total conformity with international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners, in particular with regard to the sanitary conditions and overcrowding.

Training on the prohibition against torture and ill-treatment

(18) While noting that different training programmes for law enforcement personnel on the provisions of the Convention, including the prohibition of torture, are systematically held, the Committee regrets that there is no available information on the impact of trainings on reducing incidents of excessive use of force and ill-treatment. The Committee regrets that the training is too theoretical, providing little knowledge of the practical use of human rights provisions. The Committee is also concerned about the lack of systematic training of health personnel on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) (art. 10).

The State party should ensure that educational programmes and practical training for law enforcement personnel on the provisions of the Convention, including on the limitations on the use of force and on the principles of non-discrimination, proportionality and last resort to force, are regularly provided. Furthermore, the State party should develop and implement a methodology to assess the effectiveness and impact of relevant training programmes on the incidence of cases of torture, excessive use of force and ill-treatment. In addition, the State party should provide systematic, thorough and practical training in the application of the Istanbul Protocol to all relevant health personnel.

Use of restraints and arrest techniques

(19) In light of the case concerning Mr. Eugene Obiora, who died in 2006 after police officers arrested him, the Committee notes the criticisms of the Parliamentary Ombudsman on the State party's insufficient compliance with its obligations in respect of the use of restraints exercised on a person, and on the lack of appropriate knowledge concerning arrest techniques and the absence of continued training (arts. 2, 10, 11 and 16).

The State party should take immediate steps to improve and update the arrest techniques, in order to avoid such cases as the death of Mr. Obiora, and should improve its training programmes in order to keep the law enforcement officers updated on the appropriate arrest techniques.

Prompt, effective and impartial investigations

(20) The Committee notes that the State party has taken measures to further improve the handling of complaints against the police concerning acts of ill-treatment and the investigation of relevant allegations. Nevertheless, the Committee remains concerned about allegations concerning violations of the Convention committed by law enforcement

officials, including allegations relating to discriminatory excessive use of violence, and about the lack of impartiality of subsequent investigations (arts. 12 and 13).

The State party should closely monitor the effectiveness of the new procedures for the investigation of alleged violations of the Convention committed by law enforcement officials, in particular those in which discriminatory treatment based on ethnicity is alleged. The State party is requested to provide detailed information on the results of the ongoing review.

Minorities and other vulnerable groups

(21) The Committee notes with concern allegations of cases of ill-treatment, harassment, incitement to violence and hate speech towards minorities and other vulnerable groups in the State party, including persons belonging to the lesbian, gay, bisexual, and transgender (LGBT) community (art. 16).

The Committee recalls that, in the light of its general comment No. 2 (2007) on the implementation of article 2, the special protection of minorities or marginalized individuals or groups especially at risk is part of the State party's obligation to prevent torture or ill-treatment. In this respect, the State party should enhance efforts to eradicate any instances of violence and ill-treatment of vulnerable groups, including through increased awareness-raising and information campaigns to promote tolerance and respect for diversity. The State party should ensure that violent acts, discrimination and hate speech are systematically investigated, prosecuted and the alleged perpetrators prosecuted, if found guilty, convicted and sanctioned with penalties commensurate with the gravity of the offence.

Missing minors and trafficking

(22) The Committee has received reports of NGOs raising concerns about the number of unaccompanied minors who have not returned to asylum centres in the State party, including the 68 children who were still missing from these centres on 31 August 2012. The Committee is also concerned about the provision in the Immigration Regulations (Section 8–8) which grants unaccompanied asylum-seeking minors between the ages of 16 and 18 years a temporary permit that expires at the age of 18, as this may encourage minors to leave the asylum centres before their permit expires. Furthermore, while welcoming the different measures taken to combat human trafficking such as the new Plan of Action against Human Trafficking launched by the Government in December 2010, the Committee notes with regret that trafficking in persons still remains a problem in the State party, especially concerning girls (arts. 2 and 16).

The State party should strengthen its efforts to prevent minors from going missing from asylum centres by allocating sufficient resources to the immigration authorities to prevent and investigate every case of missing minors. The police should be provided with all the necessary resources to investigate and prosecute cases of trafficking.

Detention of minors

(23) While welcoming the continued efforts of the State party to establish two separate prison units for young offenders, the Committee notes with concern that, despite the reduced number of children in prison, children are almost always detained with adults (arts. 11 and 16).

The State party should ensure that minors are always segregated from adults, either in pretrial detention or after conviction, in accordance with international standards, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Standard Minimum Rules for the Administration of Juvenile

Justice (the Beijing Rules). The State party is urged to establish the second unit for the detention of juveniles as soon as possible.

Data collection

(24) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security and prison personnel, as well as on the number of asylum seekers, the use and length of solitary confinement and the occurrence of trafficking and domestic and sexual violence, including means of redress (arts. 2, 11, 12, 13, 14 and 16).

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, the number of asylum seekers, the use of solitary confinement and the occurrence of trafficking and domestic and sexual violence, as well as on means of redress, including compensation and rehabilitation, provided to the victims.

The Committee draws the attention of the State party to the recently adopted general comment No. 3 (2012) on article 14 of the Convention which explains the content and scope of the obligations of States parties to provide full redress to victims of torture.

(25) The Committee urges the State party to continue its efforts to aiming at ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment as soon as possible.

(26) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance.

(27) The State party is requested to disseminate widely the report submitted to the Committee and the committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(28) The Committee requests the State party to provide, by 23 November 2013, follow-up information in response to the Committee's recommendations related to solitary confinement, detention of foreigners, and missing minors and trafficking, as contained in paragraphs 11, 15, 16 and 22 above.

(29) The State party is invited to submit its next report, which will be the eighth periodic report, by 23 November 2016. To that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

62. Peru

(1) The Committee against Torture considered the combined fifth and sixth periodic reports of Peru (CAT/C/PER/6) at its 1096th and 1099th meetings, held on 30 and 31 October 2012 (CAT/C/SR.1096 and 1099). At its 1121st, 1122nd and 1123rd meetings (CAT/C/SR.1121 1122 and 1123), held on 15 and 16 November 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for submitting its sixth periodic report by providing detailed replies to the list of issues (CAT/C/PER/Q/6), as it improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation.

(3) The Committee also appreciates the open and constructive dialogue with the high-level delegation of the State party and the supplementary information supplied.

B. Positive aspects

(4) The Committee welcomes that, since the consideration of the fourth periodic report, the State party ratified or acceded to the following international instruments:

(a) Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on 14 September 2006;

(b) Convention on the Rights of Persons with Disabilities, on 30 January 2008;

(c) Optional Protocol to the Convention on the Rights of Persons with Disabilities, on 30 January 2008;

(d) International Convention for the Protection of All Persons from Enforced Disappearance, on 26 September 2012.

(5) The Committee welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including:

(a) Entry into force in July 2006 of the new Code of Criminal Procedure, adopted by Legislative Decree No. 957 of July 2004;

(b) Approval by Act No. 28592 of the Comprehensive Reparations Plan, in July 2005;

(c) Incorporation of the crime of femicide in article 107 of the Criminal Code;

(d) Repeal on 15 September 2010 of Legislative Decree No. 1097 that stipulated that the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity would only apply as of 9 November 2003;

(e) Adoption of Refugee Law No. 27891 of 20 December 2002.

(6) The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) Establishment of a specialized judicial subsystem under the Public Prosecutor's Office and the Judiciary to prosecute human rights violations committed during the internal armed conflict;

(b) Establishment in 2006 of the Central Register of Victims under the responsibility of the Reparations Council;

(c) Adoption of the National Mental Health Plan and of the Coordinated National Health Plan 2007–2020 which gives priority attention to victims of political violence;

(d) Establishment in October 2010 of the Multisectoral Technical Commission to draw up guidelines and methodologies to determine amounts, procedures and conditions for the Economic Reparations Programme payments;

- (e) Establishment on 7 December 2011 of a Vice-Ministry for Human Rights and Access to Justice within the Ministry of Justice;
- (f) Establishment of the Special Commission on Refugees (CEPR);
- (g) Adoption of the Second National Action Plan to Combat Violence against Women 2009–2015;
- (h) Adoption of the National Action Plan to Combat Trafficking in Persons 2011–2016;
- (i) Adoption of the National Human Rights Plan of Action 2012–2016.

C. Principal subjects of concern and recommendations

Definition of torture

(7) The Committee is concerned that the definition of torture in the Criminal Code does not include discrimination of any kind as one of its elements (arts. 1 and 4).

The Committee recommends that the State party amend its Criminal Code to include a definition of torture that covers all the elements contained in article 1 of the Convention.

Allegations of torture and ill-treatment, fundamental legal safeguards

(8) The Committee takes note of the information from the State party on numerous allegations of torture and ill-treatment in custody by law enforcement and security officials, but is concerned at the lack of thorough investigations and the small number of convictions under national law. The Committee is concerned that while charges were raised in the case of Mr. Gerson Falla, who died in custody 48 hours after being beaten in detention, no conviction has been pronounced and no one held responsible. The Committee is also concerned that the fundamental legal safeguards for persons detained by police are not always respected and regrets the absence of a specific registry for cases of torture and cruel, inhuman or degrading treatment and punishment. The Committee is further concerned at reports about violence by law enforcement personnel in the context of apprehension. There seems to be no regular assessments of cases of torture allegations based on The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) of detained persons (arts. 2, 10, 12, 13 and 14).

The State party should take effective measures to:

- (a) Conduct prompt, impartial and effective investigations of all reports of torture and ill-treatment, bring perpetrators to justice and punish them with appropriate penalties;**
- (b) Ensure that persons deprived of their liberty enjoy fundamental legal safeguards from the very outset of their detention and have recourse to an independent complaints procedure;**
- (c) Ensure that law enforcement personnel are trained in professional techniques which minimize any risk of harm to apprehended persons;**
- (d) Establish a specific registry for cases of torture and cruel, inhuman or degrading treatment and punishment;**
- (e) Ensure that the Istanbul Protocol is made a mandatory part of the training for all medical professionals involved in the documentation and investigation of allegations of torture and ill-treatment in order to permit proper diagnosing of signs of torture.**

Pretrial detention

(9) The Committee is concerned that some 60 per cent of all detainees are in pretrial detention some of which may last up to 36 months, which contributes to the overcrowding in detention centres throughout the country (arts. 2, 11 and 16).

The State party should take prompt steps to restrict the use of pretrial detention as well as its duration, using alternative measures to imprisonment in line with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).

Conditions of detention

(10) The Committee is concerned at information about the conditions in detention centres including overcrowding at 114 per cent, deteriorated infrastructure, including food and temperature, poor sanitary conditions and only 54 doctors to cover the entire prison population. In particular, the Committee expresses concern at the conditions in the high-security prison at the Callao naval base with prolonged solitary confinement, sensory isolation, prohibition to communicate and half-hour family visits once a month, and at the conditions in the Challapalca and Yanamayo detention centres (arts. 2, 11 and 16).

The State party should:

(a) **Take immediate steps to reduce overcrowding in places of detention, including by the application of alternatives to imprisonment;**

(b) **Adopt reasonable time frames for the construction of new prisons and the expansion and renovation of existing places of detention;**

(c) **Ensure that there are sufficient medical professionals, including mental health professionals, in places of detention;**

(d) **Use solitary confinement as a last resort, for as short a time as possible, with the possibility of judicial control;**

(e) **Ensure that the prisoners in the high-security prison in Callao are treated in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners;**

(f) **Consider closing the Challapalca and Yanamayo penitentiary centres.**

Designation of a national preventive mechanism

(11) The Committee is very concerned that six years after its accession to the Optional Protocol to the Convention, the State party has still not set up the national preventive mechanism (art. 2).

The State party should without further delay establish the national preventive mechanism in full compliance with the Optional Protocol and in particular grant it sufficient financial, human and material resources in order to assume its mandate effectively.

Use of force

(12) The Committee is concerned at allegations of excessive and disproportionate use of force, including firearms, by the national police and armed forces during social protests as well as arrests of human rights defenders, lawyers, representatives of the Ombudsman and members of the indigenous population during such situations, and that to date there have been no convictions regarding the incidents in Bagua, Celendín or Bambamarca (arts. 2, 10, 12, 13 and 16).

The State party should:

(a) **Ensure that law enforcement officials receive training on the absolute prohibition of torture, and on international standards on the use of force and firearms, including on the liabilities in cases of excessive use of force;**

(b) **Expedite the investigation and prosecution of such cases and sanction officials found guilty of such offences with appropriate penalties.**

States of emergency

(13) The Committee is concerned at the frequent imposition of states of emergency, during which restrictions on human rights may give rise to violations of the Convention and that state of emergency has been imposed in relation to peaceful social protests. The Committee is further concerned at the promulgation on 1 September 2010 of Legislative Decree No. 1095 allowing military courts to decide on cases of excessive use of force and human rights violations during state of emergency (art. 2).

The State party should limit the imposition of state of emergency to situations in which it is strictly necessary, and at all times respect the provisions of the Convention stating that no exceptional circumstances may be invoked as a justification of torture. The State party should consider amending Legislative Decree No. 1095 with a view to bringing all its provisions in line with the State party obligation under the Convention.

Violence against women

(14) The Committee is concerned at reports on widespread violence against women and girls, including domestic and sexual violence and femicide, and at the low numbers of investigations and prosecutions in such cases, as well as the lack of statistics on sexual violence. While taking note of the adoption of the Second National Action Plan to Combat Violence Against Women 2009–2015, the Committee is concerned that domestic violence and forms of sexual violence and harassment, other than the crime of rape, are not defined as offences in the Criminal Code and at the obstacles victims of violence face when accessing justice, combined with the insufficient number of shelters available to them (arts. 2, 12, 13 and 16).

The State party should intensify its efforts and urgently ensure the implementation of effective protective measures to prevent and combat all forms of violence against women and girls and amend its legislation to include domestic violence and forms of sexual violence as offences under the Criminal Code, as is the case with rape, and develop a better overview on the prevalence of the offence. The State should further strengthen all efforts to prevent violence against women, enhance the access of victims to justice, ensure that all acts of violence are promptly, effectively and impartially investigated and prosecuted, perpetrators brought to justice and victims provided with redress. The State party should set up not only an effective complaints mechanism for women and girls but also a monitoring mechanism to prevent all forms of violence against them. The Ministry of Health should provide specialized training to health personnel dealing with victims of violence and a single, consolidated system for keeping records on cases of violence against women should be established. Broad awareness-raising campaigns should be initiated and training on combating and preventing violence against women and girls for law enforcement officers, judges, lawyers, and social workers should be provided.

Reproductive rights and health

(15) The Committee is seriously concerned that illegal abortions are one of the main causes of high maternal mortality in the State party and that the interpretation of therapeutic and legal abortion in cases of medical necessity is too restrictive and lacks clarity, leading

women to seek unsafe illegal abortions. The Committee is particularly concerned at the criminalization of abortions in cases of rape and incest as well as the prohibition by the Constitutional Court of the distribution of oral emergency contraception to victims of rape. It is further concerned at the fact that the existing law obliges physicians to bring information on women resorting to post-abortion health services to the attention of the authorities and which may lead to investigation and criminal prosecution, which creates such fear of punishment that, in practice, this constitutes a denial of legal abortion services. The Committee is also concerned at the forced sterilization of women, namely the 2.000 women who were subjected to forced sterilizations under the National Reproductive Health and Family Planning Program between 1996 and 2000, and who have not yet received redress (arts. 2, 10, 12, 13, 14, 15 and 16).

The State party should review its legislation with a view to:

(a) Amending the general prohibition for cases of therapeutic abortion and pregnancy resulting from rape and incest and provide free health coverage in cases of rape;

(b) Legalizing the distribution of oral emergency contraception to victims of rape;

(c) Ensuring that health professionals are aware of and informed about the protocols regarding legal abortions by the Ministry of Health and guarantee immediate and unconditional treatment for persons seeking emergency medical care;

(d) Eliminating the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion and penalizing medical personnel for the exercise of their professional responsibilities;

(e) Enhancing its provision of family planning information and services and conducting a broad public campaign to raise awareness about cases when therapeutic abortions are legal and the administrative framework to access them.

The State party should accelerate all current investigations related to forced sterilization, initiate prompt, impartial and effective investigations of all similar cases and provide adequate redress to all victims of forced sterilization.

Impunity for acts of torture and ill-treatment during the internal armed conflict

(16) The Committee is gravely concerned at the slow progress of establishing accountability for the estimated 70,000 deaths or enforced disappearances during the internal armed conflict from 1980 to 2000, and at the very small number of convictions and high rate of acquittals in cases prosecuted. It is further concerned at the slow pace of exhumations, identification of and return of bodies to their relatives and the scarcity of qualified personnel. It is also concerned at the requirement by the National Criminal Court that evidence be direct and documentary, and its unwillingness to credit the testimony of victims or their relatives. The Committee is seriously concerned at the absence of full cooperation of the Ministry of Defence to furnish information relevant for the investigations, including lists of army officers present in patrols and army bases in different regions affected by the conflict, and to inform on the aliases and code names frequently used by military officials. While taking note of the introduction of the Victim and Witness Assistance Programme and acknowledging the challenges and difficulties, the Committee is concerned that lack of effective implementation prevents courts from obtaining testimonies and that there are no special measures to protect victims of torture. It is concerned further at the underreporting of cases of sexual violence against women and girls during the armed conflict, the limited number of investigations, the absence of sentences and the lack of effective redress to victims of sexual violence during the conflict. It is also concerned that rape is the only form of sexual violence that may give rise to individual economic

compensation under Law No. 28592 and that all forms of sexual violence are not covered by the law on reparation. The Committee takes note that the State party ratified the Rome Statute in 2001, but is concerned that Bill No. 1707/2007/CR on rape as a crime against humanity, was submitted to Congress in 2007, but has not been passed to date (arts. 2, 12, 13, 14 and 16).

The State party should enhance its efforts to investigate, prosecute and bring to justice the perpetrators of human rights violations, including torture, during the internal armed conflict and ensure the access to truth, justice and compensation for victims. It should strengthen the capacity of the specialized judicial subsystem established for this purpose to conduct trials in an impartial, public and transparent manner, in accordance with international law. It also recommends that the Institute for Legal Medicine enhance its specialized forensic teams to accelerate the exhumations and analysis of human remains, their identification and handing over to relatives. The Committee urges the Ministry of Defence to cooperate with the prosecutors and judges and invites the National Criminal Court to reconsider its criteria for obtaining evidence in cases of human rights violations. Witnesses and victims should be protected and provided with sufficient financial resources under the witness protection programme. The State party should enhance the investigation and prosecution of all cases of human rights violations committed during the armed conflict, including sexual violence, and provide redress to victims. All forms of sexual violence should be included in national legislation prohibiting torture and Law No. 28592 should be enacted in order to allow for individual economic compensation for such crimes. The Committee recommends that the State party expedite the implementation of the Rome Statute in national legislation.

Comprehensive Reparation Plan

(17) While taking note of the introduction of the Comprehensive Reparation Plan and the establishment of the Central Register of Victims concerning reparation for victims of violence during the internal armed conflict from 1980 to 2000, the Committee is concerned that Supreme Decree No. 051-2011-PCM will be implemented to close the Central Register of Victims in spite of some 28,000 outstanding files requiring evaluation under the Economic Reparation Programme. The Committee is also concerned at the insufficient amount of economic reparation and at the slow pace of payments (art. 14).

The Committee recommends that:

(a) **The Reparation Council remain open and that the State party ensure that the Central Register of Victims continues the process for determining and identifying beneficiaries of the Economic Reparation Programme and amend article 41 of the regulations governing Act No. 28592 accordingly;**

(b) **Allocation be made for sufficient financial and human resources required for the full and timely implementation of the Comprehensive Reparation Plan and that an increase in the amount of economic reparation be made which should cover all the persons concerned.**

Medical and psychological care for victims of torture

(18) While noting that torture victims of the internal armed conflict are entitled to receive health services under the Comprehensive Reparation Plan and the comprehensive health insurance scheme and that the National Criminal Court has ruled in recent cases of torture that victims of torture should be given free physical and mental health care until they were fully recovered, the Committee is concerned that the plan is far from being fully implemented, that there is no specialized programme of medical and psychological care or rehabilitation for victims of torture and that there are no records showing the number of

torture victims benefiting from health programmes. The Committee is further concerned at the limited use of manuals developed to assess psychological sequelae of torture. A rehabilitation programme should also be provided for post-conflict victims of torture (art. 14).

The State party should ensure that:

(a) Public policies regarding full and complete redress to victims of torture and ill-treatment are fully developed and disseminated, including the provision of such specialized services in individual cases as may be necessary regardless of geographical location, the socio-economic situation of victims, gender, and real or perceived affiliation with current or former opposition groups;

(b) Specialized services that are provided are of a sufficient quality to enable all victims of torture to achieve as full rehabilitation as possible. These services should take into account holistic rehabilitation methodologies such as combination of medical and psychological care as well as legal, social, community and family-based, vocational, educational services, and interim economic and reintegration support and that services are available for that purpose in all parts of the country;

(c) The recently adopted manual for evaluation of psychological effects of torture by the Fiscalía de la Nación is implemented;

(d) A database is set up on the number of victims of torture, both from the period of the internal armed conflict and the post-2000 period, who have benefited from health programmes.

The Committee draws the attention of the State party to the recently adopted general comment No. 3 (2012) on article 14 of the Convention which explains the content and scope of the obligations of States parties to provide full redress to victims of torture.

Persons with disabilities

(19) The Committee is concerned at reports of violent and discriminatory practices against persons with disabilities in medical settings, including minors, deprivation of liberty, without access to basic legal safeguards, and the use of restraint, as well as the continuous enforced administration of treatments such as Electro Convulsive Therapy. The Committee welcomes the suspension of the technical norm for Family Planning 536/2005-MINSA, of 26 July 2005, which permits persons with “mental incompetence” to be sterilized without their free and informed consent, but remains concerned that the decree is not repealed (arts. 2, 12, 13, 14 and 16).

The Committee recommends that the State party adopt the draft bill on the rights of persons with disabilities, submitted to the Congress in March 2011, and ensure that all legal safeguards for people in institutions are respected, urges the State party to promptly, effectively and impartially investigate all instances of ill-treatment, and to prosecute those responsible. The State party should, as a matter of urgency, repeal the suspended administrative decree which allows the forced sterilization of persons with mental disabilities.

Violence against children, including corporal punishment

(20) The Committee is concerned that violence against children, including domestic and sexual violence, is widespread and that corporal punishment of children in the home, schools, penal institutions and care settings is not explicitly prohibited (arts. 2 and 16).

The Committee recommends that the Code on Children and Adolescents and the Penal Execution Code be amended to explicitly prohibit violence against children, and

in particular sexual violence, and define corporal punishment in all settings as an offence under the law.

Contemporary forms of slavery, including forced labour and trafficking

(21) The Committee is concerned at reports on forced labour practices amounting to slavery, debt bondage (*enganche*) and serfdom in such sectors as agriculture, stock-raising and forestry that particularly concern indigenous communities, and also at the situation of domestic workers living in conditions of domestic servitude. It is further gravely concerned at the increasing number of children affected by the worst forms of child labour in various sectors such as mining, brick-making and saw mills and that one third of persons in domestic servitude are children. The Committee is particularly concerned that the prohibition of slavery and forced labour is not adequately covered in the Penal Code. The Committee is further concerned at the trafficking in human beings for labour and sexual exploitation and in particular of women and young girls from impoverished rural regions in the Amazon who are recruited and coerced into prostitution in brothels located in mining shantytowns (arts. 2, 12, 13, 14 and 16).

The State party should strengthen its efforts to:

(a) Adopt legislative measures to eradicate forced labour, serfdom and domestic servitude;

(b) Ensure in practice the elimination of such contemporary forms of slavery and in particular protect children;

(c) Carry out prompt investigation, prosecution and adequate punishment of perpetrators and provide protection, free legal aid, rehabilitation and compensation for victims of forced labour and trafficking;

(d) Raise awareness of and train law enforcement personnel, judges and prosecutors on trafficking in persons and improve the identification of victims of trafficking;

(e) Amend the Penal Code and the Domestic Workers Act so that they are brought in line with international standards.

Attacks against members of the lesbian, gay, bisexual, and transgender (LGBT) community

(22) The Committee is seriously concerned at reports of harassment and violent attacks, some of which have resulted in deaths, against the LGBT community by members of the national police, armed forces, municipal security patrols (*serenos*) and prison officials and at arbitrary detention and physical abuse in police stations with denial of fundamental legal safeguards (arts. 2, 11, 12, 13 and 16).

The State party should take effective measures to protect the LGBT community from attacks, abuse and arbitrary detention and ensure that all acts of violence are promptly, effectively and impartially investigated and prosecuted, perpetrators brought to justice and victims provided with redress.

Data collection

(23) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill treatment by law enforcement, military, security and prison personnel, as well as on trafficking, violence, against women, children and other vulnerable groups, including domestic and sexual violence, as well as means of redress (arts. 2, 11, 12, 13, 14 and 16).

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel, trafficking, violence, including domestic and sexual, against women, children and other vulnerable groups as well as on means of redress, including compensation and rehabilitation, provided to the victims.

(24) The Committee invites the State party to consider ratifying the other United Nations human rights treaties to which it is not yet party, namely the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

(25) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, including indigenous, through official websites, the media and non-governmental organizations.

(26) The Committee requests the State party to provide, by 23 November 2013, follow-up information in response to the Committee's recommendations relating to: (a) conducting prompt, impartial and effective investigations; (b) ensuring or strengthening legal safeguards for persons detained; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 8 (a), 15 (a) and 17 (b) of the present document.

(27) The State party is invited to submit its next report, which will be the seventh periodic report, by 23 November 2016. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

63. **Qatar**

(1) The Committee against Torture considered the second periodic report of Qatar (CAT/C/QAT/2) at its 1104th and 1107th meetings (CAT/C/SR.1104 and 1107), held on 5 and 6 November 2012, and adopted, at its 1124th meeting (CAT/C/SR.1124), held on 19 November 2012, the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the second periodic report of Qatar, which generally followed the reporting guidelines, but regrets that it was submitted after a delay of more than three years. The Committee emphasized the importance of the timely submission of reports to ensure a continuous analysis of the implementation of the Convention in the State party. The Committee appreciated the State party's written replies to the list of issues (CAT/C/QAT/Q/2/Add.2), which were provided by the State party in Arabic and English.

(3) The Committee notes with appreciation that a high-level delegation met with the Committee and engaged in a constructive dialogue covering various areas of concern under the Convention.

B. Positive aspects

(4) The Committee welcomes that, since the consideration of the initial report, the State party has ratified or acceded to the following international instruments:

(a) The Convention on the Elimination of All Forms of Discrimination against Women, on 29 April 2009; and

(b) The Convention on the Rights of Persons with Disabilities, on 13 May 2008.

(5) The Committee notes with appreciation the State party's reforms in the field of human rights and ongoing efforts to revise its legislation in order to ensure stronger protection of human rights, including the rights protected in the Convention. The Committee welcomes in particular:

(a) The establishment of the Supreme Constitutional Court, pursuant to Act No. 12 of 2008;

(b) The establishment of the Qatar Foundation for Combating Human Trafficking, pursuant to Supreme Council for Family Affairs Decision No. 1 of 2008;

(c) The establishment of a standing committee to hear cases of detainees held at the Deportation Detention Centre, pursuant to Minister of State for Internal Affairs Decision No. 46 of 2008;

(d) The enactment of Act No. 3 of 2009 regulating penitentiaries and correctional institutions; and

(e) The amendment to the Act establishing the National Human Rights Committee (Act No. 38 of 2002), by Decree-Law No. 17 of 2010.

C. Principal subjects of concern and recommendations

Implementation of the Committee's previous recommendations

(6) While acknowledging the various steps taken by the State party to reform some of its legislation in line with the Convention, the Committee notes with concern that many of its recommendations adopted following the consideration of the State party's initial report (CAT/C/QAT/CO/1) have not yet been implemented, and regrets that most subjects of concern remain.

The State party should re-examine and take all necessary measures to give full effect to the recommendations adopted by the Committee in its previous concluding observations.

Overarching considerations regarding implementation

(7) The Committee regrets that, despite its repeated requests, most of the statistical information it requested was not provided. The absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security and prison personnel, expulsions of immigrants and asylum seekers, access to detention records, trial duration, rehabilitation and compensation, and trafficking and sexual violence severely hampers the identification of compliance or non-compliance with the Convention requiring attention.

The State party should compile and provide the Committee, in its next periodic report, with information on complaints, investigations, prosecution and convictions in cases of torture and ill-treatment, expulsions, length of trials of alleged perpetrators of torture and ill-treatment, rehabilitation and compensation, trafficking and sexual violence, and the outcomes of all such complaints and cases. To this end, statistical data should be disaggregated by gender, age, ethnicity status, nationality, relevant to the monitoring of the Convention.

Criminalization of torture

(8) The Committee welcomes the amendment to the definition of torture in articles 159 and 159 bis of the Criminal Code in conformity with article 1 of the Convention and the amendment to its national legislation in order to apply appropriate penalties for torture and ill-treatment. However, the Committee regrets the lack of information about cases in which

those legal provisions were applied by domestic courts and the punishments imposed for such acts (arts. 2 and 4).

The State party should ensure the effective implementation of the amended definition of torture under articles 159 and 159 bis of the Criminal Code, and follow up on cases in which those provisions are invoked before and by courts. The State party should ensure that the crime of torture and ill-treatment is punishable by appropriate penalties that take into account their grave nature, as set out in article 4, paragraph 2, of the Convention.

Reservations and declarations under articles 21 and 22 of the Convention

(9) While noting that the State party has taken steps to withdraw its reservations to articles 21 and 22 of the Convention, the Committee is concerned that it has not yet accepted the Committee's competence under those articles. The State party also seeks to retain a vague and extremely broad reservation to articles 1 and 16 of the Convention insofar as they are incompatible with the precepts of Islamic law and the Islamic religion. The Committee considers that the State party should face few obstacles in withdrawing its reservation in view of the fact that the State party has accepted and incorporated into domestic law the definition of torture in article 1 of the Convention, as noted in paragraph 8 of the present concluding observations. While noting the statement made by the State party's delegation that the reservation to the Convention will not impede the full enjoyment of all the rights guaranteed in it, the Committee is concerned that the general and imprecise nature of the reservation allows courts and governmental and other officials to negate many of the Convention's provisions and this raises serious concerns as to its compatibility with the object and purpose of the Convention.

The State party should consider withdrawing the reservation so as to ensure it is in compliance with the requirements of the Convention. The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention.

Fundamental legal safeguards

(10) While noting that article 39 of the Constitution and articles 40, 112 and 113 of the Code of Criminal Procedure provide some legal safeguards to detainees, the Committee is concerned that these provisions are not always respected in practice, in particular for non-citizens, and do not cover all fundamental safeguards required by the Convention, in particular the right to have an independent medical examination upon deprivation of liberty. The Committee also expresses its concern at the lack of information on detention registers as well as the lack of monitoring of the implementation of safeguards, in particular given that the State party stated that it had documented no cases in which the authorities had failed to properly register detainees during the reporting period. While noting the provisions in the Code of Criminal Procedure requiring persons to be charged or released within 48 hours, the Committee remains concerned that detention without charge may be extended by the Attorney General for 16 days. Of further concern are reports on persons detained without charge or trial, inter alia, the case of Mohamed Farouk al Mahdi, undertaken by the Working Group on Arbitrary Detention (A/HRC/WGAD/2010/25) (arts. 2 and 16).

The State party should promptly take effective measures to ensure that all detainees, including non-citizens, are afforded, in practice, all fundamental legal safeguards from the very outset of detention, including the rights to promptly receive independent legal assistance and a medical examination by an independent doctor, contact relatives, and appear before a judge within a time limit in accordance with international standards. The State party should also take steps to ensure effective monitoring of the adherence of all personnel to the laws governing safeguards, and discipline or prosecute those who fail to provide them to persons deprived of their

liberty as required by law. The State party should ensure that all detainees, including minors, are included on a central register. The State party is encouraged to introduce systematic video and audio monitoring and recording of all interrogations, in all places where torture and ill-treatment are likely to occur, and provide the necessary resources to that end.

Arbitrary detention under special legal provisions

(11) The Committee is deeply concerned that persons detained under the provisions of the Protection of Society Law (Law No. 17 of 2002), the Law on Combating Terrorism (Law No. 3 of 2004) and the Law on the State Security Agency (Law No. 5 of 2003) may be held for a lengthy period of time without charge and fundamental safeguards, including access to a lawyer, an independent doctor and the right to notify a family member and to challenge the legality of their detention before a judge. The Committee is concerned about reports that persons detained under those laws are often subject to incommunicado detention or solitary confinement, as seen in the cases of Mohammed al-Ajami, Fawaz Al-Attayah, Abdullah Khowar and Salem Al Kuwari (arts. 2 and 16).

The Committee urges the State party to:

(a) **Ensure that all fundamental safeguards are provided, in law and in practice, for all persons deprived of their liberty. This includes the availability of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, and to challenge the legality of their detention or treatment;**

(b) **Amend the Protection of Society Law and the Law on Combating Terrorism to bring them into conformity with the Convention. The State party should review the use of incommunicado detention with a view to its abolition and ensure that solitary confinement remains an exceptional measure of limited duration, in line with international standards; and**

(c) **Provide statistics indicating the number of persons arrested by the State security agency personnel, as well as all persons arrested on suspicion of violating the Protection of Society Law and the Law on Combating Terrorism, and the length of time that elapsed before they were charged with an offence.**

Corporal punishment as criminal sanctions

(12) While noting that the new Act regulating penitentiaries and correctional institutions (Act No. 3 of 2009) makes no provision for the use of flogging as a disciplinary sanction unlike the previous law (Act No. 3 of 1995), the Committee remains concerned that flogging and stoning continue to be punishments under article 1 of the Criminal Code. According to information before the Committee, and which the State party did not dispute, at least 45 people were given flogging sentences between 2009 and 2011 (art. 2).

The State party should put an end to its imposition of corporal punishment, which constitutes a breach of the Convention, and modify its legislation accordingly. The State party should ensure that criminal sanctions are in full conformity with the Convention.

Independence of the judiciary

(13) While noting the Constitution and the Judicial Authority Act No. 10, which recognize the independence of the judiciary, the Committee is concerned at the lack of the independence of judges in practice, mainly due to the insecurity of tenure of judges. The Committee notes with concern that a large proportion of judges are foreign nationals dependent on residence permits granted by civil authorities and that the Emir approves the appointment of judges (art. 2).

The Committee reiterates its recommendations that the State party should adopt effective measures to fully ensure the independence of the judiciary, in conformity with international standards, such as the Basic Principles on the Independence of the Judiciary.

Complaints and prompt, thorough and impartial investigations

(14) The Committee reiterates its concerns about the absence of data on individual complaints of torture or ill-treatment, or the results of investigations or prosecutions related to the provisions of the Convention. The Committee notes with concern the information provided by the State party that it has not recorded any complaint on torture or ill-treatment, which contradicts a number of reports of ill-treatment of detainees submitted by several sources, including the Qatari National Human Rights Committee (NHRC) (arts. 12, 13 and 16).

The State party should ensure that information about the possibility and procedure for filing a complaint against the police is made available and widely publicized, including by being prominently displayed in all detention facilities. The State party should ensure that all allegations of torture and ill-treatment are investigated promptly and thoroughly by independent bodies, with no institutional or hierarchical connection between the investigators and the alleged perpetrators among the police. As indicated in paragraph 7 of the present concluding observations, the State party should provide, in its next periodic report, statistical data, disaggregated by crimes, nationality, age and gender, on complaints relating to torture and ill-treatment and any related investigations, prosecutions, penal and disciplinary sanctions.

Monitoring and inspection of places of deprivation of liberty

(15) The Committee is concerned at the lack of systematic and effective monitoring of all places of deprivation of liberty by national and international monitors. Furthermore, it remains concerned at the adequacy and frequency of visits, including unannounced visits, by the existing monitoring mechanisms and the lack of information on the extent to which their recommendations have been implemented by the authorities (arts. 2, 11 and 16).

The State party should ensure that fully independent monitoring of all places used for deprivation of liberty, including the Deportation Detention Centre, psychiatric facilities and the State security prison, takes place on a regular basis, as well as including unannounced visits, and should follow up effectively on the outcome of such systematic monitoring in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The State party should strengthen the mandate and resources of the National Human Rights Committee and other national monitoring mechanisms to that end. The State party is encouraged to accept monitoring of places of detention by non-governmental organizations and relevant international mechanisms and to consider ratifying the Optional Protocol to the Convention as soon as possible.

National Human Rights Committee

(16) While noting the NHRC role in monitoring detention facilities and raising cases on human rights violations with the authorities, the Committee expresses concern about reports that NHRC visits are infrequent and refused sometimes and that NHRC lacks medical expertise for the detention visits and interpreters for the visits to the deportation centre. Further, a large proportion of the NHRC members continue to be composed of Government officials, although they serve in a non-voting capacity. The Committee is also concerned at the lack of comprehensive data on complaints received by NHRC relating to violations of the provisions of the Convention, and the actions taken by the authorities in response, as well as their outcome (arts. 2, 12 and 13).

The State party should intensify its efforts to ensure that (a) the National Human Rights Committee is able to independently and impartially monitor and investigate torture or ill-treatments by State officers and has sufficient resources to that end; and (b) all relevant authorities follow up on the recommendations issued by NHRC. Furthermore, the State party is encouraged to consider reducing the number of governmental officials who are members of NHRC and limiting their roles, in particular, in undertaking detention monitoring and adopting recommendations, with a view to strengthening the full independence of NHRC in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

Human rights defenders

(17) The Committee is concerned at the lack of information on measures taken to prevent harassment of human rights defenders and journalists and prosecute and punish perpetrators. It also regrets the lack of information on the case of Sultan al-Khalaifi, founder of a human rights organization, who was arrested in March 2011 and detained for a month without charge. Furthermore, the Committee notes with concern allegations of recent cases of arrest and detention of other human rights defenders in Qatar, referred to in an urgent appeal made by the Special Rapporteur on the situation of human rights defenders and three other special procedure mandate holders (A/HRC/18/51, case No. QAT 1/2011). The Committee regrets the insufficient role played by non-governmental bodies in the State party in monitoring the implementation of the Convention at the national level (arts. 13, 14 and 16).

The State party should take necessary measures to ensure the protection of human rights defenders from intimidation or violence as a result of their activities. Furthermore, it should ensure prompt, impartial and effective investigation and appropriate punishment of such intimidation or violent acts. It should take affirmative measures to encourage the formation of independent non-governmental bodies in the State party to monitor, promote and protect universal human rights for all.

Migrant workers

(18) The Committee is deeply concerned about reports of widespread torture or ill-treatment and abuse of migrant workers, in particular under the sponsorship system (*kafeel*), constraints on lodging complaints against their employers and the lack of information on cases in which sponsors were punished for torture or ill-treatment of migrant workers. The Committee notes the concerns raised by the Committee on the Elimination of Racial Discrimination (CERD/C/QAT/CO/13-16, para. 15) that, despite the legal provisions prohibiting conduct such as passport and wage-withholding by sponsors, the fundamental nature of the sponsorship system increases the dependency of the migrant workers on sponsors, rendering them vulnerable to various forms of exploitation and abuses. In addition, the Committee regrets the absence of labour legislation that protects domestic work, while noting that a draft law on domestic workers is presently under review. The Committee regrets the lack of information provided by the State party on complaints of violence made by migrant domestic workers during the reporting period and whether these led to investigations and prosecutions of perpetrators, particularly in the light of information before the Committee reflecting numerous allegations by migrant workers of physical abuse, sexual violence, rape and attempted rape (arts. 2, 12, 14 and 16).

The State party should strengthen its efforts to provide legal protection to migrant workers, including female domestic workers, in its territory against torture, ill-treatment and abuse and guarantee access to justice. In that regard, the State party should:

(a) **Adopt, as a matter of urgency, labour legislation covering domestic work and providing legal protection to migrant domestic workers against exploitation, ill-treatment and abuse;**

(b) **Consider abolishing the sponsorship system for all migrant workers, as recommended by the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/4/23/Add.2, para. 95); and**

(c) **Provide data of complaints of ill-treatment of migrant workers filed with the authorities, the action taken to solve cases, remedies provided to victims and the punishment imposed against employers responsible.**

Violence against women, including domestic violence

(19) The Committee notes with encouragement various measures begun by the State party, including the Qatar Foundation for the Protection of Women and Children, such as the launch of a hotline and the provision of shelters and legal assistance to some victims. However, the Committee expresses concern over the persistence of violence against women, including domestic violence and sexual violence against domestic workers and, as indicated in paragraph 7 of the present concluding observations, the lack of statistical information on the overall complaints of domestic violence reported and investigations, convictions and punishments meted out (arts. 2, 12, 14 and 16).

The State party should strengthen its efforts to prevent violence against women, including domestic and sexual violence, inter alia, by:

(a) **Establishing effective measures to guarantee victims' right to complain in relation to violations of the Convention and their inalienable rights promptly and without torture or ill-treatment or intimidation as a consequence of her or his complaint. The State party should work with appropriate non-governmental or international bodies, including foreign embassies, to that end and inform the Committee of its efforts to assess the accessibility and effectiveness of such system;**

(b) **Ensuring accountability of all perpetrators of such acts by undertaking prompt, impartial and effective investigations into complaints, prosecuting perpetrators of such violence and punishing them with appropriate penalties; and**

(c) **Ensuring that all victims of violence against women are provided with adequate redress and reparation, including compensation and the means for as full rehabilitation as possible.**

Trafficking in persons

(20) While welcoming various measures undertaken by the State party, in particular, the Qatar Foundation for Combating Human Trafficking, such as the adoption of the Arab Initiative against Human Trafficking, the Committee is concerned that Qatar continues to be a destination country for men and women subjected to forced labour and forced prostitution. The Committee also regrets the lack of information on the number of complaints, investigations, prosecutions and convictions of perpetrators of trafficking. The Committee, while noting the promulgation of the Law No. 15 of 2011 on trafficking, is concerned that, as raised by the Qatar NHRC in its 2011 annual report, article 5 of the aforementioned law allows for the return of victims to their countries without ensuring an assessment of risk upon return (arts. 2, 3, 4 and 16).

The State party should take all necessary measures to:

(a) **Effectively implement the current laws combating trafficking, including Law No. 15 of 2011;**

(b) **Ensure systematic procedures to identify victims of trafficking among vulnerable groups, such as those arrested for immigration violations or prostitution, and provide protection for victims and access for them to medical, social rehabilitative and legal services, including counselling services, as appropriate; and**

(c) **Create adequate conditions for victims to exercise their right to make complaints, and conduct prompt, impartial and effective investigation into all allegations of trafficking, bring perpetrators to justice and ensure punishment with penalties appropriate to the nature of their crimes.**

Refugees and non-refoulement

(21) The Committee is concerned at the absence of national legislation and procedures explicitly regulating expulsion, refoulement and extradition, consistent with the requirements of article 3 of the Convention. The Committee regrets the lack of information on the case of the forced return of Eman al-Obeidi, who had been allegedly raped by Libyan soldiers, to Libya, even though she had been recognized as a refugee by the Office of the United Nations High Commissioner for Refugees. Furthermore, the Committee notes that, in spite of the humanitarian measures by the Qatari authorities to help some refugees, the State party has not yet ratified international instruments relating to the protection of refugees and asylum seekers (art. 3).

The State party should:

(a) **Adopt national asylum legislation and procedures providing effective protection to asylum seekers and refugees from refoulement to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or ill-treatment, in accordance with article 3 of the Convention;**

(b) **As indicated in paragraph 7 of the present concluding observations, provide disaggregated data on the precise number of asylum applications received, the number of asylum seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin, the number of deportations with an indication of the number of deportations relating to asylum seekers, and the countries to which deportations have been carried out; and**

(c) **Consider acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Optional Protocol, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

Juvenile justice

(22) The Committee reiterates its serious concerns that the minimum age of criminal responsibility is 7 years in Qatar (arts. 2 and 16).

The State party should accelerate the process of its legislative measures, including the draft law on the children's rights, to raise the minimum age of criminal responsibility to an internationally acceptable level. The State party should ensure the full implementation of juvenile justice standards as well the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines).

Training

(23) While noting with appreciation that the State party organized several training sessions for law enforcement officials on human rights, the Committee is concerned at the lack of specific training of law enforcement officials, judges, prosecutors and medical personnel dealing with detained persons on the provisions of the Convention and how to detect and

document physical and psychological sequelae of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, the Committee regrets relatively low number of training participants and insufficient assessment of the impact of the trainings conducted and their effectiveness in reducing incidents of torture and ill-treatment (art. 10).

The State party should further develop and strengthen educational programmes and training to ensure that all officials dealing with persons deprived of liberty are fully aware of the provisions of the Convention. Furthermore, all relevant personnel, including medical personnel, should receive specific training on how to identify signs of torture and ill-treatment. To this effect, the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), should be included in the training material. In addition, the State party should develop and implement a methodology to assess the effectiveness and impact of such training programmes on the reduction of cases of torture and ill-treatment.

Redress, including compensation and rehabilitation

(24) The Committee is concerned at the lack of comprehensive information and statistical data on reparation and compensation, including rehabilitation, for victims of torture and other cruel, inhuman or degrading treatment or punishment in the State party. The Committee notes with concern the extremely low number of cases of compensation and rehabilitation for victims, in particular, domestic workers. For the period from 2007 to 2012, the State provided compensation to eight domestic workers and the Qatar Foundation for Combating Human Trafficking provided rehabilitation for 12 victims (art. 14).

The State party should strengthen its efforts to provide victims of torture and other ill-treatment with fair and adequate reparation and compensation, including rehabilitation. The State party should include migrant workers and persons subjected to trafficking in redress programmes and ensure that they have access to effective remedies for torture and ill-treatment, including compensation and rehabilitation. The Committee draws the attention of the State party to the recently adopted general comment No. 3 (2012) on implementation of article 14 of the Convention, which explains the content and scope of the obligations of States parties to provide full redress to victims of torture.

Universal jurisdiction

(25) While noting that the Qatari Penal Code provides for universal jurisdiction in cases of torture, the Committee is concerned at the lack of information provided on how the State party has exercised its jurisdiction over cases of torture referred to in articles 4 and 5 of the Convention (art. 5).

The State party should ensure that acts of torture are subject to universal jurisdiction in its domestic law in accordance with article 5 of the Convention.

(26) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, in particular, the International Covenant on Civil and Political Rights and its Optional Protocols, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

(27) The State party is encouraged to disseminate widely the reports submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(28) The Committee requests the State party to provide, by 23 November 2014, follow-up information in response to the Committee's recommendations related to (a) ensuring or strengthening legal safeguards for persons detained, (b) conducting, prompt, impartial and effective investigations, (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, and (d) violence against women, as contained in paragraphs 10, 14 and 19 of the present concluding observations.

(29) The State party is invited to submit its next report, which will be the third periodic report, by 23 November 2016. To that purpose, the Committee invites the State party to accept, by 23 November 2013, to report under its optional reporting procedure, consisting in the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.

64. **Russian Federation**

(1) The Committee against Torture considered the fifth periodic report of the Russian Federation (CAT/C/RUS/5) at its 1112th and 1115th meetings, held on 9 and 12 November 2012 (CAT/C/SR.1112 and CAT/C/SR.1115), and adopted the following concluding observations at its 1130th meeting, held on 22 November 2012 (CAT/C/SR.1130).

A. Introduction

(2) The Committee welcomes the submission of the fifth periodic report of the Russian Federation, in response to the list of issues prior to reporting (CAT/C/RUS/Q/5). The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for submitting its periodic report under this, which improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation.

(3) The Committee also appreciates the open dialogue it had with the State party's high-level delegation and the additional information supplied during the consideration of the report, but regrets that some of its questions remained unanswered.

B. Positive aspects

(4) The Committee welcomes the fact that, since the consideration of the fourth periodic report, the State party has ratified or acceded to the following international and regional instruments:

(a) The Optional Protocol to the Convention on the Rights of the Child on children in armed conflict, in 2008;

(b) The Convention on the Rights of Persons with Disabilities, in 2012;

(c) Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which resulted in the entry into force of the Protocol in 2010;

(d) The United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, in 2004.

(5) The Committee welcomes the information provided concerning various legislative, administrative, institutional and practical measures taken to improve the promotion and protection of human rights in the State party since the examination of the fourth periodic report, notably:

(a) The establishment of the Investigative Committee in charge of investigations, separate from the Procuracy, thus giving effect to the Committee's previous recommendation;

(b) The establishment of the mechanism for monitoring places of detention through Public Oversight Committees (POCs) in the 2008 Federal Law on Public Oversight of Respect for Human Rights in Places of Detention and Assistance to Inmates of Places of Forced Detention;

(c) The adoption, on 30 April 2010, of Federal Act No. 68 FZ on Compensation for Infringement of the Rights to Access to Legal Proceedings or Enforcement of a Judicial Act within a Reasonable Period;

(d) The practical measures taken, including through legislative amendments, resulting in a decrease in the incarcerated population and the number of individuals in pretrial detention, by reducing the number of penalties under criminal law, excluding detention for a number of economic crimes and recourse to alternative punishments, which, as explained by the State party's representative, is part of the effort to move towards the humanization of criminal punishment.

C. Principal subjects of concern and recommendations

Torture and ill-treatment

(6) The Committee is concerned over persistent reports of the widespread practice in the State party of torture and ill-treatment of detainees, including as a means to extract confessions. It notes the discrepancy between the large number of complaints of torture and ill-treatment and the relatively small number of criminal cases brought in response leading to prosecution. The Committee is also concerned about the State party's statement in its report that no cases of torture or cruel, inhuman or degrading treatment or punishment had been found in remand centres, whereas the Committee is aware of many recent reports documenting acts of torture in such centres, for example in the cases of Pavel Drozdov and Sergei Nazarov, both of whom died following torture in detention in 2012 (arts. 2, 4, 12 and 16).

As a matter of urgency, the State party should take immediate and effective measures to prevent all acts of torture and ill-treatment throughout the country and to eliminate impunity for those allegedly responsible. The State party should unequivocally reaffirm the absolute prohibition of torture and publicly make clear that perpetrators and those complicit or acquiescent in torture will be held responsible for their abuses and will be subject to criminal prosecution and appropriate sanctions.

Definition of torture and criminalization of torture

(7) With reference to its previous concluding observations, the Committee remains concerned that the definition intended to cover the term "torture", as contained in the annotation to article 117 of the Criminal Code, does not fully reflect all elements of the definition in article 1 of the Convention, which includes the involvement of a public official or other person acting in an official capacity in inflicting, instigating, consenting to or acquiescing to torture. The definition does not address acts aimed at coercing a third party as torture. The Committee is also concerned that article 117 has rarely been used in practice, and that officials suspected of acts of torture are mostly prosecuted under article 286, abuse of power, and 302, extorting confessions. Moreover, the Committee is concerned that torture has not been criminalized as an independent crime in the Criminal Code (art. 1).

The Committee again recommends that the State party bring its definition of torture into full conformity with article 1 of the Convention and have torture criminalized as an independent crime, and ensure that the police, the army, and other public officials can be prosecuted directly for torture and that their sentences are commensurate with the gravity of the crimes committed.

Investigation and prosecution of acts of torture and ill-treatment

(8) The Committee is deeply concerned at the failure of the authorities to carry out prompt, effective and independent investigations into allegations of torture and ill-treatment by public officials. While welcoming the State party's creation of an Investigative Committee separate from the Procuracy, as well as the creation of a subdivision within the Investigative Committee tasked solely with investigating crimes allegedly committed by law enforcement officials, the Committee is concerned at reports that this subdivision has an inadequate number of staff members to promptly and effectively investigate all complaints. The Committee is also concerned about the impartiality and effectiveness of the Investigative Committee following reports that its head, Aleksandr Bastrykin, arranged for the abduction of Sergei Sokolov, deputy editor of the *Novaya Gazeta* newspaper and threatened him with physical harm in June 2012, in retaliation for publication of a critical article, and that this incident was not made the subject of an investigation by the State party and did not lead to any disciplinary action (arts. 12 and 13).

The Committee urges the State party to carry out prompt, impartial, effective investigations into all allegations of torture and ill-treatment and, in particular, cases resulting in death in custody; prosecute those responsible, impose appropriate sentences on those convicted; and report publicly on the outcome of such prosecutions.

The Committee recommends that the subdivision of the Investigative Committee tasked with investigating crimes committed by law enforcement officials be provided with sufficient financial and human resources to enable it to conduct such investigations into all allegations received. The State party should provide the Committee with data on the number of complaints received alleging torture and ill-treatment by law enforcement and other public officials, the number of complaints investigated by the State party, and any prosecutions brought. The State party should also provide the Committee with data on the number of officials subjected to disciplinary measures for failure to adequately investigate complaints of torture or ill-treatment and for refusal to cooperate in investigating any such complaint.

Fundamental legal safeguards

(9) While noting that the State party's legislation guarantees the right of persons deprived of their liberty to access a lawyer promptly upon detention, the Committee expresses its serious concern at the State party's failure to ensure that this right is respected in practice, noting numerous cases of persons deprived of their liberty who were denied access to lawyers on improper grounds; including at reports that ex officio lawyers do not properly perform their duties and fail to provide basic legal defence for their clients, and that detainees are not always afforded their right to know the charges against them. The Committee is further concerned at reports of instances in which individuals were not assigned legal aid prior to their initial interrogations. The Committee is further concerned that the State party's legislation does not provide that all persons deprived of their liberty have the right to contact family members promptly upon deprivation of liberty, instead permitting officials of the State party to contact relatives on detainees' behalf, and failing to ensure that in all cases relatives should be informed of detainees' whereabouts. The Committee is particularly concerned that the State party does not provide for the right of all

persons deprived of their liberty to an independent medical examination promptly upon deprivation of liberty (arts. 2, 11, and 12).

The Committee recommends that the State party:

(a) **Ensure that all detainees are afforded, by law and in practice, the right to access a lawyer, contact family members, be informed of the charges against them and request and receive a medical examination by an independent physician promptly upon actual deprivation of liberty;**

(b) **Ensure that all detainees are provided with qualified lawyers who will conduct a proper defence, and independent legal aid;**

(c) **Maintain video recordings of all interrogations and install video surveillance in all areas of custody facilities where detainees may be present, except in cases where detainees' right to privacy or to confidential communication with their lawyer or a doctor may be violated. Such recordings should be kept in secure facilities and made available to investigators, detainees and their lawyers;**

(d) **Ensure that the State party monitors the provision of safeguards by all public officials to persons deprived of their liberty, including by documenting relevant information in detention registers, and ensuring regular monitoring of officials' compliance with these reporting requirements;**

(e) **Ensure that any public official who denies fundamental legal safeguards to persons deprived of their liberties is disciplined or prosecuted, and provide data to the Committee on the number of cases in which public officials have been disciplined for such conduct.**

Coerced confessions

(10) The Committee is concerned about numerous allegations that persons deprived of their liberty were subjected to torture or ill-treatment for the purpose of compelling a forced confession, and that such confessions were subsequently admitted as evidence in court in the absence of a thorough investigation into the torture allegations. The Committee is further concerned at the lack of information received on cases in which courts ordered investigations into allegations made by a defendant that he or she confessed to a crime under duress, or postponed criminal proceedings pending such an investigation, and/or deemed such confessions or other evidence inadmissible (arts. 2, 11, 15 and 16).

The Committee urges the State party to combat the practice of torture to extract confessions, and ensure that, in practice, forced confessions are not used as evidence in any proceedings. The State party should ensure that judges ask all defendants in criminal cases whether or not they were tortured or ill-treated in custody and order independent medical examinations whenever necessary, particularly whenever there is a reason to believe that a criminal defendant has been subjected to torture and where the sole evidence of a defendant's guilt is a confession. All confessions found to have been obtained through torture should be excluded. The Committee urges the State party to provide information on cases in which confessions were deemed inadmissible on the grounds that they were obtained through torture, and indicate whether any officials have been prosecuted and punished for extracting such confessions.

Monitoring of places of detention

(11) While welcoming the establishment of Public Oversight Committees (POCs), the Committee is concerned by (a) the requirement that POCs obtain advance authorization to visit detention facilities, and their inability to carry out unannounced visits; (b) reports that POC members have been denied access to detention facilities even in some cases where

their visits had been previously authorized; (c) reports of reprisals against POC members, such as the prosecution of Alexei Sokolov, a former Moscow POC Committee member; (d) reports that independence of membership of POCs is inadequately safeguarded; and (e) reports that some POCs do not have sufficient funding to enable them to perform their work adequately; and (f) that POC reports on visits to places of detention are not made public in all cases. The Committee is further concerned by reports of cases in which authorities failed to undertake adequate investigations into allegations of torture and ill-treatment in cases where this has been recommended by POCs. In this regard, although authorities revived a closed criminal investigation into the 2009 death in custody of Sergei Magnitsky following a report of the Moscow POC, only one relatively low-level prison official has been prosecuted in connection with his death to date, despite the fact that the POC report concluded that a number of investigators and penitentiary officials, including the lead investigator in the criminal case against Mr. Magnitsky, should have been investigated as well (arts. 2 and 11).

The Committee urges the State party to:

(a) Ensure that Public Oversight Committees are able to conduct unannounced visits of all detention facilities, and that all cases in which officials are reported to have obstructed such visits are investigated and those responsible disciplined appropriately;

(b) Ensure that POCs members are effectively protected from reprisals;

(c) Ensure that POCs are adequately funded and independent of regional administrations and consider transferring responsibility for appointment of members of POCs to independent authorities;

(d) Ensure that the findings and recommendations of POCs are made public in a timely and transparent manner and that all allegations of denial of safeguards or instances of torture or ill-treatment are drawn to the attention of the competent authorities and are promptly, impartially and effectively investigated, as in the case of allegations made by Leonid Razzvozhayev that he was abducted and subjected to torture for the purpose of compelling a confession by officials of the State party prior to being turned over to the Investigative Committee, and thereafter was denied the right to access to counsel of his choice;

(e) In the case of the death in custody of Sergei Magnitsky, promptly, impartially, and effectively investigate the responsibility of officials, including the lead investigator in the criminal case against him, as recommended by the Moscow POC, and ensure that all those responsible for his torture and death are prosecuted and punished with sanctions appropriate to the gravity of the crime;

(f) Provide statistical data in its next periodic report on the number of investigations into torture, ill-treatment, and denial of safeguards opened as a result of POC visits, and information about the outcome of such investigations.

Intimidation, harassment and violent attacks on human rights defenders

(12) The Committee is seriously concerned about the approach taken by the State party toward the work of individuals and organizations that monitor and report on human rights conditions in the State party. This includes a 2012 requirement that organizations receiving financial support from sources outside the State party register and identify themselves publicly as “foreign agents,” a term that seems negative and threatening to human rights defenders, including organizations that receive funding from the United Nations Voluntary Fund for Victims of Torture.

The Committee is further concerned by recent amendments to the Criminal Code which expanded the definition of the crime of State treason to include “providing financial, technical, advisory or other assistance to a foreign state or international organization [...] directed at harming Russia’s security”. The Committee is concerned that such provision could affect persons providing information to the Committee against Torture, the Sub-Committee on Prevention of Torture or the United Nations Voluntary Fund for Victims of Torture, which the Committee is concerned could be interpreted as prohibiting the sharing of information on the human rights situation in the Russian Federation with the Committee or other United Nations human rights organs.

The Committee is deeply concerned by numerous and consistent reports of serious acts of intimidation, reprisals and threats against human rights defenders and journalists, including deaths, and the failure of the State party’s authorities to effectively investigate such acts and hold accountable the perpetrators, including those responsible for ordering them. The Committee expresses its concern that, to date, no one has been convicted of ordering the killings of journalist Ms. Anna Politkovskaya, in 2006, and human rights advocate Ms. Natalia Estemirova, in 2009, and that no one has been held accountable for the alleged beating of Ms. Sapiyat Magomedova by police in Dagestan in 2009 (arts. 2, 11, 13 and 16).

The Committee recommends that the State party should:

(a) Recognize that human rights defenders are at risk and have been targeted due to the performance of their human rights activities, which play an important role in a democratic society; amend its legislation requiring human rights organizations that receive foreign funding to register as “foreign agents”; repeal the amended definition of the crime of treason in the Criminal Code; and review its practice and legislation. The State party should ensure that all human rights defenders are able to conduct their work and activities in line with the provisions of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (General Assembly resolution 53/144);

(b) Ensure that no individual or group will be subjected to prosecution for communicating with, or for providing information to, the Committee against Torture, the Sub-Committee on Prevention of Torture or the United Nations Voluntary Fund for Victims of Torture or to other United Nations human rights organs in performing their respective mandates;

(c) Investigate promptly, thoroughly and impartially all allegations of intimidation, threats, attacks and killings of human rights defenders and bring to justice those responsible for ordering the killings of Ms. Anna Politkovskaya and Ms. Natalia Estemirova and the beating of Ms. Sapiyat Magomedova.

Northern Caucasus

(13) The Committee is concerned at numerous, ongoing and consistent reports of serious human rights abuses inflicted by or at the instigation or with the consent or acquiescence of public officials or other persons acting in official capacities in the northern Caucasus, including the Chechen Republic, including torture and ill-treatment, abductions, enforced disappearances and extrajudicial killings. It is further concerned at the State party’s failure to investigate and punish the perpetrators of such abuses, despite the establishment of Agency No. 2 of the Chechen Republic investigation department for particularly important cases. It is particularly concerned by information provided by the State party that of 427 complaints of disappearances in the Chechen Republic received by the State party between 2007 and 2009, not a single case was brought to court. The Committee notes with alarm comments made by an official of the State party in March 2011 to the effect that neither the Prosecutor’s Office nor the Investigative Committee are able to compel the Chechen

authorities to meaningfully investigate allegations of disappearances and other abuses, with the result that perpetrators are not held accountable. The Committee also regrets that persons convicted of offences amounting to violations of the Convention may have benefited from amnesty. The Committee is also concerned about persistent reports concerning acts of violence against women in the northern Caucasus, including killings and so-called “honour killings” and bride-kidnapping, which constitute violations of the Convention. With reference to its previous recommendations, the Committee remains concerned that no report following the visits to the State party, including the northern Caucasus, carried out by the European Committee for the Prevention of Torture (CPT) have been made public, and that no time frame has been set for the publication of these reports (arts. 2, 4, 11, 12 and 16).

The Committee urges the State party to ensure that any counterterrorism measures taken in the north Caucasus region conform to the Convention’s prohibitions against torture and ill-treatment.

The Committee recommends that the State party should:

(a) **Ensure that all complaints of denial of safeguards, torture, ill-treatment, abduction, enforced disappearance and extrajudicial killings, including acts of violence against women in the northern Caucasus are promptly, impartially and effectively investigated, that all those responsible for such abuses are held accountable, prosecuted and sanctioned, and that victims of such abuses obtain redress;**

(b) **Ensure that no person found guilty of crimes constituting torture in violation of the Convention benefits from amnesty;**

(c) **Ensure that investigators are able to compel the cooperation of local officials with investigations and that any official who refuses to cooperate is subjected to penalties;**

(d) **Publicize information on the number of unresolved cases of enforced disappearance in the region, and keep family members of disappeared persons informed of the progress of investigations and exhumation and identification of remains.**

With reference to its previous recommendations and the State party representative’s assertion during the examination of the report that the authorities agree in principle to make public the reports on the CPT country visits to the State party, the Committee urges the State party to publish these reports, including those on visits to the northern Caucasus. The Committee further requests the State party to inform it of its timetable for their publication.

Violence against women

(14) Despite consistent reports of numerous allegations of many forms of violence against women throughout the State party, the Committee is concerned that there are only a small number of complaints, investigations and prosecutions of acts of domestic violence and violence against women, including marital rape. It is also concerned about reports that law enforcement officers are unwilling to register claims of domestic violence, and that women who seek criminal investigations of allegations of domestic violence are compelled to participate in reconciliation processes. The Committee is also concerned about the absence in the State party’s law of a definition of domestic violence (arts. 1, 2, 11, 13 and 16).

The Committee urges the State party to define domestic violence in its legislation and to ensure that all cases of violence against women, including domestic violence, are

registered by the police; that all allegations of violence against women are promptly, impartially and effectively investigated; and that perpetrators are prosecuted. The State party should ensure that police officers refusing to register such complaints are appropriately disciplined.

Violent attacks because of race, ethnicity, or identity of the victims

(15) The Committee is concerned at persistent reports of discrimination and abuses including violent attacks and abuses against Roma and other ethnic minorities, migrant workers, foreign nationals, and others targeted because of their identity or social marginalization, including the death in custody of a number of Roma in Kazan and Pskov in 2005–2011. The Committee is further concerned at reports that police have failed to promptly react to, or to carry out effective investigations and bring charges against all those responsible for violent attacks against lesbian, gay, bisexual and transgender (LGBT) persons, such as alleged regarding the recent attacks on the “7 Free Days Club” in Moscow and the “Parisian Life Club” in Tyumen (arts. 2, 12, 13 and 16).

The State party should:

(a) **Take effective measures to ensure the protection of all persons at risk, including Roma, persons belonging to ethnic minorities, migrant workers, LGBT persons and foreign nationals, including through enhanced monitoring. All acts of violence and discrimination against members of such groups should be promptly, impartially and effectively investigated, the perpetrators brought to justice, and redress provided to the victims. The Committee recommends that statistics be compiled regarding all crimes against members of such groups made vulnerable, and on the outcomes of investigations, prosecutions and remedial measures taken in relation to such crimes;**

(b) **Publicly condemn attacks against Roma, ethnic and other minorities, migrant workers, and LGBT persons and other persons at risk, and organize awareness-raising campaigns, including among the police, promoting tolerance and respect for diversity.**

Hazing (“Dedovschchina”) and ill-treatment within the armed forces

(16) The Committee remains concerned about allegations of abuses and deaths occurring within the army as a result of reported hazing practices of conscripts by officers and fellow soldiers, conducted by or with the consent, acquiescence or approval of superiors or other personnel. While noting the information provided by the delegation to the effect that such practices have decreased in recent years, the Committee remains concerned at numerous reports received on hazing and on allegations that investigations carried out into several such incidents were inadequate or absent. The Committee is further concerned by reports that individuals responsible for such acts are inadequately sanctioned (arts. 2, 4, 12, 13 and 16).

The State party should reinforce measures to prohibit and eliminate hazing in the armed forces and ensure prompt and impartial investigation of all allegations of hazing and deaths in the military in order to achieve zero tolerance of ill-treatment and torture of military personnel, as previously recommended by the Committee. Where evidence of hazing is found, the State party should ensure prosecution of all incidents and appropriate punishment of the perpetrators, including exclusion from the armed forces; make the results of those investigations public; and provide redress for victims, including appropriate medical and psychological assistance.

Non-refoulement and diplomatic assurances

(17) The Committee is concerned about reports of extraditions and expulsions of foreign nationals by the State party to members of the Commonwealth of Independent States in Central Asia, when those extraditions or expulsions expose the individuals concerned to a substantial risk that they will be subjected to torture in their countries of origin. The Committee is also concerned by the reliance of the State party on diplomatic assurances in such cases (arts. 3, 6 and 7).

The Committee recommends that the State party discontinue the practice of relying upon diplomatic assurances concerning the extradition and expulsion of persons from its territory to States where they would face a risk of torture. It also requests the State party to provide the Committee with the number and type of diplomatic assurances received during the reporting period and the countries involved, as well as on the mechanisms in place for obtaining assurances, their content, the number and outcome of court appeals in such cases, and the existence of removal and post-removal monitoring mechanisms.

Conditions of detention

(18) While welcoming measures by the State party to reduce the prison population through use of alternatives to detention and by excluding pretrial detention for a number of economic crimes, the Committee remains concerned about reports of (a) remaining overcrowding in detention facilities; (b) the high number of suicides in places of detention; (c) the lack of independent medical officials available to examine prisoners claiming to be victims of abuse; (d) long delays experienced by individuals claiming to be victims of torture seeking a medical forensic examination; (e) lack of adequate psychiatric services within the penitentiary system; and (f) lack of information about the existing system for protecting complainants from censorship of their complaints and reprisals (arts. 11 and 16).

The Committee recommends that the State party expand the use of alternative non-custodial measures (Tokyo Rules). The Committee also recommends that (a) all cases of suicide are effectively investigated, (b) a study be undertaken into the causes of suicides in detention, and that (c) the Federal Service on the Execution of Penalties enhance monitoring and detection of at-risk detainees and take preventive measures regarding the risk of suicide and inter-prisoner violence, including by installing video cameras, increasing prison staff, and ensuring that prisoners can access adequate and sufficient psychiatric services. It recommends that rules governing medical examination of prisoners be amended to ensure that examinations are carried out by fully independent medical personnel, that complainants are protected from reprisals, and that their complaints of abuse in detention are not censored by authorities.

Violence against women in detention

(19) The Committee is concerned that, despite information received by the Committee on violence against women in detention, the State party has registered a very low number of complaints of such violence. It is also concerned at the absence of information from the State party on means available for persons deprived of their liberty to make confidential complaints to independent investigators, and also on the existence of effective safeguards for the protection of authors of such complaints from reprisals, including transfer to another facility pending the investigation of their complaints. The Committee is concerned that individuals convicted of abuse of women in detention are not subjected to appropriate sanctions (arts. 2, 11, 12, 13, 14 and 16).

The State party shall guarantee the possibility for confidential interviews with all complainants, taking effective measures to ensure the safety of interviewees, and ensure that the alleged perpetrators, any co-conspirators, and government actors

found to have acquiesced to or facilitated those crimes, are identified and held accountable. The State party is also requested to provide information on the incidents reported, investigations including timely medical examination, charges brought, charges dropped and convictions obtained, including information on the number of individuals concerned, if any, who have continued to serve in the same or other penal facilities. Please also include information on the measures taken to prevent ill-treatment in this detention facility and any rehabilitative measures provided for complainants whose allegations have been verified. The State party is invited to provide information on the results of the forthcoming investigation, as promised by the State party, concerning reports of violence against female detainees in penal colony IK-13 in Mordovia.

Redress

(20) While welcoming the information provided by the State party concerning compensation paid to victims of torture or ill-treatment, as decided by the European Court of Human Rights, the Committee regrets the lack of data provided by the State party regarding the amount of compensation provided to victims, including individuals denied fundamental safeguards or subjected to torture or ill-treatment in detention. Recalling its previous recommendations, the Committee remains concerned at the fact that the law provides no means of reparation for torture victims other than financial compensation; the Committee regrets the lack of information on treatment and social rehabilitation services, including medical and psychosocial rehabilitation, provided to victims (arts. 14 and 16).

The State party should step up its efforts to provide redress to victims of torture and ill-treatment, including fair and adequate compensation, and as full rehabilitation as possible. The State party should amend its legislation to address the right of torture victims to redress, in accordance with article 14 of the Convention. It should provide the Committee with information about measures taken in this regard, including allocation of resources for the effective functioning of rehabilitation programmes.

The Committee draws the attention of the State party to the recently adopted general comment No. 3 (2012) on article 14 of the Convention, which explains the content and scope of the obligations of States parties to provide full redress to victims of torture.

Training

(21) Noting its previous recommendations, the Committee remains concerned at the absence in the State party of a system of rehabilitation for victims of torture, and of adequate training for medical workers on physical and psychological injuries caused by torture (art. 10).

The Committee recommends that the State party establish a system to provide rehabilitation for victims of torture and conduct training for nursing, medical personnel, paramedical personnel and other professionals involved in the documentation and investigation of allegations of torture and ill-treatment in detecting signs and treating physical and psychological injuries resulting from torture and ill-treatment as outlined in the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

Psychiatric facilities

(22) The Committee is concerned about reports of frequent placement of persons in psychiatric institutions on an involuntary basis, and the lack of information about the possibility of appeal. The Committee is also concerned about the absence of investigations into the reported ill-treatment, as well as deaths of persons held in such facilities (arts. 11 and 16).

The Committee recommends that the State party:

(a) **Ensure effective supervision and monitoring by judicial organs of any placement in institutions of persons with mental disabilities;**

(b) **Ensure effective safeguards for persons in such institutions, including the right of effective appeal, and through the independent monitoring of conditions, and establishment of a complaints mechanism and counsel. It should also provide training to medical and non-medical staff on how to administer non-violent and non-coercive care;**

(c) **Effectively investigate all complaints of violation of the Convention, including deaths, prosecute the perpetrators, and provide redress to victims.**

Data collection

(23) While noting the statistical data supplied by the State party in its report, the Committee regrets the absence of comprehensive and disaggregated data as requested by the Committee (arts. 2, 3, 12, 13, 14 and 16).

The State party should compile and provide the Committee with information on complaints, investigations, prosecution and convictions in cases of torture and ill-treatment, expulsions, length of trials of alleged perpetrators of torture and ill-treatment, violence against women, and the outcomes of all such complaints and cases, including redress. To this end, statistical data should be disaggregated by gender, age, ethnicity, status, nationality, type and location of place of detention or loss of custody, relevant to the monitoring of the Convention.

(24) The Committee recommends that the State party consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(25) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention for the Protection of all Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, signed in 2012. The State party is also invited to ratify the Rome Statute of the International Criminal Court.

(26) While noting the de facto moratorium on the death penalty, the Committee invites the State party to abolish the death penalty de jure and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.

(27) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations through official websites, the media and non-governmental organizations.

(28) The Committee requests the State party to provide, by 23 November 2013, follow-up information in response to the Committee's recommendations relating to (a) monitoring of places of detention, (b) intimidation, harassment, and violent attacks on human rights defenders (c) hazing ("dedovschchina") and ill-treatment within the armed forces, as contained in paragraphs 11, 12 and 16 of the present document.

(29) The State party is invited to submit its next report, which will be the sixth periodic report, by 23 November 2016. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has agreed to report to the Committee under the optional reporting procedure.

65. Senegal

(1) The Committee against Torture considered the third periodic report of Senegal (CAT/C/SEN/3) at its 1106th and 1109th meetings (CAT/C/SR.1106 and SR.1109), held on 6 and 7 November 2012. At its 1125th meeting (CAT/C/SR.1125), held on 19 November 2012, the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the third periodic report of the State party, which follows the guidelines on the form and content of periodic reports. It regrets, however, that the State party submitted the report 15 years late.

(3) The Committee welcomes the opportunity to renew the dialogue with the State party and to examine the implementation of the Convention with the delegation. It notes that the State party submitted detailed written replies to the list of issues (CAT/C/SEN/Q/3 and Add.1) on the eve of the dialogue and that the delegation provided further information.

B. Positive aspects

(4) The Committee welcomes the ratification by the State party, in October 2006, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and of other international instruments during the reporting period, including:

(a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (June 1999);

(b) The Rome Statute of the International Criminal Court (February 1999);

(c) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (May 2000);

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (March 2004) and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (November 2003);

(e) The United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing that Convention (October 2003);

(f) The International Convention for the Protection of All Persons from Enforced Disappearance (December 2008);

(g) The Convention on the Rights of Persons with Disabilities (September 2010).

(5) The Committee takes note with satisfaction of the State party's cooperation with the special procedures of the Human Rights Council during several visits by mandate holders during the reporting period, particularly the Working Group on Arbitrary Detention and the Special Rapporteur on the sale of children, child prostitution and child pornography.

(6) The Committee congratulates the State party on the abolition of the death penalty under the law of 10 December 2004, and takes note of the legislation adopted in relation to the prohibition of torture, including:

(a) Act No. 2009-13 of 2 March 2009 establishing the National Observatory of Places of Detention as the national preventive mechanism provided for in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(b) Act No. 2005-06 of 10 April 2005 on combating human trafficking and related practices;

(c) Act No. 2000-38 and Act No. 2000-39 of 29 December 2000 establishing the post of a judge to supervise detention conditions, as well as Decree No. 2001-362 of 4 May 2001 on procedures for the execution and remission of criminal sanctions.

(7) The Committee also welcomes:

(a) The adoption in 2009 of the national action plan (2008–2013) to combat human trafficking, especially trafficking in women and children, and the establishment in 2010 of a national anti-trafficking unit that brings together governmental and non-governmental institutions;

(b) The promotion of community justice, with a view to expanding and spreading across the country a network of legal advice centres offering mediation, information and legal counselling services;

(c) The second national action plan to hasten the end of the practice of excision (2010–2015), approved and launched in February 2010;

(d) The establishment of institutions like the Office of the High Commissioner for Human Rights and the Promotion of Peace (in 2004) and the Office of the Ombudsman, pursuant to Act No. 91-14 of 11 February 1991 and Act No. 99-04 of 29 January 1999.

C. Principal subjects of concern and recommendations

Definition of torture

(8) While taking note of the amendment to the Criminal Code (Act No. 96-15 of 28 August 1996), article 295-1 of which defines torture as required by article 1 of the Convention, the Committee regrets that the definition does not include certain key elements of article 1, notably the reference to “a third person” other than the victim (art. 1).

The State party should revise its Criminal Code, particularly article 295-1 on the definition of torture, to bring it fully into line with article 1 of the Convention. In particular, it should include in the definition acts aimed at obtaining information from, punishing, intimidating or coercing a third person.

Absolute prohibition of torture

(9) The Committee is concerned about the State party’s justification of amnesty laws in relation to the situation in Casamance on the grounds that they are vital for the restoration of peace. The Committee reiterates its concern that the State party’s laws should not encourage impunity for acts of torture or violate article 2 of the Convention, which states that “internal political instability” may not be invoked as a justification of torture (art. 2).

In the light of its general comments Nos. 2 (CAT/C/GC/2) and 3 (CAT/C/GC/3), the Committee considers that amnesties or other impediments which preclude prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability of the prohibition of torture. They would constitute an intolerable obstacle for victims seeking redress, and would contribute to a climate of impunity. In view of this, the Committee urges the State party to repeal any amnesty for torture or ill-treatment and to provide it with detailed information on the redress granted to torture victims in Casamance.

Fundamental legal safeguards

(10) The Committee is concerned that detainees do not enjoy all their fundamental rights from the moment they are, de facto, deprived of liberty, especially since legislation provides for the assistance of a lawyer only as from the twenty-fifth hour of detention and

the right to be examined by an independent doctor is not systematically observed. The Committee remains deeply concerned about the practice known as *retour de parquet*, which prolongs the custody of persons who have already been brought before the prosecutor and violates the right of detainees to be brought promptly before a judge. The Committee also notes that there is a shortage of lawyers in Senegal, especially in the more remote parts of the country (arts. 2, 11 and 12).

The State party should:

(a) **Take effective steps without delay to ensure that all detainees enjoy, de jure and de facto, all legal safeguards from the moment they are deprived of liberty, particularly the rights to be informed of the reasons for their arrest, including the charges against them; to have prompt access to a lawyer and, if necessary, to legal aid; to be examined by an independent doctor; to notify a relative, and to be brought promptly before a judge;**

(b) **Provide the judicial system with additional financial and human resources with a view to ending the practice known as *retour de parquet* and reducing the time taken to bring cases to court;**

(c) **Take the necessary steps to increase the resources allocated to the Bar Association, with a view to guaranteeing access to legal assistance for the most deprived. The Committee notes the delegation's statement that discussions will be organized on the question of allowing a lawyer to intervene from the very start of deprivation of liberty, and requests the State party to include information on the immediate measures to be taken to this end.**

Investigations and impunity

(11) The Committee is concerned about allegations that torture and ill-treatment by law-enforcement officers have not been investigated or prosecuted. The Committee is also concerned that, in cases where investigations have been initiated, they have not been undertaken promptly and the judicial procedures remain excessively long and drawn out, including in cases where torture has led to death, as in the cases of Mr. Dominique Lopy, Mr. Alioune Badara Diop, Mr. Abdoulaye Wade Yinghou, Mr. Mamadou Bakhom and Mr. Fally Keïta. While noting that victims of ill-treatment or torture can take their case directly to the Indictments Chamber of the Court of Appeal, the Committee is concerned at the lack of an independent body to investigate allegations of torture or ill-treatment by law-enforcement officers. Moreover, the Committee remains concerned about allegations of murder in Casamance that have not yet led to convictions (arts. 2, 11, 12, 13 and 16).

The State party should:

(a) **Take practical measures to speed up investigations and criminal prosecutions under way for alleged acts of torture and ill-treatment, which, if substantiated, should lead to sanctions and penalties that take into account their grave nature and do not class them as some other less serious offence;**

(b) **In order to ensure that thorough, prompt and impartial investigations are undertaken, set up an independent, impartial body to investigate allegations of torture and ill-treatment by members of the security forces;**

(c) **In addition to information on the individual cases mentioned above, provide information requested by the Committee on the number of complaints filed against public servants allegedly suspected of using torture or ill-treatment, as well as information on the outcomes of the ensuing investigations and on any criminal or disciplinary proceedings instigated as a result;**

(d) Provide the Committee with updated information on the situation in Casamance regarding the implementation of the Convention, including the outcome of the investigations into acts of torture and murder.

The case of Mr. Hissène Habré, former President of Chad

(12) The Committee notes the information provided by the delegation on the State party's wish to try Mr. Hissène Habré in Senegal, as well as the measures taken at regional and national levels to ensure that the trial can take place. While noting the State party's collaboration with the Committee during its official mission in 2009 under article 22 of the Convention, the Committee regrets the State party's delay in trying Mr. Habré in accordance with the Committee's decision of 17 May 2006, which was furthermore confirmed by the order of the International Court of Justice dated 20 July 2012 (*Belgium v. Senegal*) (arts. 5 and 7).

The Committee takes note of the State party delegation's statement that the trial of Mr. Hissène Habré is due to start in December 2012, and urges the State party to make every effort to get the trial under way by this date so as to put an end to impunity for anyone in its territory who is responsible for acts of torture and other international crimes, in accordance with its obligations under the Convention.

Extraction of confessions

(13) The Committee takes note of the State party's assertion that judges, who have supreme authority to weigh the evidence, cannot attach any value in a trial to confessions obtained under torture or duress. However, the Committee regrets that the Senegalese Code of Criminal Procedure contains no explicit provision to this effect and that the State party has provided no information on cases in which the courts have actually ruled as inadmissible confessions obtained under torture (arts. 2 and 15).

The State party should ensure that, whenever a person claims to have confessed under torture, such confessions are not invoked as evidence in the judicial proceedings and a thorough investigation is conducted into the claim. The Committee encourages the State party to amend its law so as to explicitly prohibit the use as evidence of any statement made under duress or as a result of torture.

Violence against women

(14) While noting the measures taken by the State party to combat all forms of violence against women, the Committee remains deeply concerned about the persistence in the State party of domestic violence, female genital mutilation, sexual abuse, rape and forced marriages. The Committee regrets that the State party has not provided information on the remedies and compensation, including rehabilitation, made available to women victims of violence (arts. 2, 12, 13 and 16).

The State party should:

(a) Continue to publicize Act No. 99-05 of 29 January 1999 on the penalization of the crimes of rape, excision, assault and battery, and incest, and to provide more information on the project to set up a national observatory on violence against women;

(b) Step up efforts to prevent, combat and punish all forms of violence against women and children, by applying domestic laws and international conventions, and to run awareness and information campaigns for the general public and law-enforcement officers. The State party should investigate all allegations of such violence, prosecute and punish the perpetrators and offer victims effective protection and immediate redress;

(c) **Ensure that the programme to combat gender violence and to promote human rights, and the related national action plan, include access to shelter, medical and psychological assistance, and reintegration programmes. The State party should provide further information on this programme and on the implementation of the second national action plan to hasten the end of the practice of excision (2010–2015).**

Violence against children

(15) The Committee remains concerned about the lack of information and statistics on the measures taken by the State party to combat practices such as the sale, prostitution and trafficking of minors. While noting the adoption of the strategic plan for the education and protection of children in Koranic schools (*daaras*), the Committee remains deeply concerned about the living conditions of young students (*talibés*), who suffer from ill-treatment and economic exploitation and are often made to beg on behalf of their masters. The Committee also remains concerned about the reported persistence of corporal punishment in Senegal (arts. 11 and 16).

The State party should:

(a) **Monitor very closely the situation of *talibés* in order to protect them from ill-treatment and exploitation by punishing those responsible and setting up mechanisms to monitor and help such children, as well as a complaints mechanism to allow them to inform the authorities of cases of abuse;**

(b) **Set up a support system to give *talibés* access to physical and mental health services. It should provide the Committee with information on other specific measures, including the number of cases identified, the investigations and prosecutions conducted, the sentences handed down to the perpetrators and the return of *talibés* to their families;**

(c) **Amend the Family Code, particularly article 285, to explicitly ban corporal punishment anywhere at all, including in the home, and punish offenders in accordance with the law, while offering legal protection and psychological help to child victims.**

Trafficking in persons

(16) Despite the legislative and administrative efforts made, the Committee is concerned that the State party remains a country of origin, transit and destination for trafficking in persons, particularly for forced labour and sexual exploitation (arts. 2, 12, 13, 14 and 16).

The State party should take effective measures to eliminate trafficking in persons and afford greater protection to victims. It should also devote more resources to prosecuting and punishing the perpetrators and providing legal, medical and psychological assistance to the victims.

Conditions of detention

(17) The Committee is concerned about reports of overcrowding in some prisons, including those in Dakar, Kaolack and Tambacounda (art. 11).

The State party should redouble its efforts to reduce prison overcrowding, by, among other things, giving preference to alternatives to imprisonment where feasible in light of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules).

Administration of justice

(18) The Committee notes the efforts made by the State party to facilitate community justice by establishing legal advice centres. However, it is concerned by the lack of

independence of the courts. The Committee notes the limited number of jurists working as lawyers. It is concerned that having fewer than 400 lawyers in a country with a population of over 11 million impedes access to justice (arts. 2, 11, 12, 13 and 16).

The State party should continue to study ways to reform the High Council of the Judiciary and should strengthen the independence of judges by upholding the principle of security of tenure for judges.

The State party should take practical steps to increase the number of people working in the justice system, including lawyers.

Juvenile justice

(19) Despite the existing juvenile justice mechanisms, the Committee is concerned that there are not enough specialized judges and courts to meet all the challenges related to the promotion and protection of children's rights in the State party (arts. 2, 11, 12, 13 and 16).

The Committee recommends that the State party hasten the adoption of the bill to establish the position of Children's Ombudsman and that it train more judges for juvenile courts. The Committee recommends that the State party set up a juvenile justice system in line with the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, General Assembly resolution 40/33) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, General Assembly resolution 40/112).

Situation of journalists and human rights defenders

(20) The Committee regrets the lack of information on allegations of intimidation, threats, physical attacks and arbitrary detention of human rights defenders and journalists. While taking note of the information supplied on the steps taken to prosecute officers who allegedly used excessive force during the pre-election demonstrations in 2012, the Committee regrets in particular the lack of information on the outcome of investigations concerning members of Rencontre africaine pour la défense des droits de l'homme and the journalists Mr. Boubacar Kambel Dieng and Mr. Karamokho Thioune (arts. 2, 12, 13 and 16).

The State party should provide information on specific measures taken in the above-mentioned cases and the penalties handed down. The State party should take all necessary steps to protect human rights defenders and journalists and punish severely the perpetrators of violence, torture or intimidation directed at them.

Situation of refugees and asylum seekers

(21) The Committee notes that further efforts need to be made to complete the issuance of identity cards to refugees and that the law on the status of refugees has not yet been revised (arts. 3 and 16).

The State party should hasten the adoption of the revised law on the status of refugees to consolidate safeguards for protecting refugees, asylum seekers, internally displaced persons and stateless persons, including by setting up a body to rule on applications for refugee status and on a range of issues such as family reunification and the protection of unaccompanied minors. The Committee encourages the State party to continue with its efforts to facilitate the integration of refugees, including by issuing identity cards, in collaboration with the Office of the United Nations High Commissioner for Refugees.

Redress, including rehabilitation

(22) The Committee regrets the lack of information on compensation awarded by the courts of the State party to the victims of violations of the Convention, including individuals denied their fundamental rights or tortured or ill-treated in custody. The Committee also regrets the lack of information on any treatment or social rehabilitation services for torture victims (art. 14).

The State party should provide information on additional measures to ensure that the victims of torture or ill-treatment obtain full and fair compensation and the fullest possible rehabilitation. It should speed up the adoption and implementation of the bill on compensation for victims held in detention for a long time who have suffered particularly serious harm, as well as of the rehabilitation programmes to be set up.

The Committee draws the attention of the State party to its recent general comment on article 14 (CAT/C/GC/3) which explains the content and scope of the obligations of States parties to provide full compensation to victims of torture.

National preventive mechanism and national human rights institutions

(23) While noting that the National Observatory of Places of Detention has been designated as the national preventive mechanism, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee remains concerned about the reported cut in the mechanism's funding. It is also concerned that the Senegalese Human Rights Committee is reportedly underfunded and that its procedures for selecting and appointing members appear not to be in line with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (annex to General Assembly resolution 48/134) (arts. 2 and 12).

The State party should:

(a) Provide the National Observatory of Places of Detention with the resources it needs to effectively fulfil its mandate as the Senegalese national preventive mechanism, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the guidelines on national preventive mechanisms drawn up by the Subcommittee on Prevention of Torture. The State party should ensure that the police, prosecutors, military personnel, prison staff and medical personnel cooperate with the Observatory, and that its recommendations to the authorities are followed up with practical measures to improve the situation in prisons and prevent torture. The Committee also recommends that the State party publish the report produced by the Subcommittee on Prevention of Torture following its visit to Senegal in December 2012;

(b) Take into account the comments made by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to ensure that the Senegalese Human Rights Committee operates in accordance with the Paris Principles.

Confidential complaints mechanism

(24) The Committee regrets that no confidential complaints mechanism has been set up to enable detainees to lodge a complaint for torture or ill-treatment (arts. 2 and 16).

The State party should establish a confidential mechanism to receive and consider complaints of torture or ill-treatment, and should ensure that such a mechanism is set up in all places of detention, especially prisons. In fact, this mechanism would make

an important contribution to the work of the National Observatory of Places of Detention.

Training

(25) The Committee notes that the State party has organized human rights training courses for police officers and members of the National Gendarmerie. However, it regrets the lack of information on the evaluation of these courses and their impact on reducing the number of cases of torture and ill-treatment. The Committee is also concerned that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) is not followed (art. 10).

The State party should organize training courses for the State agents listed in article 10 of the Convention, especially civil or military law-enforcement personnel and medical personnel. In order to enable these individuals to better detect and document the signs of torture and ill-treatment, the Istanbul Protocol should be an integral part of these courses. The State party should also evaluate the courses' effectiveness and impact on the implementation of the Convention.

Data collection

(26) The Committee regrets the lack of comprehensive, disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment committed by law-enforcement personnel, military officers, prison staff and psychiatric personnel, and of statistics on the various forms of violence against girls and women in Senegal.

The State party should compile the above-mentioned data for the whole country to allow the implementation of the Convention to be effectively evaluated and to facilitate the identification of targeted action to prevent and combat effectively torture, ill-treatment and all forms of violence against girls and women. The State party should also provide statistics on redress, including compensation, and means of rehabilitation for victims.

(27) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in the appropriate languages, through official websites, the media and non-governmental organizations.

(28) The Committee requests the State party to provide, by 23 November 2013, information on the follow-up to the Committee's recommendations on: (a) the introduction or strengthening of legal safeguards for detainees (see paragraph 10 (a) above); (b) the prompt instigation of effective and impartial investigations (see paragraph 11 (a) above); and (c) the proceedings initiated against suspects and the penalties handed down to the perpetrators of acts of torture or ill-treatment (see paragraph 12 above).

(29) The State party is invited to submit its fourth periodic report by 23 November 2016. The Committee invites the State party to agree, by 23 November 2013, to follow the optional reporting procedure in preparing its report. Under this procedure, the Committee would send the State party a list of issues prior to submission of the periodic report and the State party's replies to the list of issues would constitute, under article 19 of the Convention, its next periodic report.

66. Tajikistan

(1) The Committee against Torture considered the second periodic report of Tajikistan (CAT/C/TJK/2), at its 1108th and 1111th meetings (CAT/C/SR.1108 and 1111), held on 7 and 8 November 2012. At its 1126th and 1127th meetings (CAT/C/SR. 1126 and 1127), held on 20 November 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the second periodic report by the State party, which follows the general guidelines regarding the form and contents of periodic reports. Nonetheless, it regrets the lack of response to the questions identified under the follow-up procedure.

(3) The Committee also appreciates the frank and open dialogue it had with the high-level delegation of the State party, the submission of written replies to the list of issues (CAT/C/TJK/Q/2/Add.1), and the additional information provided orally by the delegation.

B. Positive aspects

(4) The Committee welcomes the legislative measures taken during the period under review, including:

(a) Code of Administrative Procedure adopted in March 2007;

(b) Code of Criminal Procedure, adopted in March 2008 to introduce remand hearing and to transfer the power to authorize pretrial detention from Prosecutors to judges;

(c) Human Rights Commissioner Act adopted in March 2008 and the appointment of the first Human Rights Commissioner (Ombudsman), in May 2009;

(d) Code of Administrative Offences adopted in December 2008;

(e) Amendments to the Constitutional Act on the Constitutional Court adopted in July 2009 to expand the power and jurisdiction of the Constitutional Court.

(5) The Committee further welcomes:

(a) The moratorium on the death penalty declared in 2004 and the establishment of a Working Group in April 2010 to consider the removal of the death penalty from the Criminal Code and the possibility of ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights;

(b) The visit undertaken by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in May 2012.

C. Principal subjects of concern and recommendations**Definition of and sanctions for torture**

(6) While the Committee welcomes the incorporation of article 143-1 into the Criminal Code to bring the definition of torture fully in line with article 1 of the Convention, it expresses concern that the sanctions envisaged of five years imprisonment or less for first-time offenders of torture are not commensurate with the gravity of the crime (arts. 1 and 4).

The Committee recommends that the State party amend article 143-1 of the Criminal Code to ensure that sanctions for the offence of torture reflect its grave nature, as required by article 4 of the Convention.

Amnesty Law

(7) The Committee is deeply concerned that the 2011 Law on Amnesty grants a rather wide discretion to prosecutorial bodies to commute, reduce or suspend sentences of persons convicted of torture, including the case of three police officers convicted for their involvement in the death in custody of Ismoil Bachajonov (art. 2).

The State party should ensure that the Law on Amnesty contain clear provisions stipulating that no person convicted for the crime of torture will be entitled to benefit from amnesties, and that such prohibition is strictly complied with in practice.

Fundamental legal safeguards

(8) The Committee takes note of the procedural safeguards introduced in the 2010 Code of Criminal Procedure (CPC), including the registration of detainees within three hours of arrival at the police station (art.94.1), the right to have a lawyer (arts.22.1 and.49.2), and the right not to be detained for more than 72 hours from the moment of arrest (art. 92.3). However, the Committee expresses concern that the lack of clarity as to when the person is considered to be detained under this law (art. 91.1), leaves detainees without basic legal safeguards for the period between arrest and official acknowledgement of detention. It has been reported that, in practice and in the majority of cases, detainees are not afforded the rights of timely access to a lawyer and an independent doctor, notification of family members, and other legal guarantees to ensure their protection from torture. In particular, the Committee is concerned by numerous allegations regarding the failure of police officials to keep accurate records of all periods of deprivation of liberty; to register suspects within three hours of arrival at the police station; to adhere to the 72-hour time limit for releasing or transferring suspects from a police station to pretrial detention facilities; and to notify family members of transfers of detainees from one place of deprivation of liberty to another. Furthermore, it is concerned that article 111-1 of the CPC allows judges to authorize pretrial detention solely based on the gravity of the alleged crime committed, and that it can be extended up to 18 months (art. 2).

The Committee urges the State party to take prompt and effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards from the very outset of their apprehension. In particular, the State party should:

- (a) **Amend the CPC to ensure that arrest starts from the moment of de-facto apprehension;**
- (b) **Establish an official, central register in which the arrest is scrupulously and immediately recorded, including at the minimum: (i) the time of arrest; (ii) the reason for arrest; (iii) the names of the arresting officer(s); (iv) the location where they are detained and any subsequent transfers; and (v) the names of the officers responsible for them in custody. Responsible officers who fail to record such information should be held accountable;**
- (c) **Ensure that suspects are informed of their rights at the very moment of apprehension as well as reasons for their detention;**
- (d) **Guarantee the right to access lawyers of their choice from the moment of apprehension and to hold consultations in private, including through the adoption of legal provisions in this respect;**
- (e) **Ensure that anyone arriving at a detention facility undergoes a routine medical examination, and that access to independent doctors is provided when requested by the detainee without conditioning such access on the permission or request of officials;**
- (f) **Mandate that a detainee be brought promptly before a judge, in line with international standards, and reduce the 72-hour period of police custody;**
- (g) **Amend the CPC to repeal the 12-hour period for notification of arrest by law enforcement officers to family members;**
- (h) **Amend the CPC to ensure that pretrial detention is not authorized by courts based only on the gravity of the alleged crime, and that periods of pretrial detention cannot be extended when the prosecution has failed to present well-founded grounds for the person to remain in custody.**

Allegations of torture and ill-treatment

(9) The Committee is seriously concerned about numerous and consistent allegations, corroborated by various sources, of routine use of torture and ill-treatment of suspects, principally to extract confessions to be used in criminal proceedings, primarily during the first hours of interrogation in police custody as well as in temporary and pretrial detention facilities run by the State Committee of National Security and the Department for the Fight against Organized Crime (arts. 2, 10, 11, 12, 13, 15 and 16).

As a matter of urgency, the State party should take immediate and effective steps to eradicate and prevent acts of torture and ill-treatment throughout the country, particularly in police custody and in temporary and pretrial detention facilities run by the State Committee of National Security and the Department for the Fight Against Organized Crime. The Committee further urges the State party to:

(a) Promptly, effectively and impartially investigate all incidents and allegations of torture and ill-treatment;

(b) Prosecute those who are found to be responsible, and report publicly on the outcomes of such prosecutions;

(c) Maintain video recordings of all interrogations and install video surveillance in all areas of custody facilities where detainees may be present, except in cases where detainees' right to privacy or to confidential communication with their lawyer or a doctor may be violated. Such recordings should be kept in secure facilities and be made available to investigators, detainees and their lawyers;

(d) Unambiguously reaffirm the absolute prohibition of torture and publicly warn that anyone committing such acts or otherwise complicit or acquiescent in torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties.

Deaths in custody

(10) The Committee is concerned at reports from the State party and non-governmental organizations on several instances of deaths in custody, including the deaths of Ismonboy Boboev, Usman Boboev, Khurshed Bobokalonov, Alovuddin Davlatov, Murodov Dilshodbek, Hamza Ikromzoda, Khamzali Ikromzoda, Safarali Sangov, Bahromiddin Shodiev and at the lack of effective and impartial investigations into these cases (arts. 2, 12 and 16).

The Committee urges the State party to promptly, impartially and effectively investigate all deaths of detainees, assess any liability of public officials, ensure punishment of perpetrators, and provide compensation to the families of the victims. The Committee requests that the State party provide comprehensive updated information on all reported cases of deaths in custody, including location, cause of death and results of any investigations conducted into such deaths, including punishment of perpetrators and compensation provided to relatives of victims.

Investigations and impunity

(11) The Committee is deeply concerned that allegations of torture and ill-treatment are not promptly, impartially or effectively investigated and prosecuted, thus creating a climate of impunity. The Committee is further concerned that under article 28(1) of the CPC, a court, judge, prosecutor, or an investigator may terminate criminal proceedings and exempt the person in question from criminal liability. Such actions can be taken on the basis of repentance, conciliation with the victim, change of circumstances, or expiration of the period of statute of limitation for criminal prosecution (arts. 2, 12, 13 and 16).

The State party should:

(a) **Take concrete steps to establish an effective and independent criminal investigation mechanism with no connection to the body prosecuting the case against the alleged victim;**

(b) **Expedite prompt, impartial and thorough investigation into all allegations of torture and ill-treatment and bring the alleged perpetrator to justice;**

(c) **Revoke provisions in the CPC allowing termination of criminal proceedings and exemption of the defendant from criminal liability whenever the case concerns allegations of torture and ill-treatment.**

Torture and ill-treatment in the armed forces

(12) While noting the establishment of hotlines and mobile monitoring units to address the problem of hazing and ill-treatment of conscripts by officers and fellow soldiers in the military, the Committee is concerned that such practices continue to be prevalent in the State party (arts. 2 and 16).

The State party should reinforce measures to prohibit and eliminate hazing and ill-treatment in the armed forces and ensure prompt, impartial and thorough investigation of all allegations of such acts. Where evidence of hazing is found, it should establish the liability of direct perpetrators and those in the chain of command, prosecute and punish those responsible with penalties that are consistent with the gravity of the act committed, make the results of such investigations public, and provide compensation and full rehabilitation to victims, including through appropriate medical and psychological assistance.

Evidence obtained under torture and lack of ex-officio investigations

(13) While welcoming the inclusion of article 88(3) to the Criminal Procedural Code in March 2008, which provides that evidence obtained through “physical force, pressure, cruelty, inhumanity and by other illegal methods” may not be used as evidence in a criminal case, as well as the June 2012 decree of the Supreme Court clarifying the concept of inadmissibility of evidence obtained under illegal methods, the Committee expresses concern at the lack of effective enforcement mechanisms and implementation in practice. It is also concerned at reports that judges frequently dismiss allegations of torture when raised by defendants, and that unless a formal complaint is submitted, the prosecutor will not launch an investigation (art. 15).

The Committee urges the State party to guarantee, in practice, that statements obtained by torture are not invoked as evidence in any proceedings. The State party should ensure that in any case in which a person alleges that a confession was obtained through torture, the proceedings are suspended until the claim has been thoroughly investigated. The Committee urges the State party to review cases of convictions based solely on confessions.

Conditions of detention

(14) While welcoming current efforts by the State party to improve conditions of detention in prisons and pretrial detention facilities, the Committee is concerned at:

(a) Reports of lack of hot water supply; inadequate sanitary conditions; poor ventilation; lack of means to dry clothes, which leads to respiratory infections and sickness; lack of personal hygiene products; and inadequate food and health care;

(b) Unnecessarily strict regimes for inmates serving life imprisonment, who are reportedly confined in virtual isolation in their cells for up to 23 hours a day in small,

airless cells; do not have access to lawyers; are only permitted visits by family members once a year; and are denied various activities in prison;

(c) Continued lack of systematic and independent review of all places of detention by national or international monitors, including the International Committee of the Red Cross (ICRC). While noting that the Ombudsman may undertake visits to places of detention, the Committee is concerned that the findings are not made public;

(d) The lack of a complaints mechanism for detainees. Despite the information provided by the State party that complaints of torture or ill-treatment can be submitted in sealed envelopes, they reportedly do not reach the relevant authorities and prisoners often do not have access to pens and paper;

(e) The fact that the number, location, capacity, and the number of detainees in penitentiary institutions in Tajikistan are considered as “state secrets”.

The State party should:

(a) Allocate sufficient budgetary resources to improve conditions in all places of detention;

(b) Eliminate the complete isolation of prisoners serving life imprisonment, improve their living conditions, and repeal legislation limiting their contacts with lawyers and family members;

(c) Take concrete steps, as a matter of priority, to ratify the Optional Protocol to the Convention and establish an effective National Preventative Mechanism which is resourced and permitted to conduct regular, independent, unannounced and unrestricted visits of inspection to all places of deprivation of liberty, with opportunity for inspectors to speak privately with individual detainees. In the meantime, grant unimpeded access to the ICRC and independent non-governmental organizations to all places of detention, and ensure that the Ombudsman undertakes regular, unannounced visits to all places of deprivation of liberty, accompanied by medical professionals, including to places of police custody, and that the findings are made available publicly;

(d) Establish an effective, accessible and confidential system for receiving and processing complaints regarding torture or ill-treatment in all places of detention, and ensure that: (i) every detainee has unimpeded and unsupervised access to the prosecutor upon request; (ii) all complaints are promptly, impartially and effectively investigated; (iii) perpetrators are punished with appropriate penalties; and (iv) complainants do not suffer any reprisals;

(e) Make the number, location, capacity, and the number of detainees in detention facilities available publicly, taking note of the statement made by the delegation to consider doing so in the future.

Complaints, reprisals and protection of victims, witnesses and human rights defenders

(15) The Committee is concerned about reports that victims of, and witnesses to torture and ill-treatment do not file complaints with the authorities for fear of reprisals and lack of adequate follow-up. Additionally, while noting the removal of libel and insult from the Criminal Code in July 2012, the Committee remains concerned about reports of harassment and intimidation of journalists and human rights defenders who report on torture and ill-treatment. In particular, the Committee is concerned about the information received that victims of alleged torture and their families, journalists, lawyers, medical experts and human rights defenders who raised concerns with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment during his visit to Tajikistan in May 2012 have subsequently faced harassment and intimidation from authorities.

Furthermore, while the Committee takes note of the information provided by the delegation, it is nevertheless concerned about the recent closure of the Association of Young Lawyers of Tajikistan (Amparo), a member of the Coalition Against Torture that engaged with the Special Rapporteur during his visit, pursuant to a motion filed by the Ministry of Justice to dissolve the organization on administrative grounds and a decision taken by the Khujand City Court on 24 October 2012 to this effect (arts. 12 and 13).

The Committee urges the State party to establish a fully resourced, effective, independent and accessible mechanism to investigate and facilitate the submission of complaints by victims and witnesses of torture and ill-treatment to public authorities, as pledged by the State party following the universal periodic review in March 2012. It should also ensure in practice that complainants and civil society organizations are protected against any ill-treatment, intimidation or reprisals as a consequence of their complaint, and that appropriate disciplinary, or where relevant, criminal measures, are taken against law enforcement officials for such actions.

Violence against women and children

(16) The Committee is deeply concerned about the lack of any domestic legislation criminalizing acts of violence against women, despite the existence since 2009 of a draft law on “social and legal protection against domestic violence”; reports of high prevalence of domestic violence; difficulties in filing complaints; and the reluctance of law enforcement officials to intervene in such cases. It is further concerned about the lack of domestic legislation prohibiting corporal punishment of children, despite allegations of its widespread use in the family, schools and other educational establishments (arts. 2, 12, 13 and 16).

The State party should strengthen its efforts to prevent, combat and punish violence against women and children, inter alia, by:

(a) Swiftly adopting the draft law on “social and legal protection against domestic violence” and criminalizing such acts;

(b) Taking effective measures to ensure that victims of violence against women and children, including domestic violence, can exercise their right to make complaints, and that such complaints are thoroughly investigated and perpetrators prosecuted and punished with appropriate penalties;

(c) Adopting legislation to explicitly prohibit corporal punishment in all settings;

(d) Providing victims of domestic and sexual violence with immediate protection and redress, including separation from perpetrators, provision of shelters, and rehabilitation;

(e) Training law-enforcement officials, judges and prosecutors on how to receive, monitor and investigate complaints of domestic and sexual violence, trafficking and violence against children in a sensitive manner that respects confidentiality;

(f) Organizing awareness-raising campaigns on the negative impact of corporal punishment of children, as well on domestic and sexual violence.

Independence of the judiciary

(17) While welcoming the two-phase programme of judicial-legal reform aimed at strengthening the judiciary, including through measures such as increasing the salary of judges, the Committee is concerned that the judiciary remains weak, inefficient, and influenced by the Council of Justice, an institution that is reportedly subordinate to the

President and the executive branch, and that the President is responsible for appointing and dismissing judges (arts. 2, 12 and 13).

The State party should take measures to ensure the full independence and impartiality of the judiciary in the performance of its functions, and review the regime of appointment, promotion and dismissal of judges in line with the relevant international standards, including the Basic Principles on the Independence of the Judiciary (endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985).

Non-refoulement and extradition

(18) The Committee is concerned that the Criminal Procedure Code does not contain any provision on the absolute prohibition of extradition or deportation in cases where the subject would be at risk of torture, and that there are no clear procedures in legislation for challenging the legality before a court in extradition and deportation proceedings. It is also concerned about reports of extradition requests made by the State party of persons alleged to be members of banned Islamic groups, who, upon return to Tajikistan, are reportedly held in incommunicado detention and in solitary confinement, and subjected to torture and/or ill-treatment by law enforcement officials. It is further concerned by allegations that persons facing risk of torture upon their return and have applied for interim measures at the European Court of Human Rights have been abducted by Tajikistani security forces in a neighbouring country and forcibly returned to Tajikistan, and subsequently subjected to torture and/or ill-treatment. Additionally, the Committee is concerned by reports that Abdulvosi Latipov, former member of the United Tajik Opposition, has allegedly been abducted from the Russian Federation to Tajikistan in October 2012 and is being held incommunicado (art. 3).

The State party should:

(a) Clearly establish in law and respect its non-refoulement obligations under article 3 of the Convention, including the right to appeal the issuance of an extradition warrant, and refrain from seeking and accepting diplomatic assurances from a State where there are substantial grounds for believing that a person would be at risk of being subjected to torture. It should provide detailed information to the Committee on all cases where such assurances have been provided;

(b) Cease the practice of abducting and forcibly returning individuals to Tajikistan from other States and subsequently holding them in incommunicado detention, and ensure that they are not subjected to acts of torture and ill-treatment;

(c) Disclose the whereabouts of Abdulvosi Latipov and ensure that he is not subjected to torture or ill-treatment and that his fundamental rights are fully guaranteed, including timely access to an independent lawyer.

Training

(19) The Committee welcomes the organization of human rights training programmes for law enforcement officials, judges, prosecutorial staff and Ministry of Interior personnel during the period under consideration, as well as the establishment of a Working Group headed by the Chair of the Constitutional Court to raise awareness and build capacity of law enforcement officials on the prohibition of torture. However, it remains concerned at the lack of adequate training of law enforcement officials and medical professionals in assessing and responding to cases of domestic violence against women, including rape, violence against children, and trafficking. The Committee is further concerned that forensic services are reportedly not staffed with medical personnel trained in documenting and investigating torture in accordance with the provisions of the Manual on Effective

Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (art. 10).

The State party should strengthen training programmes for law enforcement officials, judges, medical professionals, prosecutorial staff and prison staff on the requirements of the Convention and undertake a comprehensive assessment of the impact of such programmes. The State party should ensure that relevant officials, in particular medical professionals, receive training on the use of the Istanbul Protocol to identify and document signs of torture and ill-treatment. The State party should further ensure adequate training of law enforcement officials and medical professionals in assessing and responding to cases of domestic violence against women, including rape, violence against children, and trafficking.

Juvenile Justice

(20) While noting the adoption of the National Action Plan on Juvenile Justice Reform 2010–2015, the Committee is concerned that the criminal juvenile system lacks juvenile courts and judges specialized in juvenile justice. It is further concerned about reports that children are frequently placed in pretrial detention and isolation cells in the Juvenile Colony as a disciplinary measure; subjected to extended deprivation of liberty for minor offences; denied their basic legal rights, including access to lawyers; and often mistreated by police inquiry officers to confess, and, as a result, in some cases leading to attempted or actual suicides (arts. 11, 12 and 16).

The Committee urges the State party to:

(a) **Establish an effective and well-functioning juvenile justice system in compliance with international standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines);**

(b) **Review all cases of children sentenced to imprisonment to ensure that deprivation of liberty is only used for serious criminal offences, and ensure that solitary confinement of juveniles should be limited as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review, and limited to very exceptional cases;**

(c) **Guarantee that the rights of children are respected in all places of detention, including the right to appropriate legal assistance and defence by assigning a sufficient number of lawyers with relevant training and competence;**

(d) **Take effective measures to prevent police inquiry officers from mistreating children, including by investigating such acts and ensuring that appropriate disciplinary or penal measures are taken.**

Redress, including compensation and rehabilitation

(21) The Committee is concerned that there is no explicit provision in domestic legislation that provides for the right of victims of torture to fair and adequate compensation, including the means for as full rehabilitation as possible, as required by article 14 of the Convention. The Committee also regrets the lack of data provided by the State party regarding the amount of any compensation awards made by the courts to victims of violations of the Convention, including those who were subjected to torture and/or ill-treatment during the period of 1995 to 1999 and 35 victims of trafficking who were returned to Tajikistan in 2007 from other countries. The Committee also notes the lack of information on any treatment and social rehabilitation services provided to victims, including medical and psychosocial rehabilitation (art. 14).

The State party should ensure that there are clear provisions in the domestic legislation on the right of torture victims to redress, including fair and adequate compensation and rehabilitation for damages caused by torture. It should, in practice, provide all victims of torture or ill-treatment with redress, including fair and adequate compensation, and as full rehabilitation as possible regardless of whether perpetrators of such acts have been brought to justice, including victims of trafficking, victims of torture and/or ill-treatment during the period of 1995 to 1999, and family members, in cases of deaths in custody.

The Committee draws the attention of the State party to the recently adopted general comment No. 3 (2012) on article 14 of the Convention which explains the content and scope of the obligations of States parties to provide full redress to victims of torture.

Data collection

(22) The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as on trafficking and domestic and sexual violence, and on redress provided to the victims.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking and domestic and sexual violence, as well as of means of redress, including compensation and rehabilitation provided to the victims.

(23) The Committee recommends that the State party consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Second Optional Protocol to the International Covenant on Civil and Political Rights as soon as possible. It also invites the State party to consider ratifying the other core United Nations human rights treaties to which it is not yet party, namely the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, Optional Protocol to the Convention on the Elimination of Discrimination against Women, and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

(24) The Committee also recommends that the State party consider making the declarations under articles 21 and 22 of the Convention, in order to recognize the competence of the Committee to receive and consider communications.

(25) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(26) The Committee requests the State party to provide, by 23 November 2013, follow-up information in response to the Committee's recommendations relating to: (a) conducting prompt, impartial and effective investigations; (b) ensuring or strengthening legal safeguards for persons detained; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 8(a) and (b), 9(a), 11(c), and 14(a), (b), (c), and (d) of the present document.

(27) The State party is invited to submit its next report, which will be the third periodic report, by 23 November 2016. To that purpose, the Committee invites the State party to accept, by 23 November 2013, to report under its optional reporting procedure, consisting in the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the periodic report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.

67. Togo

(1) The Committee against Torture considered the second periodic report of Togo (CAT/C/TGO/2) at its 1114th and 1117th meetings (CAT/C/SR.1114 and SR.1117), held on 12 and 13 November 2012. At its 1128th meeting (CAT/C/SR.1128), held on 21 November 2012, the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the second periodic report of Togo, as well as the State party's written replies to the list of issues prior to submission of its report (CAT/C/TGO/Q/2). It regrets, however, that the report does not contain specific information on the implementation of the provisions of the Convention.

(3) The Committee appreciates the frank and open dialogue with the high-level delegation sent by the State party, as well as the additional information provided during the consideration of the report.

B. Positive aspects

(4) The Committee notes with satisfaction that, since its consideration of the initial report of the State party, the latter has acceded to or ratified the following international instruments:

- (a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 20 July 2010;
- (b) The Convention on the Rights of Persons with Disabilities, on 1 March 2011;
- (c) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, on 1 March 2011.

(5) The Committee welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including:

- (a) Act No. 2007-017 of 6 July 2007 on the Children's Code;
- (b) Act No. 2009-011 of 24 July 2009 abolishing the death penalty.

(6) The Committee also takes note of the initiatives undertaken by the State party to amend its policies, programmes and administrative procedures to give effect to the Convention, including:

- (a) The adoption of the national plan of action against trafficking in persons, especially women and children, in 2007;
- (b) The signature of the tripartite agreement between Benin, Togo and the Office of the United Nations High Commissioner for Refugees on 3 April 2007;
- (c) The signature of the tripartite agreement between Ghana, Togo and the Office of the United Nations High Commissioner for Refugees on 11 April 2007;
- (d) The establishment of the Truth, Justice and Reconciliation Commission on 25 February 2009;
- (e) The publication on 2 July 2010 of the guide to good practices for the protection of minors in conflict with the law;
- (f) The publication on 27 February 2012 of the report of the National Human Rights Commission, which was commissioned by the Minister of Justice to investigate allegations of torture and ill-treatment on the premises of the National Intelligence Agency (ANR).

C. Principal subjects of concern and recommendations

Definition and criminalization of torture

(7) The Committee notes with concern that, 6 years after establishing a national commission to update its legislation and 25 years after ratifying the Convention, the State party has yet to adopt criminal legislation explicitly defining and criminalizing torture (arts. 1 and 4).

The Committee recommends that the State party take the necessary measures to incorporate in the Criminal Code all the elements of the definition of torture contained in article 1 of the Convention, as well as provisions criminalizing and penalizing acts of torture with penalties commensurate with their gravity.

Legislative reforms

(8) While noting the adoption of the draft Criminal Code by the Council of Ministers in November 2012, the Committee remains concerned, as it noted in its previous concluding observations in 2006, that legislative reforms, in particular the adoption of the new Criminal Code and the new Code of Criminal Procedure, have not yet been completed (arts. 1, 2 and 4).

The State party should expedite the process of legislative reform and take the necessary measures to promulgate and adopt the new Criminal Code and the new Code of Criminal Procedure as soon as possible in order to remedy the present legal vacuum surrounding torture.

Allegations of torture and ill-treatment

(9) The Committee is concerned by the allegations of torture and ill-treatment in detention, in particular of persons held in custody who are detained on the premises of investigative units or in police stations, gendarmeries, offices of the National Intelligence Agency, barracks of the presidential guard or other places of detention, including unofficial places of detention. It is particularly concerned by the conclusion in the report of the National Human Rights Commission that “inhuman and degrading acts of physical and mental violence have been committed against detainees” and allegedly against persons linked to the attempted coup in 2009 who were held on the premises of the National Intelligence Agency and in other places of detention. The Committee is also concerned that the new Code of Criminal Procedure, which provides for the inadmissibility of confessions obtained under torture, is still not in force (arts. 2, 11, 15 and 16).

The State party should:

(a) **Give clear instructions to members of the security forces (police and gendarmerie) regarding the absolute prohibition and criminalization of torture and the fact that such acts will not be tolerated and that perpetrators will be prosecuted;**

(b) **Take effective measures without delay to ensure that in-depth, prompt, independent and impartial investigations are conducted into all allegations of torture and ill-treatment and that the perpetrators of such acts are brought before the courts, which should punish them with appropriate penalties under the relevant criminal legislation, and that the outcomes are publicized;**

(c) **Expedite the adoption by Parliament of the new Criminal Code and the new Code of Criminal Procedure and ensure that confessions obtained under torture and the subsequent proceedings are declared null and void, and raise awareness among judges of the inadmissibility of statements obtained under torture and of the obligation to initiate investigations when allegations of torture are brought to their attention.**

Fundamental legal safeguards

(10) The Committee is concerned that the fundamental legal safeguards of detainees are often violated and that arbitrary arrests and detention could take place. The Committee is concerned that some periods of custody exceed the legal time limits, particularly outside the capital. It is also concerned that legislation provides for the assistance of a lawyer only as of the 25th hour of deprivation of liberty, and that lawyers have only 30 minutes to speak to their clients in private. The Committee is also concerned that the assistance of a lawyer is not systematically guaranteed for poor persons from the beginning of proceedings but only at the trial stage, and that suspects are not always given the opportunity after their arrest to immediately consult a judge and a doctor and to contact their family (arts. 2 and 11).

The State party should:

(a) Immediately take effective measures to guarantee that all persons deprived of their liberty enjoy all the fundamental legal safeguards from the outset of their detention, namely the right to be informed of the reasons for their arrest and to have prompt access to legal counsel and, if necessary, to legal aid;

(b) Ensure that detainees can be examined by an independent doctor or a doctor of their choice, contact a member of their family, be brought before a judge without delay, and have the legality of their detention examined by a court, in accordance with international standards;

(c) Release and compensate all persons detained irregularly or arbitrarily;

(d) Establish a procedure in the Code of Criminal Procedure allowing the victims of miscarriages of justice to receive reparation.

Impunity and investigations

(11) The Committee is deeply concerned by:

(a) The total impunity of perpetrators of acts of torture and the State party's statement that the Togolese courts currently have no legal means to punish torture, and that there are therefore no examples of judgements in this respect. The Committee is concerned by the information indicating that, to date, no court has been able to directly apply the provisions of the Convention, even where the courts have evidence of acts of torture before them, because there is no legislation criminalizing and punishing such acts. The Committee is very concerned that no criminal proceedings appear to have yet been initiated against the perpetrators of the acts of torture committed on the premises of the National Intelligence Agency in 2009, even though detainees have given details of the torture and ill-treatment to which they claim to have been subjected during their detention, as well as the names of the perpetrators;

(b) Judges' reported refusal to deal with cases of torture committed by the security forces, which contributes to impunity and represents a denial of justice for victims of torture. Furthermore, the Committee is concerned that allegations of torture and ill-treatment in detention are not systematically and thoroughly investigated, and that those responsible for acts of torture are apparently subjected only to disciplinary sanctions which are not commensurate with the severity of their acts;

(c) The fact that the 13 recommendations in the report of the National Human Rights Commission published on 27 February 2012, which was commissioned by the Government to investigate allegations of torture and ill-treatment on the premises of the National Intelligence Agency and elsewhere, have not yet been implemented and that the persons responsible for the acts of torture on those premises appear to have remained in their posts or been promoted after short suspensions of 30 to 45 days imposed as a disciplinary measure (arts. 2, 12, 13 and 14).

The State party should:

(a) In accordance with the commitment it made during the universal periodic review, end impunity of persons who have committed acts of torture by launching credible, prompt and impartial investigations into all allegations of torture or ill-treatment committed by members of the security services or others, in particular on the premises of the National Intelligence Agency in 2009, and, where necessary, punish those responsible in accordance with the gravity of their acts;

(b) Include a provision on the non-applicability of statutory limitations to the crime of torture in the Criminal Code and remove the provision establishing a 10-year period of limitations that is reportedly included in the current draft Criminal Code;

(c) Implement all measures necessary to comply with its obligations under the Convention, particularly its obligation to combat impunity of perpetrators of acts of torture. The Committee reminds the State party that, in accordance with article 27 of the Vienna Convention on the Law of Treaties, “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”;

(d) Take measures to implement the recommendations of the National Human Rights Commission regarding the allegations of torture and ill-treatment on the premises of the National Intelligence Agency and in other places of detention;

(e) Establish a special central register for cases of torture or cruel, inhuman or degrading treatment, and provide information on the results of the investigations launched.

Pretrial detention

(12) The Committee notes with concern that more than 65 per cent of detainees are in pretrial detention, which calls into question the principle of the presumption of innocence and contributes to prison overcrowding throughout the country. It is concerned that the time limits for pretrial detention are not always respected, and that persons are kept in detention for years without being tried, including for minor offences, which reflects a major dysfunction in the judicial system. The Committee is concerned that one of the reasons for the high incidence of pretrial detention is the shortage of judges and facilities and that the delay in legislative reform is impeding the introduction of the position of liberties and detention judge, who could contribute to reducing the incidence of pretrial detention (arts. 2, 11 and 16).

The State party should:

(a) Expedite the national programme to modernize the justice system and take measures to restrict the use of pretrial detention, as well as its duration, using non-custodial penalties and alternatives to detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

(b) Transfer minor offences from the criminal justice system to the preventive justice system;

(c) Improve training for magistrates, judges, prosecutors, prefects, subprefects and lawyers on the principle of the presumption of innocence, which would reduce the incidence of pretrial detention;

(d) Ensure that, when there are compelling reasons to place the defendant in pretrial detention, all the time limits for the accused and defendants are respected;

(e) Release all persons for whom the maximum legal period of detention has expired;

(f) Consider recruiting additional judges and constructing new courtrooms in the country.

Conditions of detention

(13) The Committee is deeply concerned by:

(a) The alarming conditions in detention centres throughout the country, particularly in Lomé, some of which are tantamount to torture given that remand prisoners awaiting trial are packed into cells measuring 7 metres by 6 metres in groups of 60 to 90, while sentenced prisoners are packed into cells of 6 metres by 5 metres in groups of 50 to 60. It is also concerned by the tiny size of the cells in the prison of Notsé and particularly those in the Kara military camp, where the detention of soldiers in punishment cells measuring 112 cm by 90 cm constitutes a violation of the Convention. Furthermore, overcrowding is currently in the region of 156 per cent on average;

(b) The lack of hygiene, ventilation, lighting and bedding, as well as the lack of food, which consists of a single meal a day, as described in the initial report, and is said to be of poor quality;

(c) The almost total lack of access to health care and medication and the fact that sick prisoners are only transferred to hospital when they are practically at death's door. The Committee is concerned in particular about the health of Captain Lambert Adjion, who is being held in the civil prison in Lomé and apparently has a tumour for which he is not receiving treatment. This would appear to run counter to the decision of the Council of Ministers of 29 February 2012 to make medical care available to all persons in custody or in detention at any stage of proceedings, as recommended in one of the 13 measures to be implemented following the publication of the report of the National Human Rights Commission;

(d) The conditions, described by the State party itself as appalling, in the custody facilities of police stations and gendarmeries, where many detainees are kept for long periods with no legal justification;

(e) The high and increasing number of deaths in detention, in particular as a result of a lack of food and hygiene, as well as violence among prisoners (arts. 2, 11 and 16).

The State party should:

(a) Redouble efforts and increase funding to bring living conditions in all prisons into line with international standards and the Standard Minimum Rules for the Treatment of Prisoners;

(b) Implement the declaration made by the representatives of Togo to the Committee at its forty-ninth session to the effect that all pending cases will be tried in January 2013 to reduce prison overcrowding by 50 per cent;

(c) In order to ease overcrowding in places of detention, adopt a precise timetable for the construction of new prisons, including in Lomé and Kpalimé, and for the renovation of existing prisons and facilities, as well as increasing the number of prison officers in all such establishments; and ensure that the size of cells is in line with international standards;

(d) Increase funding for basic services, including access to drinking water, at least two meals a day, hygienic conditions and basic necessities, and ensure that there is sufficient natural and artificial light and ventilation in cells; provide medical and psychosocial care for prisoners with a view to preventing deaths in detention;

(e) Evacuate Captain Lambert Adjimon, and anyone else with similar health problems, to another country for the necessary medical treatment;

(f) Take urgent measures to improve conditions in custody facilities in police stations and gendarmeries, in accordance with international standards;

(g) Carry out investigations into deaths in detention and their causes, and provide the Committee with statistical data and information on the preventive measures taken by the prison authorities in the next periodic report; and take measures to reduce violence among prisoners;

(h) Establish a central register on all detainees in the country, indicating whether they are remand prisoners or sentenced prisoners, their crime, the date on which they were taken into detention, the place where they are being held, and their age and sex;

(i) Ensure that the National Human Rights Commission and human rights organizations have free access to all places of detention, in particular for unannounced visits and private interviews with detainees.

National Human Rights Commission and designation of a national preventive mechanism

(14) The Committee notes with concern that the budget of the National Human Rights Commission has reportedly decreased by 20 per cent since 2008, preventing it from fully carrying out its functions. While noting the information that the National Intelligence Agency can no longer take in any more people, the Committee is concerned that inspections of the Agency's premises are no longer possible. While noting that the National Human Rights Commission was to be designated as the national mechanism for the prevention of torture, the Committee is concerned that the mechanism is not yet operational. It is also concerned that the President of the Commission, Mr. Kounté, had to leave the country after publication of the report, following threats made against him in an attempt to make him alter some of the outcomes of the Commission's investigation (art. 2).

The State party should:

(a) Provide the National Human Rights Commission with sufficient financial, human and material resources to fully carry out its functions in an independent, impartial and effective manner;

(b) Undertake a revision of the organic law on the remit, composition and functioning of the National Human Rights Commission to enable it to serve as the national preventive mechanism in accordance with the requirements of the Optional Protocol to the Convention, including by conducting investigations and preventing acts of torture, as well as by undertaking unannounced visits to all places of detention, including the National Intelligence Agency, and to unofficial facilities and those described as "difficult to access", as well as to psychiatric institutions and all places where people are deprived of their liberty;

(c) Take all necessary measures to ensure the physical and psychological integrity of the members of the national mechanism;

(d) Investigate the reasons that led Mr. Kounté to leave the country and take all the protection measures and provide all the guarantees that would allow the safe return to the country of Mr. Kounté and his family should he decide to come back.

Violence against women

(15) The Committee is concerned by the absence of specific legislation to punish all forms of violence against women, including domestic and sexual violence. It is also

concerned by the incidence of violence against women, including marital rape, as well as female genital mutilation and sexual abuse of women in prison. The Committee is concerned by the insufficient progress made in reducing trafficking in persons, especially women and girls, in particular for the purpose of sexual exploitation (arts. 2 and 16).

The State party should:

(a) Draft and adopt, as a matter of priority, comprehensive legislation on violence against women, making acts of sexual violence, including marital rape, and domestic violence offences in their own right in the new Criminal Code;

(b) Strengthen efforts to prevent violence against women, including domestic violence, female genital mutilation, violence in prison and trafficking in women and girls, particularly for the purpose of sexual exploitation, and encourage victims to press charges;

(c) Duly investigate, prosecute and, where applicable, punish perpetrators;

(d) Train judges, prosecutors and police officers on the strict application of the law prohibiting female genital mutilation and provide statistics on the number of complaints, investigations, prosecutions and convictions linked to violence against women and female genital mutilation;

(e) Conduct nationwide public awareness campaigns to publicize the prohibition of female genital mutilation.

Non-refoulement

(16) The Committee regrets that incomplete information was provided in the report on the procedures and measures introduced by the State party to fulfil its obligation of complying with the principle of non-refoulement pursuant to article 3 of the Convention (art. 3).

The Committee recommends that the State party should:

(a) Respect the principle of non-refoulement in accordance with article 3 of the Convention, and in particular the obligation to check whether there are substantial grounds for believing that the asylum seeker would be in danger of being subjected to torture or ill-treatment if expelled, including by systematically conducting individual interviews to evaluate the personal risk incurred by applicants;

(b) Introduce in the Criminal Code the right to an appeal with suspensive effect against expulsion decisions, and respect all guarantees in the context of asylum and expulsion procedures pending the outcome of appeals.

Training on the prohibition of torture

(17) While noting the many training sessions organized for members of the security services, including in the area of human rights, the Committee is concerned by the absence of training on the Convention against Torture, and in particular the absolute prohibition of torture, for police officers, gendarmes, prefectural guards, criminal investigation police, prison guards and law enforcement personnel such as judges, prosecutors, magistrates, prefects, subprefects and lawyers. It is also concerned that the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is not systematically followed in investigations into cases of torture or ill-treatment (art. 10).

The Committee recommends that the State party should:

(a) Implement training programmes and prepare modules on human rights to ensure that security personnel such as police officers, gendarmes, prefectural

guards, criminal investigation police and prison guards and law enforcement personnel such as judges, prosecutors, magistrates, prefects, subprefects and lawyers are fully informed of the provisions of the Convention, particularly the absolute prohibition of torture;

(b) Provide regular and systematic training on the Istanbul Protocol to medical personnel, forensic doctors, judges, prosecutors and all persons involved in the custody, interrogation and treatment of any individual subjected to arrest, detention or imprisonment, as well as to anyone else involved in investigations into cases of torture;

(c) Draft and implement a methodology for the effective evaluation of education and training programmes on the Convention against Torture and the Istanbul Protocol and their impact on reducing the number of cases of torture and ill-treatment.

Redress and rehabilitation of victims of torture

(18) The Committee is concerned that the current criminal legislation does not contain any provisions guaranteeing redress for damage caused to victims of torture. Similarly, there is no procedure in place to request redress for damages resulting from acts of torture. The Committee is also concerned that the only request for redress to date was made by the alleged organizers of the attempted coup, for whom redress was recommended in the report of the National Human Rights Commission published on 27 February 2012. The Commission also called for fair compensation for victims of torture. That recommendation has not yet been fully implemented, as victims and their lawyers were not consulted by the authorities about the compensation recommended by the National Human Rights Commission (arts. 2, 12, 13 and 14).

The State party should:

(a) Take legislative and administrative measures to ensure that victims of torture and ill-treatment benefit from all forms of redress, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, and introduce them in criminal legislation;

(b) Provide fair and adequate compensation and redress for as full a rehabilitation as possible to all the victims of torture linked to the events of 2009 described in the National Human Rights Commission's report;

(c) Provide fair and adequate redress and rehabilitation to all victims of torture and to victims of violence against women and girls, victims of trafficking in persons, and victims of prison violence.

The Committee draws the attention of the State party to its recently adopted general comment No. 3 on the implementation of article 14 (CAT/C/GC/3), which explains and clarifies the content and scope of the obligations of States parties with a view to providing full redress to victims of torture.

Corporal punishment

(19) The Committee is concerned that corporal punishment of children is prohibited in schools but not in social or family situations, where it is reported to be "common and socially acceptable provided that it remains proportionate" (art. 16).

The State party should amend its criminal legislation, particularly Act No. 2007-017 of 6 July 2007 on the Children's Code, so as to prohibit and criminalize all forms of corporal punishment of children in all environments and contexts, in accordance with international standards.

Data collection

(20) The Committee regrets the absence of comprehensive, disaggregated data on complaints, investigations, prosecutions and convictions related to acts of torture and ill-treatment attributed to security service agents, including gendarmes, police officers, prefectural guards and prison guards. Statistical data are also lacking with regard to trafficking in persons, violence against women, including domestic and sexual violence and female genital mutilation, and violence against children (arts. 2, 11–14 and 16).

The State party should collect statistical data, disaggregated by age and sex of the victim, that would be useful in monitoring the implementation of the Convention at the national level, particularly data on complaints, investigations, prosecutions and convictions related to acts of torture and ill-treatment attributed to security service agents, including gendarmes, police officers and prefectural guards and prison guards, and on deaths in detention. Statistical data should also be provided on trafficking in persons, violence against women, including domestic and sexual violence and female genital mutilation, and violence against children, as well as on the means of redress, particularly compensation and rehabilitation, from which victims have benefited.

(21) The Committee encourages the State party to consider making the declaration under article 22 of the Convention, recognizing the competence of the Committee to receive and consider communications from individuals.

(22) The Committee invites the State party to consider ratifying the core United Nations human rights instruments to which it is not yet a party, namely: the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the International Convention for the Protection of All Persons from Enforced Disappearance.

(23) The State party is requested to widely disseminate the report submitted to the Committee as well as the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(24) The Committee requests the State party to provide, by 23 November 2013, information on follow-up to the following recommendations: (a) ensure the entry into force of the new Criminal Code and the new Code of Criminal Procedure as a matter of urgency; (b) urgently improve conditions of detention; (c) strengthen or ensure respect for the legal safeguards to which detainees are entitled; and (d) prosecute and punish perpetrators of acts of torture and ill-treatment, as contained in paragraphs 8, 10 (a), (b) and (c), 11 (a), (b) and (e), and 13 (d), (e) and (f) of this document.

(25) The Committee invites the State party to present its next periodic report, which will be its third, by 23 November 2016. The Committee also invites the State party to agree, before 23 November 2013, to submit that report under the optional procedure whereby the Committee sends the State party a list of issues prior to submission of its periodic report. The replies of the State party to the list of issues would constitute its third periodic report under article 19 of the Convention.

68. Plurinational State of Bolivia

(1) The Committee against Torture considered the second periodic report of the Plurinational State of Bolivia (CAT/C/BOL/2) at its 1148th and 1151st meetings (CAT/C/SR.1148 and 1151), held on 16 and 17 May 2013, and approved the following

concluding observations at its 1165th and 1166th meetings (CAT/C/SR.1165 and 1166), held on 29 and 30 May 2013.

A. Introduction

(2) The Committee welcomes the second periodic report of Bolivia, although it regrets that the report was submitted seven years after it was due and that it conforms only partially to the general reporting guidelines (CAT/C/14/Rev.1).

(3) The Committee appreciates the State party's written replies (CAT/C/BOL/Q/2/Add.2) to its list of issues (CAT/C/BOL/Q/2/Add.1), along with the supplementary information provided during the consideration of the periodic report. It also appreciates the dialogue held with the State party's delegation, although it regrets that some of its questions went unanswered.

B. Positive aspects

(4) The Committee commends the State party for having made the declarations provided for in articles 21 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 14 February 2006 and for having ratified the Optional Protocol to the Convention on 23 May 2006.

(5) The Committee notes with satisfaction that, since its consideration of the initial report in May 2001, the State party has ratified or acceded to the following international human rights instruments:

(a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (3 June 2003);

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (22 December 2004);

(c) The International Convention for the Protection of All Persons from Enforced Disappearance (17 December 2008);

(d) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto (16 November 2009).

(6) The Committee welcomes the amendments made in the State party's legislation, in particular:

(a) The promulgation of the Constitution, which establishes the overall framework for the protection of human rights, notably in title II, which deals with fundamental rights and guarantees, on 9 February 2009;

(b) The promulgation of Act No. 358 of 17 April 2013, whereby the State party approved the decision to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

(c) The promulgation of Comprehensive Act No. 348 of 27 February 2013, which provides guarantees for women's right to a life free of violence;

(d) The promulgation of Comprehensive Anti-Trafficking in Persons Act No. 263 of 31 July 2012;

(e) The promulgation of Refugee Protection Act No. 251 of 20 June 2012 and its implementing regulations, which were approved by Supreme Decree No. 1440 of 19 December 2012, and Migration Act No. 370 of 8 May 2013;

(f) The Jurisdiction Demarcation Act (Act No. 073) of 29 December 2010;

- (g) The Anti-Racism and Anti-Discrimination Act (Act No. 045) of 8 October 2010;
- (h) The Judiciary Act (Act No. 025) of 24 June 2010;
- (i) Act No. 3760 of 7 November 2007, which incorporates the United Nations Declaration on the Rights of Indigenous Peoples into Bolivian law;
- (j) The adoption of Act No. 2640 of 11 March 2004, which provides for special compensation for victims of political violence during periods of unconstitutional government, as amended by Act No. 238 of 30 April 2012, and Act No. 3955 of 6 November 2008, which provides for benefits for victims of the events of February, September and October 2003.

(7) The Committee also commends the State party upon the efforts it has made to modify its policies and procedures so that they will afford greater protection for human rights and facilitate the application of the Convention. It also notes that the State party's efforts in this regard have included the adoption of the National Human Rights Action Plan for 2009–2013 by means of Supreme Decree No. 29851 of 10 December 2008.

C. Principal subjects of concern and recommendations

Definition of torture and the crime of torture

(8) The Committee is concerned that, its previous concluding observations (A/56/44, paras. 89–98) notwithstanding, the State party has not yet established a definition of the crime of torture that is in conformity with the Convention. While it takes note of the existence of a draft bill that would amend article 295 (ill-treatment and torture) of the Criminal Code, the Committee is of the view that the wording of that draft bill is seriously flawed, since it does not include the purpose of the conduct in question in the basic definition of the offence but instead classifies the reasons for inflicting torture as aggravating circumstances. The draft bill, as it now stands, does not cover acts of torture carried out in order to intimidate or coerce a third person or acts committed by a person other than a public official who is acting in an official capacity (arts. 1 and 4).

The Committee reiterates its earlier recommendation (para. 97 (a)) to the effect that the State party should incorporate a definition of torture into its body of criminal law that includes all the elements set forth in article 1 of the Convention. These elements include a clear definition of intent, of aggravating circumstances, of attempted torture, of acts of torture committed to intimidate or coerce a person or a third person and of acts of torture committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The Committee would like to draw the State party's attention to its general comment No. 2 (2007), on the application of article 2 by States parties, which underscores the preventive effect of having the crime of torture defined as an offence in its own right (CAT/C/GC/2, para. 11).

The State party should also ensure that these offences are punishable by appropriate penalties which take into account their grave nature, as stipulated in article 4, paragraph 2, of the Convention.

Fundamental procedural safeguards

(9) The Committee takes note of the information provided by the State party's delegation about the rules and regulations governing prisoners' rights during the initial stages of their detention. However, it regrets the lack of information on the measures and procedures in place to ensure that, in practice, all persons deprived of their liberty are actually able to exercise those rights. Nor has the State party explained what obstacles it has

encountered in its efforts to give effect to the Committee's earlier recommendation that a national public register of persons deprived of their liberty be established that indicates the authority which ordered such deprivation, the grounds for doing so and the type of proceedings to be instituted (A/56/44, para. 97 (c)). The Committee is concerned by the fact that article 296 of the Code of Criminal Procedure requires police officers to enter no more than the place, date and time of arrest in the register (art. 2).

The State party should:

(a) **Take effective steps to ensure that persons who are arrested actually have the benefit of all fundamental legal safeguards from the very outset of their detention. These safeguards include the right to be informed of the reasons for the arrest, access to a lawyer, the right to contact family members or other persons of the detainee's choice and the right to have an independent medical exam performed without delay. The Committee encourages the State party to continue its efforts to expand and improve the coverage of the National Public Defence Service (SENADEP);**

(b) **Carry out monitoring and inspections on a systematic basis in order to ensure fulfilment of the obligation to duly record the information regarding each arrest that is outlined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988).**

Complaints of torture and ill-treatment

(10) Information provided by the State party indicates that the Bolivian police force dealt with 42 individual cases (28 involving men and 14 involving women) of ill-treatment or torture (article 295 of the Criminal Code) between 2001 and 2012, while the Attorney General's Office registered 36 reports (31 involving men and 5 involving women) between March 2006 and February 2013. The Directorate-General of Prisons registered just four individual cases of torture or ill-treatment involving male juveniles at the rehabilitation centre in Qaluama, Viacha, during the reporting period. These figures differ from those provided by the Ombudsman's Office, whose report to the Committee states that it dealt with a total of 3,784 complaints of torture or ill-treatment between 2007 and 2012 and issued 91 decisions in that connection (arts. 2, 12, 13, 16).

The State party should establish a special independent complaints mechanism for receiving reports of torture and ill-treatment so that such reports can be dealt with swiftly and impartially. It should also examine the internal complaints system available to persons deprived of their liberty in order to determine how effective it is.

The Committee reiterates its earlier recommendation (para. 97 (e)) to the effect that the State party should set up a centralized public register of complaints of torture that includes information on the corresponding investigations, trials and criminal or disciplinary penalties imposed.

Investigations and legal proceedings

(11) The Committee is concerned by the delays that have occurred in the criminal investigation and prosecution of most of the individual cases of ill-treatment, torture, excessive use of force and death in custody that were drawn to the State party's attention in the list of issues (CAT/C/BOL/Q/2/Add.1, paras. 22 and 27). The Committee shares the concern of the Ombudsman's Office about the possibility that the prosecution of some of these crimes might be time-barred. The Committee also regrets that it has not received detailed information on the outcome of the investigations, on related legal or disciplinary proceedings or on the sentences or disciplinary penalties imposed on persons who committed acts of torture during the period covered by the report. In the absence of this

information, the Committee finds itself unable to evaluate the actions of the State party in the light of article 12 of the Convention (arts. 2, 12 and 16).

The State party should:

(a) **Ensure that all reports of torture or ill-treatment are investigated promptly and impartially;**

(b) **Promptly undertake a thorough, effective investigation on its own initiative whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed;**

(c) **Ensure that persons suspected of having committed acts of torture or ill-treatment are suspended from their duties immediately and remain so throughout the investigation, particularly if there is any risk that they might otherwise be in a position to repeat the alleged act or interfere with the investigation;**

(d) **Prosecute persons suspected of having committed torture or ill-treatment and, if they are found guilty, ensure that they receive sentences that are commensurate with the gravity of their acts and that their victims are afforded appropriate redress. The State party should provide up-to-date statistics in this respect.**

The Committee recommends that the State party ensure that acts of torture are not subject to any statute of limitations.

Military jurisdiction

(12) The Committee applauds the Plurinational Constitutional Court's decision (Decision No. 2540/2012 of 21 December 2012) to resolve the jurisdictional dispute regarding the case of Second Lieutenant Grover Beto Poma Guanto by referring that case to a civilian court. The Committee notes, however, that, in its decision, the Court urged the Plurinational Legislative Assembly to amend the military penal provisions set forth in Decree-Law No. 13321 of 22 January 1976 so that they would be compliant with the Constitution and with international human rights treaties under which the State party has an obligation to ensure that military courts do not have jurisdiction over cases involving human rights violations (art. 2, paras. 1 and 3, and arts. 12, 13 and 16).

The Committee urges the State party to amend its Military Criminal Code, Code of Military Criminal Procedure and the Military Justice Organization Act in order to establish that military courts do not have jurisdiction over cases involving human rights violations, including acts of torture and ill-treatment committed by members of the armed forces.

The State party should ensure that the conduct of members of the armed forces who are suspected of having committed acts of ill-treatment or torture against military personnel is thoroughly investigated, that persons suspected of committing such acts are tried in civilian courts and that, if found guilty, they are punished appropriately.

Efforts to combat impunity and to provide redress for past human rights violations

(13) The Committee takes note with interest of the existence of a draft bill concerning the establishment of a truth and justice commission to investigate human rights violations committed in Bolivia in the period 1964–1982. It takes note with concern, however, of the delays and scant progress made in investigating serious human rights violations committed during the period when the country was under military rule (1964–1982) and in prosecuting the persons responsible for them. The Committee is also concerned that, despite the establishment of the Inter-Agency Council of Inquiry on Enforced Disappearances in 2003, the whereabouts of many of the people who disappeared between 1980 and 1982 remain

unknown. It is concerned, in particular, about the armed forces' refusal to declassify records that could help investigators to determine the fate and discover the whereabouts of these people (arts. 1, 4, 12, 13 and 16).

The State party should:

(a) **Ensure that sufficient resources are made available to permit impartial, effective investigations to be conducted and to bring suspects to trial;**

(b) **Take steps to complete the work of exhuming and identifying the remains of disappeared persons;**

(c) **Adopt the necessary measures to provide access to all civilian and military files that may contain documentation relevant to ongoing investigations and documentation that could be of assistance in determining the fate and discovering the whereabouts of disappeared persons.**

(14) The Committee is concerned by the fact that such a large percentage of the applications for redress submitted in connection with acts of torture committed between 1964 and 1982 have been turned down. The State party has indicated that only 558 of the 3,306 applications it received have been accepted for processing. The Committee takes note with concern of reports from non-governmental organizations (NGOs) which indicate that administrative hurdles exist that make it difficult for victims to secure sufficient, effective and full redress. The Committee also observes that the 488 payments made thus far correspond to just 20 per cent of the total amount of compensation anticipated and that the remainder is to be paid out as donations are received from the "private sector, foreign donors and international agencies", as provided for in article 16 (b) of Act No. 2640 (art. 14).

The State party should take the necessary steps to ensure that victims of torture or ill-treatment receive redress, including fair and adequate compensation and the means for as full a rehabilitation as possible. The Committee would like to direct the State party's attention to its general comment No. 3 (2012), on the implementation of article 14 of the Convention by States parties (CAT/C/GC/3), and, in particular, to paragraphs 37 through 43, which deal with obstacles to the exercise of the right to redress and establish that States parties have an obligation to ensure that the right to redress is effective and that a State party may not invoke its level of development as a justification for failing to provide a victim of torture with redress.

Violence against women

(15) While taking note of recent advances in the development of laws and regulations, the Committee is concerned by reports regarding the persistence of gender violence in the State party, particularly domestic and sexual violence, which in many cases goes unreported. The Committee regrets that, while information has been provided concerning numerous acts of gender violence, including cases of femicide, the State party has not furnished the requested statistics on the number of complaints filed, convictions handed down or penalties imposed during the reporting period or on the prevalence of such violence in respect of indigenous and Afro-Bolivian women (arts. 1, 2, 4, 12, 13 and 16).

The Committee urges the State party to:

(a) **Investigate, prosecute and punish the persons who commit such acts;**

(b) **Adopt effective measures to assist victims to prepare and file complaints;**

(c) **Ensure that victims receive effective protection by guaranteeing their access to shelters and health-care services;**

(d) Expedite the creation of special investigative courts to deal with cases of gender violence, as provided for in Comprehensive Act No. 348;

(e) Strengthen efforts to raise awareness and educate public officials who work directly with victims and the general public about gender violence;

(f) Provide detailed information on the incidents of violence against women that have occurred during the reporting period, including disaggregated data on the number of complaints, investigations, trials, sentences and measures instituted to provide victims with redress.

Child abuse and sexual violence against children

(16) The Committee has received reports on the severity of the problem of child abuse and sexual violence against minors existing in Bolivian educational institutions. Although it notes that the delegation has said that such incidents are isolated cases, the Committee is concerned by the fact that official statistics that could be used to evaluate the situation in this respect have not been made available. The Committee also regrets that so little information was provided by the delegation on the obstacles that hinder victims and their families from gaining access to justice. The Committee will be closely following the progress of the petition submitted to the Inter-American Commission on Human Rights concerning the case of the girl child Patricia Flores (arts. 2 and 16).

The Committee urges the State party to take steps to prevent the sexual abuse of children in its schools, to mount an appropriate response to cases of such abuse and, in particular, to:

(a) Urge all the relevant authorities to investigate such abuses and to bring the suspected perpetrators to trial;

(b) Set up effective complaints mechanisms and mechanisms for the provision of comprehensive assistance to victims and their families that will afford them protection, access to justice and redress of the harm suffered;

(c) Ensure that victims have access to specialized health-care services in the areas of family planning and the prevention and diagnosis of sexually transmitted diseases;

(d) Develop ongoing awareness-raising and training programmes that focus on this problem for teachers and other civil servants involved in victim protection;

(e) Compile a broader range of data on this issue.

The State party should ensure that the persons suspected of having murdered the child Patricia Flores are brought to trial and, if found guilty, punished appropriately. It should also make certain that her family members receive full and effective redress.

Refugees, non-refoulement

(17) The Committee is aware of the efforts made by the State party to establish an appropriate legal and institutional framework for protecting refugees and asylum seekers present in the country. However, it notes that, prior to the entry into force of Act No. 251 in 2012, in some cases the State party engaged in practices that were at odds with the principle of non-refoulement. The Committee also observes that the transitional provision of Supreme Decree No. 1440 establishes that applications from stateless persons are, on a provisional basis, to be processed by the National Commission for Refugees (CONARE) (arts. 2 and 3).

The Committee reiterates its earlier recommendation (para. 97 (i)) to the effect that the State party should adopt adequate measures to ensure that no person can be

expelled, returned or extradited to another State where there are substantial grounds for believing that that person would face a personal and foreseeable risk of being subjected to torture. In particular, the State party should give clear instructions to its immigration officials and other law enforcement officers, expand the curriculum of its mandatory training courses on asylum and the protection of refugees, and ensure that CONARE takes prompt action, in accordance with its terms of reference, to ensure that the principle of non-refoulement is upheld.

The State party should also:

(a) Establish regulations to govern the procedures used to determine whether or not a person is stateless and the procedures relating to the determination of migrant status, documentation and the protection of such persons in order to ensure that the State party is fulfilling the international commitments assumed under the Convention relating to the Status of Stateless Persons (1954). The State party should also grant its nationality, in accordance with its national laws and subject to the criteria set forth in the Convention on the Reduction of Statelessness (1961), to persons who were not born on Bolivian territory but who would otherwise be stateless. The State may request technical advisory services, as needed, from the Office of the United Nations High Commissioner for Refugees (UNHCR) in this connection;

(b) Establish effective mechanisms for the identification of asylum seekers, stateless persons and other individuals in need of international protection and for their referral to CONARE and other authorized institutions. The State party should take particular care to ensure that people are not wrongfully turned back at the border and that victims of trafficking and other persons in need of international protection are identified, especially in the context of mixed migration flows.

Prison conditions

(18) The Committee is alarmed by the extent of overcrowding in the State party's jails. The delegation has indicated that the mean rate of overcrowding in the prison system is 193 per cent, with a total prison population of 14,272 inmates being held in facilities built to house 4,864. While taking note of the fact that new facilities are being built and of Presidential Decree No. 1445, which deals with pardons, of 22 December 2012, the Committee is of the view that the impact of these measures will be minimal, given the sharp increase in the prison population in recent years and the large percentage of the prison population that is made up of people awaiting trial (83.3 per cent). The Committee regrets that it has not received the additional information that it requested on progress in the implementation of the National Human Rights Action Plan in this area. Nor has it received the information requested from the State party about the riots and disturbances that frequently occur in the country's jails as prisoners protest about failures to pay the daily food allowance, demand better medical care and a reduction in overcrowding, and protest against decisions taken by prison administrators on such issues as the restriction of visiting hours or the transfer of minors from rehabilitation centres. In addition, the Committee is concerned by reports describing the power wielded by organized gangs of prisoners in some correctional facilities, cases of abuse and extortion, and violent incidents among inmates. It is also concerned by the fact that remand prisoners are not always held separately from convicted prisoners and by the existence of mixed prison facilities in which female inmates have become victims of sexual violence, as acknowledged by the delegation of the State party (arts. 2, 11 and 16).

The Committee urges the State party to take the necessary steps to ensure that prison conditions are in keeping with the Standard Minimum Rules for the Treatment of Prisoners approved by the Economic and Social Council in its resolution 663 C

(XXIV) of 31 July 1957 and its resolution 2076 (LXII) of 13 May 1977 and, in particular, to:

(a) Redouble its efforts to relieve overcrowding in the prison system by using non-custodial measures in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), as adopted by the General Assembly in its resolution 45/110 of 14 December 1990, and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), as adopted by the General Assembly in its resolution 65/229 of 21 December 2010;

(b) Increase the level of resources allocated for inmates' meals and for medical and health care as a matter of urgency;

(c) Proceed with the work being done to improve and expand prison facilities in order to remodel those facilities that do not meet international standards;

(d) Establish the full authority of the State in all correctional facilities;

(e) Take steps to prevent inter-prisoner violence, including sexual violence, and investigate all such incidents so that the suspected perpetrators may be brought to trial and victims may be protected;

(f) Ensure that different categories of prisoners are housed in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.

Deaths in custody

(19) According to the State party, 85 prison inmates died in police stations between January 2006 and May 2010. The Committee is disturbed by the large number of deaths occurring in custody and by the fact that it has not received information on the causes of death or on the outcome of the corresponding investigations. The Committee also finds it regrettable that it does not have data on mortality rates in places of detention, including prisons, for the period from 2010 to 2012 (arts. 2, 11 and 16).

The Committee urges the State party to promptly undertake thorough, impartial investigations into all deaths of persons held in custody and to carry out the corresponding autopsies. The State party should also assess any possibility that prison officers or other staff might bear responsibility for such deaths and, if this proves to be the case, to punish those responsible appropriately and to provide compensation to the victims' families.

The State party should supply detailed information on the causes of death recorded for persons who have died in custody, disaggregated by place of detention, sex, age, ethnic origin and cause of death.

Monitoring and inspection of detention centres

(20) While recognizing that, by law, the Ombudsman's Office has unhindered access to the country's prisons and other places of internment, the Committee does not have information on the adequacy of the measures adopted by the State party in response to the recommendations made by the Office in connection with its visits. Nor does the Committee have information on what the State party has done to ensure effective, independent oversight of detention centres by other agencies (arts. 11 and 12).

The State party should:

(a) **Take the necessary steps to support the work of the Ombudsman's Office in detention centres and to ensure that its recommendations are given full effect;**

(b) **Build NGO oversight capacity and take the necessary steps to enable NGOs to visit places of detention regularly.**

The Optional Protocol and a national preventive mechanism

(21) The Committee regrets that the State party has not yet established a national mechanism for the prevention of torture as provided for by the Optional Protocol to the Convention. It takes note of the fact that the delegation has informed it that the Ministry of Justice has prepared a new draft bill that would designate the Ombudsman's Office as the national preventive mechanism. The Committee also notes, however, that the text of that draft bill does not define the terms of reference or the areas of authority of the mechanism, provides that the corresponding regulations are to be established by the Ombudsman's Office and, with respect to the mechanism's financial autonomy, simply says that "the Ministry of Economic Affairs and Public Finance shall allocate the necessary resources ... within the available resources" (art. 2).

The Committee urges the State party to complete the process of establishing or designating the national preventive mechanism in accordance with the Optional Protocol to the Convention and in keeping with the Guidelines on National Preventive Mechanisms (CAT/OP/12/5, paras. 7, 8 and 16). The State party should ensure that the national preventive mechanism is endowed with sufficient resources to do its work effectively on a fully independent basis.

The Committee encourages the State party to authorize the publication of the report on the visit to Bolivia made by members of the Subcommittee against Torture in 2008, along with the Bolivian authorities' response to the Subcommittee's recommendations, dated 27 October 2011.

Training

(22) While taking note of the special module devoted to the Convention that has been included in training programmes for the armed forces, the Committee is concerned by the fact that the instructional programmes for police officers do not include training that deals specifically with the provisions of the Convention. Nor does the training provided to judges, prosecutors and medical personnel who work with prisoners specifically cover methods of improving the detection and documentation of the physical and psychological after-effects of torture (art. 10).

The State party should:

(a) **Revise its training programmes in order to ensure that law enforcement officers and prison staff are fully aware of the provisions of the Convention, that violations of the Convention are not tolerated and are investigated, and that the persons committing such violations are brought to justice;**

(b) **Ensure that training programmes for judges, prosecutors, forensic physicians and other medical personnel who work with prisoners specifically cover the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);**

(c) **Develop and apply a methodology for evaluating the effectiveness of training programmes in reducing the number of cases of torture and ill-treatment.**

Illegal abortions

(23) The Committee takes note of the explicit recognition of sexual and reproductive rights accorded in article 66 of the Constitution and of article 20.I.7 of Act No. 348, which sets forth the State party's obligation to "respect the decisions taken by women victims of violence in exercising their sexual rights and their reproductive rights in accordance with the laws and regulations in force". However, the Committee notes with concern that, under article 266 (permissible abortions) of the Criminal Code, rape victims who decide to interrupt their pregnancy must obtain authorization from a judge in order to do so. Information made available to the Committee regarding the use of the right to conscientious objection by the judiciary indicates that this requirement constitutes an insurmountable obstacle in many cases, and women in this situation are therefore forced to undergo illegal abortions, with all the health risks that this entails (arts. 2 and 16).

The State party should ensure that rape victims who voluntarily decide to interrupt their pregnancy have access to safe abortions. To this end, the State party should do away with any unnecessary obstacle in that regard. The Committee refers the State party to the recommendations made to it by the Committee on the Elimination of Discrimination against Women (CEDAW/C/BOL/CO/4, paras. 42 and 43). The Committee against Torture urges the State party to evaluate what effects the current highly restrictive laws on abortion have on women's health.

Forced labour and servitude

(24) The Committee regrets that it has received very little information on the implementation of the transitional interministerial plan to defend the rights of the Guaraní people or on progress in eradicating forced labour and servitude in Guaraní communities (arts. 2 and 16).

The Committee urges the State party to redouble its efforts to eradicate forced labour and servitude and to continue its efforts to implement the agreements reached between government authorities and representatives of the Guaraní people in this regard.

Other issues

(25) The Committee invites the State party to deposit an instrument of ratification for the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, with the Secretary-General of the United Nations.

(26) The Committee invites the State party to disseminate its report to the Committee and these concluding observations widely, in all the appropriate languages, by means of official websites, the media and NGOs.

(27) The Committee requests the State party to furnish it with information by 31 May 2014, at the latest, on the action it has taken in response to the recommendations that it: (a) consolidate or strengthen fundamental legal safeguards for persons in custody; (b) promptly conduct impartial, effective investigations; and (c) prosecute persons suspected of committing torture or ill-treatment and punish those found guilty of having done so. These recommendations are set forth in paragraphs 9 (b), 11 (d) and 13 (c) herein. In addition, the Committee would like to be informed about the measures adopted to prevent and deal appropriately with cases of sexual abuse of children in educational institutions. The corresponding recommendation is set forth in paragraph 16 (a) herein.

(28) The Committee invites the State party to submit its third periodic report by 31 May 2017. To that end, it invites the State party to agree, by 31 May 2014, to use the optional reporting procedure, whereby the Committee would transmit a list of issues to the State

party prior to the submission of its report. As provided for by article 19 of the Convention, the State party's replies to that list of issues would then constitute its next periodic report.

69. Estonia

(1) The Committee against Torture considered the fifth periodic report of Estonia (CAT/C/EST/5) at its 1154th and 1157th meetings, held on 22 and 23 May 2013 (CAT/C/SR.1154 and CAT/C/SR.1157), and adopted the following concluding observations at its 1166th meeting (CAT/C/SR.1166) held on 30 May 2013.

A. Introduction

(2) The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for submitting its fifth periodic report in a timely manner by providing replies to the list of issues (CAT/C/EST/Q/5), which focuses the examination of the report as well as the dialogue with the delegation.

(3) The Committee also appreciates the open and constructive dialogue with the high-level delegation of the State party and the detailed supplementary information provided.

B. Positive aspects

(4) The Committee welcomes that, since the consideration of the fourth periodic report, the State party ratified or acceded to the following international instruments:

(a) The Convention on the Rights of Persons with Disabilities, on 30 May 2012;

(b) The 1973 ILO (International Labour Organization) Convention No. 138 concerning Minimum Age for Admission to Employment in 2007.

(5) The Committee welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including:

(a) Amendments to the Penal Code in April 2012 which criminalize trafficking in human beings as a distinct provision in the Penal Code;

(b) Amendments to the Code of Criminal Procedure which expedite judicial proceedings, enhance the protection of minors and strengthen the rights of detainees, that entered into force on 1 September 2011;

(c) The entry into force on 1 January 2009 of the Equal Treatment Act which ensures the right to effective remedy to victims of direct and indirect discrimination and harassment;

(d) An amendment to Section 133 of the Penal Code that entered into force in March 2007 which improves the definition of the elements of enslavement.

(6) The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) The adoption in 2010 of the final implementation report on the Government Development Plan for Combatting Trafficking in Human Beings 2006–2009;

(b) The adoption in April 2010 of the Development Plan for the Reduction and the Prevention of Violence 2010–2014 and of the National Action Plan on Domestic Violence for the period 2008–2011;

(c) The adoption in 2010 of a new police regulation on how to treat victims of domestic violence and how to investigate and record cases of domestic violence;

(d) The adoption in 2010 by Parliament of the Guidelines for Development of Criminal Policy until 2018;

(e) The launching in 2009 of the programme funded by the European Fund for the Integration of Third-Country Nationals to offer language courses for all persons “with undetermined citizenship” or citizens of third countries;

(f) The operation since 2008 by the Estonian Women’s Shelters Union of the nationwide free helpline for women experiencing violence;

(g) The adoption on 14 December 2007 of an Integration Strategy and of the State Integration Programme for 2008–2013;

(h) The operation since 2004 of a helpline for the prevention of human trafficking and for counselling, financed since 2006 by the Ministry of Social Affairs and run by Living for Tomorrow, a non-governmental organization.

C. Principal subjects of concern and recommendations

Definition of torture

(7) While taking note of the delegation’s assertion that Estonia intends to amend its Penal Code to bring it in line with the Convention, and recalling its previous concluding observations (para. 8), the Committee is concerned that the definition of torture in section 122 of the Penal Code does not reflect all of the elements contained in article 1 of the Convention, such as infliction of mental pain (arts. 1 and 4).

The Committee recommends that the State party amend its Penal Code to include a definition of torture in conformity with the Convention which covers all the elements contained in article 1 of the Convention.

Penalties for acts of torture

(8) Recalling its previous concluding observations (para. 13), the Committee is concerned that the penalty in the Penal Code for acts of torture of up to five years of imprisonment is not commensurate with the grave nature of the crime. It is also concerned by the discrepancy between the penalties for torture and those for trafficking in human beings, which is also a form of torture, of up to 15 years’ imprisonment, and that sentences served for acts of torture are usually of approximately one-and-a-half years according to the representatives of the State party (arts. 2 and 4).

The Committee recommends that the State party amend its Penal Code to include penalties for acts of torture which take into account their grave nature, in accordance with article 4, paragraph 2, of the Convention and taking into consideration the Committee’s general comment No. 2.

Fundamental legal safeguards for persons deprived of their liberty

(9) The Committee is concerned that persons deprived of their liberty may not enjoy all fundamental legal safeguards against torture and ill-treatment from the very outset of their detention, in particular the right to a lawyer and the right to inform a person of their own choice. It is also concerned by reports that detention registers in police stations are not always kept in a regular manner (arts. 2, 12, 13 and 16).

The State party should:

(a) **Take effective measures to guarantee that all persons deprived of their liberty are afforded, by law and in practice, all the fundamental legal safeguards from the outset of their detention, namely, the rights to be informed of the reasons for their arrest and of the charges against them; to be informed of their rights; to have prompt access to an independent lawyer and, if necessary, to legal aid; to inform a person of their own choice; to receive a medical examination by an independent doctor, if possible, a doctor of their choice; to be brought before a judge without delay; and to**

have the legality of their detention examined by a court, in accordance with international standards;

(b) Ensure that the State party monitors the provision of safeguards by all public officials to persons deprived of their liberty, including by documenting relevant information in detention registers, and ensuring regular monitoring of officials' compliance with these documentation requirements;

(c) Ensure that any public official who denies fundamental legal safeguards to persons deprived of their liberty is disciplined or prosecuted;

(d) Provide data to the Committee on the number of cases in which public officials have been disciplined for such conduct and the nature of the discipline.

Charges under the Code of Criminal Procedure

(10) The Committee is concerned that the Code of Criminal Procedure has not been amended to allow courts to continue criminal proceedings at their own discretion if the prosecution drops the charges (arts. 2, 12 and 13).

The Committee reiterates its recommendation that the State party consider revising its Code of Criminal Procedure in order to regulate the powers of prosecution vis-à-vis the judiciary so that withdrawal of charges by the prosecution does not result in termination of criminal proceedings or acquittal but is decided by a court.

Use of force

(11) The Committee is concerned by information that no prosecutions resulted from official applications to the Chancellor of Justice or the Public Prosecutor's Office in relation to allegations of brutality and excessive use of force by law enforcement personnel during the events which took place in Tallinn in April 2007. It is further concerned by instances of "excessive" use of force by law enforcement officers, that the State party's investigation into the events were inadequate, and that the authorities did not made an attempt to obtain additional evidence, be it by questioning the applicants in person or by interviewing the witnesses, as found by the European Court of Human Rights (arts. 2, 10, 12, 13, 14 and 16).

The State party should:

(a) Conduct prompt, thorough, effective and impartial investigations into all allegations of torture, ill-treatment and excessive use of force by law enforcement personnel, and prosecute and sanction officials found guilty of such offences with appropriate penalties;

(b) Establish a specific registry for allegations of torture and cruel, inhuman or degrading treatment and punishment and establish an independent mechanism to investigate allegations of torture and ill-treatment;

(c) Ensure that all victims of torture and ill-treatment obtain redress and have a legally enforceable right to fair and adequate compensation, including the means for the fullest possible rehabilitation, in accordance with article 14 of the Convention;

(d) Ensure that law enforcement officials receive training on the absolute prohibition of torture and on international standards on the use of force and firearms, including on the liabilities in cases of excessive use of force;

(e) Ensure that law enforcement personnel are trained in professional techniques which minimize any risk of harm to apprehended persons.

Domestic violence

(12) Recalling its previous concluding observations (para. 21) and the new plans and guidelines for reducing such violence, the Committee remains concerned by the continued absence of specific legislation to prevent and combat domestic violence and the fact that domestic violence is not a distinct crime in the Penal Code (arts. 1, 2, 4, 12, 13, 14 and 16).

The State party should:

(a) **Adopt, as a matter of priority, comprehensive legislation on violence against women that would establish domestic violence and marital rape as specific criminal offences;**

(b) **Ensure the effective implementation of the Development Plan for the Reduction and the Prevention of Violence 2010–2014;**

(c) **Establish an effective and independent complaints mechanism for victims of domestic violence;**

(d) **Ensure that all allegations of domestic violence, including sexual violence and violence against children, are registered by the police, that all allegations of violence are promptly, impartially and effectively investigated, and that perpetrators prosecuted and punished;**

(e) **Ensure that victims of domestic violence benefit from protection, including restraining orders, and have access to medical and legal services, including counselling, and to rehabilitation as well as to safe and adequately funded shelters;**

(f) **Sensitize and train law enforcement personnel in investigating and prosecuting cases of domestic violence;**

(g) **Compile disaggregated data on the number of complaints, investigations, prosecutions and sentences handed down for acts of domestic violence, on the provision of redress to the victims and on the difficulties experienced in preventing such acts; and provide such data to the Committee.**

Trafficking

(13) While welcoming amendments to the Penal Code in relation to trafficking in human beings, the Committee is concerned that the State party remains a source, transit and destination country for human trafficking, both for forced prostitution and forced labour purposes (arts. 1, 2, 4, 10, 12, 13, and 14).

The State party should:

(a) **Vigorously enforce the new anti-trafficking law and take effective measures to prevent human trafficking and increase protection to its victims;**

(b) **Promptly, thoroughly, effectively and impartially investigate, prosecute and punish trafficking in persons and related practices;**

(c) **Provide redress to victims of trafficking, including legal, medical and psychological aid and rehabilitation, as well as adequate shelters and assistance in reporting incidents of trafficking to the police;**

(d) **Prevent the return of trafficked persons to their countries of origin where there are substantial grounds to believe that they would be in danger of torture, and enhance international cooperation with regard to preventing and punishing trafficking;**

(e) **Provide specialized training to the police, prosecutors and judges on effective prevention, investigation, prosecutions and punishment of acts of trafficking, and inform the general public of the criminal nature of such acts;**

(f) **Compile disaggregated data on the number of complaints, investigations, prosecutions and sentences handed down for acts of trafficking, on the provision of redress to the victims and on the difficulties experienced in preventing such acts; and provide this information to the Committee.**

National human rights institution

(14) Recalling its previous concluding observations (para. 11) which noted that the Chancellor of Justice had been designated as the National Prevention Mechanism, inspects places of detention and has issued reports, the Committee is nonetheless concerned that there has not been an effort for it or another institution to be accredited as a national human rights institution by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (art. 2).

The State party should consider seeking accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights for the Chancellor of Justice or another institution to serve as a national human rights institution and provide it with adequate resources to carry out its mandate.

Situation of asylum seekers

(15) The Committee is concerned:

(a) That persons seeking asylum may not enjoy all the procedural guarantees, including the right of appeal against negative decisions, including in cases where Estonian border authorities reportedly reject, within the admissibility or accelerated procedure, all asylum applications filed by persons who have arrived in Estonia via the Russian Federation;

(b) That the risk of refoulement exists with regard to decisions under the accelerated procedure made by border guards who are not trained, equipped or resourced to conduct personal interviews, examine applications for international protection and undertake the legal analysis of the asylum claims;

(c) By the conditions prevailing in the Harku Expulsion Centre for irregular migrants, such as poor food, routine handcuffing during transfers to hospitals or courts, disproportionate use of force and verbal abuse by staff.

The State party should:

(a) **Ensure that all persons seeking asylum in the State party, including at its border-crossing points, enjoy all procedural guarantees, including the right of appeal against negative decisions, as well as access to legal assistance and interpreters;**

(b) **Ensure that decisions concerning asylum, including under the accelerated procedure, are taken by the Police and Border Guard Board (formerly the Citizenship and Migration Board) or a determining authority which meets relevant international criteria;**

(c) **Take immediate steps to improve conditions at the Harku Expulsion Centre so that they conform to international standards, and provide training and instruction to prison personnel regarding the use of force and the prohibition of verbal abuse.**

Training

(16) The Committee is concerned that no specific methodologies exist to evaluate the efficiency of training or educational programmes for law enforcement and medical personnel, judges and prosecutors, as well as persons working with migrants and asylum seekers on the absolute prohibition of torture and ill-treatment (art. 10).

The State party should:

(a) **Develop specific methodologies to evaluate the training and educational programmes provided on the absolute prohibition of torture and ill-treatment to law enforcement and medical personnel, judges and prosecutors, as well as persons working with migrants and asylum seekers;**

(b) **Ensure that the Istanbul Protocol is made a mandatory part of the training for all medical professionals involved in the documentation and investigation of allegations of torture and ill-treatment in order to permit, inter alia, the proper diagnosis of signs of torture.**

Conditions of detention

(17) The Committee is concerned by information suggesting that conditions in some prisons and police arrest houses do not meet international standards, including with regard to infrastructure, hygiene and sanitary conditions, hot water, heating, windows, ventilation, lighting, furniture and living space. It is concerned that unsatisfactory conditions have also been reported by the Chancellor of Justice in some new or renovated facilities. The Committee is particularly concerned by the use of cells with unsuitable conditions in some police stations. It is also concerned by the failure of the prison authorities to ensure the right of prisoners to have their complaints about the conditions of detention heard (arts. 2, 11, 12, 13 and 16).

The State party should:

(a) **Take immediate steps to improve the material conditions in all prisons and police arrest houses, including newly built and renovated ones, with a view to improving the infrastructure, hygiene and sanitary conditions, hot water, heating, ventilation, lighting and furniture, and repairing broken windows, in accordance with international standards;**

(b) **Take steps to ensure minimum international standards of at least four square meters of living space for each detainee;**

(c) **Ensure that the construction of planned additional prisons and the expansion and renovation of existing places of detention continue according to schedule;**

(d) **Ensure the existence of impartial mechanisms to deal with the complaints of prisoners about their conditions of detention and provide effective follow-up to such complaints.**

Categorization of prisoners according to their language proficiency

(18) The Committee is concerned by reports that since 2011, prisoners' name badges include information about their proficiency in the Estonian language, which some consider to be discriminatory and humiliating (arts. 2, 11 and 16).

The Committee recommends that the State party put an end to any discrimination against prisoners on the basis of their proficiency in the Estonian language and ensure that prisoners are not penalized with regard to administrative or disciplinary matters if they do not have a sufficient understanding of the language. Translation services

should be provided for prisoners with an insufficient knowledge of the Estonian language.

Use of restraints

(19) The Committee is concerned by reports of unjustified use of restraints in prisons, including handcuffs, owing to an insufficient assessment of the situation and the options to deal with it by the prison officers (arts. 2, 11, 12, 13 and 16).

The Committee recommends that the State party ensure strict adherence by all prison officers to the new, more specific regulations concerning the use of restraints in prisons in force since 2011, as well as adherence to the protocols and filling in of registers documenting the use of restraints, including the reasons for use, duration of use and particular method of restraint used. The State party should ensure that all complaints of violations concerning the use of restraints are promptly and independently investigated and the persons responsible are held to account.

Persons with disabilities

(20) While taking note of the 1 September 2012 amendments to the Mental Health Act, the Committee is concerned by reports of shortcomings in judicial oversight regarding the involuntary hospitalization and forced medication of persons with mental and psychosocial disabilities in psychiatric institutions. It is also concerned by the lack of a complaints mechanism regarding involuntary placement of treatment. In addition, the Committee is concerned by information that persons with psychosocial disabilities or their legal guardians are not often denied the right to be sufficiently informed about criminal proceedings and charges against them, the right to a fair hearing and the right to adequate and effective legal assistance (arts. 2, 10, 11, 12, 13 and 16).

The State party should:

(a) **Ensure effective supervision and independent monitoring by judicial organs of any involuntary hospitalization in psychiatric institutions of persons with mental and psychosocial disabilities; and ensure that every patient, whether voluntarily or involuntarily hospitalized, is fully informed about the treatment to be prescribed and given the opportunity to refuse treatment or any other medical intervention;**

(b) **Ensure effective legal safeguards for persons in such institutions, including the right of effective appeal;**

(c) **Ensure the right of persons with mental and psychosocial disabilities or their legal guardians to be sufficiently informed about criminal proceedings and charges against them, the right to a fair hearing and the right to adequate and effective legal assistance for their defence;**

(d) **Provide training to medical and non-medical staff on how to administer non-violent and non-coercive care, and establish clear and detailed regulations on the use of restraints and other coercive measures in psychiatric institutions;**

(e) **Establish an independent complaints mechanism, and counsel and effectively and impartially investigate all complaints of violations of the Convention, bring those responsible to justice, and provide redress to victims.**

Corporal punishment of children

(21) While taking note that corporal punishment is unlawful in schools and in the penal system, the Committee is concerned by the absence of legislation which explicitly prohibits corporal punishment in all settings (arts. 2 and 16).

The Committee recommends that the Child Protection Act be amended to prohibit explicitly corporal punishment of children in all settings, including at home and in alternative care settings, as an offence under the law.

Stateless persons

(22) While welcoming the significant reduction of statelessness in the State party from 32 per cent in the 1990s, and noting the information provided by the representatives of the State party, the Committee is concerned that some 7 per cent of the population continues to have “undetermined citizenship” and by the low level of registration as citizens of children born in Estonia to non-citizen parents (art. 2).

The State party should:

(a) Adopt legal and practical measures to simplify and facilitate the naturalization and integration of stateless persons and non-citizens, including by revisiting the requirements for the granting of citizenship;

(b) Consider offering language courses free of charge to all non-citizens who wish to apply for Estonian citizenship;

(c) Continue and enhance the efforts by the Citizenship and Migration Board to raise the awareness of parents whose children are eligible for naturalization through the simplified procedure of the requirements for citizenship, and consider granting automatic citizenship at birth, without previous registration by parents, to the children of non-citizen parents who do not acquire any other nationality;

(d) Ensure the effective implementation of the Integration Strategy and of the State Integration Programme for 2008–2013, and extend the Programme beyond 2013;

(e) Despite the information provided by the State party regarding its decision not to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the reduction of statelessness, reconsider such ratification as a matter of priority.

Data collection

(23) While appreciating the data provided on complaints and convictions on torture and ill-treatment as well as on trafficking and other items, the Committee regrets the information from the State party that statistical data is not collected in ways that would permit a fuller analysis of who is complaining, where, for what reason, by whom, and with what result. Accordingly, the Committee regrets that this data is not disaggregated by crime or other characteristics, regarding complaints, investigations and prosecutions of cases of torture and ill-treatment by law enforcement, military, security and prison personnel, as well as on inter-prisoner violence, trafficking, violence against women, children and other vulnerable groups, including domestic and sexual violence, as well as means of redress provided to the victims (arts. 1, 2, 4, 11, 12, 13, 14 and 16).

The State party should establish an effective system for national data collection that compiles statistical data relevant to the monitoring of the implementation of the Convention at the national level, including disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel, inter-prisoner violence, trafficking, violence, including domestic and sexual, against women, children and other vulnerable groups, as well as on means of redress, including compensation and rehabilitation, provided to the victims.

Other issues

(24) While taking note of the State party's position in this regard, the Committee reiterates its recommendation that the State party consider making the declarations under articles 21 and 22 of the Convention.

(25) The Committee invites the State party to consider ratifying the other United Nations human rights treaties to which it is not yet party, namely the International Convention for the Protection of All Persons from Enforced Disappearance; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

(26) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, including in Russian, through official websites, the media and non-governmental organizations.

(27) The Committee requests the State party to provide, by 31 May 2014, follow-up information in response to the Committee's recommendations relating to: (a) conducting prompt, impartial and effective investigations; (b) ensuring or strengthening legal safeguards for persons detained; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 9, 11, 12 and 14 of the present document.

(28) The State party is invited to submit its next report, which will be the sixth periodic report, by 31 May 2017. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

70. Guatemala

(1) The Committee against Torture considered the combined fifth and sixth periodic reports of Guatemala (CAT/C/GTM/5-6) at its 1142nd and 1145th meetings (CAT/C/SR.1142 and SR.1145), held on 13 and 14 May 2013. At its 1161st and 1162nd meetings (CAT/C/SR.1161 and SR.1162), held on 27 and 28 May 2013, the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee expresses its appreciation for the submission by Guatemala of its combined fifth and sixth periodic reports in response to the list of issues prior to reporting (CAT/C/GTM/Q/6). The Committee would like to thank the State party for following the optional reporting procedure, as this makes for closer cooperation between the State party and the Committee, and for a more focused consideration of the report and dialogue with the delegation.

(3) The Committee also appreciates the frank dialogue with the State party's high-level delegation, as well as the additional information provided.

B. Positive aspects

(4) The Committee notes with satisfaction that the State party has ratified or acceded to the following international instruments since the Committee's consideration of its fourth periodic report:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (June 2008);

(b) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto (April 2009);

(c) The Rome Statute of the International Criminal Court (April 2012).

(5) The Committee welcomes the measures taken by the State party to amend its legislation on matters related to the Convention, particularly:

(a) The adoption of the Prisons Act (Legislative Decree No. 33-2006);

(b) The adoption of the Act on Femicide and Other Forms of Violence against Women (Legislative Decree No. 22-2008);

(c) The adoption of the Act on Criminal Jurisdiction in High-risk Trials (Legislative Decree No. 21-2009), as amended by Legislative Decree No. 35-2009;

(d) The adoption of the Act on Strengthening the Criminal Prosecution System (Legislative Decree No. 17-2009);

(e) The adoption of the Act against Sexual Violence, Exploitation and Trafficking in Persons (Legislative Decree No. 9-2009).

(6) The Committee also welcomes the State party's efforts to modify its policies and procedures so as to afford greater protection for human rights and to apply the Convention, particularly:

(a) The establishment in 2008 of the Unit for the Analysis of Attacks on Human Rights Defenders, and the decision to renew its mandate in 2012;

(b) The signing, on 12 December 2006, of the agreement between the State party and the United Nations on the establishment of the International Commission against Impunity in Guatemala, and the subsequent ratification of the agreement by Congress (Legislative Decree No. 35-2007);

(c) The establishment of rota criminal courts.

(7) The Committee notes with satisfaction that the State party has extended a standing invitation to all special procedures mandate holders of the Human Rights Council to visit the country. In this connection, the Committee notes that the State party has agreed to the request for a visit by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and encourages it to take the necessary steps to enable the visit to go ahead in 2013.

C. Principal subjects of concern and recommendations

Definition and offence of torture

(8) The Committee notes with concern that the definition of the offence of torture set out in the State party's Criminal Code has not yet been brought into line with the provisions of the Convention in spite of the Committee's previous recommendations and Constitutional Court resolution 18-22 of 17 July 2012. In this respect, it notes that the State party intends to adjust its legislation as indicated by the delegation during the dialogue with the Committee (arts. 1 and 4).

The Committee reiterates its previous recommendation (CAT/C/GTM/CO/4, para. 10) and urges the State party to amend, as a matter of priority, the relevant provisions of the Criminal Code, particularly articles 201 bis and 425, in order to legally define torture in accordance with article 1 of the Convention, and criminalize it in accordance with article 4, paragraph 2, of the Convention. The Committee also recommends that the State party ensure that acts of torture are not subject to any statute of limitations.

Allegations of torture and ill-treatment

(9) The Committee is concerned at reports of the use of police violence, including ill-treatment, when a person is arrested and before they are brought before the competent judicial authority. The Committee also regrets that no specific record is kept of complaints of torture and ill-treatment (arts. 2, 12, 13 and 14).

The Committee recommends that the State party take effective measures to:

(a) Ensure that impartial and effective investigations into all reports of torture and ill-treatment are carried out without delay, and that those responsible are tried and, if found guilty, punished in accordance with the seriousness of their acts;

(b) Ensure that, in cases of alleged acts of torture or ill-treatment, the suspects are suspended immediately from their duties for the duration of the investigation;

(c) Ensure that all persons deprived of their liberty enjoy in practice, and from the very beginning of their detention, all fundamental legal safeguards, including those set out in the Committee's general comment No. 2 (2007) on the implementation of article 2 of the Convention by States parties;

(d) Ensure that the police receive training on the obligations and responsibilities deriving from the Convention;

(e) Ensure that all victims of torture or ill-treatment receive appropriate redress, including compensation and the means for their physical and psychological rehabilitation, in line with article 14 of the Convention and the Committee's general comment No. 3 (2012) on the implementation of article 14 of the Convention;

(f) Set up a centralized register of complaints, investigations, prosecutions and convictions in cases of torture or ill-treatment.

Investigation of acts of torture and other serious human rights violations committed during the internal armed conflict

(10) The Committee notes with interest the information provided by the State party about the investigations carried out and the convictions obtained in some of the actions brought for serious human rights violations committed during the internal armed conflict. However, it remains gravely concerned about the impunity which exists for most human rights violations carried out during this period, which include, according to the Commission for Historical Clarification, 626 massacres and the deaths or disappearances of over 200,000 people. The Committee highlights that, again according to the Commission, over 90 per cent of the human rights violations and acts of violence committed during this period appear to be attributable to the State and over 80 per cent to have been committed against the indigenous population. The Committee emphasizes that this impunity is a violation of international human rights law, the peace agreements and national legislation. The Committee highlights, in particular, the conviction of the former Head of State, Efraín Ríos Montt, for genocide and crimes against humanity on 10 May 2013, but cannot fail to note also that the decision was overturned by the Constitutional Court, reportedly on procedural grounds. In addition, the Committee is concerned that in the course of this trial certain parties, including high-ranking executive government officials, made statements to the effect that there was no genocide in Guatemala, which could have influenced the judiciary's deliberations. The Committee is also concerned about reports that the Guatemalan army is not fully cooperating in the investigations. In addition, the Committee is concerned about reports of attacks and threats directed at people involved in the criminal proceedings, including those related to investigations into human rights violations (arts. 2, 12, 13, 14 and 16).

The Committee reiterates its previous recommendation (para. 15) that the State party should fully apply the National Reconciliation Act, which, among other things, explicitly excludes any amnesty for perpetrators of the crimes of genocide, torture and enforced disappearance, as well as offences not subject to statutory limitations or extinction of criminal liability, in accordance with national legislation and the international treaties ratified by Guatemala. In addition, the Committee recommends that the State party should:

(a) Redouble its efforts to ensure that serious human rights violations committed during the internal armed conflict, particularly the massacres and acts of torture and enforced disappearance, are investigated, and to bring to justice the perpetrators of such acts, including persons in the chain of command;

(b) Ensure that the individuals accused of torture or similar acts do not benefit from a statutory time limit;

(c) Guarantee that all bodies involved in the investigations have the human, technical and financial resources needed to carry out their duties effectively;

(d) Ensure that all State agencies cooperate fully and promptly with the investigations;

(e) Prevent State officials from doing anything or making any public statement that might adversely affect the independence of the judiciary;

(f) Guarantee the safety of the victims, witnesses and all those involved in the criminal proceedings and, to this end, provide the bodies responsible for their protection with the human and financial resources they need to function effectively.

Enforced disappearances during the internal armed conflict

(11) The Committee notes with concern that, despite the years that have passed since the end of the internal armed conflict, the fate and whereabouts of over 40,000 alleged victims of enforced disappearance during this period are still unknown and, in this respect, regrets that no independent commission has yet been established to locate them. The Committee takes note of the information supplied by the delegation to the effect that the proposals submitted to Congress for this purpose have no chance of being adopted and that a new text is being negotiated (arts. 2, 12, 14 and 16).

The Committee recommends that the State party establish an independent commission to search for the victims of enforced disappearance during the internal armed conflict, which should meet international human rights standards and have the authority and resources it needs to perform its duties effectively. It also recommends that the State party set up a national register of disappeared persons to facilitate the search and ensure that all persons involved in the process receive due support.

National Reparations Programme

(12) The Committee, while acknowledging the establishment and work of the National Reparations Programme, notes the reports indicating that, under the programme, financial compensation has apparently been given priority over other forms of redress. The Committee also notes that the programme is due to run until the second half of 2013 and takes note of the proposals to extend it (art. 14).

The State party should redouble its efforts to guarantee that all victims of human rights violations committed during the internal armed conflict receive appropriate redress that includes the means for their physical and psychological rehabilitation and that is culturally and gender sensitive. Accordingly, the State party should ensure that the National Reparations Programme is continued until all victims have received

appropriate redress; ensure that legislative or other measures adopted meet international standards for reparation, including article 14 of the Convention; and provide the programme with sufficient resources to ensure that all forms of reparation, whether of an individual or collective nature, are implemented in full. The Committee calls the State party's attention to its general comment No. 3 (2012).

Violence against women

(13) While it welcomes the legislative and other measures adopted by the State party to prevent and punish violence against women, particularly the definition of femicide as a specific offence, the Committee notes with deep concern that, despite its previous recommendation (para. 16) the level of violence against women, including murders, remains high. The Committee is very concerned to see that, according to the National Institute of Forensic Sciences, 709 violent deaths of women were recorded in 2012 and 200 between January and March 2013. Furthermore, while recognizing the progress made in terms of criminal investigations and prosecution, the Committee notes with concern the low number of convictions for offences related to violence against women (arts. 1, 2, 12, 13, 14 and 16).

The Committee urges the State party to:

(a) **Redouble its efforts to prevent and combat violence against women, including gender-related murder; ensure the full and effective application of the relevant legislation; and ensure effective coordination between the various bodies that have a role to play in tackling violence against women;**

(b) **Ensure that acts of violence against women are investigated promptly, effectively and impartially, and that the perpetrators are tried and punished in accordance with the seriousness of their acts;**

(c) **Ensure that victims obtain appropriate redress, including physical and psychological rehabilitation services, and have access to shelters to house and support them in every region of the country;**

(d) **Run extensive awareness campaigns for the general public and extend and strengthen existing training programmes to ensure that all police officers, judges, lawyers, social workers and health workers are ready to respond effectively to all cases of violence against women.**

Human rights defenders

(14) The Committee remains concerned about the persistently high number of threats and attacks, including murders, targeting human rights defenders, particularly those defending the rights of indigenous peoples and those working on issues related to the right to land, labour rights and the environment, despite the recommendations of numerous human rights monitoring bodies. In this connection, the Committee takes note with concern of the report that 15 human rights defenders were murdered between January and October 2012. It is also concerned about reports that only a limited number of convictions have been obtained for crimes against human rights defenders. Furthermore, the Committee notes with concern the reports that campaigns have been waged, including in the media, to discredit their activities and that the criminal justice system has been used to persecute them (arts. 2, 12, 13 and 16).

The Committee urges the State party to recognize publicly the essential role played by human rights defenders in helping it fulfil its obligations under the Convention, and to take the necessary steps to facilitate their work. Recalling its earlier recommendation (para. 12), the Committee urges the State party to:

(a) **Redouble its efforts to guarantee the effective protection, safety and physical integrity of human rights defenders in face of the threats and attacks to which they are vulnerable on account of their activities;**

(b) **Ensure the prompt, thorough and effective investigation of all threats and attacks targeting human rights defenders, and ensure that those responsible are tried and punished in accordance with the seriousness of their acts;**

(c) **Guarantee the continued existence of the Unit for the Analysis of Attacks on Human Rights Defenders.**

Violent deaths and lynchings

(15) The Committee notes with concern the persistent levels of violence in the State party, which appear to be largely linked to organized crime, despite the measures taken to reduce this. It is concerned, in particular, about the large number of violent deaths – a large number of which are committed against women and children, the persistence of lynching and the reportedly low percentage of cases of violence that are investigated and of perpetrators who are tried and punished (arts. 2, 12, 13 and 16).

The Committee, recalling its previous recommendation (para. 16), urges the State party to redouble its efforts to prevent and punish all acts of torture or other cruel, inhuman or degrading treatment inflicted on persons within its jurisdiction. The Committee recommends that the State party ensure that all acts of violence, including killings and lynchings, are investigated promptly, effectively and impartially, that the perpetrators are tried and punished, and that the victims receive appropriate redress. The Committee also recommends that the State party step up its campaigns in schools, the media and elsewhere to raise awareness of lynchings.

Internal security

(16) The Committee notes with concern that, despite its previous recommendations and the State party's efforts to strengthen the National Civil Police, the latter still does not have sufficient resources to perform its duties effectively. The Committee is also concerned about reports that the army is playing a greater role in civil security tasks, that it has even been called on in social conflicts related to, for example, the complaints of indigenous communities, and that its intervention has in some cases led to deaths or injuries. In this connection, the Committee deplores the events of October 2012 in Totonicapán, when soldiers fired on a group of indigenous demonstrators who had blocked a road, killing six of them and wounding more than 30, and hopes that progress is being made in identifying those responsible for these acts and bringing them to trial. The Committee takes note of the delegation's statement that cooperation between the army and the National Civil Police will continue until the latter has the number of officers it needs. The Committee is also concerned about the growing number of private security officers, who reportedly outnumber National Civil Police officers (art. 2).

The Committee:

(a) **Reiterating its previous recommendation (para. 11), urges the State party to redouble its efforts to strengthen the National Civil Police as soon as possible, in particular by allocating adequate human and financial resources to it, with a view to ensuring a prompt end to army intervention in public security activities; to ensure that there are no longer any legal provisions that allow the army to be involved in activities of law enforcement or the prevention of ordinary crime, which should be carried out exclusively by the National Civil Police;**

(b) **Recommends that the State party ensure that all private security firms are registered, as required by law, and that their activities are properly monitored and they are held accountable;**

(c) **Urges the State party to ensure that any cases where public servants or private security staff infringe or violate human rights are investigated promptly, independently and effectively; that the perpetrators are tried and punished in accordance with the seriousness of their acts; and that the victims receive appropriate redress, including the means for their physical and psychological rehabilitation.**

Pretrial detention

(17) The Committee remains concerned about the large number of detainees — allegedly 51 per cent of all persons deprived of their liberty — held in pretrial detention, which contributes to prison overcrowding. The Committee notes the information provided by the delegation during the dialogue which indicates that the issue of pretrial detention and the use of alternatives to deprivation of liberty is now being addressed (arts. 2, 11 and 16).

The Committee, recalling its previous recommendation (para. 20), urges the State party to ensure that the necessary steps are taken to limit the use of pretrial detention by adopting alternatives to custodial sentences, in line with the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), General Assembly resolution 45/110 of 14 December 1990, and to ensure that people subject to this regime are tried quickly and impartially.

Detention conditions

(18) The Committee is concerned about the poor conditions in detention centres, including centres for women, and, in particular, about the high levels of overcrowding, which reportedly exceed 200 per cent. It is also concerned about reports that recount incidents of inter-prisoner violence and indicate that numerous detention centres are controlled by organized groups of prisoners that, with the acquiescence of the authorities, allegedly force other prisoners to pay them not to hurt them or to get them out of various tasks, a practice known as *talacha*, and that they beat anyone who cannot pay up, sometimes to death. In this connection, the Committee notes with concern the deaths of Messrs. Víctor Rojas and Efraín Pérez in 2012 after they were beaten for not paying the *talacha*. The Committee takes note of the information supplied by the delegation, which said that steps are being taken to improve detention conditions and find a comprehensive solution to the problem of overcrowding (arts. 2, 11 and 16).

The Committee urges the State party to speed up and step up its efforts to reduce overcrowding, particularly through the use of alternatives to custodial sentences, in line with the Tokyo Rules. The Committee also recommends that conditions in prisons should comply with the Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council in resolution 663C (XXIV) of 31 July 1957 and resolution 2076 (LXII) of 13 May 1977, and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules, adopted by General Assembly resolution 65/229 of 21 December 2010). The Committee further recommends that the State party ensure its authority and responsibility for the humane treatment of prisoners in centres of detention and step up its efforts to eradicate the practice whereby organized groups of prisoners control these centres; ensure that all cases of prison violence, including torture and ill-treatment, are investigated thoroughly and impartially, and that the perpetrators are brought to trial and, if found guilty, are punished in accordance with the seriousness of their acts; and ensure that detainees have access to an independent complaints mechanism.

Detention centres and alternative-care centres for juveniles

(19) The Committee notes with concern the poor conditions, including overcrowding, in juvenile detention centres. The Committee notes with particular concern the reports about the ill-treatment of minors in detention, including corporal punishment and locking them up for long periods. It is also concerned about reports that minors are ill-treated on admission to both public and private alternative-care centres (arts. 2, 11 and 16).

The Committee recommends that the State party should:

(a) **Ensure that the deprivation of liberty of minors is a last resort limited to the shortest possible period, and that it is reviewed periodically with a view to eliminating it;**

(b) **Take all necessary steps to bring juvenile detention centres into line with the relevant international standards and, in particular, to reduce overcrowding and avoid locking up inmates for long periods;**

(c) **Ensure that minors deprived of their liberty and those in public or private alternative-care centres receive an education and appropriate rehabilitation and reintegration services;**

(d) **Adopt without delay appropriate measures to prevent and punish any type of ill-treatment of minors deprived of their liberty or those in alternative-care centres;**

(e) **Ensure that all detention centres and alternative-care centres for minors are subject to regular, unannounced checks, and that the minors have access to independent complaints mechanisms.**

Private drug rehabilitation centres

(20) The Committee is concerned about the reports of poor conditions in private drug rehabilitation centres and ill-treatment inflicted upon persons admitted to them. The Committee notes with satisfaction the State party's commitment to carrying out the relevant investigations, as indicated in the additional information provided (arts. 2, 11, 12 and 16).

The Committee urges the State party to carry out the relevant investigations without delay and to take all steps that might be necessary to prevent and punish ill-treatment in private drug rehabilitation centres. The Committee recommends that the State party conduct a survey of existing centres in the country and ensure that each is duly accredited by the competent authority and is subject to a regular inspection programme. It also recommends that the State party ensure the prompt, thorough and effective investigation of all complaints of ill-treatment in these centres and that the persons responsible are brought to trial and, if found guilty, receive penalties commensurate with the seriousness of their acts.

Federico Mora National Mental Health Hospital

(21) The Committee is concerned about the poor conditions in the Federico Mora National Mental Health Hospital, which include inadequate access to basic services and a lack of proper medical treatment. It is also concerned about reports that persons with mental disabilities who have been deprived of their liberty and are admitted to this hospital share wards with ordinary patients, and that persons admitted to the hospital are abused by other patients or by police officers assigned to the hospital. The Committee takes note of the information provided by the delegation to the effect that that the precautionary measures requested by the Inter-American Commission on Human Rights for the patients of the Federico Mora hospital have led the Government to address mental health issues as a whole, besides implementing the precautionary measures. It also takes note of the

delegation's statement that the hospital does not admit children, contrary to the reports the Committee received to this effect (arts. 2, 11, 12 and 16).

The Committee encourages the State party to step up its efforts to tackle the issue of mental health comprehensively. In addition, it recommends that the State party ensure that people admitted to Federico Mora National Mental Health Hospital are treated properly, and particularly that they receive appropriate medical care, and that complaints of their ill-treatment and abuse are investigated promptly and impartially, and that the alleged perpetrators are tried and punished in accordance with the seriousness of their acts. The Committee urges the State party to ensure that ordinary patients do not share wards with persons who have been deprived of their liberty and that persons in pretrial detention are separated from convicted prisoners. It also urges the State party to ensure that there are no minors in the hospital and that any children who might be there are separated from adults. The Committee urges the State party to take effective measures to guarantee full and prompt compliance with the precautionary measures requested by the Inter-American Commission on Human Rights (PM 370/12 – 334 Patients at the Federico Mora Hospital).

Lesbian, gay, bisexual and transgender community

(22) While noting the delegation of the State party's statement that the problem is now being tackled, the Committee is concerned about reports of discrimination against lesbian, gay, bisexual and transgender persons (arts. 2, 10, 12, 13 and 16).

The Committee recommends that the State party adopt effective measures to protect lesbian, gay, bisexual and transgender persons from any discrimination or aggression, and ensure that all cases of violence are promptly, effectively and impartially investigated, tried and punished, and that victims obtain appropriate redress. The Committee refers the State party to section V, on "Protection for individuals and groups made vulnerable by discrimination or marginalization", of its general comment No. 2 (2007).

National preventive mechanism

(23) The Committee welcomes the adoption in October 2010 of Legislative Decree No. 40-2010 establishing the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. However, it notes with concern that the mechanism is still not operational (art. 2).

The State party should speed up the implementation of the law establishing the national preventive mechanism by promptly appointing its members and should ensure that these appointments comply fully with the relevant provisions of the Optional Protocol to the Convention. The State party should also ensure that the mechanism has the necessary resources to fulfil its mandate independently and effectively throughout its territory.

Training

(24) The Committee takes note of the information supplied by the State party on training activities in the field of human rights and the prohibition of torture for staff of the National Civil Police and the prison service, but regrets that it has received no detailed information about programmes for other State employees related to the prohibition and prevention of torture. It also observes that no information has been provided about the impact of training activities on the incidence of torture and ill-treatment (art. 10).

The State party should strengthen existing training programmes and ensure that all public servants, particularly police, army and prison officers, migration officials and members of the judiciary and the Public Prosecution Service, attend regular, suitable

and compulsory training courses on the Convention, which include strategies for dealing with violence against children, women, indigenous peoples, human rights defenders and the lesbian, gay, bisexual and transgender community. The State party should also ensure that the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) is a compulsory topic in the training of all professionals involved in the investigation and documentation of cases of torture and ill-treatment, and that it is widely publicized and applied. It further recommends that the State party develop and apply a methodology to evaluate the effectiveness of training programmes in reducing torture and ill-treatment.

Death penalty

(25) While noting with satisfaction the de facto moratorium on the use of the death penalty and the commutation of all death penalties into prison sentences, the Committee regrets that the death penalty remains on the statute book in the State party (arts. 2 and 16).

The Committee invites the State party to consider abolishing the death penalty and ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. In the meantime, the Committee urges the State party to maintain its de facto moratorium.

Other issues

(26) The Committee invites the State party to consider acceding to the core United Nations human rights instruments to which it is not yet a party, namely, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

(27) The State party is requested to disseminate widely the report submitted to the Committee and these concluding observations, in the appropriate languages, including indigenous languages, through official websites, the media and non-governmental organizations.

(28) The Committee requests the State party to provide, by 31 May 2014, follow-up information in response to the Committee's recommendations related to: (a) ensuring or strengthening fundamental legal safeguards for detainees; (b) conducting prompt, impartial and effective investigations; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 13, 14 and 18 of the present document.

(29) The State party is invited to submit its seventh periodic report by 31 May 2017. To that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, given that the State party has agreed to report to the Committee under the optional reporting procedure.

71. Japan

(1) The Committee against Torture considered the second periodic report of Japan (CAT/C/JPN/2) at its 1152nd and 1155th meetings, held on 21 and 22 May 2013 (CAT/C/SR.1152 and 1155), and adopted the following concluding observations at its 1164th meeting, held on 29 May 2013 (CAT/C/SR.1164).

A. Introduction

(2) The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for having submitted its periodic report under it, as it

improves the cooperation between the State party and the Committee and focuses on the examination of the report as well as the dialogue with the delegation.

(3) The Committee welcomes the constructive dialogue held with the State party's high-level delegation as well as the additional information and explanations provided by the delegation.

B. Positive aspects

(4) The Committee welcomes the State party's ratification of the following international instruments:

(a) The International Convention for the Protection of All Persons from Enforced Disappearance, on 23 July 2009;

(b) The Rome Statute of the International Criminal Court, on 1 October 2007.

(5) The Committee welcomes the following legislative measures taken by the State party:

(a) The revision of the Immigration Control and Refugee Recognition Act, which came into effect in July 2009;

(b) The revision of the Act on the Prevention of Spousal Violence and Protection of Victims, which came into effect in January 2008.

(6) The Committee welcomes the following administrative and other measures taken by the State party:

(a) The establishment of the Inspection Guidance Division at the Supreme Public Prosecutors Office, in July 2011;

(b) The approval of the Third Basic Plan for Gender Equality, in December 2010;

(c) The creation of the Immigration Detention Facilities Visiting Committee, in July 2010;

(d) The adoption of the 2009 Action Plan to Combat Trafficking in Persons, in December 2009;

(e) The compilation of the Policy on Ensuring Propriety of Examination in Police Investigations, in January 2008.

C. Principal subjects of concern and recommendations

Definition of torture

(7) The Committee is concerned that the State party has not taken any measures to adopt a definition of torture that covers all the elements contained in article 1 of the Convention (art. 1).

The Committee reiterates the recommendation made in its previous concluding observations (CAT/C/JPN/CO/1, para. 10) that the State party incorporate into domestic law the definition of torture as contained in article 1 of the Convention, encompassing all its constituent elements which characterize torture as a specific crime with appropriate penalties. The Committee considers, referring to its general comment No. 2 (2007) on implementation of article 2 by States parties, that States parties will directly advance the Convention's overarching aim of preventing torture by naming and defining the offence of torture in accordance with the Convention and distinct from other crimes.

Statute of limitations

(8) While noting the Act No. 26 of April 2010 abolishing or extending the statute of limitations for certain crimes, the Committee is concerned that the statute of limitations remains in place for acts of torture and ill-treatment, including attempts to commit torture and acts by any person which constitute complicity or participation in torture (arts. 4 and 12).

The Committee reiterates its previous recommendation (para. 12) that the State party bring its legislation on the statute of limitations fully in line with its obligations under the Convention, so that perpetrators of acts of torture are prosecuted and convicted in accordance with the gravity of the acts, as required by article 4 of the Convention, without time limitations.

Non-refoulement and detention pending deportation

(9) The Committee expresses its concern about:

(a) The use of lengthy, and in some cases, indefinite detention for asylum seekers under a deportation order according to the Immigration Control and Refugee Recognition Act (ICRRA) as well as the lack of independent review of such detention decision;

(b) The restrictive use of alternatives to detention for asylum seekers;

(c) The lack of resources and authority of the Immigration Detention Facilities Visiting Committee to effectively discharge its mandate, as well as the appointment of its members by the Ministry of Justice and the Immigration Bureau;

(d) Detention of unaccompanied children in Child Consultation Centres, which are often overcrowded and lack resources for hiring interpreters;

(e) The lack of effective implementation of article 53 (3) of the ICRRA, which prohibits the removal of a person to any country where he or she may be subject to torture, as proscribed in article 3 of the Convention (arts. 3, 11 and 16).

In light of the previous recommendations made by the Committee (para. 14) as well as by the Special Rapporteur on the human rights of migrants, following his mission to Japan in 2011 (A/HRC/17/33/Add.3, para. 82), the State party should:

(a) **Continue its efforts to bring all legislation and practices relating to the detention and deportation of immigrants or asylum seekers in line with the absolute principle of non-refoulement under article 3 of the Convention;**

(b) **Ensure that the detention of asylum seekers is only used as a last resort, and when necessary, for as short a period as possible, and introduce a maximum period of detention pending deportation;**

(c) **Further utilize alternatives to detention as provided for in the Immigration Control and Refugee Recognition Act;**

(d) **Strengthen the independence, authority and effectiveness of the Immigration Detention Facilities Visiting Committee, inter alia, by providing appropriate resources and authority to ensure effective monitoring detention centres and allowing them to receive and review complaints from immigrants or asylum seekers in detention;**

(e) **Consider acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Stateless.**

Daiyo Kangoku (substitute detention system)

(10) While noting the formal separation of the police functions of investigation and detention under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, the Committee expresses its serious concern at the lack of safeguards in the Daiyo Kangoku system, which mitigates the State party's compliance with the obligations under the Convention. In particular, the Committee deeply regrets that under this system, suspects can be detained in police cells for a period up to 23 days, with limited access to a lawyer especially during the first 72 hours of arrest and without the possibility of bail. The lack of effective judicial control over pretrial detention in police cells and the lack of an independent and effective inspection and complaints mechanism are also a matter of serious concern. Furthermore, the Committee regrets the position of the State party that the abolition or reform of the pretrial detention system is unnecessary (A/HRC/22/14/Add.1, para. 147.116) (arts. 2 and 16).

The Committee reiterates its previous recommendations (para. 15) that the State party:

(a) Take legislative and other measures to ensure, in practice, separation between the functions of investigation and detention;

(b) Limit the maximum time detainees can be held in police custody;

(c) Guarantee all fundamental legal safeguards for all suspects in pretrial detention, including the right of confidential access to a lawyer throughout the interrogation process, and to legal aid from the moment of arrest, and to all police records related to their case, as well as the right to receive independent medical assistance, and to contact relatives;

(d) Consider abolishing the Daiyo Kangoku system in order to bring the State party's legislation and practices fully into line with international standards.

Interrogation and confessions

(11) The Committee takes note of article 38 (2) of the Constitution and article 319 (1) of the Code of Criminal Procedure stipulating inadmissibility in court of confessions obtained under torture and ill-treatment as well as the State party's statement that convictions are not based solely on confessions and that interrogation guidelines ensure that suspects cannot be compelled to confess to a crime. However, the Committee remains seriously concerned that:

(a) The State party's justice system relies heavily on confessions in practice, which are often obtained while in the Daiyo Kangoku without a lawyer present. The Committee has received reports about ill-treatment while interrogated, such as beating, intimidation, sleep deprivation, and long periods of interrogations without breaks;

(b) It is not mandatory to have defence counsel present during all interrogations;

(c) The lack of means for verifying the proper conduct of interrogations of detainees, while in police custody, in particular the absence of strict time limits for the duration of consecutive interrogations;

(d) None of the 141 complaints concerning interrogations filed to the public prosecutors by suspects and their defence counsels resulted in a lawsuit (arts. 2 and 15).

The Committee reiterates its previous recommendations (para. 16) that the State party take all necessary steps to in practice ensure inadmissibility in court of confessions obtained under torture and ill-treatment in all cases in line with article 38 (2) of the Constitution, article 319 (1) of the Code of Criminal Procedure as well as article 15 of the Convention by, inter alia:

(a) Establishing rules concerning the length of interrogations, with appropriate sanctions for non-compliance;

(b) Improving criminal investigation methods to end practices whereby confession is relied on as the primary and central element of proof in criminal prosecution;

(c) Implementing safeguards such as electronic recordings of the entire interrogation process and ensuring that recordings are made available for use in trials;

(d) Informing the Committee of the number of confessions made under compulsion, torture or threat, or after prolonged arrest or detention, that were not admitted into evidence based on article 319 (1) of the Code of Criminal Procedure.

Complaint mechanism

(12) Notwithstanding the information on the appeal systems established under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees (2007), the Committee remains concerned about the lack of an independent and effective complaint mechanism for receiving and conducting impartial investigations into allegations of torture and ill treatment of persons deprived of their liberty, including those in police custody, and for ensuring that officials found guilty are appropriately punished. The Committee also regrets the absence of information on claims for State compensation or on disciplinary sanctions (arts. 2, 4, 12, 13 and 16).

The Committee reiterates its previous recommendation (para. 21) that the State party:

(a) Consider establishing a specifically dedicated, independent and effective complaints body and ensure prompt, impartial and full investigations into all allegations of torture and ill-treatment committed by public officials, and to prosecute and punish those responsible with penalties taking into account the grave nature of offences;

(b) Ensure in practice that complainants are protected against any reprisals as a consequence of their complaint or any evidence given;

(c) Compile information, including disaggregated statistics, on the number of complaints filed against public officials on torture and ill-treatment, as well as information about the results of the proceedings, at both the penal and disciplinary levels.

Conditions of detention

(13) Despite the State party's efforts to improve the conditions of detention and to increase the capacities of penal institutions, the Committee remains concerned at:

(a) Overcrowding in certain facilities, including women's prisons;

(b) Inadequate access to health care and serious shortage of medical staff within detention facilities;

(c) The insufficient provision of mental health care in prisons and reports indicating that mentally ill inmates are subjected to extensive use of solitary confinement and subsequent increased risks of suicide attempts;

(d) The lack of adequate safeguards and monitoring mechanism on the use of restraining devices such as Type II handcuffs and straitjackets (arts. 11 and 16).

The State party should strengthen its efforts to improve conditions of detention in prisons in conformity with the standard minimum rules for treatment of prisoners, by:

(a) Reducing the high rate of overcrowding, in particular through the wider application of non-custodial measures as an alternative to imprisonment, in light of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) and United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules);

(b) Providing adequate somatic and mental health care for all persons deprived of their liberty;

(c) Strictly monitoring the use of Type II handcuffs and the length of time they are used, so as to comply with the State party's obligations under the Convention, and considering completely banning the use of devices to restrain persons in custody.

Solitary confinement

(14) The Committee remains deeply concerned that solitary confinement continues to be used often extensively prolonged without a time limit, and that decision of isolation for detainees is left to the discretion of the prison warden. The Committee regrets that the prison doctor is directly involved in the periodic medical review of prisoners in solitary confinement under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees and such practice might deteriorate doctor-patient relationship, which is a major factor in safeguarding the health conditions of prisoners (arts. 2, 11 and 16).

Taking into account the provisions of the Convention and the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Committee urges the State party to:

(a) Revise its legislation in order to ensure that solitary confinement remains as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review. The State party should establish clear and specific criteria for the decision of isolation;

(b) Establish a system of regular monitoring and review of the detainee's physical and mental condition by qualified medical personnel throughout the period of solitary confinement, and release such medical records to the detainees and their legal counsel;

(c) Increase the level of psychological meaningful social contact for detainees while in solitary confinement;

(d) Evaluate and assess the existing practice of the use of solitary confinement, and also provide specific and disaggregated information on the use and conditions of solitary confinement.

Death penalty

(15) The Committee is deeply concerned about the conditions of detention of prisoners on death row in the State party, in particular with respect to:

(a) The unnecessary secrecy and uncertainty surrounding the execution of prisoners sentenced to death. As referred to by the Special Rapporteur on extrajudicial, summary or arbitrary executions, refusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation (E/CN.4/2006/53/Add.3, para. 32);

(b) The use of solitary confinement for persons sentenced to death, often for extended periods of time, even exceeding 30 years in some cases, and limited contact with the outside;

(c) Interference with the right to assistance by legal counsel, including the limited confidential access to lawyer;

(d) The lack of a mandatory appeal system for capital cases given that an increasing number of defendants convicted and sentenced to death without exercising their right of appeal;

(e) The non-use of the power of pardon since 2007 and the absence of transparency concerning procedures for seeking benefit for pardon, commutation or reprieve;

(f) Reports about executions carried out even if the person was determined by a court to be mentally ill, as in the case of Seiha Fujima, in contradiction of article 479 (1) of the Code of Criminal Procedures which prohibits the execution of a detainee in a state of insanity (arts. 2, 11 and 16).

In light of the previous recommendations made by the Committee (para. 17), the Human Rights Committee (CCPR/C/GC/32, para. 38) as well as the communication sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/14/24/Add.1, paras. 515 ff), the Committee urges the State party to ensure that death row inmates are afforded all the legal safeguards and protections provided by the Convention, inter alia, by:

(a) Giving death row inmates and their family reasonable advance notice of the scheduled date and time of the execution;

(b) Revising the rule of solitary confinement for death row inmates;

(c) Guaranteeing effective assistance by legal counsel for death row inmates at all stages of the proceedings, and the strict confidentiality of all meetings with their lawyers;

(d) Making available the power of pardon, commutation and reprieve in practice for death row inmates;

(e) Introducing a mandatory system of review in capital cases, with suspensive effect following a death penalty conviction in first instance;

(f) Ensuring an independent review of all cases when there is credible evidence that death row inmate is mentally ill. Furthermore, the State party should ensure that a detainee with mental illness is not executed in accordance with article 479 (1) of the Code of Criminal Procedures;

(g) Providing data on death row inmates, disaggregated by sex, age, ethnicity and offence;

(h) Considering the possibility of abolishing the death penalty.

National human rights institution

(16) The Committee notes with concern that the State party has not yet established a national human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (art. 2).

Noting the commitment made by the State party in the context of the universal periodic review (A/HRC/22/14/Add.1, paras. 147.47 ff), the Committee urges the State

party to expedite the establishment of an independent national human rights institution in conformity with the Paris Principles.

Training

(17) While taking note of various human rights training programmes initiated by the State party, the Committee notes with concern that the State party does not provide training on the Convention for all immigration officials and that the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) is not incorporated in the training programme. The lack of information on the effectiveness and impact of those training programmes in reducing the number of cases of torture, including gender-based violence and ill-treatment is also a matter of concern (art. 11).

The State party should:

(a) Further develop and strengthen training programmes to ensure that all officials, in particular judges and law enforcement, prison and immigration officers, are aware of the provisions of the Convention;

(b) Provide training on the Istanbul Protocol for medical personnel and other officials involved in the investigation and documentation of cases of torture, on a regular basis;

(c) Encourage the involvement of non-governmental organizations in training of law enforcement officials;

(d) Assess the effectiveness and impact of training programmes on the prevention and absolute prohibition of torture, including gender-based violence, and ill-treatment.

Redress, including compensation and rehabilitation

(18) Notwithstanding article 1 of State Redress Act under which victim may seek damages against the State or the public entity, the Committee remains concerned about (a) reports of difficulties faced by victims of acts of torture or ill-treatment in obtaining redress and adequate compensation, (b) restrictions on the right to compensation, such as statutory limitations and reciprocity rules for immigrants, and (c) the lack of information on compensation requested and awarded to victims of torture or ill-treatment (art. 14).

Referring to its general comment No. 3 (2012) on article 14 of the Convention which clarifies the content and scope of the obligations of States parties to provide full redress to victims of torture, the Committee recommends that the State party strengthen its efforts to ensure that all victims of acts of torture or ill-treatment can fully exercise their right to redress, including fair and adequate compensation, and as full rehabilitation as possible, as well as their right to truth. The State party should provide the Committee with information on (a) redress and compensation measures ordered by the courts and provided to victims of torture or ill-treatment, or their families This information should include the number of requests made and of those granted and the amounts ordered and actually provided in each case; and (b) any ongoing rehabilitation programmes for victims of torture and ill-treatment. The State party should also allocate adequate resources to effectively implement such programmes and inform the Committee thereof.

Victims of military sexual slavery

(19) Notwithstanding the information provided by the State party concerning some steps taken to acknowledge the abuses against victims of Japan's military sexual slavery practices during the Second World War, the so-called "comfort women", the Committee

remains deeply concerned at the State party's failure to meet its obligations under the Convention while addressing this matter, in particular in relation to:

- (a) Failure to provide adequate redress and rehabilitation to the victims. The Committee regrets that the compensation, financed by private donations rather than public funds, was insufficient and inadequate;
- (b) Failure to prosecute perpetrators of such acts of torture and bring them to justice. The Committee recalls that on account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them;
- (c) Concealment or failure to disclose related facts and materials;
- (d) Continuing official denial of the facts and retraumatization of the victims by high-level national and local officials and politicians, including several diet members;
- (e) Failure to carry out effective educational measures to prevent gender-based breaches of the Convention, as illustrated, inter alia, by a decrease in references to this issue in school history textbooks;
- (f) The State party's rejection of several recommendations relevant to this issue, made in the context of the universal periodic review (A/HRC/22/14/Add.1, paras. 147.145 ff.), which are akin to recommendations made by the Committee (para. 24) and many other United Nations human rights mechanisms, inter alia, the Human Rights Committee (CCPR/C/JPN/CO/5, para. 22), the Committee on the Elimination of Discrimination against Women (CEDAW/C/JPN/CO/6, para. 38), the Committee on Economic, Social and Cultural Rights (E/C.12/JPN/CO/3, para. 26) and several special procedures mandate holders of the Human Rights Council (arts. 1, 2, 4, 10, 14 and 16).

Recalling its general comment No. 3 (2012), the Committee urges the State party to take immediate and effective legislative and administrative measures to find a victim-centred resolution for the issues of "comfort women", in particular, by:

- (a) Publicly acknowledging legal responsibility for the crimes of sexual slavery, and prosecuting and punishing perpetrators with appropriate penalties;**
- (b) Refuting attempts to deny the facts by government authorities and public figures and to re-traumatize the victims through such repeated denials;**
- (c) Disclosing related materials, and investigating the facts thoroughly;**
- (d) Recognizing the victim's right to redress, and accordingly providing them full and effective redress and reparation, including compensation, satisfaction and the means for as full rehabilitation as possible;**
- (e) Educating the general public about the issue and include the events in all history textbooks, as a means of preventing further violations of the State party's obligations under the Convention.**

Violence against women and gender-based violence

(20) While taking note of the State party's efforts to combat gender-based violence, the Committee is concerned at reports on the continuing incidents of gender-based violence, in particular domestic violence, incest and rape, including marital rape, the low number of complaints, investigations, prosecutions and convictions for such cases, and insufficient legal protections for victims. Furthermore, the Committee expresses its concern at the requirement of the victim's complaint in the Penal Code in order to prosecute crimes of sexual violence (arts. 2, 12, 13, 14 and 16).

In light of previous recommendations made by the Committee (para. 25) and the Committee on the Elimination of Discrimination against Women (CEDAW/C/JPN/CO/6, paras. 31–34), the State party should strengthen its efforts to prevent and prosecute all forms of gender-based abuse, including domestic violence, incest and rape, including marital rape, in particular, by:

(a) Adopting and implementing a coherent and comprehensive national strategy for the elimination of violence against women that includes legal, educational, financial and social components;

(b) Guaranteeing victims of such violence access to a complaint mechanism, and facilitating victims' physical and psychological rehabilitation. Such support should be extended to victims of all military personnel, including those in foreign forces in the State party;

(c) Promptly, effectively and impartially investigating all incidents of violence against women and prosecuting those responsible. The Committee urges the State party to revise its legislation to ensure that the crime of sexual violence is prosecuted without complaint by the victim;

(d) Broadening public awareness-raising campaigns on all forms of violence against women and gender-based violence.

Trafficking

(21) While noting the State party's efforts to combat human trafficking, including the 2009 Action Plan on Measures to Combat Trafficking in Persons, the Committee is concerned at the lack of information on the resources provided for this action plan, and the wide discrepancy between the numbers of persons arrested for trafficking and of persons prosecuted and convicted. The Committee regrets the lack of information about the coordinating and monitoring body and the impact of measures to address trafficking, especially on children (arts. 2, 12, 13, 14 and 16).

The Committee calls on the State party to fully implement the recommendations made by the Special Rapporteur on trafficking in persons (A/HRC/14/32/Add.4), following her visit to Japan in 2009. In particular, the State party should ensure that:

(a) Victims of trafficking are provided with adequate assistance for their physical and psychological recovery;

(b) Clear identification procedures are set out, so that victims of trafficking are not incorrectly identified and treated as undocumented migrants and deported without redress or remedy;

(c) Perpetrators are prosecuted and punished with appropriate penalties;

(d) Specialized training is provided to relevant public officials in this regard.

In addition, the State party should consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol).

Psychiatric health care

(22) Notwithstanding the Act on Mental Health and Welfare for the Mentally Disabled, which established operating parameters for mental health institutions and the additional information provided by the State party's delegation, the Committee remains concerned at the high numbers of persons with mental disabilities, both psychosocial and intellectual who are held in mental health-care institutions on involuntary basis and frequently for a lengthy period of time. The Committee is further concerned at the frequent use of solitary

confinement, restraints and forced medication, actions which may amount to inhumane and degrading treatment. Taking into account the information received during the dialogue on plans regarding mental health care, the Committee remains concerned at the lack of focus on alternatives to hospitalization of persons with mental disabilities. Finally, the Committee is concerned about the frequent lack of effective and impartial investigation of the excessive use of restrictive measures as well as at the lack of relevant statistical data (arts. 2, 11, 13 and 16).

The Committee urges the State party to ensure that:

- (a) Effective judicial control over involuntary treatment and placement, as well as effective appeals mechanisms are established;**
- (b) Outpatient and community services are developed and the number of institutionalized patients is brought down;**
- (c) Effective legal safeguards are respected in all places of deprivation of liberty, including psychiatric and social care institutions;**
- (d) Access to effective complaint mechanisms is strengthened;**
- (e) Use of restraints and solitary confinement is avoided or applied as a measure of last resort when all other alternatives for control have failed, for the shortest possible time, under strict medical supervision, and any such act is duly recorded;**
- (f) Effective and impartial investigations are undertaken in incidents where excessive use of such restrictive measures result in injuries of the patient;**
- (g) Remedies and redress are provided to the victims;**
- (h) Independent monitoring bodies conduct regular visits to all psychiatric institutions.**

Corporal punishment

(23) Noting that child abuse is prohibited under article 3 of the Act on Child Abuse Prevention, the Committee shares concern raised by the Committee on the Rights of Child (CRC/C/JPN/CO/3, para. 47) that corporal punishment in the home and in alternative care settings is not expressly prohibited by law and that the Civil Code and the Act on Child Abuse Prevention allow the use of appropriate discipline and are unclear as to the admissibility of corporal punishment in some cases (art. 16).

The State party should explicitly prohibit corporal punishment and all forms of degrading treatment of children in all settings by law.

Other issues

(24) The State party should establish an effective system to gather all statistical data disaggregated by sex, age and authenticity, relevant to the monitoring of the implementation of the Convention at the national level, including complaints, investigations, prosecutions, convictions of cases of torture and ill-treatment by public officials, trafficking and domestic and sexual violence as well as means of redress, including compensation and rehabilitation, provided to the victims.

(25) The Committee recommends that the State party strengthen its cooperation with United Nations human rights mechanisms, including by permitting a visit of, inter alia, the Working Group on Arbitrary Detention, as well as its efforts in implementing their recommendations. The State party should take further steps to ensure a well-coordinated, transparent and publicly accessible approach to overseeing implementation of its obligations under the United Nations human rights mechanisms, including the Convention.

(26) Noting the commitment made by the State party in the context of the universal periodic review (A/HRC/22/14/Add.1, para. 147.9), the Committee urges the State party to accelerate the current domestic discussions and to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible. The Committee also recommends that the State party consider making the declaration envisaged under article 22 of the Convention.

(27) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the Second Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention on the Rights of Persons with Disabilities.

(28) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(29) The Committee requests the State party to provide, by 31 May 2014, follow-up information in response to the Committee's recommendations related to (a) ensuring or strengthening legal safeguards for persons detained, (b) conducting, prompt, impartial and effective investigations, and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 10, 11 and 15 of the present concluding observations. In addition, the Committee requests follow-up information on remedies and redress to the victims, as contained in paragraph 19 of the present concluding observations.

(30) The State party is invited to submit its next report, which will be the third periodic report, by 31 May 2017. To that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

72. Kenya

(1) The Committee considered the second report of Kenya (CAT/C/KEN/2) at its 1146th and 1149th meetings, held on 15 and 16 May 2013 (CAT/C/SR.1146 and 1149), and adopted at its 1164th and 1165th meetings, held on 29 May 2013 (CAT/C/SR.1164 and 1165), the following conclusions and recommendations.

A. Introduction

(2) The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for having submitted its periodic report under it, as it improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation. The Committee also welcomes the submission of the State Party's core document in 2011 (HRI/CORE/KEN/2011).

(3) The Committee appreciates the frank dialogue with the State party's high-level delegation, which covered various areas of concern under the Convention.

B. Positive aspects

(4) The Committee welcomes the State party's efforts to strengthen its legal and institutional framework to safeguard universal human rights protection, including, inter alia, the following:

- (a) Enactment of the Constitution, in 2010, including especially:
 - (i) The comprehensive Bill of Rights, with the non-derogable right to "freedom from torture and cruel, inhuman or degrading treatment or punishment" (art. 25 (a));

- (ii) The principle of direct incorporation of international treaties (art. 2, para. 6) and general rules of international law (art. 2, para. 6), including customary international law, into the domestic legal framework of the State party;
 - (b) Ratification of the Treaties Bill, in 2012;
 - (c) Enactment of the Judges and Magistrates Vetting Board Act of 2011 with the ongoing judicial reform, including the establishment of office of Director of Public Prosecutions;
 - (d) Enactment of the National Gender and Equality Commission Act, in 2011;
 - (e) Enactment of the Independent Electoral and Boundaries Commission Act, in 2011.
- (5) The Committee also welcomes the delegation's commitment to invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Kenya.

C. Principal subjects of concern and recommendations

Definition of torture and appropriate penalties for acts of torture

(6) While noting that the National Police Service Act (2011) criminalizes torture and ill-treatment committed by police officers, and provides for appropriate penalties, the Committee remains deeply concerned that the draft Prevention of Torture Bill (2011) has still not been enacted (arts. 1 and 4).

Considering that the State party ratified the Convention in 1997, the Committee urges the State party to table, as a matter of urgency, the Prevention of Torture Bill (2011) in Parliament, so that its provisions, which include a comprehensive definition of torture in line with article 1 of the Convention and render all acts of torture punishable by appropriate penalties, become the applicable law.

(7) The Committee is concerned by the delegation's statement that while the provisions of the Convention are incorporated into the national legal system as enforceable rights, in practice, law enforcement officers, who have committed acts of torture, are not charged with the offence of torture, but rather with other offences such as murder, assault and rape (art. 4).

The State party should ensure that, in the presence of evidence of acts of torture, public officials should be prosecuted for the crime of torture, in accordance with the definition contained in article 1 of the Convention.

(8) While welcoming the information provided by the State party on the proposed amendments to the penalties for acts of torture and ill-treatment of children in the Child Justice Bill (2011), the Committee remains deeply concerned that the current Children Act (2001) provides for the penalty of "imprisonment not exceeding twelve months or a fine of fifty thousand Kenya shillings or both" for acts of torture and other forms of ill-treatment of children, which is not commensurate with the gravity of these crimes (arts. 1 and 4).

The Committee urges the State party to enact the Children's Act (Amendment) Bill (2011) and the Child Justice Bill (2011), with a view of ensuring that national legislation provides for appropriate penalties for acts of torture and ill-treatment of children, which take into account the grave nature of these offences.

Extrajudicial killings and disproportionate use of force

(9) The Committee remains concerned by the persistent allegations of ongoing extrajudicial killings, enforced disappearances and excessive use of force by police officers, especially during "special operations", as well as by the low rate of investigations and

prosecutions of such acts. The Committee is also particularly concerned by reports of a case of a young man who died after he was shot by police officers in Nairobi, in April 2013, following the theft of a mobile phone (arts. 11 and 12).

In the light of its previous recommendation (CAT/C/KEN/CO/1, para. 20), the Committee urges the State party to ensure that all cases of use of lethal force and excessive force by security forces, including those that occurred in Mandera and the Tana River District, are promptly, effectively and independently investigated, and that the alleged perpetrators are brought to justice and if convicted, sentenced according to the grave nature of such acts. In addition, the State party should:

(a) Ensure that no changes to the Independent Police Oversight Authority's (IPOA) mandate alter its obligation to report deaths caused by the police;

(b) Properly regulate the use of firearms by the police, with a view to ensuring that they comply with the United Nations Basic principles on the use of force and firearms by law enforcement officials (1990);

(c) Adequately train all law enforcement personnel, especially police officers, on the use of force;

(d) Make public the results of all the investigations on extrajudicial killings, enforced disappearances and excessive use of force by police officers, especially the above-mentioned cases.

Fundamental legal safeguards

(10) While the Committee welcomes the information on the legal safeguards afforded to persons in police custody, it is concerned that these standards are not fully upheld in practice, especially timely access to a lawyer and a medical doctor, the right to contact a family member and timely presentation before a judicial authority (arts. 2 and 11).

The State party should ensure that, in law and in practice, all detainees are afforded the fundamental legal safeguards from the moment of arrest, including the right to a lawyer, to notify a relative, to request an independent medical examination and to be presented to a judicial authority within 24 hours, as provided for in article 49 (para. 1 (f) (i)) of the Constitution. To this effect, the Committee refers the State party to its general comment No. 2 (2007) on the implementation of article 2 by States parties, that is, effectively preventing torture and ill-treatment. Further, the State party should ensure that the Persons Deprived of Liberty Bill (2012) contains all the necessary legal safeguards and is tabled in Parliament.

Police reform and investigations

(11) While noting with appreciation the ongoing police reforms, in particular the enactment of the National Police Service Act (2011), the establishment of the IPOA and the adoption of a Police Code of Conduct, the Committee remains deeply concerned by the persistent failure by the State party to promptly, impartially and effectively investigate all allegations of acts of torture and ill-treatment by police officers, and to prosecute the alleged perpetrators (arts. 12 and 13).

The Committee urges the State party to take all necessary measures to ensure that the National Police Service Act (2011) is effectively implemented, ascertain that all allegations of acts of torture or ill-treatment by police officials are promptly, effectively and impartially investigated, duly prosecuted under the offence of torture or other cruel, inhuman or degrading treatment or punishment and if convicted, punished appropriately. In particular, the State party should ensure that:

(a) The Independent Police Oversight Authority (IPOA) has sufficient financial and human resources to effectively carry out its mandate, including the collection of independent data on complaints, investigations, prosecutions, convictions and penalties against law enforcement officials for acts of torture and ill-treatment;

(b) The National Police Service Commission is sufficiently funded and that it prioritizes the use of a vetting system, whereby alleged offenders are suspended from duty, pending investigation, and appropriately prosecuted;

(c) The Coroner's Service Bill (2011) is enacted and the independent medical examiners service, proposed therein, promptly established.

Conditions of detention

(12) While acknowledging the steps taken by the State party to improve conditions in all places of detention, including the enactment of the Power of Mercy Act (2011), allocation of additional financial resources and measures taken to reduce overcrowding, the Committee remains deeply concerned about detention conditions, in particular the persistent levels of overcrowding, lack of appropriate health services, prevalence of prison violence, including inter-prisoner violence and sexual abuse, and the practice of detaining children under the age of 4 with their mothers (arts. 2, 11 and 16).

Recalling its previous recommendation (CAT/C/KEN/CO/1, para. 15), the Committee urges the State party to strengthen its efforts to bring detention conditions into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners and, in particular, to:

(a) **Take all appropriate measures to address the high level of violence in prisons, including sexual violence, prevent sexual exploitation of detainees and punish those found responsible of such acts;**

(b) **Further reduce overcrowding in prisons by increasing the use of non-custodial measures and Community Service Orders, especially for minor offences;**

(c) **Adopt the draft Correctional Policy with a view to effectively improving conditions in all places of detention and ensuring that adequate health services are made available.**

In addition, the State party should reduce the practice of imprisoning children with their mothers by increasing the use of non-custodial measures, and ensure that, if detention is unavoidable, their detention conditions are in accordance with the United Nations Rules for the Treatment of Women prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (General Assembly resolution 65/229, annex).

(13) While welcoming the information provided by the delegation on the measures taken to address the issue of HIV in prisons, the Committee remains concerned by the prevalence of HIV in places of detention and by allegations of transmission of HIV among detainees (art. 16).

The Committee urges the State party to adopt all necessary measures to protect detainees from contracting HIV, including through awareness-raising campaigns and, when appropriate, by making condoms available.

National human rights institution

(14) The Committee welcomes the re-establishment of the Kenya National Commission on Human Rights (KNCHR) in 2011, following the enactment of the KNCHR Act (2011), and its work in monitoring the conditions in prisons and detention centres, but remains concerned by the lack of an unconditional commitment on the part of the State party to provide adequate funding to the Commission to enable it to carry out its mandate. It further

regrets the lack of information on the dissemination of reports on the Commission's visits to places of deprivation of liberty (art. 2).

The State party should unconditionally commit to providing the Commission with sufficient financial resources necessary to enable it to carry out its mandate in accordance with the Principles relating to the status of national institutions (the Paris Principles) (General Assembly resolution 48/134, annex). In addition, the reports produced by the KNCHR on its visits to places of detention should be made public.

Pretrial detention

(15) While welcoming the information provided by the State party on the measures to reduce the length of pretrial detention, the Committee remains concerned by the high number of detainees awaiting trial, and the long period of pretrial detention – up to four years. The Committee acknowledges the improvements to the bail system, but is concerned that the bail conditions are still too prohibitive to be effective in practice (arts. 2, 11 and 16).

The State party should take all necessary measures to reduce overcrowding in places of detention, in particular by:

- (a) **Strengthening its efforts to reduce the backlog of cases, including by increasing judicial capacity and reviewing the current criminal justice policy;**
- (b) **Enacting the Bail Information and Supervision Bill (2011);**
- (c) **Affording non-custodial sentencing measures and sensitizing the relevant judicial personnel to the use of such measures, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (General Assembly resolution 45/110, annex).**

Arbitrary arrests and police corruption

(16) The Committee is concerned by persistent allegations of the widespread practice of arbitrary detention by the police, frequently connected to extortion of those detained and particularly targeting economically disadvantaged neighbourhoods (arts. 2, 11 and 16).

With reference to the recommendations made in paragraph 11 of the present concluding observations, the State party should also take all necessary measures to determine cases where vulnerable persons are prone to arbitrary arrest, prevent such acts and put in place systems to ensure that police corruption is promptly, effectively and impartially investigated. Perpetrators should be suspended from duties while under investigation and brought to justice.

Lynchings

(17) The Committee is concerned by reports on cases of lynchings, in particular of elderly women accused of witchcraft, and by the allegations that these acts have not been effectively investigated, prosecuted and punished, even in cases where there is video evidence of the lynching (arts. 2 and 12).

The Committee urges the State party to amend the Witchcraft Act (1925) to bring it into conformity with the Constitution and international human rights standards in order to eliminate the practice of lynching. The State party should investigate, prosecute and appropriately punish the perpetrators of such acts, in order to ensure the security and safety of all persons.

Investigation of the post-election violence

(18) While the Committee welcomes the information provided by the delegation that the Truth, Justice and Reconciliation Commission's report has been submitted to the President

and released, it remains concerned that the report has not yet been considered by the Government and, as a result, its outcome is still unknown. The Committee regrets the lack of publication of the final report of the Multi-Agency Taskforce; it is also concerned at the delay in effectively and impartially investigating the 2007 and 2008 post-election violence, with the result that perpetrators continue to be at large (arts. 11, 12 and 14).

Recalling its previous recommendations (CAT/C/KEN/CO/1, paras. 19 and 20), the Committee urges the State party to:

(a) Strengthen its efforts to ensure prompt, impartial and effective investigation of all allegations of excessive use of force, torture and extra-judicial killings by the police and the military during the post-election violence, that perpetrators are prosecuted and, on conviction, appropriately punished. All victims should obtain adequate redress;

(b) Continue its cooperation with the Prosecutor of the International Criminal Court;

(c) Make public the report of the Multi-Agency Taskforce;

(d) Ensure that the report by the Truth, Justice and Reconciliation Commission is considered without delay, published, and its recommendations implemented.

Refugees and counterterrorism measures

(19) While the Committee commends the State party's efforts in providing sanctuary to over 600,000 refugees and recognizes the State party's legitimate national security concerns, in particular with regard to its border with Somalia, it remains concerned by allegations of police violence, including killings, and by the level of sexual and gender-based violence in the refugee camps. It is also concerned by the State party's failure to effectively investigate, prosecute and punish the acts perpetrated by the security forces during the "special operation" in Mandera, in October 2008; in Dadaab refugee camps, between 2008 and 2010; in Eastleigh between mid-November 2012 and late January 2013. In particular, the Committee is concerned by the absence of an effective investigation into the police killing of two refugees in the Daghaley refugee camp in June 2011 (arts. 2, 11 and 12).

The Committee urges the State party to ensure that all police and military operations, including counterterrorism activities, are carried out in full compliance with the Convention and the State party's obligations under international law. The State party should promptly, effectively and impartially investigate any allegation of torture and ill-treatment of ethnic Somalis perpetrated by the police and ensure that those responsible are prosecuted and punished according to the gravity of their acts. The State party should compile and publish data on the investigations carry out, including by any committees of inquiry established in this context, and their outcomes.

Non-refoulement

(20) The Committee notes the information provided by the delegation that the State Party operates an open border policy with Somalia and all asylum applicants are treated in accordance with the State party's obligations under international and regional conventions on human rights and refugees. Nevertheless, the Committee recalls its previous recommendations (CAT/C/KEN/CO/1, paras. 16 and 17), and notes with concern reports of cases of deportations effected without due process and of Somali asylum seekers being turned back at the border for reasons of national security (art. 3).

The State party should amend its legislation and bills, including the Refugee Bill (2006), the Extradition (Contagious and Foreign Countries) Act (2010), the

Extradition (Commonwealth Countries) Act (2010), the Kenya Citizenship and Immigrations Act (2011) and the Refugee Bill (2012) to ensure that its law conforms to its non-refoulement obligation under article 3 of the Convention. The State party should enact the amended Refugee Bill (2012) and adopt the Draft National Refugee Policy (2012) to ensure that all asylum applicants are afforded due process. The State Party should also ensure that, in practice, foreigners are not expelled, returned or extradited under any circumstances to countries where there are substantial grounds for believing that the person would be in danger of being subjected to torture in the country of destination.

Witness protection

(21) The Committee welcomes the enactment of the Witness Protection (Amendment) Act (2010) and the establishment of the Witness Protection Agency (2011). However, it is concerned that, in practice, witnesses and their families are reportedly still vulnerable to threats and reprisals by law enforcement personnel who seek to eliminate evidence that could be used against them under this Act. The Committee is concerned that the Agency's budget overemphasizes administrative matters and allocates an insufficient amount of resources for the purpose of witness protection (arts. 2, 13 and 16).

The State party should take immediate and effective measures to ensure that the provisions of the Witness Protection Act are upheld in practice in order to effectively protect witnesses and their families, all allegations of violations are promptly, effectively and impartially investigated, and alleged perpetrators are prosecuted and punished. The State party should allocate sufficient resources to the Witness Protection Agency to enable it to function effectively in practice.

Complaints mechanisms

(22) While the Committee acknowledges the steps taken by the State party to improve the quality and access to the "P3" form, it remains concerned by the impediments inhibiting its effective use by a victim of torture and ill-treatment, such as the high fees charged by medical professionals to complete the form and the insistence that the complaint form be first filled in at a police station (art. 13).

Recalling its previous recommendation (CAT/C/KEN/CO/1, para. 24), the Committee urges the State party to take effective measures to ensure that all victims of torture and ill-treatment have effective access to complaint mechanisms and their cases are promptly, effectively and impartially investigated. In particular, the State party should:

- (a) **Review the "P3" form to ensure compliance with the standards of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) and make the form available free of charge at all public hospitals;**
- (b) **Ensure that the medical professionals filling in the "P3" form are adequately remunerated, including for giving testimony in court, to ensure that the right of a complainant is not tied to his economic situation;**
- (c) **Take measures, including training medical professionals, to integrate forensic medical services in the mainstream health framework;**
- (d) **Take effective measures to ensure that victims alleging abuse in places of detention can complain to an independent and impartial institution.**

Adequate compensation

(23) While acknowledging the information on modalities of compensation, civil court decisions awarding compensation to victims of torture and ill-treatment or their families and the Victims of Offences Bill, the Committee regrets the continued absence of a comprehensive legislative framework providing for effective redress for victims of torture and ill-treatment and that health care for victims of torture is not covered by the National Hospital Insurance Fund. The Committee is also concerned that victims are directed to lengthy and costly civil procedures to realize their rights. It remains particularly concerned that most victims of the 2007 and 2008 post-election violence and the “special security operations” are still awaiting redress and compensation (art. 14).

The Committee draws the attention of the State party to its recently adopted general comment No. 3 (2012) on the implementation of article 14 of the Convention, which explains the content and scope of State parties’ obligation to provide full redress to victims of torture. In particular, it defines victims of torture or ill-treatment as persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention, and states that such persons should be considered victims, regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted (para. 3).

The Committee urges the State party to:

- (a) **Repeal, as a matter of urgency, the one-year limitation for tort claims against government officials;**
- (b) **Strengthen its efforts to reduce delays in civil compensation cases;**
- (c) **Enact the Victims of Offences Bill with a view to establishing a comprehensive legislative framework to give effect to the right to redress, including compensation and medical rehabilitation;**
- (d) **Consult with relevant stakeholders to properly and effectively regulate the National Fund for Victims of Torture as soon as possible;**
- (e) **Ensure that the right to rehabilitation is included in the Prevention of Torture Bill (2011), that adequate resources are allocated for effective rehabilitation treatment and programmes, including medical and psychological programmes as well as those provided by non-State services. Rehabilitation services should be duly covered under the National Hospital Insurance Fund.**

Training

(24) While the Committee notes with appreciation the 50 per cent increase in the budget allocation for the police training programme and the progress made in training over 25,000 police officers, it remains concerned by the limited scope of the programme and the lack of an effective evaluation mechanism of the training programme as well as the absence of training for military and relevant medical personnel (art. 10).

The Committee recommends that the State party redouble its efforts to train the police on human rights, especially the provisions of the Convention, and extend the training programme to all law enforcement and military personnel and carry out an effective evaluation of the impact of the training programme. It further recommends that the State party ensure that all relevant medical and law enforcement personnel are trained on the Istanbul Protocol (2004) and take measures to ensure that the standards contained therein are properly applied in practice.

Access to justice

(25) While the Committee takes note of the State party's national legal aid scheme and welcomes the information that the Legal Aid Bill (2012) will be "enacted within one year", it remains concerned about the persistent problem of access to justice, particularly by those without economic resources (art. 2).

The State party should promptly table the Legal Aid Bill (2012) in Parliament, together with the National Legal Aid policy, and ensure that it is operational countrywide and provide it with adequate resources to function properly so as to ensure that lack of resources is not an obstacle to accessing justice. Further, the State party should continue its efforts to increase the number of lawyers throughout the country.

Female genital mutilation

(26) While the Committee welcomes the enactment in 2011 of the Female Genital Mutilation Act and the Ministry of Gender, Children and Social Development's work on raising awareness against female genital mutilation, it remains concerned by the prevalence of the practice. The Committee is further concerned that the power to enter premises without a warrant that is afforded to "chiefs and children's officers" by the Act does not have legal safeguards (arts. 2, 11 and 12).

The State Party should redouble its efforts to eradicate the practice of female genital mutilation, including through awareness-raising campaigns and by prosecuting and punishing perpetrators of such acts. The State party should ensure that all measures to combat the practice comply with legal safeguards.

Reproductive health facilities

(27) The Committee welcomes the waiver on maternity fees in public hospitals, but remains concerned about ill-treatment of women who seek access to reproductive health services, in particular the ongoing practice of post-delivery detention of women unable to pay their medical bills, including in private health facilities. The Committee is further concerned by occurrences of forced and coerced sterilization of HIV positive women and women with disabilities (arts. 2, 12 and 16).

The Committee urges the State party to strengthen its efforts to end the practice of forcible detention of post-delivery mothers for non-payment of fees, including in private health facilities.

The State party should strengthen its efforts to investigate allegations of involuntary sterilizations or other harmful practices in connection with reproductive health, and identify and punish those involved in such practices.

The State party should enact the Family Protection Bill to give effect to the right to health as provided for in article 43 of the State party's Constitution. The Commission on the Administrative Justice (Ombudsman) should publish detailed reports on complaints, follow-up and outcomes. The State party should ensure that the National Gender and Equality Commission effectively monitors the conditions in reproductive health facilities by issuing periodic status reports.

Abortion in case of rape or incest

(28) While acknowledging the information provided by the State party that in practice physicians may allow abortion in cases where a woman has been subjected to incest or rape, the Committee is concerned that there is no right to abortion in such cases and, as a consequence, women are left in an unjustified discretionary situation with grave

repercussions on their health due to the resulting uncertainty for women and medical doctors (art. 2 and 16).

The Committee recommends that the State party amend its legislation in order to grant women who have been subjected to rape or incest the right to abortion independently of any medical professional's discretion.

The Committee recommends that the State party evaluate the effects of its restrictive legislation on abortion on women's health with a view to regulating this area with sufficient clarity.

Juvenile justice and age of criminal responsibility

(29) While noting the information that the Children Act (Amendment Bill) (2011) and the Child Justice Bill (2011) propose raising the age of criminal responsibility to 12 years, the Committee remains concerned that the bills have not been enacted and that the age of criminal responsibility remains at 8 years (art. 2).

The Committee recommends that the State party adopt the bills on children with a view to raising the age of criminal responsibility to internationally acceptable standards, as expressed in general comment No. 10 (2007) of the Committee on the Rights of the Child on children's rights in juvenile justice (paras. 32 and 33). The State party should ensure the full implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (General Assembly resolution 40/33), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (General Assembly resolution 45/112, annex) and the United Nations Guidelines for the Protection of Juveniles Deprived of Their Liberty (General Assembly resolution 45/113).

Violence against children

(30) The Committee is concerned by the lack of effective monitoring of violence against children in schools and in public institutions. While the Committee welcomes the establishment of 14 Child Protection Units in police stations, it remains concerned that these are concentrated in urban centres, leaving children in rural areas without such protection (arts. 2 and 11).

The State party should strengthen its complaints mechanisms, follow-up procedures and support services for children who have been tortured and abused, including by extending Child Protection Units to police stations countrywide and by affording countrywide child helpline call centres. The State party should also strengthen its inspection and monitoring of Charitable Children Institutions to ensure that children do not stay for long periods, unless under special circumstances. The State Party should take effective measures to ensure that all children are always protected from violence and other forms of mistreatment in schools and institutions.

The findings of the National Gender and Equality Commission's monitoring of children's institutions should be made available and its recommendations should be implemented.

Mental health institutions

(31) The Committee is concerned by reports of deplorable conditions in psychiatric institutions and other places of deprivation of liberty and regrets the lack of information by the State party on the conditions in such institutions (art. 16).

The State party should ensure that all places of deprivation of liberty, including psychiatric hospitals, are adequately monitored and that effective safeguards are in place to prevent any ill-treatment of persons in such facilities. The State party is urged

to provide detailed information on the place, time and periodicity of visits, including unannounced visits, to psychiatric institutions and other places of deprivation of liberty, and on the findings and follow-up on the outcome of such visits.

Human rights defenders

(32) The Committee is concerned that human rights defenders continue to report intimidation, harassment and ill-treatment by the police. The Committee is concerned by the State party's inability to provide effective support to human rights defenders and to promptly, effectively and impartially investigate, prosecute and punish acts of violence and intimidation against human rights defenders. The Committee regrets the lack of information on the investigation of the reported attack on 9 November 2012 on the executive director of the NGO Kenyans for Justice and Development (arts. 2, 12, 13 and 16).

Bearing in mind the Committee's previous recommendation (CAT/C/KEN/CO/1, para. 28), the State party should take effective steps to ensure that all persons reporting acts of torture and ill-treatment are protected from intimidation and reprisals in any form. The State party should ensure prompt, effective and impartial investigations of any allegations of abuse or intimidations against human rights defenders, including the attack of 9 November 2012. The Committee encourages the State party to seek closer cooperation with civil society in upholding human rights, including the prevention of intimidation, reprisals and ill-treatment of human rights defenders.

Death penalty

(33) While acknowledging that the death penalty has not been applied in the State party since 1987, the de facto moratorium on the death penalty and the President's initiative to commute 4,000 death sentences in 2009, the Committee remains concerned by the legal uncertainty following the High Court's judgements, the high number of death sentences passed, including for minor offences, and the conditions of the 1,600 persons still on death row (arts. 2 and 16).

The Committee recommends that the State party reconsider the possibility of reviewing its policy with a view to abolishing the death penalty. The State party should ensure that all persons on death row are afforded the protection provided for under the Convention and are treated humanely. The State party should support the efforts of the Kenya National Commission on Human Rights to conduct a survey and awareness-raising measures regarding public opinion on the death penalty.

Deaths of police officers

(34) The Committee is concerned by reports of a high number of deaths of police officers while on duty, including in the context of "special operations" in Mandera District and Tana River District (arts. 2, 10 and 16).

The State party should ensure that police officers are trained and equipped appropriately so as to ensure sufficient preparation for the tasks at hand. The State party should improve the terms and conditions of service for police officers to be at the same level as other security forces, and take effective measures to protect the lives of security officers.

Data collection

(35) The State party should establish a system to compile national statistics and should provide statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of extrajudicial killings, enforced disappearances, domestic and sexual

violence as well as on means of redress, including compensation and rehabilitation, provided to victims.

Cooperation with United Nations human rights mechanisms

(36) The Committee recommends that the State party strengthen its cooperation with United Nations human rights mechanisms, including by inviting Special procedures mandate holders on areas related to this report to visit the country.

Other issues

(37) Recalling the commitment made by the State Party during the universal periodic review in 2010 (A/HRC/15/8, para. 101.3), the Committee recommends that the State party consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(38) The Committee recommends that the State party consider making the declarations envisaged under articles 21 and 22 of the Convention.

(39) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocols to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child (on the sale of children, child prostitution and child pornography) and the Convention on the Rights of Persons with Disabilities.

(40) The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(41) The Committee requests the State party to provide, by 31 May 2014, follow-up information in response to the Committee's recommendations related to (a) ensuring or strengthening legal safeguards for persons detained, (b) conducting, prompt, impartial and effective investigations, and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 9, 10, 17 and 18 of the present document.

(42) The State party is invited to submit its next report, which will be its third periodic report, by 31 May 2017. To that purpose, the Committee will, in due course, transmit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

73. Mauritania

(1) The Committee against Torture considered the initial report of Mauritania (CAT/C/MRT/1) at its 1138th and 1141st meetings (CAT/C/SR.1138 and 1141), held on 8 and 10 May 2013. At its 1161st meeting (CAT/C/SR.1161), held on 27 May 2013, the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the initial report of Mauritania. It does note, however, that the report is not entirely in conformity with the Committee's reporting guidelines and regrets that the State party has submitted this report seven years after it was due.

(3) The Committee appreciates the open dialogue held with the State party's delegation and the responses provided to the questions posed by Committee members during their

consideration of the report. However, it regrets that representatives of all the relevant ministries were not in attendance.

B. Positive aspects

(4) The Committee notes with satisfaction that the State party has ratified or acceded to the following international instruments:

(a) The International Covenant on Economic, Social and Cultural Rights (17 November 2004);

(b) The International Covenant on Civil and Political Rights (17 November 2004);

(c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (22 July 2005);

(d) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (22 January 2007);

(e) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (23 April 2007);

(f) The Convention on the Rights of Persons with Disabilities (3 April 2012);

(g) The Optional Protocol to the Convention on the Rights of Persons with Disabilities (3 April 2012);

(h) The International Convention for the Protection of All Persons from Enforced Disappearance (3 October 2012);

(i) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (3 October 2012).

(5) The Committee takes note with satisfaction of the State party's efforts to revise its legislation and, in particular, of its adoption of the following instruments:

(a) Act No. 2003-025 of 17 July 2003 on the suppression of trafficking in persons;

(b) Ordinance No. 2005-015 of 5 December 2005 on the judicial protection of children;

(c) Ordinance No. 2007-36 of 17 April 2007, which sets out the Code of Criminal Procedure;

(d) Act No. 2007-048 of 3 September 2007, which classifies slavery as a criminal offence and provides for the suppression of slavery-like practices;

(e) The Migrant Smuggling Act of 22 January 2010;

(f) The Ministerial Order issued by the Ministry of the Civil Service, Labour and the Modernization of Public Administration in 2011 which sets out regulations governing the employment of men and women as domestic servants and defines forms of employment that violate labour laws (including the provisions of the conventions ratified by Mauritania, as well as the Mauritanian Labour Code) as criminal offences.

(6) The Committee commends the State party on its cooperation with the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences, and with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

C. Principal subjects of concern and recommendations

Definition and criminalization of torture

(7) The Committee remains concerned by the fact that, over eight years after becoming a party to the Convention, the State party has still not incorporated a provision into its criminal legislation that explicitly defines and penalizes torture as a specific criminal offence and that acts of torture can be punished only as the offences of assault and battery or homicide (arts. 1 and 4). Although the delegation of the State party stated orally that a new law adopted in March 2013 would criminalize torture and slavery in its first article and establish both offences as crimes against humanity, the Committee is concerned that a legal void conducive to impunity might continue to exist if the above-mentioned law is not promulgated (arts. 1, 4 and 14).

(a) The Committee recommends that the State party amend its Criminal Code to include a definition of torture that incorporates all the elements of torture defined in article 1 of the Convention, together with provisions which classify acts of torture as a criminal offence that is subject to penalties commensurate with the gravity of such acts;

(b) The State party should expedite its legislative reform process and take the necessary steps to promulgate and publish the above-mentioned law of March 2013 in order to fill the existing legal void. It should also make a determined effort to disseminate the contents of this law widely and to provide special training on this law to security and law enforcement personnel.

Allegations of torture and ill-treatment

(8) The Committee notes with satisfaction that the first article of Ordinance No. 2007-36 (amending Ordinance No. 83-163 of 9 July 1983, which sets out the Code of Criminal Procedure) provides that “a confession obtained under torture, violence or duress is devoid of value”. It also notes with satisfaction reports that the Supreme Court refused to admit confessions obtained under torture into evidence in the 2007 trial of a number of Salafists, which paved the way for a reduction in the sentences of some of the defendants and the acquittal of others. The Committee observes, however, that these reports indicate that detainees are being tortured and ill-treated, including in unofficial places of detention. While noting that article 15 of Act No. 2010-007 of 20 January 2010 regulating the National Police prohibits police officers from inflicting “cruel or degrading treatment that would constitute human rights violations”, the Committee is particularly concerned by credible reports that, since 2009, at least two prisoners have died after being tortured (arts. 2, 11, 15 and 16).

The State party should:

(a) Give clear, official instructions to members of the security forces (police and gendarmerie) which state that the prohibition of torture is absolute, that it is a criminal offence and that the perpetrators of such acts will be prosecuted and receive punishments commensurate with the gravity of the offence;

(b) Take effective steps to ensure that thorough, independent and impartial investigations are conducted, without delay, into all allegations of torture or ill-treatment, that the perpetrators of such acts are brought before the courts and that appropriate penalties are imposed upon them;

(c) Take all necessary steps to ensure that confessions obtained under torture are not used as evidence against the authors of such confessions during investigations or trials;

(d) Raise judges' awareness of their obligation to open inquiries into any allegations of torture which are brought to their attention.

Direct application of the Convention by national courts

(9) While the Committee is pleased to learn that the Convention can be invoked directly in the courts of the State party and takes precedence over national laws, it is concerned by information it has received that acts of torture can be punished only as the offences of assault and battery or homicide because torture is not a criminal offence in its own right. Moreover, the Committee regrets the lack of information on cases in which the Convention has been applied by the courts of the State party or has been invoked before them (art. 2).

The State party should incorporate the obligations prescribed by the Convention into its national legislation. It should also make certain that public officials, judges, magistrates, prosecutors and attorneys receive training that covers the provisions of the Convention so that they will be in a position to apply them directly and to assert the rights they establish before the courts of the State party.

Fundamental legal safeguards

(10) The Committee is particularly concerned about the fact that article 57 of the Code of Criminal Procedure states that a person may be held in police custody for a period of 15 days in connection with terrorist crimes or crimes that threaten national security, and that this period may be extended twice for a further 15 days each time if authorization to do so is received from the public prosecutor, especially since persons in police custody have no means of challenging the legality of their detention. The Committee is also particularly concerned by the fact that article 3 of Act No. 2010-043 of 21 July 2010 on combating terrorism defines terrorism in broad and vague terms (art. 2).

The State party should:

(a) Immediately take effective steps to ensure that all persons who are deprived of their liberty have the benefit of all of the following fundamental legal safeguards from the moment that they are taken into police custody:

- (i) The right to be informed of the reasons for their arrest;**
- (ii) The right to have prompt access to independent legal counsel from the moment that they are deprived of their liberty and, if necessary, to legal aid;**
- (iii) The right to be examined by an independent physician and to contact a family member; and**
- (iv) The right to be brought before a judge without delay and to have the legality of their detention examined by a court in accordance with international standards;**

(b) Release and compensate all persons who have been detained arbitrarily;

(c) Abolish the provision under which people may be held in police custody for a 15-day period in connection with terrorist offences or crimes that threaten national security, and establish a maximum 48-hour period instead;

(d) Introduce an amendment to Act No. 2010-043 on combating terrorism to restrict its scope in a manner that will avert arbitrary arrests and forms of treatment that are prohibited under the Convention.

Incommunicado detention and enforced disappearances

(11) The Committee is concerned by allegations of persons being held in incommunicado detention, a practice that is conducive to torture and enforced disappearances.

The State party should:

(a) **Ensure that a register is kept of all persons deprived of their liberty and that the register is up-to-date and made available to all competent judicial authorities.**

The information in the register should include:

- (i) **The identity of the person deprived of their liberty;**
- (ii) **The date, time and place at which the person was placed in detention and the name of the official or body who deprived them of their liberty;**
- (iii) **The reasons for their detention;**
- (iv) **The official or body overseeing their detention;**
- (v) **Notes on their state of health;**
- (vi) **If the detainee dies in custody, the circumstances and causes of death and the place to which the body will be taken; and**
- (vii) **The time and date of their release or of their transfer to another place of detention and, where applicable, the place to which they were transferred and the official or body overseeing the transfer;**

(b) **Promptly incorporate a definition of the crime of enforced disappearance in national legislation;**

(c) **Take effective steps to ensure that thorough, independent and impartial criminal investigations are conducted, without delay, into all allegations of torture or ill-treatment and that the perpetrators of such acts are brought before the courts, which should impose appropriate penalties on them.**

Order from a superior

(12) While taking note of the State party's statement to the effect that, in accordance with the decree which sets forth the National Police Code of Ethics, a person who obeys the order of a superior to commit an act of torture is liable to administrative penalties, without prejudice to the penalties prescribed by law, as well as the oral reports that article 14 of Act No. 2010-07 regulating the National Police subordinates the obligation to obey an order from a superior to the laws and regulations that are in force, the Committee remains concerned by the fact that these provisions apply only to the police. Moreover, these provisions do not establish a formal system for protecting subordinates from reprisals if they refuse to obey a superior who orders them to commit an act of torture (art. 2).

The State party should ensure, both by law and in practice, and in accordance with article 2, paragraph 3, of the Convention, that the execution of such an order cannot be invoked as a justification for torture. The State party should also introduce a system for protecting subordinates from reprisals if they refuse to obey an order from a superior that would be in violation of the Convention.

National Human Rights Commission

(13) The Committee notes with satisfaction that the National Human Rights Commission was established in 2006 and that it has been classified as having A status under the Paris Principles since 2011. The Committee is satisfied that the Commission has sufficient opportunity to carry out unannounced visits to all places of detention within the State party and to make recommendations to the relevant authorities (art. 2).

The State party should provide the Commission with the financial and human resources it needs in order to fulfil its mandate, to publicize its recommendations and

to reinforce its independence in full conformity with the Paris Principles (General Assembly resolution 48/134).

National mechanism for the prevention of torture

(14) The Committee notes that, having ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the State party is obliged to establish a national preventive mechanism (art. 2).

The State party should take the appropriate steps, in consultation with all stakeholders, to establish a national preventive mechanism in accordance with article 3 of the Optional Protocol to the Convention by October 2013 and to provide it with the financial and human resources that it needs in order to carry out its work effectively on an entirely independent basis in accordance with articles 3 and 17 of the Optional Protocol and the Guidelines on National Preventive Mechanisms (CAT/OP/12/5).

Independence of the judiciary

(15) The Committee is concerned by credible reports regarding the exertion of pressure on members of the judiciary and interference in the judicial system. The fact that article 89 of the Constitution of 1991 states that the President of the Republic is the “guarantor of the independence of the judiciary” and presides over the Supreme Council of the Judiciary only heightens the Committee’s concerns in this respect. The Committee is concerned by the absence of measures to guarantee the effective independence of the judiciary (art. 2).

The State party should:

(a) Guarantee the full independence of the judiciary, in accordance with the Basic Principles on the Independence of the Judiciary (General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985);

(b) Take appropriate measures to guarantee and protect the independence of the judiciary and ensure that its operations are free from any pressure or interference from the executive;

(c) Provide the courts and judges with the support they need to operate in a wholly independent manner, including the necessary human, technical and financial resources;

(d) Establish an independent body to review disciplinary decisions;

(e) Invite the Special Rapporteur on the independence of judges and lawyers to visit the State party.

Non-refoulement, migrants, refugees and asylum seekers

(16) The Committee takes note with satisfaction of the fact that a new title that was added to the Code of Criminal Procedure in 2011 bars extradition if the person whose extradition is being requested would be in danger of being subjected to torture in the requesting State. The Committee is also pleased that the State party has opened up its borders to Malians who have been displaced by the violence that erupted in northern Mali in January 2012. The Committee has taken note of the information provided to it regarding the conclusion of agreements between the State party and Spain to combat irregular immigration and wishes to express its concern about the possibility of asylum seekers being mistaken for irregular immigrants, which could result in their arbitrary detention and violations of the principle of non-refoulement. The Committee finds it regrettable that information has not been made available regarding any decisions that would ensure that the State party effectively fulfils its obligation under article 3 of the Convention to uphold the principle of non-refoulement in

the course of extradition proceedings, immigrant visa application procedures and asylum application procedures (arts. 2 and 3).

The Committee recommends that the State party:

(a) **Ensure that no one, regardless of whether he or she is in the country in an irregular situation, is expelled, extradited or returned to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture, that decisions in this connection are taken on the basis of an examination of each person's individual case and that the persons concerned can appeal against such decisions;**

(b) **Ensure that any person who is detained in connection with the effort to combat irregular immigration has access to an effective judicial remedy which allows that person to challenge the legality of administrative decisions regarding his or her detention, expulsion or refoulement;**

(c) **Ensure that asylum seekers are held in detention only as a last resort and, if this becomes necessary, that they are held for as short a time as possible and that use is made of alternatives to detention whenever feasible;**

(d) **Issue identity documents to Mauritians who were expelled in the past and then repatriated, as well as to their family members.**

Training

(17) While noting that many training sessions dealing with human rights and other subjects are organized for members of the security services, the Committee is concerned by the absence of training on the Convention against Torture, and particularly regarding the absolute prohibition of torture, for police officers, gendarmes, criminal investigation police, prison guards and law enforcement personnel such as judges, prosecutors and lawyers. It is also concerned by the fact that the guidelines set out in the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol, 1999) are not systematically followed in investigations into cases of torture or ill-treatment (art. 10).

The Committee recommends that the State party:

(a) **Establish training programmes and develop modules on human rights to ensure that security and law enforcement personnel are fully aware of the provisions of the Convention and particularly of the absolute prohibition of torture;**

(b) **Provide training in respect of the Istanbul Protocol on a regular and systematic basis to medical personnel, forensic doctors, judges, prosecutors and all other persons involved in the custody, interrogation or treatment of any individual who is arrested, detained or imprisoned, as well as to anyone else involved in investigations into cases of torture;**

(c) **Develop and apply a methodology for evaluating the effectiveness of educational and training programmes dealing with the Convention against Torture and the Istanbul Protocol and for assessing their impact in helping to reduce the number of cases of torture or ill-treatment.**

Investigations

(18) The Committee is deeply concerned by the fact that information on the prosecution of persons who have committed acts of torture has not been made available. It is also concerned about the conspicuous absence of statistics on the number of criminal charges of torture that have been brought, the investigations undertaken into complaints of torture and the convictions obtained in such cases, inasmuch as this suggests that no court has as yet

been able to apply the provisions of the Convention because there is no law that defines torture as a criminal offence or that sets out punishments for acts of torture. The Committee is also concerned by the reports it has received that the State party's authorities have been slow to investigate claims that acts of torture were committed in 2011 and 2012 in Nouakchott, Kaédi and Ould Yengé. The Committee is also deeply concerned by the scant information on the case of Hassane Ould Brahim, who was being held in the Dar Naïm prison in Nouakchott and who is said to have died in October 2012 after having been tortured by prison guards (arts. 12 and 13).

The State party should:

(a) Put an end to torture and to inhuman and degrading treatment, and ensure that allegations of torture, ill-treatment or excessive use of force by police or security forces are promptly investigated, that the persons concerned are prosecuted and convicted, as applicable, and that the penalties imposed are commensurate with the gravity of the offences committed, in line with the commitment made by the State party during the universal periodic review in November 2010;

(b) Introduce a provision in the Criminal Code establishing that the crime of torture is not subject to any statute of limitation;

(c) Provide the Committee with detailed information on the investigations conducted into the death of Hassane Ould Brahim in October 2012 in the Dar Naïm prison, and on their follow-up.

Amnesties and impunity

(19) The Committee is concerned about the fact that Act No. 92-93 of 14 June 1993 provides a blanket amnesty to members of the Armed Forces and security forces. In particular, the Committee remains concerned about the approach adopted by the State party (the nature of which was confirmed by its delegation) in dealing with the demands of victims and their dependants who, rather than availing themselves of the compensation provided for in that law, prefer to bring civil indemnification proceedings, which the State party considers to be ill-advised (arts. 2, 12, 13 and 14).

With reference to its general comment No. 3 (2012) (CAT/C/GC/3), the Committee recommends that the State party:

(a) Amend the Amnesty Act (Act No. 92-93) and take all necessary steps to combat impunity with respect to acts of torture by, inter alia, making effective remedies available to victims and their dependants;

(b) Ensure that victims and their relatives who seek reparation are protected from reprisals and intimidation.

Redress and rehabilitation for victims of torture

(20) The Committee is concerned about the fact that existing legislation does not contain any guarantees of redress for the harm caused to victims of torture. The Committee is further concerned that some forms of redress of religious origin, such as *qisas*, which is based on the principle of retaliation and is provided for in articles 285 and 286 of the Criminal Code, constitute acts of torture or cruel, inhuman or degrading treatment (arts. 2, 12, 13, 14 and 16).

The State party should:

(a) Adopt legislative and administrative measures to ensure that victims of torture and ill-treatment obtain redress, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, and introduce these into its body of criminal law;

(b) **Amend the Criminal Code to remove references to *qisas* penalties. In this regard, the Committee draws the attention of the State party to its recently adopted general comment No. 3 (2012) on article 14 of the Convention, which explains and clarifies the content and scope of the obligations of States parties with regard to the full redress to which victims of torture are entitled.**

Application of the prohibition of slavery-like practices

(21) While noting that the State party's delegation has informed the Committee that the judicial authorities of the State party are currently considering 15 cases involving allegations of slavery that would fall under Act No. 2007-048 of 3 September 2007, which classifies slavery as a criminal offence and provides for the suppression of slavery-like practices, the Committee regrets that no statistics are available on the nature and scale of slavery in the State party. The Committee is also concerned by the fact that the courts treat slavery cases as matters for ordinary law, particularly as labour or property rights issues, rather than as slavery offences. The crime of slavery is thus rendered meaningless in legal terms. Moreover, the Act of 2007 does not cover the discrimination intrinsic to slavery. The Committee echoes the concern of the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences, who noted that the Act could be applied only in the course of the criminal prosecution of slave-owners and therefore relied entirely on the police and the public prosecution service for its enforcement, there being no provision for victims to sue to obtain redress (arts. 1, 2 and 16).

The State party should:

(a) **Include a provision in the Criminal Code that defines and specifically criminalizes racial or ethnic discrimination, including slavery-like practices, and that sets out penalties commensurate with the gravity of the acts in question;**

(b) **Include a definition in Act No. 2007-048 of 3 September 2007 that covers all forms of slavery, as well as provisions concerning redress and rehabilitation measures for former slaves;**

(c) **Amend Act No. 2007-048 of 3 September 2007 so that victims of slavery or related practices may cause criminal proceedings to be initiated by suing for damages;**

(d) **Provide specific training modules in order to raise the awareness of judges and members of the legal profession as a whole about racial discrimination and about the fact that, in accordance with international standards, it is a prosecutable offence;**

(e) **Develop a comprehensive national strategy for combating both traditional and modern forms of slavery and discrimination, which include the practices of early and forced marriage, servitude, forced child labour, human trafficking and the exploitation of domestic workers, in line with the commitment made by the State party during the universal periodic review in November 2010.**

Conditions of detention

(22) While noting the efforts made by the State party to renovate its prisons, the Committee remains concerned by reports that conditions in all its detention centres are below international standards, in particular because of a lack of hygiene, ventilation, lighting, bedding, food and medical care. The Committee is also concerned by reports it has received that in many cases prisoners are sick and that about 20 died in 2010, including 14 at the Dar Naïm Prison. Also, while taking note of the efforts made by the State party to reduce overcrowding at the Dar Naïm prison, the Committee is concerned that some of the

inmates have been transferred to the Aleg Prison, where prisoners allegedly held protests in January 2013 about conditions of detention there (arts. 2, 11 and 16).

The State party should:

(a) **Redouble its efforts to bring living conditions in all prisons into line with international standards and with the Standard Minimum Rules for the Treatment of Prisoners (United Nations Economic and Social Council, resolutions 663 C (XXIV) and 2076 (LXII)) and increase the funding allocated for that purpose;**

(b) **Ensure all prisoners have access to drinking water, at least two meals per day, hygiene and basic necessities; make sure there is sufficient natural and artificial light and ventilation in cells; and provide medical and psychosocial care for prisoners with a view to preventing deaths in detention;**

(c) **Reduce prison overcrowding by making greater use of non-custodial measures, in line with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

(d) **Establish a central register of all prisoners in the country in which it is indicated whether they are remand prisoners or sentenced prisoners, the offence in question, the date on which they were taken into custody, the place where they are being held, and their age and gender;**

(e) **Ensure that prisoners have genuine access to a means of filing a complaint with an independent body regarding their conditions of detention and/or ill-treatment and that impartial, independent investigations into such complaints are promptly carried out;**

(f) **Carry out formal investigations into deaths in detention and their causes, provide the Committee with statistics and other information on the preventive measures taken by the prison authorities in the next periodic report, and take measures to reduce violence among prisoners;**

(g) **Continue to ensure that the National Human Rights Commission and other human rights organizations have unhindered access to all places of detention, which includes the ability to make unannounced visits and to hold private interviews with detainees.**

Human trafficking and violence against women

(23) The Committee takes note of the numerous legislative, institutional and awareness-raising measures adopted by the State party to prevent and combat human trafficking, including the adoption of Act No. 2003-025 of 17 July 2003 on the suppression of trafficking in persons. However, it remains concerned at the lack of information on: the penalties for rape; the number of convictions for rape; the prevalence of domestic violence and the way that cases are handled; and the extent of human trafficking (arts. 2, 12, 13, 14 and 16).

The State party should:

(a) **Ensure the effective enforcement, in full compliance with the Convention, of existing anti-trafficking laws;**

(b) **Conduct a study to determine the actual extent of human trafficking in the State party and its causes;**

(c) **Put an end to impunity by conducting formal investigations into allegations of rape, trafficking and domestic violence, prosecuting the perpetrators and imposing appropriate punishments on them;**

(d) **Offer victims protection, sufficient compensation and rehabilitation services, as necessary, and step up its awareness campaigns;**

(e) **Provide appropriate training to investigators and other personnel who come into contact with trafficking victims, including immigration service staff, and provide sufficient resources to the shelters set up for victims.**

Female genital mutilation

(24) While taking note of the institutional and awareness-raising measures adopted by the State party, the Committee remains deeply concerned by the fact that the practice of female genital mutilation is not penalized. It is also concerned by the lack of detailed information on the complaints that have been filed and the investigations conducted into those complaints, on the legal proceedings brought against those responsible for this practice and on the penalties imposed upon them (arts. 2, 12, 13, 14 and 16).

In line with the commitment that it made during the universal periodic review in November 2010, the State party should urgently adopt a law prohibiting female genital mutilation. The State party should also make it easier for victims to file complaints and should carry out inquiries, prosecute the perpetrators, impose appropriate penalties on them and provide victims with suitable redress, including compensation or rehabilitation. It should, furthermore, expand the scope of campaigns to raise awareness, particularly among families, of the harmful effects of this practice.

Corporal punishment

(25) Notwithstanding the adoption of Ordinance No. 2005-015 of 5 December 2005 on the judicial protection of children, which establishes prison sentences for persons who commit acts of torture or acts of barbarity against children, the Committee is concerned that corporal punishment of children is not prohibited by law and seems to be even considered a suitable and effective method of education (art. 16).

The State party should:

(a) **Amend its criminal legislation, including Ordinance No. 2005-015 on the judicial protection of children, to prohibit and explicitly penalize any form of corporal punishment of children in all places and contexts, including within the family, and enforce the principle of education without violence in accordance with article 28, paragraph 2, of the Convention on the Rights of the Child;**

(b) **Carry out programmes involving children, families, communities and religious leaders to educate, sensitize and mobilize the general public about the harmful effects of corporal punishment on the physical and psychological development of the person.**

Data collection

(26) The Committee regrets the lack of comprehensive disaggregated data on complaints, investigations, prosecutions and convictions related to acts of torture and ill-treatment attributed to security service agents, including gendarmes, police officers and prison staff. There are also insufficient statistics on trafficking in persons and violence against women, including domestic violence and female genital mutilation (arts. 2, 11, 12, 13, 14 and 16).

The State party should establish an independent body to generate and process statistical data, disaggregated by the age and gender of victims, for use in monitoring the implementation of the Convention at the national level. Such statistics should, in particular, cover complaints, investigations, prosecutions and convictions related to acts of torture and ill-treatment attributed to security service agents, including

gendarmes, police officers and prison staff, as well as deaths in detention. Statistics should also be compiled and made available on trafficking in persons and violence against women and female genital mutilation, as well as on the means of redress, particularly compensation and rehabilitation services, available to victims.

Other matters

(27) The Committee encourages the State party to consider making the declaration provided for under article 22 of the Convention, thereby recognizing the competence of the Committee to receive and consider individual communications. It also invites the State party to withdraw its reservations to articles 20 (confidential inquiries) and 30 (dispute settlement) of the Convention.

(28) The Committee invites the State party to consider ratifying the core United Nations human rights instruments to which it is not yet a party, namely:

(a) The Optional Protocol to the International Covenant on Civil and Political Rights;

(b) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

(c) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;

(d) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;

(e) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

(29) The State party is requested to widely disseminate the report it has submitted to the Committee and the present concluding observations, in the appropriate languages, through official websites, the media and non-governmental organizations.

(30) The Committee requests the State party to provide information on the follow-up given to the recommendations formulated in paragraphs 10 (c), 22 (a) and (b), and 18 (a) of this document by 31 May 2014. These recommendations are as follows: (1) repeal the provision under which persons may be held in police custody for up to three consecutive periods of 15 days in connection with terrorist acts or threats to national security and strengthen legal safeguards for detainees; (2) improve the conditions of detention in all of the State party's prisons; and (3) prosecute and punish perpetrators of acts of torture and ill-treatment.

(31) The Committee invites the State party to submit its second periodic report by 31 May 2017. The Committee also invites the State party to agree, by 31 May 2014, to submit that report under the optional procedure whereby the Committee will send the State party a list of issues prior to submission of its periodic report. The replies of the State party to the list of issues would constitute its second periodic report under article 19 of the Convention.

74. Netherlands

(1) The Committee against Torture considered the combined fifth and sixth periodic reports of the Kingdom of the Netherlands (CAT/C/NLD/5-6) at its 1144th and 1147th meetings, held on 14 and 15 May 2013 (CAT/C/SR/1144 and 1147), and adopted at its 1163rd meeting, held on 28 May 2013 (CAT/C/SR/1163), the following concluding observations.

A. Introduction

(2) The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and to have submitted its periodic report under it, as it improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation.

(3) The Committee welcomes the information presented in the combined fifth and sixth periodic reports of the Kingdom of the Netherlands which consists of the Netherlands (the part in Europe and in the Caribbean, namely Bonaire, Sint Eustatius and Saba), and the autonomous countries within the Kingdom, namely Aruba, Curaçao and St. Maarten. The Committee notes with appreciation a constructive dialogue with the State party's delegation. The State party's report generally complied with the reporting guidelines, although it lacked updates on the implementation of the Convention in the Caribbean part of the Netherlands. The Committee also appreciates the delegation's oral and written responses to questions raised and concerns expressed during the consideration of the report.

B. Positive aspects

(4) The Committee notes with satisfaction the various measures taken by the State party to implement the standards set by the Convention in the domestic policies and to guarantee the rights of persons not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment in the Kingdom of the Netherlands.

(5) The Committee welcomes the ratification by the State party of the following international instruments:

(a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 24 September 2009;

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 28 September 2010;

(c) The International Convention for the Protection of All Persons from Enforced Disappearance, on 23 March 2011.

(6) The Committee welcomes the enactment of the following legislation:

(a) The adoption of new legislation to criminalize human trafficking in Curaçao, in 2011;

(b) The entry into force of the new Penal Code of Curaçao, on 15 November 2011;

(c) The adoption of the New Criminal Code in Aruba, in April 2012, including the new juvenile justice system providing for educational measures and treatment of juveniles.

(7) The Committee also welcomes the adoption of the following administrative and other measures:

(a) The establishment in Aruba of an interdepartmental and interdisciplinary Task Force against the trafficking and smuggling of persons in 2007 and the subsequent adoption of a comprehensive counter-trafficking action plan;

(b) The revision of Police Order on Detainees in Aruba, in February 2012, incorporating the legally prescribed hours of access by a duty lawyer in order to guarantee the right of consultation with a lawyer even before the first police interview, in accordance with the *Salduz* judgement (No. 36391/02) of the European Court of Human Rights;

(c) The adoption of an instruction for the use of force for prison personnel in Aruba in 2012;

(d) The extension in 2012 of the mandate of the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children to cover all forms of sexual violence against children in the European part of the Netherlands;

(e) The designation of the national preventive mechanism which has been mandated to serve as a national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, although the Committee expresses some reservations at the lack of its independence, the way it is established and the fact that the mandate is limited to the European part of the Netherlands which may result in differential treatment of some categories of the Dutch nationals;

(f) The steps taken by the Government to improve the quality of its refugee status determination procedure, inter alia, through constant attention and monitoring of the system;

(g) The establishment of a centre for substance abuse addicts as part of the criminal justice system in Aruba;

(h) The improvement of detention conditions through renovations and expansions of several detention and correctional facilities in Curaçao.

C. Principal subjects of concern and recommendations

Enforcement of prohibition of torture and ill-treatment

(8) While noting the availability of data on investigations and prosecutions into alleged offences of torture and ill-treatment by law enforcement officers in Curaçao, the Committee regrets the absence of clarity as well as specific information as to which allegations and investigations of torture and ill-treatment by public officials in the other parts of the Kingdom, if any and if proven true, amounted to torture, under article 1 of the Convention, or to cruel, inhuman or degrading treatment or punishment, under article 16 of the Convention (arts. 1, 12, 13 and 16).

In accordance with the Committee's general comment No. 2 (2007), the State party should:

(a) Provide statistics on the allegations and investigations of torture and ill-treatment by public officials in all four parts of the Kingdom;

(b) Clarify which of the incidents of ill-treatment by law enforcement officers, if proven true, amount to torture, and other cruel, inhuman or degrading treatment or punishment;

(c) Provide training for law enforcement personnel to effectively apply the prohibition of torture and ill-treatment in order to appropriately sanction such acts.

Direct applicability of the Convention

(9) The Committee notes that the State party stated during the consideration of the report that the Convention is directly applicable and self-executing; however, the Committee has not been provided with specific information on cases in which the Convention has been invoked and directly applied before the national courts in the individual parts of the Kingdom (arts. 2 and 10).

The Committee recommends that the State party undertake all necessary steps to ensure direct applicability of the Convention, including by disseminating the Convention to all public authorities, including the judiciary, and raising the

awareness thereon to facilitate direct application of the Convention before national courts in all four parts of the Kingdom, and that it provide an update on the illustrative cases.

Right of access to a lawyer

(10) The Committee notes that the right of access to a lawyer is regulated by the instruction of the Board of Procurators General of 1 April 2010. It also observes that the draft Bill on Counsel and Police Interviews is being prepared. However, the Committee is concerned about the practice of restricting the right of access to a lawyer during police interrogation only to suspects under the age of 18 and anyone accused of a crime carrying a prison sentence of six years or more. The Committee is also concerned that the draft Bill contains an exception to the effect that the request for legal assistance can be denied if such legal assistance is “contrary to the interests of the investigation” which may lead to arbitrary restrictions of this right by the Public Prosecution’s Office. The Committee also notes that there are no advocates based in Sint Eustatius and Saba (Caribbean Netherlands) and that detained suspects in police custody in Sint Eustatius often sign a waiver to having a lawyer present during the first police interrogation (art. 2).

The State party should:

(a) **Review, in all parts of the Kingdom, its criminal procedures and practice with a view to guaranteeing to persons in police custody an access to a lawyer from the moment of deprivation of liberty;**

(b) **Consider timely adoption of the draft Bill on Counsel and Police Interviews to allow all suspects of an indictable offence, whether detained or not, to rely on access to and assistance from a lawyer at an earlier stage in the proceedings;**

(c) **Define in law the circumstances when the right to legal assistance can be restricted to avoid arbitrary limitations of the access to a lawyer.**

Non-refoulement

(11) Noting the positive impacts of amending the asylum procedure in July 2010, introducing the eight-day accelerated procedure, and the information that almost 90 per cent of new asylum applications were processed or at least interviewed under the eight-day procedure, the Committee is nevertheless concerned that the pressure to decide claims speedily puts constraints on procedural safeguards and fair review of applications by the Immigration and Naturalization Service. In particular, the Committee is concerned that:

(a) The accelerated procedure may prevent asylum seekers from fully presenting and substantiating their claims and therefore put the persons in need of international protection at heightened risk of rejection and possible return to a country where they may face persecution, torture or ill-treatment, in violation of the non-refoulement principle (art. 3);

(b) Only 12 hours of legal aid are allocated during the asylum procedure, which may limit the quality of legal advice to asylum seekers with complex claims (art. 3);

(c) The information forwarded by the asylum seeker after the initial decision has been taken by the authorities concerned is considered to have less value than the information provided before the initial decision was adopted and that the appeal procedures before the Council of State (the Administrative Jurisdiction Division) provide only for a marginal review of the facts which substantially limits the effectiveness of the appeal procedures (art. 3).

Noting the intention of the State party to evaluate the accelerated asylum procedure in 2013, the Committee recommends that the State party consider the following revisions:

(a) Allow sufficient time for asylum seekers, especially those in the accelerated procedures, to fully indicate the reasons for their application and obtain and present crucial evidence in order to guarantee fair and efficient asylum procedures in order to ensure that the legitimacy of applications for protection by refugees and other persons in need of international protection is duly recognized and refoulement is prevented;

(b) Allow for adequate legal assistance to all asylum seekers including by providing for exceptions from the maximum number of hours of legal assistance during the asylum procedure to facilitate submission of complex claims; and

(c) Allow asylum seekers to present new evidence which could not be made available at the time of the first interview on the merits and ensure that the appeal procedures before the Council of State provide for a full review of rejected applications.

Medical examinations as part of asylum procedure

(12) The Committee is also concerned that during medical examinations that form a part of asylum procedure, individuals are primarily assessed on their ability to be interviewed while disregarding their eventual needs of treatment and support due to ill-treatment, torture or trauma suffered. This practice of not using the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) as a means for establishing a link between the asserted ill-treatment in the asylum application and the findings of actual physical examination is not in conformity with the requirements set out in the Istanbul Protocol (arts. 3 and 10).

The Committee recommends that the State party take measures:

(a) To identify asylum seekers with specific needs as early as possible by ensuring that during the medical examination as part of asylum procedure the applicants are assessed for both their capacity to be interviewed properly as well as their eventual needs of treatment and support due to ill-treatment, torture or trauma suffered;

(b) To apply the Istanbul Protocol in the asylum procedures and to provide training thereon for concerned professionals to facilitate monitoring, documenting and investigating torture and ill-treatment, focusing on both physical and psychological traces, with a view to providing redress to the victims.

Residence permits to asylum seekers

(13) The Committee notes with concern the reports by reliable sources on the Government's intention to change the Aliens Act to abolish article 29, paragraph 1 (c), of the Act providing for residence permit based on humanitarian grounds, leaving discretion to the Government to reflect, for example, on the level of the asylum seeker's integration into society. This intention is reportedly motivated by the new Government policy to counter the perceived abuse of the law by requiring the asylum seekers to prove the well-founded fear of persecution or real risk of suffering cruel or inhuman treatment. The Committee is also concerned at reports that in the context of such evaluations the Government tends to place emphasis on the fact that if perpetrators of atrocious acts are duly prosecuted in the country of destination, the victims are no longer considered being at risk to be subjected to torture or ill-treatment upon return to that country. This policy may not fully address the

psychological conditions of the concerned individual and therefore should not result in a negative decision on asylum and return of the person to his country (art. 3 and 16).

The Committee recommends that the State party consider maintaining the provision in article 29 (1) (c) of the Aliens Act and ensure that the assessment of well-founded fear take into account, inter alia, previous experience of persecution or serious harm as being seriously indicative of a well-founded fear and whether or not protection against widespread and generalized violence in the country of destination can be provided by either the state or other actors, in accordance with article 3 of the Convention.

Detention of asylum seekers and foreigners based on migration law

(14) The Committee is concerned at reports that asylum seekers arriving at Amsterdam's Schiphol airport are systematically detained for average duration of 44 days due to a failure to comply with the necessary visa requirements, which, for example, prompted a hunger strike by 19 detainees on 30 April 2013 and the incidents of suicide in protest against detention. Their grounds for stay are processed according to the Dublin II Regulation procedure and they remain detained until its outcome (arts. 11 and 16).

The Committee urges the State party to ensure that the detention of asylum seekers is only used as a last resort, and, where necessary, for as short period as possible and without excessive restrictions, and to effectively establish and apply alternatives to the detention of asylum seekers.

(15) The Committee is concerned that the maximum time limit of 18 months for administrative detention of foreign nationals who await expulsion or return to their country of origin, based on article 59 of the Alien Act and article 15 of the EU Return Directive (EU directive 2008/115/EG) is not strictly observed in practice. There have been reports of about 30 per cent of aliens being administratively detained repeatedly for periods longer than 18 months because of apprehensions by the police after the release from their first detention due to absence of valid residence permit.

The Committee recommends that the State party:

(a) Scrupulously observe the absolute time limit for the administrative detention of foreign nationals, including in the context of repeated detention;

(b) Avoid, wherever possible, the accumulation of administrative and penal detention, in excess of the absolute time limit of 18 months of detention of migrants under migration law.

(16) The Committee further notes with concern that the legal regime in alien detention centres is not different from the legal regime in penal detention centres. The reports received by the Committee with regard to the confinement in cell for 16 hours, the absence of day-activities, the use of isolation cells, handcuffs and strip searches of aliens detained under migration law who await expulsion to their home country have been of particular concern (arts. 11 and 16).

The Committee urges the State party to ensure that the legal regime of alien detention is suitable for its purpose and that it differs from the regime of penal detention. The State party is also urged to use alien detention as a last resort and where necessary, for as short period as possible and without excessive restrictions, and to effectively establish and apply alternatives to such detention.

Unaccompanied children asylum seekers and children in detention

(17) The Committee notes the State party's information that unaccompanied children asylum seekers continue to be placed in detention centres in the European part of the

Kingdom if there is doubt about their age. The Committee is also concerned about the reports by the European Committee for the Prevention of Torture regarding families with children, who await expulsion, being detained longer than the maximum limit of 28 days (arts. 3 and 11).

The Committee recommends that the State party:

(a) **Verify the age of an unaccompanied child, if uncertain, before placing the child in detention. Such detention should be used as a last resort;**

(b) **Take alternative measures to avoid detention of children or their separation from their families;**

(c) **Ensure that unaccompanied minors can enjoy the rights guaranteed by the Convention on the Rights of the Child, to which the Kingdom of the Netherlands is a party.**

Forced removals

(18) The Committee notes the State party's clarifications of the figures on removals and forced returns of foreign nationals. Out of the total number of removals in the recent years amounting to about 20,000 per year, the number of forced returns was around 6,000. The Committee is concerned at the reported incidents of the excessive use of restraints during forced returns, some of which, according to NGO sources of information, have not been duly investigated (arts. 2, 3, 11, 12 and 16).

The Committee urges the State party to use restraints during forced returns only in accordance with the principle of proportionality, and to investigate any incidents of excessive use of restraints and force during forced returns.

Illegal treatment by the police and prison and border guards

(19) The Committee expresses concern at the alleged incidents of illegal use of force, insults and mistreatment in the Koraal Specht prison in Curaçao and the cells at the police stations on the islands of St. Maarten, Bonaire and Aruba, as well as ethnic profiling by the police and border guards aimed in particular at foreigners and members of minorities.

The State party should take measures to strengthen adequate training of law enforcement personnel and justice officials about the obligations stemming from the Convention and regularly assess the impact and effectiveness of such training measures in order to prevent the acts of torture, ill-treatment and violence.

Pretrial detention

(20) The Committee is concerned at the high percentage (38 per cent) of pretrial detainees in the Netherlands, and the little consideration of alternatives to pretrial detention. The Committee is also concerned that pretrial detention does not serve as a measure of last resort; instead it was reported that a bill is currently discussed in Parliament which may lead to the further extension of the grounds for pretrial detention for up to seventeen days before a hearing takes place. In addition, the Committee is concerned about the State party's response that the nature of sentencing is generally lenient. This was not considered by the Committee as a convincing argument, especially in light of the absence of commitment to reduce the use of pretrial detention. The Committee further observes with concern the absence of systems to obtain disaggregated data about the composition of detainee population. Finally, the Committee is concerned at the length of pretrial detention in Aruba (up to 116 days) and in Curacao (up to 116 days, and 146 days in the event of preliminary judicial investigation), which can be exceptionally extended (arts. 2 and 11).

The State party should take appropriate measures to reduce the use of pretrial detention and to ensure that the decisions imposing pretrial detention are duly

substantiated. The State party should use the pretrial detention as a measure of last resort, consider alternative measures to its use and observe presumption of innocence. The State party should also establish systems to obtain disaggregated data about the composition of detainee population to avoid disproportionate representation of minorities. In addition, the Governments of Aruba and Curacao should review criminal legislation to further shorten the length of pretrial detention and guarantee the suspects the right to be brought before a judge within one or two days from the arrest.

Forced internment in mental health care

(21) The Committee is concerned at the high numbers of persons with mental and psychosocial disabilities who are held in mental health care institutions on an involuntary basis, often for a lengthy period of time. The Committee is further concerned at the frequent use of solitary confinement, restraints and forced medication which may amount to inhumane and degrading treatment. Taking into account the information received during the consideration of the report on plans regarding mental health care, the Committee remains concerned at the lack of focus on alternatives to hospitalization of persons with mental and psychosocial disabilities. Finally, the Committee is concerned about the frequent lack of effective and impartial investigation of the excessive use of restrictive measures in mental health-care institutions (arts. 2, 11, 13 and 16).

The Committee recommends to the State party to:

- (a) **Develop alternative measures to reduce the number of forcibly interned persons with mental and psychosocial disabilities and ensure that involuntary internments in places of deprivation of liberty, including psychiatric and social care institutions, are done on the basis of a legal decision, guaranteeing all effective legal safeguards;**
- (b) **Strengthen the possibilities for appeal of decisions and effective access to complaint mechanisms for interned persons;**
- (c) **Use restraints and solitary confinement as a measure of last resort when all other alternatives for control have failed, for the shortest possible time and under strict medical supervision;**
- (d) **Undertake effective and impartial investigations into incidents where the excessive use of restrictive measures resulted in injuries and/or death of the interned persons;**
- (e) **Provide remedies and redress to the victims.**

Access to complaint mechanisms

(22) The Committee is concerned at the lack of clarity regarding the State party's strategies to inform, through the Custodial Institutions Inspectorate, alleged victims of torture and ill-treatment in detention facilities, including immigration detention centres, about the available complaint procedures against detention personnel (arts. 12, 13 and 16).

The Committee recommends that the State party take further steps:

- (a) **To sensitize detainees, through the Custodial Institutions Inspectorate, about the possibility and procedure for filing a complaint of alleged torture and ill-treatment in detention facilities against the respective categories of detention personnel;**
- (b) **To make such information available and widely publicized, including by displaying it in all places of detention;**

(c) **To ensure that all allegations of misconduct by the detention personnel are duly assessed and investigated, including the cases of intimidation or reprisals as a consequence of the complaints of ill-treatment.**

Prompt, independent and thorough investigations

(23) While welcoming the clarification on the mechanisms of investigation of ill-treatment and abuse of prisoners (paras. 73–77 of the report), the Committee is concerned at the absence of any indication of the impact of the measures to reduce cases of ill-treatment in detention facilities, including immigration detention centres. The Committee is also concerned about the lack of independent, impartial and effective investigations of inter-prisoner violence in Aruba and Curaçao (arts. 12, 13 and 16).

The Committee recommends that the State party:

(a) **Inform it about measures to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment in detention facilities, including immigration detention centres, and measures to bring the perpetrators to justice and compensate the victims appropriately;**

(b) **Assess the impact of those measures in reducing the cases of ill-treatment in all detention facilities and update the Committee accordingly;**

(c) **Undertake independent, impartial and effective investigations of inter-prisoner violence in Aruba and Curaçao and facilitate request for compensation, including by family members of the inmates.**

Redress

(24) Noting the State party's indication about the avenues of seeking redress and reparation through the criminal, civil and administrative proceedings (para. 90 of the Report), the Committee notes with concern the lack of specific information about the number and instances of redress and reparation measures, including the means of compensation ordered by the courts and actually provided to victims of torture, or their families, since the examination of the last periodic report in 2007. The Committee is also concerned that while an independent investigation into the fire in the immigration detention centre at Amsterdam's Schiphol airport, killing 11 people and injuring 15 on the night of 26 to 27 October 2005, concluded that fire precautions had severely failed, no officials were held accountable and none of the victims or their families received redress and reparation as part of the 2007 Haarlem court judgement (art. 14).

The Committee requests the State party to indicate in its next periodic report the number of requests for redress and reparation, including compensation, the number granted, the amounts of compensation ordered and actually provided in each case. In particular, the State party should grant redress and reparation to the victims of the fire in the immigration detention centre at Amsterdam's Schiphol airport in 2005 or their families. The Committee draws the State party's attention to the recently adopted general comment No. 3 (2012) on article 14 of the Convention which explains the content and scope of the obligations of States parties to provide full redress to victims of torture.

Trafficking

(25) The Committee notes with concern that the number of criminal investigations of trafficking in human beings rose to 150 in 2012 and that there have been 140 convictions for trafficking in human beings in 2012 which represents a substantial increase compared to previous years. The Committee is thus concerned at the State party's information that "since trafficking is very difficult to detect it is impossible to say if there has been an increase or decrease in the total number of cases, i.e. identified and unidentified cases of

sexual exploitation and trafficking taken together” (para. 150 of the report) (arts. 2, 3, 12, 14 and 16).

The Committee recommends that the State party, in particular:

(a) **Prevent, and promptly, thoroughly and impartially investigate, prosecute and punish trafficking in persons and related practices, including the incidents of trafficking of minors;**

(b) **Provide adequate protection and means of redress to victims of trafficking, including the assistance to report incidents of trafficking to the police, in particular by providing legal, medical and psychological aid and rehabilitation including adequate shelters, as well as protection of witnesses, in accordance with article 14 of the Convention;**

(c) **Prevent return of trafficked persons to their countries of origin where there is a substantial ground to believe that they would be in danger of exploitation and torture or ill-treatment;**

(d) **Provide regular training to the police, prosecutors and judges on effective prevention, investigation, prosecution and punishment of acts of trafficking, including on the guarantees of the right to be represented by an attorney of one’s own choice, and inform the general public on the criminal nature of such acts;**

(e) **Undertake research into the impact of preventive measures and criminal justice responses to counter trafficking in human beings with a view to increasing their efficiency;**

(f) **Compile disaggregated data on trafficking in human beings including cases of sexual exploitation and trafficking of children, to be regularly updated.**

Physical restraints in places of detention and incidents of death

(26) The Committee notes with concern the reports of the incidents of death in places of detention, some of which have allegedly been related to the excessive use of physical restraints such as isolation measures.

The Committee recommends that the State party carry out thorough investigations of deaths and ascertain whether there is a link between the use of measures of physical restraints and the incidents of death in places of detention.

Use of Electrical Discharge Weapons (Tasers)

(27) The Committee is concerned about the pilot plan to be reportedly launched to distribute electrical discharge weapons to the entire Dutch police force, without due safeguards against misuse and proper training for the personnel. The Committee is concerned that this may lead to excessive use of force (arts. 2, 11 and 16).

The Committee recommends to the State party, in accordance with articles 2 and 16 of the Convention, to refrain from flat distribution and use of electrical discharge weapons by police officers. It also recommends adopting safeguards against misuse and providing proper training for the personnel to avoid excessive use of force. In addition, the Committee recommends that electrical discharge weapons should be used exclusively in extreme limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons.

The National Agency for the Prevention of Torture

(28) The Committee takes positive note that the State party designated six different bodies as the national preventive mechanism (NPM) in accordance with the Optional Protocol to the Convention in April 2012 (three national inspectorates on public order and

safety, health care and youth care, a supervisory commission and a council, coordinated by the Inspectorate of Justice and Security). Since the inspectorates that form the NPM are organisational divisions of various ministries, the Committee is concerned about the alleged lack of perceived independence of the NPM and the limitation of its mandate to the European part of the Netherlands (arts. 2 and 12).

While noting that the Optional Protocol leaves the institutional format in which the NPM is established to the State party's discretion, the Committee recommends that the State party:

(a) Ensure and respect complete financial and operational independence of the NPM, both factual and perceived, when carrying out its functions, in accordance with article 18, paragraph 1, of the Optional Protocol and the Subcommittee on Prevention on Torture's "Guidelines on national preventive mechanisms", with due regard to the Paris Principles;

(b) Explain, in its next periodic report, what progress has been made to accept and apply the Optional Protocol to the Caribbean part of its territory and the autonomous islands in order to establish the NPMs tailored for the needs of the islands and allow for the visits by the Subcommittee on Prevention of Torture.

The National Human Rights Institution

(29) The Committee notes with appreciation the establishment of the Netherlands Institute for Human Rights in October 2012, independent from the Government, but it regrets that while the mandate extends to the Caribbean Netherlands it does not cover the autonomous territories of the Kingdom. In this respect it notes the commitment made by the Governments of Aruba and Curaçao in the context of the universal periodic review to establish similar but separate institutions (arts. 2 and 12).

The Committee recommends that the Governments of Aruba and Curaçao deliver on their commitment and establish separate national human rights institutions as a matter of priority. The Government of St. Maarten should also consider establishing a national human rights institution.

Data collection

(30) In light of its previous concluding observations (para. 17), the Committee regrets the State party's response "that the Government is unable to provide information as data are not registered in a way that would allow the production of the statistics" (para. 89 of the report) on complaints, investigations, prosecutions, convictions and sanctions of cases of torture and ill treatment by law enforcement, security, military and prison personnel. The Committee observes with concern the State party's response that the law does not allow for the collection of such data (arts. 2, 12, 13 and 16).

The Committee recommends that the State party:

(a) Establish a national system for the collection of data including through research studies to facilitate analysis of the implementation of the Convention;

(b) Provide the Committee with detailed statistical data, disaggregated by crime, ethnicity, age and sex, relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions, convictions and penal or disciplinary sanctions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel, domestic and sexual violence, crimes with racist motives, ethnic composition of the detainee population including the representation therein of Antilleans, Moroccans, Roma, Sinti and Turks, as well as on means of redress, including compensation and rehabilitation provided to the victims.

(31) The Committee is also concerned about the lack of updates in the report, due to privacy concerns, on the asylum applications, including their outcomes.

The Committee reiterates its recommendation that, in order to have a clearer view of the situation regarding protection against torture, the State party include in its future reports, data which are disaggregated by age, sex and ethnicity on:

(a) **The number of asylum applications registered and the number of applications processed respectively under the normal and accelerated procedures;**

(b) **The number of applications accepted;**

(c) **The number of applicants whose applications for asylum were accepted on grounds that they had been tortured, or might be tortured if returned to their country of origin, as well as data on asylum granted on grounds of sexual violence;**

(d) **The number of cases of refoulement or expulsion.**

Other issues

(32) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, including the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and to consider signing and ratifying the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

(33) The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(34) The State party is invited to submit its common core document in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

(35) The Committee requests the State party to provide, by 31 May 2014, follow-up information in response to the Committee's recommendations related to (a) ensuring or strengthening the right of access to a lawyer for persons in police custody, (b) conducting, prompt, impartial and effective investigations, and (c) statistics on prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 10, 23, and 30 of the present concluding observations. In addition, the Committee requests follow-up information on detention of asylum seekers and foreigners based on migration law and forced internment in mental health care, including "providing remedies and redress to the victims", as contained in paragraphs 14–17 and 21 of the present concluding observations.

(36) The State party is invited to submit its next report which should cover all parts of the Kingdom of the Netherlands, which will be the seventh periodic report, by 31 May 2017. To that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

75. United Kingdom of Great Britain and Northern Ireland

(1) The Committee against Torture considered the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (CAT/C/GBR/5) at its 1136th and 1139th meetings, held on 7 and 8 May 2013 (CAT/C/SR.1136 and 1139), and adopted at its 1160th and 1161st meeting (CAT/C/SR.1160 and 1161), held on 27 May 2013, the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the fifth periodic report of the United Kingdom, which generally followed the reporting guidelines. The Committee appreciated the State party's detailed written replies to the list of issues (CAT/C/GBR/Q/5/Add.1 and annexes).

(3) The Committee appreciates the positive and constructive engagement of the State party's high-level delegation during the dialogue, as well as its efforts to provide comprehensive responses to the issues raised by Committee members.

B. Positive aspects

(4) The Committee notes with satisfaction that the State party has ratified the following international human rights instruments:

(a) Convention on the Rights of Persons with Disabilities, in 2009;

(b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2009.

(5) The Committee welcomes the judicial developments and the State party's ongoing efforts to revise its legislation in order to give effect to the Committee's recommendations and to enhance the implementation of the Convention, including:

(a) Amendment of the International Criminal Court Act 2001 by section 70 of the Coroners and Justice Act 2009 which extends the jurisdiction *ratione personae* and *ratione temporis* of United Kingdom courts over genocide, war crimes and crimes against humanity to United Kingdom residents and to acts committed abroad after 1 January 1991;

(b) Adoption of the Protection of Freedoms Act 2012, amending Schedule 8 of the Terrorism Act 2000 and reducing the maximum period of pre-charge detention for terrorist suspects from 28 to 14 days;

(c) House of Lords judgement in the case of *A and Others v. Secretary of State for the Home Department* (No. 2) [2005], which made clear that evidence obtained by torture is inadmissible in legal proceedings;

(d) Criminal Procedure (Legal Advice, Detention and Appeals) (Scotland) Act 2010, which provides for the right to access solicitors for detained persons in Scotland;

(e) Police and Criminal Evidence Act 2006, which enshrines the right to have someone informed when arrested in Bermuda;

(f) Repeal, in 2007, of specific provisions for Northern Ireland contained in Part VII of the Terrorism Act 2000 as part of the normalization programme undertaken in Northern Ireland;

(g) Entry into force, in 2009, of new Constitution Orders enshrining fundamental rights and freedoms in the Virgin Islands, Cayman Islands, Falkland Islands (Malvinas),⁹ St. Helena, Ascension and Tristan da Cunha, and, in 2012, in Turks & Caicos;

(h) Entry into force, in 2006, of the Human Rights (Bailiwick of Guernsey) Law 2000, the Human Rights (Jersey) Law 2000 and the Isle of Man Human Rights Act 2001, aimed at incorporating human rights provisions, including the prohibition of torture;

⁹ There is an ongoing dispute between the governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

(i) Establishment of a new Police Complaints (Guernsey) Law 2008, and the enactment of the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law 2006, enhancing witness protection.

(6) The Committee also welcomes actions taken by the State party to amend its policies, programmes and administrative measures in order to ensure greater protection of human rights and give effect to the Convention, including:

(a) Establishment of the Commission for Equality and Human Rights, in 2007, and the Scottish Human Rights Commission, in 2008;

(b) Appointment of a Prisoner Ombudsman for Northern Ireland, in 2005;

(c) Adoption of the Foreign & Commonwealth Office Strategy for the Prevention of Torture (2011–2015);

(d) Establishment of the Historical Enquiries Team to re-examine deaths in Northern Ireland attributable to “the Troubles” committed between 1968 and 1998, and holding of a number of public inquiries into conflict-related deaths;

(e) Measures undertaken in England, Scotland and Northern Ireland to reform the criminal justice system and upgrade the prison estate in England and Scotland;

(f) Adoption of strategies to prevent suicide and self-harm in custody, such as the Assessment, Care in Custody and Teamwork, introduced between 2005 and 2007 in England and Wales; the revised suicide risk management strategy ACT2Care, introduced in 2005 in Scotland; as well as the Supporting Prisoners At Risk (SPAR) procedures, introduced in 2009, and the revised Suicide and Self-Harm Prevention Policy and Standard Operating Procedures, issued in 2011 in Northern Ireland;

(g) Changes in the youth justice system in England, Wales and Northern Ireland, aimed at reducing the number of children in detention and the development of community sentences;

(h) Extension of the scope of the United Kingdom’s ratification of the Optional Protocol to the Convention against Torture to the Isle of Man.

C. Principal subjects of concern and recommendations

Incorporation of the Convention in the domestic legal order

(7) The Committee notes the State party’s position that the Human Rights Act incorporates the European Convention of Human Rights, including the prohibition of torture contained therein, in its legislation. However, the Committee is of the view that incorporation of the Convention against Torture into the State party’s legislation and adoption of a definition of torture in full conformity with article 1 of the Convention would strengthen the protection framework and allow individuals to invoke the provisions of the Convention directly before the courts (art. 2).

The Committee recommends that the State party incorporate all the provisions of the Convention against Torture in its legislation, and raise awareness of its provisions among members of the judiciary and the public at large.

The Human Rights Act 1998

(8) The Committee welcomes the assurance given by the State party’s delegation that the European Convention on Human Rights will remain incorporated in its legislation, regardless of any decision on a Bill of Rights. It is concerned, however, that the Human Rights Act 1998 is the subject of negative criticisms by public figures (art. 2).

The State party should ensure that public statements or legislative changes, such as the establishment of a Bill of Rights, do not erode the level of constitutional protection afforded to the prohibition of torture, cruel, inhuman or degrading treatment or punishment currently provided by the Human Rights Act.

Extraterritoriality

(9) The Committee is concerned by the State party's position on the extraterritorial application of the Convention, in particular that although its armed forces are required to comply with the absolute prohibition against torture as set out in the Convention, it considers that the scope of each article of the Convention "must be considered on its terms" (CAT/C/GBR/Q/5/Add.1, para. 4.5) (art. 2).

The Committee calls on the State party to publicly acknowledge that the Convention applies to all individuals who are subject to the State party's jurisdiction or control, including to its armed forces, military advisers and other public servants deployed on operations abroad. Recalling its general comment No. 2 (2007) on the implementation of article 2 by States parties, the Committee reminds the State party of its obligations to take effective measures to prevent acts of torture not only in its sovereign territory but also "in any territory under its jurisdiction", including all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law (para. 16).

Ambiguities in the legislation

(10) The Committee is concerned by remaining ambiguities in the State party's legislation, which appear to provide an "escape clause" to the absolute prohibition of torture. It notes in particular that, despite its previous concluding observations (CAT/C/CR/33/3, para. 4 (a) (ii)), the State party has not yet repealed Section 134 (4) and (5) of the Criminal Justice Act 1988 which provides for the defence of "lawful authority, justification or excuse" to a charge of official intentional infliction of severe pain or suffering and the defence of conduct that is permitted under foreign law, even if unlawful under the State party's law (art. 2).

The State party should repeal Section 134 (4) and (5) of the Criminal Justice Act 1988 and ensure that its legislation reflects the absolute prohibition of torture, in accordance with article 2, paragraph 2, of the Convention, which states that no exceptional circumstances whatsoever may be invoked as a justification of torture.

Consolidated guidance to intelligence officers and service personnel

(11) The Committee welcomes the publication in 2010 of the Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees (Consolidated Guidance) as an important step toward ensuring transparency and accountability in relation to the actions of its personnel operating overseas and their relationships with foreign intelligence services. The Committee further welcomes the delegation's assurance that this framework is "absolutely not intended as allowing torture to proceed" but rather to "prevent it". It remains concerned, however, that ambiguities in the Consolidated Guidance remain, noting in particular the possibility of seeking assurances in situations where actions of foreign security and intelligence services pose a serious risk of torture or other ill-treatment to "effectively mitigate that risk to below the threshold of a serious risk" (Consolidated Guidance, paras. 17–21) (arts. 2 and 3).

The Committee urges the State party to reword the Consolidated Guidance in order to avoid any ambiguity or potential misinterpretation. The State party should in particular eliminate the possibility of having recourse to assurances when there is a serious risk of torture or ill-treatment, and require that intelligence agencies and

armed forces cease interviewing or seeking intelligence from detainees in the custody of foreign intelligence services in all cases where there is a risk of torture or ill-treatment. The State party should also ensure that military personnel and intelligence services are trained with regard to the absolute prohibition of torture and ill-treatment.

Closed material procedures

(12) Notwithstanding the State party's position that the Justice and Security Act 2013 will strengthen the oversight and scrutiny of the security and intelligence agencies, it is concerned that it also extends the use of closed material procedures in civil proceedings where national security is at risk. The Committee notes that the decision was made despite the European Court of Human Rights ruling in *A and Others v. United Kingdom* (Application no. 3455/05)¹⁰ that the Special Advocate System used in closed material procedures was insufficient to safeguard detainees' rights, as well as other severe criticisms, including from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment¹¹ and the majority of special advocates (memorandums to the Joint Committee on Human Rights on the Justice and Security Bill, June 2012 and February 2013). The Committee notes in particular that (arts. 2, 15 and 16):

(a) Special advocates have very limited ability to conduct cross-examination and cannot discuss the full content of confidential material with their client, thus undermining the right to a fair trial;

(b) A good amount of closed evidence is heavily reliant on information from secret intelligence sources and may contain second- or third-hand hearsay or other material and statements that may have been obtained by torture, which would not be admissible in ordinary criminal or civil proceedings, except against a person accused of torture as evidence that the statement was made;

(c) Closed material procedures may adversely impact on the possibility of establishing State responsibility and accountability.

The Committee recommends that all measures used to restrict or limit fair trial guarantees based on national security grounds be fully compliant with the Convention. The State party should in particular:

(a) **Address the concerns raised with regard to the Justice and Security Act 2013 by the Joint Committee on Human Rights and the special advocates;**

(b) **Ensure that intelligence and other sensitive material be subject to possible disclosure if a court determines that it contains evidence of human rights violations such as torture or cruel, inhuman or degrading treatment;**

(c) **Ensure that the Justice and Security Act 2013 will not become an obstacle to accountability for State involvement or complicity in torture, cruel inhuman or degrading treatment, nor will it adversely impact on the right of victims to obtain redress, remedy and fair and adequate compensation.**

Non-jury trials in Northern Ireland

(13) The Committee notes with appreciation the measures taken in Northern Ireland in the context of the security normalization programme but regrets that the Justice and Security (Northern Ireland) Act 2007 retains the possibility of the conduct of non-jury

¹⁰ See <http://www.refworld.org/docid/499d4a1b2.html>.

¹¹ <http://www.internationalalllawbureau.com/index.php/un-special-rapporteur-on-torture-criticises-uk-secret-courts-plan/>.

trials, despite the apparent consensus among a broad range of actors that the problem of juror intimidation in Northern Ireland still needs to be demonstrated (art. 2).

The Committee recommends that the State party take due consideration of the principles of necessity and proportionality when deciding the renewal of emergency powers in Northern Ireland, and particularly non-jury trial provisions. It encourages the State party to continue moving towards security normalization in Northern Ireland and to envisage alternative juror protection measures.

National preventive mechanism

(14) The Committee, fully cognizant of the State party's willingness to promote experience sharing, notes that the practice of seconding State officials working in places of deprivation of liberty to National Preventive Mechanism bodies raises concerns as to the guarantee of full independence to be expected from such bodies (art. 2).

The Committee recommends that the State party end the practice of seconding individuals working in places of deprivation of liberty to National Preventive Mechanism bodies. It recommends that the State party continue to provide the bodies constituting the National Preventive Mechanism with sufficient human, material and financial resources to discharge their prevention mandate independently and effectively.

Inquiries into allegations of torture overseas

(15) The Committee is deeply concerned at the growing number of serious allegations of torture and ill-treatment, including by means of complicity, as a result of the State party's military interventions in Iraq and Afghanistan. It welcomes the State party's assurances that it intends to "hold an independent, judge-led inquiry" and to publish as much as possible of the interim report of the Detainee Inquiry conducted by Sir Peter Gibson to examine the involvement of State security and intelligence agencies in "improper treatment of detainees held by other countries in counter-terrorism operations overseas". The Committee is concerned that the State party has not yet set a clear timeline for the establishment of the new inquiry which may result in the amendment of Section 134 (4) and (5) of the Criminal Act 1988, nor for the publication of the interim report of the Detainee Inquiry (arts. 2, 12, 13, 14 and 16).

The Committee recommends that the State party establish without further delay an inquiry on alleged acts of torture and other ill-treatment of detainees held overseas committed by, at the instigation of or with the consent or acquiescence of British officials. The State party should ensure that the new inquiry is designed to satisfactorily address the shortcomings of the Detainee Inquiry, identified by a broad range of actors. In this regard, the Committee encourages the State party to give due consideration to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/19/61). The State party should ensure that all perpetrators of torture and ill-treatment identified in the context of the inquiry are duly prosecuted and punished appropriately, and that effective reparation, including adequate compensation, is granted to every victim. Furthermore, the Committee urges the State party to speedily publish the content of the interim report of the Detainee Inquiry to the fullest extent possible.

Accountability for abuses in Iraq

(16) The Committee notes the establishment of some inquiries into allegations involving the State party's army in Iraq, such as the Baha Mousa Public Inquiry and the ongoing Al-Sweady Public Inquiry. It notes the establishment of the Iraq Historic Allegations Team set up to investigate allegations of abuse of Iraqi citizens by British service personnel, but remains concerned that its composition and structural independence is further challenged,

as close institutional links with the Ministry of Defence remain. In view of the number and persistence of legal claims submitted by Iraqis who allege that they were subject to abuse by British officers in Iraq between 2003 and 2009, the Committee regrets that the State party continues to resist a full public inquiry that would assess the extent of torture and ill-treatment and establish possible command responsibility for senior political and military figures. Furthermore, it is deeply concerned that, to date, there have been no criminal prosecutions for torture or complicity in torture involving State's officials, members of the security services or military personnel, although there have been a number of court martials of soldiers for abuses committed against civilians in Iraq (arts. 2, 13, 14 and 16).

The Committee urges the State party to take all necessary measures to establish responsibilities and ensure accountability, including setting up a single, independent public inquiry to investigate allegations of torture and cruel, inhuman or degrading treatment or punishment in Iraq from 2003 to 2009. In accordance with the Committee's general comment No. 3 (2012) on the implementation of article 14 by States parties, the State party should also ensure that all victims of torture, cruel, inhuman or degrading treatment obtain redress and are provided with effective remedy and reparation, including restitution, fair and adequate financial compensation, satisfaction and appropriate medical care and rehabilitation.

Appropriate penalties for torture

(17) The Committee is deeply concerned that despite the gravity of the injuries inflicted by British soldiers on Baha Mousa, the investigation of and prosecution for his death has led to the acquittal or clearance of charges for six of the accused officers, and only one year imprisonment for the corporal who pleaded guilty to inhumane treatment (arts. 4, 13 and 14).

Recalling that penalties commensurate with the gravity of the crime of torture are indispensable in order to have a successful deterrent effect, the Committee urges the State party to ensure that torture or complicity in torture committed by State party's officials, members of the security services or military personnel abroad are subjected to appropriate penalties commensurate with the seriousness of the crime, in line with article 4 of the Convention.

Reliance on diplomatic assurances

(18) The Committee notes with concern the State party's reliance on diplomatic assurances to justify the deportation of foreign nationals suspected of terrorism-related offences to countries in which the widespread practice of torture is alleged (arts. 3 and 13).

The Committee calls on the State party to ensure that no individual — including persons suspected of terrorism, who are expelled, returned, extradited or deported — is exposed to the danger of torture or other cruel, inhuman or degrading treatment or punishment. It urges the State party to refrain from seeking and relying on diplomatic assurances "where there are substantial grounds for believing that [the person] would be in danger of being subjected to torture" (art. 3). The more widespread the practice of torture or other cruel, inhuman or degrading treatment, the less likely the possibility of the real risk of such treatment being avoided by diplomatic assurances, however stringent any agreed follow-up procedure may be. Therefore, the Committee considers that diplomatic assurances are unreliable and ineffective and should not be used as an instrument to modify the determination of the Convention.

Transfer of detainees to Afghanistan

(19) The Committee takes note of the decision of the Secretary of State for Defense to maintain the moratorium on the transfer of detainees to Afghan authorities due to the risk of torture and ill-treatment, and welcomes the assurance provided by the State party that it will

not transfer detainees to countries where it deems that there is a real risk of serious mistreatment or torture (art. 3).

The Committee recommends that the State party adopt a clear policy and ensure in practice that the transfer of detainees to another country is clearly prohibited when there are substantial grounds for believing that he or she would be in danger of being subjected to torture. It further recommends that the State party recognize that diplomatic assurances and monitoring arrangements cannot be relied upon to justify transfers when such substantial risk of torture exists.

Deportations to Sri Lanka

(20) The Committee notes that on 28 February 2013 the High Court ordered a suspension of the return of Tamils — whose asylum applications were not successful — to Sri Lanka, given the allegations and evidence that some Sri Lankan Tamils have been victims of torture and ill-treatment following their forced or voluntary removal from the State party. The Committee is nevertheless concerned that the State party has not yet reflected such evidence in its asylum policy (art. 3).

The Committee recommends that the State party observe the safeguards to ensure respect for the principle of non-refoulement, including consideration of whether there are substantial grounds to indicate that an asylum seeker might be in danger of torture or ill-treatment upon deportation to his or her country of origin. The Committee calls on the State party to conduct a thorough risk assessment of situations covered by article 3 of the Convention, notably by taking into consideration evidence from Sri Lankans whose post-removal torture claims were found credible, and revise its country guidance accordingly.

Shaker Aamer

(21) The Committee notes with great concern the case of Shaker Aamer, the last British resident held in Guantanamo Bay, who has been detained without charges for over 11 years and whose condition is rapidly deteriorating, particularly in the context of the current hunger strike. The Committee regrets that despite the State party's "best endeavours" to secure his release, there are no encouraging signs of this happening soon (arts. 2 and 16).

The Committee urges the State party to consider all possible measures to ensure the prompt release and return to the United Kingdom of Shaker Aamer, who has been detained without charges for over 11 years. In this context, the State party should follow up on its June 2012 and May 2013 requests to the Secretary of Defence of the United States of America to exercise a "waiver", as contained within the National Defence Authorisation Act 2012, to enable the release of Shaker Aamer.

Universal jurisdiction

(22) The Committee notes with satisfaction the reference made in the State party's strategy for the Prevention of Torture (2011–2015) to the obligations under the Convention to ensure that there are no "safe havens" for individuals accused of torture, and welcomes legislative changes which widen the competence of United Kingdom courts to prosecute international crimes. The Committee is however concerned that, in parallel, legislation has been passed (Police and Social Responsibility Act, 2011), making it more difficult for private arrest warrants to be issued where a suspect is present in the State party's territory (art. 5).

The Committee recommends that the State party take all necessary steps to effectively exercise universal jurisdiction over persons allegedly responsible for acts of torture, including foreign perpetrators who are temporarily present in the United Kingdom. In addition, the Committee recommends that the State party fill the "impunity" gap,

identified by the Human Rights Joint Committee in 2009,¹² by adopting the Torture (Damages) Bill that would provide universal civil jurisdiction over some civil claims.

Transitional justice in Northern Ireland

(23) The Committee welcomes the development by the Northern Ireland Office and Northern Ireland Department of Justice of a “package of measures” to deal with the past in Northern Ireland, including the establishment of mechanisms to carry out historical investigations into deaths related to the conflict, including of victims of torture and ill-treatment. However, it notes reports of apparent inconsistencies in investigation processes in which military officials are involved which delay or suspend investigations, thus curtailing the ability of competent bodies to provide prompt and impartial investigations of human rights violations and to conduct a thorough examination of the systemic nature or patterns of the violations and abuses that occurred in order to secure accountability and provide effective remedy. In addition, the Committee is concerned about the State party’s decision not to hold a public inquiry into the death of Patrick Finucane (arts. 2, 12, 13, 14 and 16).

The Committee recommends that the State party develop a comprehensive framework for transitional justice in Northern Ireland and ensure that prompt, thorough and independent investigations are conducted to establish the truth and identify, prosecute and punish perpetrators. In this context, the Committee is of the view that such a comprehensive approach, including the conduct of a public inquiry into the death of Patrick Finucane, would send a strong signal of its commitment to address past human rights violations impartially and transparently. The State party should also ensure that all victims of torture and ill-treatment are able to obtain adequate redress and reparation.

Historical Institutional Abuse Inquiry

(24) While welcoming the establishment in May 2012 of the Historical Institutional Abuse Inquiry, which will investigate the experiences of abuse of children in residential institutions in Northern Ireland between 1922 and 1995, the Committee regrets that some victims, such as women over 18 who were confined in Magdalene Laundries and equivalent institutions, as well as clerical abuse survivors, will fall outside the remit of the inquiry (arts. 2, 12, 13, 14 and 16).

The Committee recommends that the State party conduct prompt, independent and thorough investigations into all cases of institutional abuse that took place in Northern Ireland between 1922 and 1995, including of women over 18 who were detained in Magdalene Laundries and equivalent institutions in Northern Ireland, and ensure that, where possible and appropriate, perpetrators are prosecuted and punished, and that all victims of abuse obtain redress and compensation, including the means for as full as possible rehabilitation, in accordance with the Committee’s general comment No. 3 on the implementation of article 14 by States parties.

Use of evidence obtained by torture

(25) The Committee notes the House of Lords’ judgment in the case of *A and Others v. Secretary of State for the Home Department* (No. 2) [2005] (UKHL71) (CAT/C/GBR/5, para. 27) not to allow evidence obtained by torture to be admissible in legal proceedings. It

¹² United Kingdom, Parliament, Joint Committee on Human Rights, *Closing the Impunity Gap: UK law on genocide (and related crimes) and redress for torture victims*, 11 August 2009 (HL 153/HC 553), available at: <http://www.refworld.org/docid/4a81460c2.html>.

is concerned, however, that the burden of proof on the admissibility of torture material continues to lie with the defendant/applicant (art. 15).

The Committee calls on the State party to ensure that where there is allegation that a statement was made under torture, the burden of proof is on the State. In addition, the State party should never rely on intelligence material obtained from third countries through the use of torture or other cruel, inhuman or degrading treatment.

Electrical discharge weapons (Taser)

(26) While taking note of the guidance for England and Wales, which seeks to limit the use of electrical discharge weapons to situations where there is a serious threat of violence, the Committee expresses concern that the use of electrical discharge weapons almost doubled in 2011 and that the State party intends to further extend their use in the Metropolitan Police area. In addition, it is deeply concerned at instances where electrical discharge weapons have been used on children, persons with disabilities and in recent policing operations where the serious threat of violence was questioned (arts. 2 and 16).

The State party should ensure that electrical discharge weapons are used exclusively in extreme and limited situations — where there is a real and immediate threat to life or risk of serious injury — as a substitute for lethal weapons and by trained law enforcement personnel only. The State party should revise the regulations governing the use of such weapons with a view to establishing a high threshold for their use and expressly prohibiting their use on children and pregnant women. The Committee is of the view that the use of electrical discharge weapons should be subject to the principles of necessity and proportionality and should be inadmissible in the equipment of custodial staff in prisons or any other place of deprivation of liberty. The Committee urges the State party to provide detailed instructions and adequate training to law enforcement personnel entitled to use electric discharge weapons, and to strictly monitor and supervise their use.

Age of criminal responsibility

(27) The Committee welcomes the enactment of the Criminal Justice and Licensing (Scotland) Act 2010, which raises the age of criminal prosecution from 8 to 12 years in Scotland. The Committee remains concerned, however, that criminal responsibility starts at the age of 8 in Scotland and at 10 in England, Wales and Northern Ireland and regrets the State party's reluctance to raise the age despite calls to do so from more than 50 organizations, charities and experts in December 2012 and the repeated recommendations made by the Committee on the Rights of the Child¹³ (arts. 2 and 16).

The State party should raise the minimum age of criminal responsibility and ensure the full implementation of juvenile justice standards, as expressed in general comment No. 10 (2007) on children's rights in juvenile justice of the Committee on the Rights of the Child (paras. 32 and 33). The State party should ensure full implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (General Assembly resolution 40/33, annex) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) (General Assembly resolution 45/112, annex).

¹³ See CRC/C/15/Add.135; CRC/C/15/Add.188; CRC/C/GBR/CO/4.

Restraint of children

(28) The Committee is concerned that the State party is still using techniques of restraint that aim to inflict deliberate pain on children in young offender institutions, including to maintain good order and discipline (arts. 2 and 16).

The Committee reiterates the recommendation of the Committee on the Rights of the Child to ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished (CRC/C/GBR/CO/4). The Committee also recommends that the State party ban the use of any technique designed to inflict pain on children.

Corporal punishment

(29) The Committee takes note of amendments to legislation in England, Wales, Scotland and Northern Ireland, which limit the application of the defence of “reasonable punishment” (or “justifiable assault” in Scotland), but remains concerned that some forms of corporal punishment are still legally permissible in the home by parents and those in *loco parentis*. In addition, it is concerned that some forms of corporal punishment are lawful in the home, schools and alternative care settings in almost all overseas territories and Crown dependencies.

The Committee recommends that the State party prohibits corporal punishment of children in all settings in the Metropolitan territory, Crown dependencies and overseas territories, repealing all legal defences currently in place, and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.

Immigration detention

(30) The Committee notes that the expansion of immigration detention has prompted some reforms including the adoption of the Borders, Citizenship and Immigration Act (2009), aimed at streamlining immigration processes; the official disavowal of child detention and revised processes for dealing with Rule 35 of the Detention Centre Rules. The Committee remains concerned at:

(a) Instances where children, torture survivors, victims of trafficking and persons with serious mental disability were detained while their asylum cases were being decided;

(b) Cases of torture survivors and people with mental health conditions entering the Detained Fast Track (DFT) system due to a lack of clear guidance and inadequate screening processes, and the fact that torture survivors need to produce “independent evidence of torture” at the screening interview to be recognized as unsuitable for the DFT system;

(c) The absence of a limit on the duration of detention in Immigration Removal Centres (arts. 2, 3, 11 and 16).

The Committee urges the State party to:

(a) **Ensure that detention is used only as a last resort, in accordance with the requirements of international law, and not for administrative convenience;**

(b) **Take necessary measures to ensure that vulnerable people and torture survivors are not routed into the Detained Fast Track System, including by: (i) reviewing the screening process for administrative detention of asylum seekers upon entry; (ii) lowering the evidential threshold for torture survivors; (iii) conducting an immediate independent review of the application of Rule 35 of the Detention Centre Rules in immigration detention, in line with the Home Affairs Committee’s**

recommendation and ensure that similar rules apply to short-term holding facilities and (iv) amending the 2010 United Kingdom Border Agency, *Enforcement Instructions and Guidance*, which allows for the detention of people with mental illness unless their mental illness is so serious that it cannot be managed in detention;

(c) **Introduce a limit for immigration detention and take all necessary steps to prevent cases of de facto indefinite detention.**

Detention conditions

(31) The Committee is concerned about the steady increase in the prison population throughout the past decade and the problem of overcrowding and its impact on the suicide rate, cases of self-injury, prisoner violence and access to recreational activities. The Committee echoes the concerns raised by the National Preventive Mechanism in 2010 concerning deficiencies in access to appropriate mental health care and treatment and inappropriate placement of children. It is deeply concerned that children with mental disabilities can sometimes be placed in police custody in England for his or her “own interest or for the protection of others” (arts. 11 and 16).

The Committee urges the State party to strengthen its efforts and set concrete targets to reduce the high level of imprisonment and overcrowding in places of detention, in particular through the wider use of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (General Assembly resolution 45/110, annex). It further recommends that the State party speedily implement the reforms undertaken with a view to reducing the reoffending rate. The State party should ensure that children with mental disabilities shall not, under any circumstances, be detained in police custody, but directed to appropriate health institutions. Detainees who require psychiatric supervision and treatment should be provided with adequate accommodation and psychosocial support care. The Committee also recommends that the State party step up efforts to prevent violence and self-harm in places of detention.

Women offenders

(32) The Committee welcomes the adoption of new strategies for female offenders in England, Wales and Northern Ireland, aimed at reducing the number of women in custody and increasing the use of community sentences in combination with support and rehabilitation services. It further welcomes the Northern Ireland Minister of Justice’s plan to construct a separate custodial facility for women prisoners in Northern Ireland, and the steps taken by the Scottish government to implement the recommendations made by the Commission on Women Offenders. The Committee is nevertheless concerned at the unprecedented increase of women in prison over the last 15 years, at information that about half of them have severe and enduring mental illness, and at the disproportionate rate of self-harm amongst women prisoners (arts. 11 and 16).

The Committee recommends that the State party commence without further delay the construction of the new custodial facility for women prisoners in Northern Ireland and urgently implement its new strategy for female offenders, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (Economic and Social Council resolution 2010/16, annex). The Committee recommends that the State party pay due attention to the recommendations of the Commission on Women Offenders (Scotland) and those contained in the Corston Report (England and Wales) and, in particular, ensure effective diversion from the criminal justice system for petty non-violent offenders, increase the use of community sentences, and implement changes to the prison regime to further reduce deaths and incidents of self-harm.

Mid Staffordshire NHS Foundation Trust Public Inquiry

(33) The Committee notes with interest the reports, published in 2010 and 2013, of the public inquiry, chaired by Robert Francis QC, into the, which highlight the failure of the National Health System's managers and regulators to identify and act upon the problems at Mid Staffordshire Foundation Trust that led to some 400 to 1,200 deaths between 2005 and 2009. The Committee notes with particular concern the finding that the "system [...] ignored the warning signs of poor care and put corporate self interest and cost control ahead of patients and their safety" (Press release, 6 February 2013) (arts. 11 and 16).

The Committee calls on the State party to act on its commitment to implement the recommendations contained in the Mid Staffordshire NHS Foundation Trust Public Inquiry reports, and particularly to establish a structure of fundamental standards and measures of compliance in order to prevent ill-treatment of patients receiving health-care services.

Declaration under article 22

(34) The Committee regrets that the State party is "not yet convinced of the practical value of individual petition" and notes the concern of the House of Lords/House of Commons Joint Committee on Human Rights that the United Kingdom's "slow progress in accepting individual petition [...] undermines its credibility in the promotion and protection of human rights internationally" (17th report, session 2004–2005, HL 99/HC 264) (art. 22).

The Committee recommends that the State party reconsider its position and make the declarations envisaged under article 22 of the Convention, in order to recognize the competence of the Committee to receive and consider individual communications.

Data collection

(35) The Committee appreciates the State party's efforts to provide it with detailed information, data and statistics, but regrets that it did not provide comprehensive and disaggregated data on investigations into allegations of torture and ill-treatment by law enforcement, security, military and prison personnel, nor on prosecutions as a result of operations conducted by law enforcement and prison personnel overseas. It also regrets that the delegation did not provide details on settlement or compensation received by victims of torture or ill-treatment, nor information about interrogation techniques and training.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, as well as on means of redress, including compensation and rehabilitation, provided to the victims. It should also provide information on educational training and programmes, including interrogation techniques, provided to all officials, including law enforcement, security and prison personnel.

Other issues

(36) The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

(37) The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

(38) The Committee requests the State party to provide, by 31 May 2014, follow-up information in response to the Committee's recommendations relating to (a) inquiries into

allegations of torture overseas; (b) observance of safeguards ensuring respect for the principle of non-refoulement; (c) ensuring the prompt release and return to the United Kingdom of Shaker Aamer; (d) adopting comprehensive measures of transitional justice in Northern Ireland and (e) conducting prompt, thorough and independent investigations, as contained in paragraphs 15, 19, 20, 21, and 23 above.

(39) The State party is invited to submit its next report, which will be the sixth periodic report, by 31 May 2017. The Committee invites the State party to agree, by 31 May 2014, to follow the optional reporting procedure in preparing its report. Under this procedure, the Committee would send the State party a list of issues prior to submission of the periodic report and the State party's replies to the list of issues would constitute, under article 19 of the Convention, its next periodic report.

IV. Follow-up to concluding observations on States parties' reports

76. This chapter presents information regarding the follow-up responses by States parties and the activities of the Rapporteur for follow-up to concluding observations under article 19 of the Convention, including a summary of the Rapporteur's views on the results of this procedure. This information is updated through 31 May 2013, the end of the Committee's fiftieth session. Detailed information, including the submissions and replies in connection with the follow-up procedure, is posted on the website of the Committee against Torture at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Lang=En&TreatyID=1.

77. In accordance with its rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. In its annual report for 2005–2006,¹⁴ the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties' reports. The Committee has presented information in its subsequent annual reports on its experience in receiving information on follow-up measures taken by States parties since the initiation of the procedure in May 2003, including substantive trends and further modifications it has made in the procedure.

78. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific measures to prevent acts of torture and/or ill-treatment. Thereby, the Committee advises States parties as to its views on effective legislative, judicial, administrative and other measures to bring their laws and practice into compliance with the obligations of the Convention.

79. In its follow-up procedure, the Committee identifies a number of its recommendations to each State party as requiring additional information within one year. Such follow-up recommendations are identified because they are serious, protective and are considered able to be accomplished within one year. The States parties are asked to provide information within one year on the measures taken to give effect to the follow-up recommendations. The recommendations requiring follow-up within one year are specifically identified in a paragraph at the end of each set of concluding observations.

80. In November 2011, after receiving and discussing an analysis of its experience with the follow-up procedure, and noting in particular the large and growing number of items that were being identified for follow-up, the Committee adopted a new framework aimed at focusing the procedure.¹⁵ In a paragraph near the end of its concluding observations, the Committee requests each State party reviewed under article 19 to provide, within one year, information on the measures taken to give effect to the concluding observations relating to (a) ensuring or strengthening the legal safeguards for persons deprived of their liberty; (b) conducting prompt, impartial and effective investigations; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment. In addition, when deemed necessary, the State party may be asked to include information on other issues identified by the Committee in its concluding observations, including on how it provides remedies and redress to victims.

¹⁴ *Official Records of the General Assembly, Sixty-first Session, Supplement No. 44 (A/61/44)*.

¹⁵ *Ibid.*, *Sixty-seventh Session, Supplement No. 44 (A/67/44)*, para. 80.

81. Since the follow-up procedure was established at the thirtieth session in May 2003, through the end of the fiftieth session in May 2013, the Committee has reviewed 142 reports from States parties for which it has identified follow-up recommendations. Of the 125 follow-up reports that were due by 31 May 2013, the time of the adoption of the present report, 84 had been received by the Committee, for a 67 per cent overall response rate.

82. As at 31 May 2013, the following States had not yet supplied follow-up information that had fallen due: Albania (forty-eighth session), Armenia (forty-eighth), Benin (thirty-ninth), Bulgaria (thirty-second),¹⁶ Burundi (thirty-seventh), Cambodia (thirty-first and forty-fifth), Cameroon (thirty-first and forty-fourth), Canada (forty-eighth), Chad (forty-second), Costa Rica (fortieth), Cuba (forty-eighth), Czech Republic (forty-eighth),¹⁷ Democratic Republic of the Congo (thirty-fifth), Djibouti (forty-seventh), Ecuador (forty-fifth), El Salvador (forty-third), Ethiopia (forty-fifth), Ghana (forty-sixth), Greece (forty-eighth),¹⁸ Honduras (forty-second), Indonesia (fortieth), Jordan (forty-fourth), Kuwait (forty-sixth), Luxembourg (thirty-eighth), Madagascar (forty-seventh), Mauritius (forty-sixth), Mongolia (forty-fifth), Nicaragua (forty-second), Peru (thirty-sixth), Republic of Moldova (thirtieth), Rwanda (forty-eighth), Syrian Arab Republic (forty-eighth), South Africa (thirty-seventh), Tajikistan (thirty-seventh), Togo (thirty-sixth), Uganda (thirty-fourth), Yemen (forty-fourth) and Zambia (fortieth).

83. The Rapporteur sends reminders requesting the outstanding information to each State party for which follow-up information is due, but not yet submitted. The status of the follow-up to concluding observations has been compiled in the past in a chart maintained on the web pages of the Committee.¹⁹ State party responses were posted on this web page, as were letters from the Rapporteur to the State party, and any follow-up submissions from NGOs.

84. Between June 2012 and May 2013, follow-up replies were received from 12 States parties, namely (in the order of receipt): Monaco, Finland, Slovenia, Ireland, Serbia, Turkmenistan, Poland, Germany, Belarus, Bulgaria, Sri Lanka and Paraguay.²⁰

85. The Rapporteur expresses appreciation for the information provided by these States parties regarding those measures taken to implement their obligations under the Convention. She has assessed the responses received as to whether all the items designated by the Committee for follow-up have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the State party concerned with specific requests for further clarification.²¹ To date, 23 State parties have provided additional clarifications in response to these requests. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

¹⁶ Bulgaria, which had not provided follow up information due at the thirty-second session, submitted follow-up information in December 2012 regarding its periodic report reviewed at the forty-seventh session.

¹⁷ The Czech Republic submitted its follow-up information on 20 June 2013. See <http://www2.ohchr.org/english/bodies/cat/docs/followup/CAT-C-CZE-CO-4-5-Add1.pdf>.

¹⁸ Greece submitted its follow up information on 5 June 2013. See <http://www2.ohchr.org/english/bodies/cat/docs/followup/CAT-C-GRC-CO-5-6-Add1.pdf>.

¹⁹ In 2010, the Committee established a separate web page for follow-up: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Lang=En&TreatyID=1.

²⁰ Follow-up replies are available from the web page for follow-up (ibid.).

²¹ See http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Lang=En&TreatyID=1.

86. The Rapporteur also expresses appreciation for the information submitted by human rights NGOs and other civil society groups under the follow-up procedure. As at 31 May 2013, the Committee has received follow-up reports from such sources on 25 State parties.

87. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification have addressed many topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

88. During the period under review, the Rapporteur sent reminders to Bulgaria, Djibouti, Madagascar, Paraguay, Sri Lanka and the Syrian Arab Republic.

89. At the forty-ninth and fiftieth sessions (October–November 2012 and May 2013, respectively), the Rapporteur for follow-up to concluding observations presented progress reports to the Committee on the procedure, as has been done at previous sessions.

90. The Rapporteur and the Committee have discussed the steps to be taken to address non-response to the follow-up procedure and ways to ensure due attention to the issues designated for follow-up in subsequent periodic reviews, particularly under the optional simplified reporting procedure.

91. While State parties that have never replied to the follow-up procedure came from all regions of the world, it was noted that the largest number of non-respondents (15) are based in the African region, with others based in Latin America (7), Asia (7), Eastern Europe (5) and Western Europe/North America (2). At the fiftieth session, the Rapporteur invited Committee members to consider what measures could be taken to help these States parties to provide the information requested for the follow-up procedure. Committee members emphasized the importance of addressing this problem, and suggested contacting representatives of the States parties in Geneva, including by sending reminders; contacting appropriate bodies in the State party that monitor implementation of recommendations; and considering consultations inside each country. The Rapporteur noted that this might be facilitated by communicating with national human rights institutions in relevant States parties.

92. The Committee also reaffirmed, in a discussion of the preparation of lists of issues prior to reporting under the optional simplified reporting procedure, its decision on the necessity of including unresolved follow-up issues in the list of issues prior to reporting for subsequent reports.

Special follow-up report of the Syrian Arab Republic

93. Following its review of the situation in the Syrian Arab Republic at its forty-eighth session (May 2012), the Committee requested, pursuant to article 19, paragraph 1, *in fine*, that the Syrian Arab Republic submit a special follow up report to the Committee on the measures taken to implement the recommendations contained in CAT/C/SYR/CO/1/Add.2. Those recommendations addressed a wide range of measures initially recommended in 2010, including: publicly condemning the widespread and systematic practices of torture, especially by the security forces; revoking decrees affording immunity for acts of torture committed by members of security services, intelligence agencies and the police; establishing an independent national monitoring and inspection system of places of detention; releasing all persons arbitrarily detained; investigating all cases of disappearances; ceasing all attacks against journalists and human rights defenders; and

adopting protective measures (CAT/C/SYR/CO/1/Add.2, para. 22). The follow-up recommendations also added a number of recommendations, calling for: “an immediate end to all attacks against [the Syrian] population”, including the systematic denial of food, water and medical care; establishment of an independent commission of inquiry into serious allegations of violations committed by security forces; prompt, impartial and thorough investigations into allegations of summary execution, arbitrary arrest, torture or ill-treatment, and prosecutions including “investigations up to the highest levels in the chain of command” (ibid., para. 23). Noting that the current practices in violation of the Convention are “completely unacceptable”, the Committee called on the State party “to cease its clear breach of the obligations under the Convention” and called for “an immediate and vigorous programme to establish compliance with the Convention” (ibid., para. 24).

94. At its forty-ninth session, the Committee discussed the fact that no follow-up report had been submitted in accordance with the request, although it had received notes verbales from the Government of the Syrian Arab Republic. Accordingly, the Rapporteur for follow-up on concluding observations sent a letter dated 21 December 2012 to the Permanent Representative of the Syrian Arab Republic to the United Nations in Geneva, recalling the request for updated information on these recommendations, and requested clarification as to what actions had been taken and when the information would be forthcoming.

95. At the fiftieth session of the Committee, the Rapporteur for follow-up on concluding observations reported to the Committee on the continued absence of information requested from the State party regarding compliance with the Convention. She informed the Committee that information had been outlined in recent reports of the independent international commission of inquiry on the Syrian Arab Republic created by the Human Rights Council, and of the United Nations High Commissioner for Human Rights; both detailed the spread of violence, torture and mutilation, including new forms of violence at checkpoints, sexual violence and massacres. The Rapporteur, in response to a request from the Committee, affirmed that she would continue to seek a follow-up response from the State party. In addition, the Committee noted that the next periodic report of the Syrian Arab Republic was due in 2014 and requested that the State party accept the optional simplified reporting procedure in connection with that report.

V. Activities of the Committee under article 20 of the Convention

96. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

97. In accordance with rule 75 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

98. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

99. The Committee's work under article 20 of the Convention continued during the period under review. In accordance with the provisions of article 20 and rules 78 and 79 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed. However, in accordance with article 20, paragraph 5, of the Convention, the Committee may, after consultations with the State party concerned, decide to include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly.

100. In the framework of its follow-up activities, the Rapporteurs on article 20 continued to carry out activities aimed at encouraging States parties on which enquiries had been conducted and the results of such enquiries had been published, to take measures to implement the Committee's recommendations.

101. Further information on the procedure is available on the OHCHR website (http://www2.ohchr.org/english/bodies/cat/confidential_art20.htm).

VI. Consideration of complaints under article 22 of the Convention

A. Introduction

102. Under article 22 of the Convention, individuals who claim to be victims of a violation by a State party of the provisions of the Convention may submit a complaint to the Committee against Torture for consideration, subject to the conditions laid down in that article. Sixty-five States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider complaints under article 22 of the Convention. The list of those States is contained in annex III. No complaint may be considered by the Committee if it concerns a State party to the Convention that has not recognized the Committee's competence under article 22.

103. In accordance with rule 104, paragraph 1, of its rules of procedure, the Committee established the post of the Rapporteur on new complaints and interim measures, which is currently held by Mr. Fernando Mariño.

104. Consideration of complaints under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents relating to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential. Rules 113 and 115 of the Committee's rules of procedure set out the modalities of the complaints procedure.

105. The Committee decides on a complaint in the light of all information made available to it by the complainant and the State party. The findings of the Committee are communicated to the parties (art. 22, para. 7, of the Convention and rule 118 of the rules of procedure) and are made available to the public. The text of the Committee's decisions declaring complaints inadmissible under article 22 of the Convention is also made public, without disclosing the identity of the complainant, but identifying the State party concerned.

106. Pursuant to rule 121, paragraph 1, of its rules of procedure, the Committee may decide to include in its annual report a summary of the communications examined. The Committee shall also include in its annual report the text of its decisions under article 22, paragraph 7, of the Convention.

B. Interim measures of protection

107. Complainants frequently request preventive protection, particularly in cases concerning imminent expulsion or extradition, where they allege a violation of article 3 of the Convention. Pursuant to rule 114, paragraph 1, at any time after the receipt of a complaint, the Committee, through its Rapporteur on new complaints and interim measures, may transmit to the State party concerned a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violations. The State party shall be informed that such a request does not imply a determination of the admissibility or the merits of the complaint. During the reporting period, requests for interim measures of protection were received in 44 complaints, of which 30 were granted by the Rapporteur on new complaints and interim measures, who regularly monitors compliance with the Committee's requests for interim measures.

108. The decision to grant interim measures may be adopted on the basis of information contained in the complainant's submission. Pursuant to rule 114, paragraph 3, this decision

may be reviewed by the Rapporteur on new complaints and interim measures, at the initiative of the State party, in the light of timely information received from that State party to the effect that the need for interim measures is not justified and the complainant does not face any prospect of irreparable harm, as well as subsequent comments, if any, from the complainant. The Rapporteur has taken the position that such requests need only be addressed if based on new and pertinent information which was not available to him or her when he or she took his or her initial decision on interim measures.

109. The Committee has conceptualized the formal and substantive criteria applied by the Rapporteur on new complaints and interim measures in granting or rejecting requests for interim measures of protection. Apart from timely submission of a complainant's request for interim measures of protection under rule 114, paragraph 1, of the Committee's rules of procedure, the basic admissibility criteria set out in article 22, paragraphs 1 to 5, of the Convention, must be met by the complainant for the Rapporteur to act on his or her request. The requirement of exhaustion of domestic remedies need not be fulfilled if the only remedies available to the complainant are without suspensive effect, i.e. remedies that, for instance, do not automatically stay the execution of an expulsion order to a State where the complainant might be subjected to torture, or if there is a risk of immediate deportation of the complainant after the final rejection of his or her asylum application. In such cases, the Rapporteur may request the State party to refrain from deporting a complainant while his or her complaint is under consideration by the Committee, even before domestic remedies have been exhausted. As for substantive criteria to be applied by the Rapporteur, a complaint must have a reasonable likelihood of success on the merits for it to be concluded that the alleged victim would suffer irreparable harm in the event of his or her deportation.

110. In cases concerning imminent expulsion or extradition where a complaint failed to establish a prima facie case with a reasonable likelihood of success on the merits that would allow the Rapporteur on new complaints and interim measures to conclude that the alleged victim would suffer irreparable harm in the event of his or her deportation, the complainant is requested in writing to confirm his or her interest in having his or her communication considered by the Committee, despite the rejection, by the Rapporteur, of the respective request for interim measures. In some cases, requests for interim measures are lifted by the Rapporteur, pursuant to rule 114, paragraph 3, and on the basis of pertinent State party information received, which obviates the need for interim measures.

C. Progress of work

111. At the time of adoption of the present report the Committee had registered, since 1989, 546 complaints concerning 31 States parties.²² Of those, 151 complaints had been discontinued and 67 had been declared inadmissible. The Committee had adopted final decisions on the merits on 218 complaints and found violations of the Convention in 76 of them. A total of 110 complaints were pending for consideration.

112. At its forty-ninth session, the Committee adopted decisions on the merits in respect of complaints No. 416/2010 (*Ke v. Australia*), No. 464/2010 (*K.H. v. Denmark*), No. 385/2009 (*M.A.F. et al. v. Sweden*), No. 389/2009 (*R.A. v. Switzerland*), No. 406/2009 (*S.M. v. Switzerland*), No. 412/2010 (*A.A.R. v. Denmark*), No. 417/2010 (*Y.Z.S. v. Australia*), No. 432/2010 (*H.K. v. Switzerland*) and No. 435/2010 (*G.B.M. v. Sweden*). The text of these decisions is also reproduced in annex XVII, section A, to the present report.

²² The complaints examined by the Committee in relation to the Federal Republic of Yugoslavia, as well as to Serbia and Montenegro, are attributed to Serbia for statistical purposes.

113. Complaint No. 416/2010 (*Ke v. Australia*) concerned a national of China, who had requested and was denied a protection visa under the Australian Migration Act 1958 and was requested to leave the country. At the time of the submission he was detained in the Villawood Immigration Detention Centre in Sydney and was facing deportation. The complainant claimed that if he were to be returned to China, given his arrest, detention and recorded profile as a Falun Gong leader, he would be subjected to interrogation immediately upon arrival at the airport, which may lead to a period of detention for further questioning and result in infliction of torture. He claimed that his forced return to China would constitute a violation by Australia of article 3 of the Convention. The Committee observed that the review on the merits of the complainant's claims regarding the risk of torture that he faced was conducted predominantly based on the content of his initial application for a Protection Visa, which he filed shortly after arriving in the country, without knowledge or understanding of the system; and that the complainant was not interviewed in person, neither by the Immigration Department, which rejected his initial application, nor by the Refugee Review Tribunal, and therefore did not have the opportunity to clarify any inconsistencies in his initial statement. The Committee was of the view that complete accuracy is seldom to be expected from victims of torture and observed that both the decisions of the Federal Magistrates Court and of the Federal Court of Australia recognized that the complainant had not been informed of the Refugee Review Tribunal's invitation for a hearing. The Committee also observed that the State party did not dispute that Falun Gong practitioners in China had been subjected to torture, but based its decision to refuse protection to the complainant in the assessment of his credibility. The Committee found that the State party had failed to duly verify the complainant's allegations and evidence, through proceedings meeting the State party's procedural obligation to provide for effective, independent and impartial review, and concluded that the deportation of the complainant to his country of origin would therefore constitute a violation of article 3 of the Convention.

114. Complaint No. 464/2011 (*K.H. v. Denmark*) concerned a national of Afghanistan, who requested asylum upon arrival in Denmark. His request was denied and he was asked to leave the country. He claimed that he had been subjected to torture by the Taliban and the Afghan authorities and that the Taliban forced him to agree to cooperate with them. As he spoke Pashto and was from a village where many Taliban come from, he considered that Denmark would be violating his rights under article 3 if he were deported to Afghanistan, as he would be subjected to interrogation immediately upon arrival, which may lead to a period of detention for further questioning and result in the infliction of torture. The Committee observed that during the interviews before the Danish Immigration Service and the Refugee Appeals Board, the complainant, who was illiterate, provided inconsistent statements; that the interviews were held with the assistance of an interpreter from and to Pashto; and that the complainant tried to clarify his statements following questions in the Board's hearing. The Committee also observed that during the Board's hearing, the complainant requested a specialized medical examination and argued that he lacked financial means to pay for that examination himself. Moreover, his allegation that he showed to the Board sequelae of the violence inflicted by the Afghan authorities on parts of his body was not contested by the State party. The Committee was of the view that the complainant provided the State party with enough elements as to his claims of having been subjected to torture to seek further investigation on these claims, inter alia, through specialized medical examination. The Committee found that by rejecting the complainant's asylum request without seeking further investigation on his claims or ordering a medical examination, the State party failed to determine whether there were substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned. The Committee therefore concluded that, in the circumstances, the deportation of the complainant to his country of origin would constitute a violation of article 3 of the Convention.

115. Complaint No. 385/2009 (*M.A.F et al. v. Sweden*) concerned a family of seven nationals of Libya, residing in Sweden, who claimed that their deportation to Libya would constitute a breach by Sweden of article 3 of the Convention. They invoked the pattern of gross, flagrant and mass human rights violations in Libya under the Qaddafi Government, including the systematic practice of torture by security forces. The complainants further alleged that they were at personal risk, as the main complainant had been previously tortured due to his family's political activism. Following the removal of the Qaddafi Government and the establishment of the National Transitional Council, the complainants alleged that their forcible deportation would still violate article 3 of the Convention. They invoked instability in the Abu Slem area of Tripoli, and alleged that because cousins of the main complainant's wife fought on the side of Qaddafi during the revolt, she would be at risk of torture by the Libyan authorities. The Committee observed that the complainants had submitted contradictory information and documentation in support of their initial claim, and that they had not provided any documentary evidence to support their current claim that they would personally be exposed to a risk of being subjected to torture if returned to Libya. Accordingly, the Committee concluded that the decision of the State party to return the complainant to Libya would not constitute a breach of article 3 of the Convention.

116. Communication No. 389/2009 (*R.A. v. Switzerland*) concerned a national of Turkey of Kurdish Alevi origin who claimed that by deporting him to Turkey, Switzerland would violate article 3 of the Convention. He invoked his political activities in Turkey, the harassment and detention with torture he had been subjected to on several occasions between 1995 and 2003; and the close supervision he was under, primarily due to the well-known activism of members of his family. In its decision, the Committee considered that the complainant had not produced any evidence to challenge the conclusion reached by domestic authorities, such as the existence of possible politically motivated criminal proceedings against him, since there was nothing to show that the criminal proceedings to which he was subject in Turkey, and which led to an acquittal, were politically motivated. The complainant also failed to show evidence supporting his allegations of ill-treatment in the course of his reported arrests in Turkey or details of the nature thereof; the reasons why he managed to live and work in Istanbul for a year without encountering problems with the Turkish authorities between 2003 and 2004, when he left the country; or even evidence to suggest that the Turkish authorities would be aware of the militant activities of the complainant abroad and that those activities might endanger him in his country of origin. The Committee further considered that the arguments relating to the situation of the Democratic People's Party (a political group which replaced the People's Democracy Party, HADEP) and the Kurdish population in general were not sufficient to establish a personal risk. The Committee therefore concluded that the complainant would not be at risk of a treatment contrary to article 3 of the Convention if returned to Turkey.

117. Complaint No. 406/2009 (*S.M. v. Switzerland*) concerned a national of Ethiopia, residing in Switzerland, who claimed that her deportation to Ethiopia would constitute a breach by Switzerland of article 3 of the Convention. The complainant claimed that she was born in a refugee camp in Sudan, returned to Ethiopia with her mother as a teenager for a few years and was harassed there as a Christian by persons of Islamic faith. She left for Kenya in 2001 and then applied for asylum in Switzerland in 2002. She alleged that while in Switzerland she became a founding member of the support group for the Coalition for Unity and Democracy (CUD, also known as KINIJJIT/CUPD) in Switzerland, participated in numerous demonstrations and political activities, including the founding meeting of KINIJJIT at the University of Geneva in April of 2006 and the filing of a petition with the United Nations at Geneva in October 2007. She claimed that she risked being arrested, interrogated and subjected to torture or other inhumane and degrading treatment by the Ethiopian authorities as a result of her political activities in Switzerland. The Committee noted the complainant's allegations about her political involvement in Switzerland. It also

observed that the complainant had not claimed to have been arrested or ill-treated by the Ethiopian authorities, nor had she claimed that any charges had been brought against her under the antiterrorism law or any other domestic law. In the Committee's view, the complainant had failed to adduce sufficient evidence about the conduct of any political activity of such significance that would attract the interest of the Ethiopian authorities. Accordingly, the Committee concluded that the decision of the State party to return the complainant to Ethiopia would not constitute a breach of article 3 of the Convention.

118. Communication No. 412/2010 (*A.A.R. v. Denmark*) concerned a national of Iraq, who had been deported from Denmark to Iraq on 2 September 2009. He maintained that his detention in Denmark as a refused asylum seeker from 18 June 2009 to 2 September 2009, including in solitary confinement, amounted to a violation of articles 16 and 2 of the Convention. He further claimed to be a victim of a violation by the State party of article 12, for failure to carry out a proper investigation into the alleged violations of articles 16 and 2 of the Convention and that his deportation amounted to a violation by Denmark of article 3, paragraph 1, of the Convention, since it was foreseeable that he would be subjected to torture upon return as he had been subjected to torture and ill-treatment in Iraq in 2005 and as he was exposed to threats from the families of nine other inmates who had been executed. The Committee noted that the State party had acknowledged and taken into account the fact that the complainant had been subjected to torture in the past when evaluating the existence of a personal risk of torture the complainant might face if returned to his country, including in all three decisions of the Refugee Appeals Board which have dealt with this issue. The Committee further noted that in 2009 the complainant had submitted that he would be exposed to a risk of torture exclusively based on threats from the families of his friends, who had been executed in 1995. The Committee recalled that the State party's obligation under article 3 is to refrain from forcibly returning a person to another State where there are substantial grounds for believing that there is a risk of torture. The Committee observed that the complainant in the present case had failed to substantiate that he was in such danger. The Committee concluded that the complainant's detention as a refused asylum seeker did not amount to a violation of articles 16 and 2 of the Convention, that his rights under article 12 of the Convention had not been violated and that his removal to Iraq by the State party did not constitute a breach of article 3 of the Convention.

119. Complaint No. 417/2010 (*Y.Z.S. v. Australia*) concerned a Chinese national whose request for a Protection Visa under the Australian Migration Act 1958 was denied and he was requested to leave the country. At the time of the submission, he was detained in the Villawood Immigration Detention Centre in Sydney and was facing deportation. The complainant claimed that if he were to be returned to China, given his Falun Gong activities, he would be subjected to torture, thus constituting a violation by Australia of article 3 of the Convention. His request for interim measures was denied and he was subsequently removed to China. Deciding the merits of the case, the Committee noted the lack of details provided by the complainant concerning his Falun Gong activities and a number of inconsistencies in his account of facts that had undermined the general credibility of his claims, as well as his failure to provide compelling evidence in support of his claim. The Committee further observed that the complainant was able to leave China freely on two occasions and travel to Australia, and that in such circumstances it was difficult to conclude that he was of interest to the Chinese authorities. The Committee found that the complainant had failed to provide sufficient evidence to demonstrate that he faced a foreseeable, real and personal risk of being subjected to torture at the time he was deported back to China and concluded that his deportation to China did not constitute a violation of article 3 of the Convention.

120. Complaint No. 432/2010 (*H.K. v. Switzerland*) concerned a national of Ethiopia, residing in Switzerland, who claimed that her deportation to Ethiopia would constitute a violation by Switzerland of article 3 of the Convention. The complainant alleged that she

became involved with the newly founded KINIJJIT movement (also known as the Coalition for Unity and Democracy, CUD/CUDP) in December 2004, was arrested by members of the Ethiopian military in May 2006, imprisoned for one month and suffered severe ill-treatment in custody. In June 2007, she attended a conference in Geneva and seized that opportunity to seek asylum. She continued to be politically active in Switzerland by becoming a member of the Association des Ethiopiens en Suisse (AES), arranging meetings and organizing demonstrations for the KINIJJIT Support Organisation in Switzerland and publishing critical comments and articles on the Internet. The complainant alleged that, being an active and outstanding member of the Ethiopian dissident community, she risked being subjected to torture or other cruel and inhumane or degrading treatment by the Ethiopian authorities as a result of her political activities in Switzerland. The Committee observed that the complainant had not submitted any evidence supporting her claims of having been severely ill-treated by the Ethiopian military prior to her arrival in Switzerland or suggesting that the police or other authorities in Ethiopia had been looking for her since, nor did she claim that any charges had been brought against her under the anti-terrorism law or any other domestic law in Ethiopia. The Committee then noted that the complainant claimed to be one of the most active members of the Ethiopian dissident movement in Switzerland, who regularly published critical articles against the Ethiopian authorities on the Internet and contributed to the opposition blogs. It also noted that the State party questioned the complainant's authorship of the articles and blog entries in question. The Committee further noted the complainant's submission that the Ethiopian authorities used sophisticated technological means to monitor Ethiopian dissidents abroad, but observed that she had not elaborated on that claim or presented any evidence to support it. In the Committee's view, the complainant had failed to adduce sufficient evidence about the conduct of any political activity of such significance that would attract the interest of the Ethiopian authorities. The Committee concluded accordingly that the information submitted by the complainant, including the unclear nature of her political activities in Ethiopia prior to her departure from that country and the low-level nature of her political activities in Switzerland, was insufficient to show that she would personally be exposed to a risk of being subjected to torture if returned to Ethiopia. Therefore, the decision of the State party to return the complainant to Ethiopia would not constitute a breach of article 3 of the Convention.

121. Communication No. 435/2010 (*G.B.M. v. Sweden*) concerned a national of the United Republic of Tanzania, facing deportation back to his country of origin. He maintained that his deportation would amount to a violation by Sweden of article 3 of the Convention, since he would be arrested and subjected to torture upon return as he had been subjected to torture and ill-treatment in the United Republic of Tanzania in 2002. On 4 November 2010, the Committee, through its Rapporteur on new complaints and interim measures, rejected his request for interim measures of protection. The State party notified the Committee that the complainant had left Sweden on 20 November 2010. The complainant, in turn, claimed that on the mentioned date, he was indeed deported from Sweden but managed to escape during a stopover to a third country. The Committee concluded that the complainant's removal to the United Republic of Tanzania would not constitute a breach of article 3 of the Convention. Firstly, the Committee noted inconsistencies in the complainant's submissions concerning when and how he had been tortured in the United Republic of Tanzania in 2002. Further, the Committee noted that considerable time had elapsed since 2002. In this connection, the Committee noted recent human rights reports reflecting the improvement of the human rights situation in the United Republic of Tanzania. Finally, in respect of the medical record concerning the injuries allegedly sustained by the complainant after his ill-treatment in 2002 and submitted in the framework of the communication, the Committee observed that the complainant had not provided any explanation as to why he did not present it to the State party's authorities, and

that, in any event, nothing in the said record brought additional details on his alleged past ill-treatment. The Committee therefore found no violation of article 3 of the Convention.

122. Also at its forty-ninth session, the Committee decided to declare inadmissible complaints No. 346/2008 (*S.A.C. v. Monaco*), No. 425/2010 (*I.A.F.B. v. Sweden*) and No. 437/2010 (*B.M.S. v. Sweden*).

123. Communication No. 346/2008 (*S.A.C. v. Monaco*) concerned a national of Brazil, who had been sentenced to 13 years of imprisonment in Brazil and left the country while under provisional release. He was arrested in Monaco in view of the request for his extradition to Brazil. The complainant claimed that his extradition to his country would constitute a violation by Monaco of article 3 of the Convention given the inhumane conditions of detention existing in Brazil. The Committee declared the communication inadmissible under article 22, paragraph 2 (b), of the Convention for failure to exhaust domestic remedies, because the complainant failed to request cancellation of the extradition decision before the Supreme Court, which is considered an effective remedy as long as it effectively suspends the person's removal, which would have been the case in this communication.

124. Communication No. 425/2010 (*I.A.F.B. v. Sweden*) concerned a national of Algeria, who claimed that his removal to his country of origin would constitute a violation by Sweden of article 3 of the Convention. The complainant claimed that the Swedish authorities did not take into consideration that human rights are not respected in Algeria, which has been in a state of emergency for the past 18 years. He also claimed that torture is a systematic practice by the secret services and that its agents act with impunity. He also submitted that Algerian citizens who are returning after having failed to obtain asylum in a third country are generally suspected to be Islamic terrorists, which makes them vulnerable for reprisals. On 13 July 2011, fearing deportation to Algeria, the complainant voluntarily left Sweden for Egypt. The Committee concluded therefore that with the complainant's departure to Egypt the communication before the Committee no longer served any purpose and has by that fact turned out to be incompatible with the provisions of the Convention in accordance with article 22, paragraph 2, as he is no longer under any risk to be sent back to Algeria by the State party.

125. Communication No. 437/2010 (*B.M.S. v. Sweden*) concerned a national of Algeria, who claimed that his removal to his country of origin would constitute a violation by Sweden of article 3 of the Convention. The complainant claimed that he would be exposed to a real, personal risk of being imprisoned by the authorities and thus tortured because he was considered to have helped "terrorists" carry out an attack on a money transport. He also claimed that he would be at risk of an extrajudicial killing by terrorists because they suspected that he had revealed their plan of the attack on the money transport. The Committee declared the communication inadmissible for failure to exhaust domestic remedies, because the expulsion order against the complainant had become statute-barred on 24 October 2012 and the complainant is therefore no longer under a threat of being expelled to Algeria. Moreover, he now has the possibility of submitting new asylum applications which will be re-examined in full by the migration authorities.

126. At its fiftieth session, the Committee adopted decisions on the merits in respect of complaints No. 430/2010 (*Abichou v. Germany*), No. 392/2009 (*R.S.M. v. Canada*), No. 431/2010 (*Y. v. Switzerland*), No. 439/2010 (*M.B. v. Switzerland*), No. 467/2011 (*Y.B.F. et al. v. Switzerland*) and No. 463/2011 (*D.Y. v. Sweden*). The text of these decisions is also reproduced in annex XVII, section A, to the present report.

127. Communication No. 430/2010 (*Abichou v. Germany*) concerned a French national arrested in Germany pursuant to an international arrest warrant issued by Tunisia, further to the complainant's conviction in absentia in Tunisia, in relation to drug-trafficking offences.

The Saarland Regional High Court considered the complainant's extradition to be lawful, after the receipt of diplomatic assurances from Tunisia, which included the fact that the complainant would be retried in accordance with standards under the International Covenant on Civil and Political Rights, and that, in the event of a conviction, he would be detained in prisons which meet the United Nations Standard Minimum Rules for the Treatment of Prisoners. The complainant claimed that the State party would breach article 3 of the Convention by extraditing him to Tunisia: (a) in light of the fact that his conviction was based solely on testimonies of two co-accused, which were obtained under torture, and during which his name was revealed; and (b) due to the systematic practice of torture in Tunisia. On 25 August 2010, the complainant was extradited to Tunisia by Germany, despite interim measures of protection requested by the Committee on the same day. On 19 May 2011, the Tunis Court of Appeal acquitted the complainant of all charges against him. He was released. The Committee declared the communication admissible, notwithstanding the fact that the case had been brought before the European Court of Human Rights before being presented to the Committee, considering that the case had not been examined by the Court since it considered only a related request for interim measures under rule 39 of the Court's rules of procedure.

128. Regarding the interim measures requested by the Committee, in the light of the short amount of time between the request and the foreseen extradition, and the diligence shown by the State party to implement the request, the Committee considered that in the circumstances, there was no breach of article 22 of the Convention in this respect. The Committee then considered the actual human rights situation in Tunisia at the time of the complainant's extradition and concluded that the authorities of the State party knew, or should have known at the time of his extradition, that Tunisia consistently resorted to the widespread use of torture. The Committee also gave due weight to the fact that the complainant's name was revealed pursuant to acts of torture presumably inflicted on two of his co-accused, which increased the personal risk to which he was exposed. The fact that diplomatic assurances were obtained was not sufficient grounds for the State party's decision to ignore this obvious risk, especially since none of the guarantees provided related specifically to the protection against torture or ill-treatment. The fact that the complainant was ultimately not subjected to such treatment following his extradition cannot be used to call into question or minimize, retrospectively, the existence of such a risk at the time of the extradition. The Committee concluded that the complainant's extradition constituted a violation of article 3 of the Convention.

129. Communication No. 392/2009 (*R.S.M. v. Canada*) concerned a citizen of Togo seeking asylum in Canada. He claimed that his forced return to Togo would constitute a violation by Canada of article 3 of the Convention. He alleged that he was a member of the Union des Forces de Changement (Union of Forces for Change), and had an active role within the party, especially during the 2005 election campaign. After the election he was arrested and remained in detention until he managed to escape in May 2006. The Committee held that the human rights situation in Togo was difficult. However, this was not enough to establish a personal risk of torture if returned. The facts as presented by the complainant did not provide the Committee with grounds for concluding that he would face such risk. Inter alia, he had not furnished evidence that he was sought by the authorities and risked being detained and did not provide evidence of his previous arrest and alleged torture. The Committee thus concluded that the State party's decision to return the complainant to Togo would not constitute a breach of article 3 of the Convention.

130. Case No. 431/2010 (*Y. v. Switzerland*) concerned a national of Turkey, whose asylum application was rejected by Swiss migration authorities in August 2010. The complainant claimed that if she were to be returned to Turkey, she would be detained, interrogated, and mistreated by the police given (a) her detention and torture in 1998; (b) her short-term arrests following visits to her sister, a Kurdish Workers Party (PKK)

militant, in prison; (c) her continued surveillance since her sister had fled the country in 2002, her harassment, intimidation and detention because of her sister's illegal pro-Kurdish activities and because of suspicion that she had made use of her physical resemblance to facilitate her sister's escape from Turkey; (d) her own activities within the Mesopotamia Cultural Centre in Istanbul; and (e) the risk of family persecution on account of her close family relationship with her sister. She also referred to her ensuing mental problems. The complainant claimed that her forced return to Turkey would constitute a violation by Switzerland of article 3 of the Convention. The Committee took note of the medical evidence supplied by the complainant and the State party's arguments that the alleged origin of her mental problems had not been proven and that a suspected post-traumatic stress disorder could not be considered an important indication of her persecution in Turkey.

131. While the Committee noted that the complainant's torture in 1998 was uncontested, it also noted with respect to the current risk of torture upon return to Turkey that the complainant had failed to provide elements which would show that the continuous surveillance, harassment, short-term arrests and persecution until her escape to Switzerland in 2008 would amount to torture; that she had not presented any evidence showing that she had ever been summoned for interrogation or had been indicted for her alleged suspected involvement with the PKK, neither had she supplied any evidence corroborating her claim that the police had searched for her at her parents' home since her escape to Switzerland; that she had never claimed that her family members living in Istanbul were being persecuted in connection with her sister's and her own escape to Switzerland; the complainant herself had not been sentenced, prosecuted for or accused of any crime in Turkey; and that she had not been politically active in Switzerland or cooperating with members of the PKK either in Turkey or in Switzerland. On the human rights situation in Turkey, the Committee noted that no reports indicated that family members of PKK militants were specifically targeted and subjected to torture. In the light of the above considerations, the Committee concluded that the complainant's removal to Turkey would not constitute a breach of article 3 of the Convention. One member of the Committee appended an individual opinion.

132. Communication No. 439/2010 (*M.B. v. Switzerland*) concerned an Iranian national whose asylum request was rejected by the Swiss authorities and who claimed that in the Islamic Republic of Iran he would be exposed to torture inter alia due to his Arab ethnicity; because one of his close relatives was active in a pro-Arab political party; and because he had taken part in a demonstration in front of the Iranian Embassy in Bern. He claimed that his forcible return to the Islamic Republic of Iran would thus be in breach of article 3 of the Convention. The Committee noted that the overall human rights situation in the Islamic Republic of Iran could be considered problematic in many aspects; however, the complainant had not been tortured there in the past, neither because of his ethnicity nor on other grounds. It also noted that the complainant had adduced no evidence in substantiation of his claim that his family was persecuted in the Islamic Republic of Iran due to the political activities of one of his relatives, and he had never been himself politically active in the Islamic Republic of Iran. The Committee further considered that the complainant's participation, on a single occasion, in a demonstration in front of the Iranian Embassy in Bern, together with several other individuals, in the absence of other elements, was insufficient to consider that the complainant would be persecuted in the Islamic Republic of Iran. In light of this, the Committee concluded that the deportation of the complainant to his country of origin would not constitute a violation of article 3 of the Convention.

133. Communication No. 467/2011 (*Y.B.F et al. v. Switzerland*) concerned an individual (first complainant), his wife and son, all Yemeni nationals, who claimed that their deportation to Yemen would constitute a violation of article 3 of the Convention, given: (a) the first complainant's participation in Yemen in a demonstration organized by supporters

of the Southern Movement, which calls for the independence of South Arabia (South Yemen) from Yemen; (b) his subsequent detention, during which he was allegedly beaten; and (c) the harassment of his family by security forces. The complainants' persecution risk in Yemen is allegedly aggravated by the first complainant's political activities in Switzerland as a member of the Southern Democratic Assembly. The Committee considered that the information submitted by the first complainant, including the unclear nature of his political activities in Yemen prior to his departure from that country and the low-level nature of his political activities in Switzerland, was insufficient to show that he would personally be exposed to a risk of being subjected to torture if returned to Yemen. The Committee was concerned at the many reports of human rights violations, including the use of torture in Yemen, but recalled that for the purposes of article 3 of the Convention the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. As the cases of the first complainant's wife and their son were dependent upon his case, the Committee did not find it necessary to consider their claims separately. The Committee concluded that the complainants' return to Yemen would not constitute a violation of article 3 of the Convention.

134. Communication No. 463/2011 (*D.Y. v. Sweden*) concerned a national of Uzbekistan, whose asylum request was denied. He claimed that while serving in the Air Forces in Uzbekistan, as part of his military service, he participated in an operation to suppress a violent demonstration in Andizjan, and that he had been instructed to shoot against demonstrators. As he and other soldiers refused to obey this order and laid down their arms, he had been arrested by the police twice and brought to a military court, accused of not following orders and of State perfidy. While in prison, he was tortured, assaulted and insulted. During the time he was released from prison, he was also harassed and beaten by the police several times. He held that if returned to Uzbekistan, he would risk imprisonment and that such imprisonment would inevitably be followed by ill-treatment and torture, as he experienced before, which would constitute a violation of article 3 of the Convention. The Committee took note of the observation by the State party that the complainant provided a false identity to the Migration Board and that afterwards, the Court could not corroborate the real identity claimed by him; that he modified his original statements on more than one occasion; that he was not able to provide some basic information as to the events in Andizjan, such as the name of the main square where the demonstration took place; that he did not submit any document as to his conviction by a military court and the prohibition to travel and was not able to provide a description of these documents; and that his allegations of torture were vague and did not provide details about the circumstances in which it was inflicted. The Committee observed that notwithstanding the complainant's allegations, his children, who had initially fled with his wife to Kazakhstan, had returned to Uzbekistan and lived with his parents, and that the complainant did not report any acts against members of his family other than the police requesting information about the complainant's whereabouts. Accordingly, the Committee considered that the complainant had failed to provide sufficient evidence in support of his claims to the effect that he would be exposed to a real risk of torture if he were removed to Uzbekistan.

135. Also at its fiftieth session, the Committee decided to declare inadmissible complaint No. 479/2011 (*E.E. v. Russian Federation*).

136. Communication No. 479/2011 (*E.E. v. Russian Federation*) concerned a national of the Russian Federation, who claimed that he had been subjected to torture and ill-treatment at the initial stages of his detention, as well as while in pretrial detention, and that the subsequent failure to investigate his complaints amounted to a violation, by the State party, of his rights under article 1, paragraph 1; article 2, paragraph 3; article 3; and article 4, paragraph 1, of the Convention. He also claimed that his ill-treatment at the police station and in prison amounted to torture aimed at obtaining a confession, in violation of article 15 of the Convention. The Committee observed that the complainant's claims had been

examined by the European Court of Human Rights and that on 28 March 2006 the Court had found his application inadmissible; acting through a Committee of three judges, the Court declared the claims inadmissible on the ground that the information before it did not reveal any violation of the rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, the Committee considered that examination by the European Court of Human Rights in the present case constituted an examination by another procedure of international investigation or settlement and concluded that the communication was inadmissible under article 22, paragraph 5 (a), of the Convention.

D. Follow-up activities

137. At its twenty-eighth session, in May 2002, the Committee against Torture established the mandate of a Rapporteur for follow-up to decisions on complaints submitted under article 22 of the Convention against Torture. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties inquiring about measures taken pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of comments from complainants concerning non-implementation of the Committee's decisions; meeting with State party representatives to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow-up visits to States parties; preparing periodic reports for the Committee on his or her activities.

138. The present report compiles information received from States parties and complainants since the forty-eighth session of the Committee against Torture, which took place from 7 May to 1 June 2012.

State party	Algeria
Case	<i>Hanafi, 341/2008</i>
Decision adopted on	3 June 2011
Violation	Articles 1, 2, paragraph 1, 11, 12, 13 and 14
Remedy recommended	Obligation to conduct an impartial investigation into the incidents in question, with a view to bringing those responsible for the victim's treatment to justice, and to inform the Committee, within 90 days from the date of the transmittal of the decision, of the steps it has taken in response to the views expressed in the decision, including compensation of the complainant.

On 30 July and 4 November 2012, the complainant's counsel informed the Committee that no measures had been taken by the State party to give effect to the Committee's decision and no compensation had been provided to the complainant for her husband's death. Counsel wrote to the State party's authorities on 18 May 2012, requesting that the Committee's decision be implemented, to no avail. The two submissions from the counsel were transmitted to the State party for observations but no reply was received.

A reminder was sent to the State party and a decision was made to request a meeting between the Rapporteur for follow-up to decisions on complaints and the Permanent Representative of Algeria to the United Nations Office in Geneva.

Committee's decision: Follow-up dialogue ongoing.

State party	Australia
Case	<i>Ke, 416/2010</i>
Decision adopted on	5 November 2012
Violation	Article 3 (deportation to China)
Remedy recommended	To inform the Committee, within 90 days from the date of the transmittal of the decision, of the steps it has taken in accordance with the observations made in the communication.

On 1 March 2013, the State party explained that it did not necessarily accept the conclusion that the removal of Mr. Ke from Australia would constitute a breach of article 3 of the Convention or that the immigration processes of Australia were procedurally flawed in this case. However, as an interim step, the Minister for Immigration and Citizenship would consider whether to allow Mr. Ke to make a further application for a Protection Visa under the Migration Act 1958. Should the Minister allow a further application by Mr. Ke, any claims he raises that may engage the State party's non-refoulement obligations under the Convention against Torture, the International Covenant on Civil and Political Rights and the 1951 Convention Relating to the Status of Refugees will be fully reconsidered through the State party's domestic proceedings.²³

On 6 March 2013, the State party's submission was transmitted to the complainant's counsel for information.

Committee's decision: Follow-up dialogue ongoing.

State party	Canada
Case	<i>Singh, 319/2007</i>
Decision adopted on	30 May 2011
Violation	Article 3 (extradition to India)
Remedy recommended	To inform the Committee, within 90 days from the date of the transmittal of the decision, of the steps it has taken in accordance with the observations of the Committee.

²³ On 17 May 2013, the Rapporteur for follow-up to decisions on complaints met with members of the Permanent Mission of Australia to the United Nations in Geneva and the case was discussed. The State party representatives reiterated their pledge to comply with the Committee's decision and therefore to find an interim solution to the full implementation of the decision through ministerial intervention.

On 18 November 2011, the State party informed the Committee that it had decided not to return the complainant to India.

The State party explains that it does not accept as a general proposition that its domestic system of judicial review and in particular proceedings before its Federal Court do not provide an effective remedy against removal where there are substantial grounds to believe that a person faces a risk of torture. The State party interprets the Committee's decision in this case as indicating that, in the particular circumstances of the case, the Committee did not find that the domestic remedies were sufficient.

The State party's observations were transmitted to the complainant, on 28 December 2011, for comments.

Despite several reminders and a note to counsel that, in the absence of comments, the Committee may decide to close the case with a note of satisfactory resolution, the counsel has not replied.

At its fiftieth session, the Committee decided, under these circumstances and in the light of the information provided by the State party, to close the follow-up dialogue with a finding of a satisfactory resolution, while noting that the counsel has not commented thereupon.

State party	Canada
Case	<i>Boily, 327/2007</i>
Decision adopted on	14 November 2011
Violation	Articles 3 and 22 (extradition to Mexico)
Remedy recommended	The State party is requested, in accordance with its obligations under article 14 of the Convention, to provide effective redress, including the following: (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 expenditures, future services, and legal expenses; and (c) review its system of diplomatic assurances with a view to avoiding similar violations in the future.

Previous follow-up information: A/67/44, chap. VI

In January 2013 a reminder for comments was sent to the counsel.

On 4 February 2013, the complainant's counsel criticized the State party's reply, which, in his opinion, shows the State party's failure to implement the Committee's decision.

On 8 March 2013, the State party reiterated its position that it would not provide observations on the matter at this point in time given that proceedings are ongoing before the Federal Court of Canada.

Committee's decision: Follow-up dialogue ongoing.

State party	Canada
Case	<i>Kalonzo, 343/2008</i>
Decision adopted on	18 May 2012
Violation	Article 3 (deportation to the Democratic Republic of the Congo)
Remedy recommended	To inform the Committee, within 90 days from the date of the transmittal of the decision, of the steps it has taken in accordance with the observations of the Committee.

On 25 May 2012, the State party informed the Committee that the complainant's application for permanent resident status in Canada based on humanitarian and compassionate considerations (H&C application) had been approved in principle on 15 May 2012. In addition, the complainant was granted an exemption from the provision under paragraph 36 (2) (b) of the Immigration and Refugee Protection Act on inadmissibility on grounds of criminality.

On 3 September 2012, the State party stated that the complainant's removal had been stayed pending the finalization of requisite background checks (including criminal, security and medical) before his permanent resident status could be formally conferred. These verifications were initiated on 18 June 2012. Provided that the complainant is granted permanent resident status, he will not be subjected to removal from Canada. After the requisite period of residency, the complainant will be eligible to apply for Canadian citizenship.

Since the complainant's application for permanent residence had been approved in principle, and he was no longer at risk of removal, the State party had urged the Committee, on 25 May 2012, to find the author's communication to be inadmissible under article 22 of the Convention. The State party regrets that the timing of the facts was such that the Committee was not in a position to find this communication inadmissible and would prefer that the Committee reverse its decision on admissibility.

While noting the Committee's decision that the State party would violate article 3 were the complainant to be removed to the Democratic Republic of the Congo, the State party notes that this is not the case here since the complainant is being considered for permanent residence status.

The State party also points out that in this case, as in the case of a number of other individuals who have submitted communications under article 22, the H&C application proved to be an effective remedy.

On 17 April 2013, a request for an update was sought from the State party with regard to the complainant's situation.

Committee's decision: Follow-up dialogue ongoing.

State party	Denmark
Case	<i>K.H., 464/2011</i>
Decision adopted on	23 November 2012
Violation	Article 3 (deportation to Afghanistan)

Remedy recommended To inform the Committee, within 90 days from the date of the transmittal of the decision, of the steps it has taken in accordance with the Committee's observations.

On 18 February 2013, the complainant's counsel informed the Committee that, following the denial by the Rapporteur on new complaints and interim measures of the request for interim measures made in June 2012, the complainant had been returned to Afghanistan, which made difficult the implementation of the Committee's subsequent decision in this case.

However, in the framework of the follow-up procedure, on 6 March 2013, the State party informed the Committee that on 18 December 2012, the Refugee Appeals Board decided to reopen the case and refer it to the Danish Immigration Service. The Refugee Appeals Board also decided to request the Immigration Service to help facilitate the complainant's return to Denmark for a renewed consideration of his asylum case.

On 1 March 2013, the Danish Embassy in Afghanistan and the complainant's counsel informed the Government of Denmark that the complainant had been located in Afghanistan, and on 2 March 2013, the Danish Immigration Service informed the Government of Denmark that the Danish Embassy had issued the complainant a laissez-passer and a visa.

The State party's submission was transmitted to the counsel for comments.

On 11 March 2013, the complainant's counsel informed the Committee that the complainant had indeed returned to Denmark and that a new asylum case is currently pending.

On 16 April 2013, the complainant's counsel informed the Committee that after re-entering Denmark, the complainant had been granted a residence permit and thus the follow-up dialogue had reached a satisfactory conclusion.

At its fiftieth session, the Committee decided to close the follow-up dialogue with a finding of a satisfactory resolution.

State party	Kazakhstan
Case	<i>Abdussamatov et al.</i>, 444/2010
Decision adopted on	1 June 2012
Violation	Articles 3 and 22 (extradition to Uzbekistan)
Remedy recommended	The Committee asked the State party to provide redress for the complainants, including return of the complainants to Kazakhstan and adequate compensation.

On 8 November 2012, the State party submitted information from the General Prosecutor's Office of Kazakhstan stating that from 3 to 14 August 2012, representatives of the Kazakh diplomatic service held meetings with 18 of the 28 extradited individuals in order to assess their human rights situation, conditions of detention and whether they had been subjected to torture or inhuman and degrading treatment. None of the visited convicts indicated that they had been subjected to torture, unlawful measures of physical and moral pressure or other unlawful methods of investigation. All of them were assigned ex officio lawyers and had the opportunity to hire private lawyers as well. None of them

had any claims related to the conditions of detention, the food or the medical care provided. The State party submits that each of the visited individuals wrote a statement to the Committee confirming the above and that the statements were enclosed with the State party's note verbale (no such documents have been received to date). In addition, the State party submits that upon request of the Kazakh diplomatic service, medical examinations of the 18 complainants were conducted and no traces of beatings or torture were discovered. (No copies of the medical certificates have been provided and it is not clear who conducted the medical examinations).

The State party further submits that since seven of the complainants are still under investigation, according to the representatives of Uzbekistan, meetings with them will be arranged at a later stage and the State party will inform the Committee of the results. The State party also submits that three of the extradited persons were convicted and given punishments that do not include imprisonment; the criminal case against one of them was closed based on an amnesty. Since these individuals were not in correctional institutions, no meetings were held with them.

On 21 December 2012, the complainants' counsel notes that the State party has not given effect to the Committee's recommendation to provide redress to the complainants. In particular, no mention is made of compensation to the complainants or any meaningful attempt to return them from Uzbekistan to Kazakhstan.

Counsel reminds the State party that the purpose of the follow-up procedure is not to appeal against the decision of the Committee but to give effect to such decision. The State party should therefore not explain the complainants' present situation in Uzbekistan but rather explain which measures of redress were implemented in their case.

According to the information provided by the State party, the visits were carried out by representatives of the Kazakh diplomatic service. Neither an independent organization nor an independent expert was present to monitor the conditions of detention. The State party has not given details on the modalities of such visit, the composition and qualification of the delegation, whether a doctor was present and whether interviews were carried out in private. In this regard, counsel received information from relatives of one of the complainants alleging that Uzbek officers were present during the interviews (the testimony of the relative providing such information is appended to the counsel's letter). Such presence prevents any confidential discussion.

Given that 9 of the 18 statements signed by the complainants and provided by the State party were pre-typed, counsel fears these documents were prepared in advance. It suspects they were drafted without having assessed the complainants' situation and were brought for the sole purpose of gathering their signature and refuting any violation of their rights without a real and effective monitoring of their conditions. As for the handwritten statements, since their content is similar to those which were pre-typed, counsel fears they were written under constraint, especially since the complainants are in custody and therefore could fear reprisals. Counsel argues that such method is to be considered contrary to the complainants' right of petition under article 22 of the Convention.

With regard to the medical examinations performed on 18 of the complainants, counsel notes that there is no indication as to who conducted the examination, whether an independent doctor was present, whether the person who performed the medical examination had any qualification or training regarding the specific examination of ill-treatment or torture, how the examinations were held (protocol, confidentiality) and what the detailed results were (in accordance with the Istanbul Protocol). Counsel notes that no

medical certificate was provided by the State party. Contrary to the information provided by the State party, according to Uzbek human rights defenders, at least 4 of the 18 complainants visited by the State party were tortured. No further information was transmitted on that matter and no information is available regarding the remaining complainants. Furthermore, counsel received a testimony (copy submitted) alleging that torture had been used against complainants, for instance electrocution or suffocation by the placement of a plastic bag on the head. The testimony also refers to complainants threatened with reprisals before the visit of the Kazakh diplomats. It is alleged that they were compelled to say that they were not tortured. In the light of the above, counsel considers that the monitoring performed by the State party was neither independent nor effective. Counsel insists that the information related to the allegations of torture is particularly worrying.

Counsel's comments were submitted to the State party for observations, with a deadline set for 28 June 2013.

Committee's decision: Follow-up dialogue ongoing.

State party	Morocco
Case	<i>Ktiti</i>, 419/2010
Decision adopted on	26 May 2011
Violation	Articles 3 and 15 (extradition to Algeria)
Remedy recommended	To inform the Committee, within 90 days of the date of transmission of the decision, of the measures taken in response to the decision. The Committee added that because Djamel Ktiti had been in detention for 21 months despite no charges having been laid against him, the State party was obliged to release him or to try him should charges be brought against him. Referring to its most recent concluding observations, the Committee once again urged the State party to review its legislation in order to incorporate a provision prohibiting any statement obtained under torture from being invoked as evidence in any proceedings, in conformity with article 15 of the Convention.

Previous follow-up information: A/67/44, chap. VI

Reminders were sent to the complainant's counsel on 4 January and 12 March 2013.

On 16 April 2013, the complainant's counsel confirmed that the complainant had been released from Salé prison on 2 February 2012, thereby putting the follow-up dialogue of communication No. 419/2010 to a close with a satisfactory resolution. Counsel expressed, on behalf of the complainant's family, great appreciation for the decision of the Committee which enabled the complainant to be released.

At its fiftieth session, the Committee decided to close the follow-up dialogue with a finding of a satisfactory resolution.

State party	Morocco
Case	<i>Kalinichenko, 428/2010</i>
Decision adopted on	25 November 2011
Violation	Articles 3 and 22 (the complainant has been already extradited to the Russian Federation)
Remedy recommended	The State party was urged to provide redress for the complainant, including compensation and establishing an effective follow-up mechanism to ensure that the complainant is not subjected to torture or ill-treatment.

Previous follow-up information: A/67/44, chap. VI

On 6 July 2012, the complainant's parents explained that the State party had failed to give effect to the Committee's views. Their submission was transmitted to the State party, for observations (deadline 27 August 2012). No reply was received. A reminder was sent to the State party on 12 March 2013.

Committee's decision: Follow-up dialogue ongoing.

State party	Norway
Case	<i>Eftekhary, 312/2006</i>
Decision adopted on	25 November 2011
Violation	Article 3 (deportation to the Islamic Republic of Iran)
Remedy recommended	To inform the Committee, within 90 days from the date of the transmittal of the decision, of the steps it has taken in accordance with the Committee's observations.

Previous follow-up information: A/67/44, chap. VI

On 23 February 2012, the State party informed the Committee that following the adoption of its decision, the Norwegian Immigration Appeals Board had reopened the complainant's case and, on 31 January 2012, the complainant was granted a leave to stay, pending the consideration of his appeal. A hearing had been scheduled for 13 March 2012, and the complainant would be able to present his case.

The State party's information was sent to the complainant, on 23 March 2012, for comments. The letter was returned for wrong address. A second letter, sent in January 2013, was also returned. Therefore, on 18 February 2013, the Committee decided to send a request for information on the situation of the complainant to the State party. The Committee will await receipt of further information prior to deciding on the matter.

Committee's decision: Follow-up dialogue ongoing.

State party	Senegal
Case	<i>Guengueng et al., 181/2001</i>
Decision adopted on	17 May 2006
Violation	Article 5, paragraph 2, and article 7

Remedy recommended The State party is obliged to adopt the necessary measures, including legislative measures, to establish its jurisdiction over the acts committed by the Habré regime referred to in the present communication. Moreover, under article 7 of the Convention, the State party is obliged to submit the present case to its competent authorities for the purpose of prosecution or, failing that, since Belgium has made an extradition request, to comply with that request, or, should the case arise, with any other extradition request made by another State, in accordance with the Convention.

Previous follow-up information: A/66/44, chap. VI and A/67/44, chap. VI

At the time of writing, the State party had not replied to the Committee's note verbale dated 18 February 2013 setting a deadline for a reply for 8 April 2013. In addition to a reminder to be sent to the State party, the Committee decided to request a meeting between the Rapporteur for follow-up to decisions on complaints and the Permanent Representative of Senegal to the United Nations in Geneva.

Committee's decision: Follow-up dialogue ongoing.

State party	Serbia
Case	<i>Ristic, 113/1998</i>
Decision adopted on	11 May 2001
Violation	Articles 12 and 13
Remedy recommended	The Committee urged the State party to investigate allegations of torture by police.

Previous follow-up information: A/66/44, chap. VI and A/67/44, chap. VI

A reminder for updated information was sent to the State party, with a request for clarifications concerning the possible difficulties faced by the State party in implementing the Committee's recommendation.

On 19 April 2013, the State party mentioned that in December 2004, the Municipal Court of Belgrade held the Republic of Serbia and the State Union of Serbia and Montenegro jointly liable to pay Radivoje and Vesna Ristic 500,000 dinars each for non-pecuniary damages. On 7 February 2006, the Republic of Serbia paid the above stated compensation with an interest rate calculated from 30 December 2004, for the mental suffering caused by the death of their son, Milan Ristic.

The State party's information was transmitted to counsel for comments.

Committee's decision: Follow-up dialogue ongoing.

State party	Serbia
Case	<i>Dimitrov, 171/2000</i>
Decision adopted on	3 May 2005

Violation	Article 2, paragraph 1 in connection with articles 1, 12, 13 and 14
Remedy recommended	The Committee urged the State party to conduct a proper investigation into the facts alleged by the complainant.

Previous follow-up information: A/66/44, chap. VI and A/67/44, chap. VI

On 18 February 2013, a reminder for updated information was sent to the State party.

On 19 April 2013, the State party stated that on 7 July 2010, the complainant filed a claim against the Republic of Serbia before the First Instance Court of Belgrade for non-pecuniary damages. On 20 October 2011, an agreement between Jovica Dimitrov and the Serbia was signed, by which Serbia is obligated to make payment to the complainant of an amount of 450,000 dinars for having violated the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The payment was made on 30 November 2011. In the light of the off-court settlement made between the complainant and Serbia, the First Instance Court of Belgrade discontinued the proceedings for non-pecuniary damages on 28 December 2011.

The State party information was transmitted to counsel for comments.

Committee's decision: Follow-up dialogue ongoing.

State party	Serbia
Case	<i>Dimitrijevic, 172/2000</i>
Decision adopted on	16 November 2005
Violation	Article 2, paragraph 1, in connection with articles 1, 12, 13 and 14
Remedy recommended	The Committee urged the State party to prosecute those responsible for the violations found and to provide compensation to the complainant.

Previous follow-up information: A/66/44, chap. VI and A/67/44, chap. VI

On 18 February 2013, a reminder for comments was sent to the complainant.

Committee's decision: Follow-up dialogue on-going.

State party	Serbia
Case	<i>Nikolić, 174/2000</i>
Decision adopted on	24 November 2005
Violation	Articles 12 and 13
Remedy recommended	Conducting an impartial investigation into the circumstances of the death of the complainants' son.

Previous follow-up information: A/66/44, chap. VI and A/67/44, chap. VI

On 18 February 2013, a reminder was sent to the complainant's counsel for comments.

Committee's decision: Follow-up dialogue ongoing.

State party	Spain
Case	<i>Sonko, 368/2008</i>
Decision adopted on	25 November 2011
Violation	Articles 12 and 16
Remedy recommended	To carry out a suitable investigation of the events that occurred on 26 September 2007, to prosecute and punish any persons found to be responsible for those acts, and to provide effective remedy, which shall include adequate compensation for Mr. Sonko's family.

Previous follow-up information: A/67/44, chap. VI

On 12 March 2013, another reminder was sent to the complainant's counsel with a deadline set at 13 May 2013.

Committee's decision: Follow-up dialogue ongoing.

State party	Spain
Case	<i>Gallastegi Sodupe, 453/2011</i>
Decision adopted on	23 May 2012
Violation	Article 12
Remedy recommended	To provide the complainant with an effective remedy, including a full and thorough investigation of his claims, and to prevent similar violations in the future.

On 19 September 2012, the State party provided its follow-up observations. It refers to the Committee's findings and reiterates its arguments regarding the investigations carried out by its authorities and the absence of evidence within the judicial proceedings held before the Second Examining Magistrate's Court of Vitoria-Gasteiz and the Provincial High Court of Álava (submitted when presenting its observations on the admissibility and merits of the communication). It emphasizes, in particular, the fact that no sign of ill-treatment was mentioned by the forensic reports issued by the physicians who examined the complainant when he was in custody. Within the criminal proceeding against the complainant, the National High Court also looked at the circumstance in which he had been questioned. The State party further points out that the complainant did not complain about the alleged acts of torture immediately, but rather three months after his detention. Likewise, he did not submit his case before an international instance immediately after he exhausted domestic remedies in June 2005.

The State party further informs the Committee that it has adopted the following measures pursuant to the Committee's decision: (a) in September 2012, the Committee's decision was published in the Official Bulletin of the Ministry of Justice; and (b) the Committee's decision was notified to all judicial and other concerned authorities.

The State party points out that the crime of torture and other ill-treatment was included in its Criminal Code; and that Organic Law No. 2/1986 of 13 March 1986 on the security forces and bodies regulates the use of force in general and of firearms in particular. According to this, use of force is accepted in case of self-defence or defence of others against serious threat of death or serious injury, under the principles of proportionality, moderation and exceptionality. Should a person suffer damage caused by the functioning of the public service, he or she is entitled to compensation pursuant to Law No. 30/1992 of 26 November. Following the jurisprudence of the European Court of Human Rights, the Constitutional Court has stated the need to speed up sufficient and effective investigation as to complaints about ill-treatment by police, and to take into account the likely lack of proof and the difficulties faced by victims with regard to providing evidence. Injuries of a detainee that did not exist prior to the person's detention shall be attributable to the persons in charge of the custody. Finally, it is noted that the security forces, as well as judiciary staff, receive training in human rights matters, in particular on prevention of ill-treatment.

On 8 January 2013, the State party's submission was transmitted to the complainant for comments with a deadline of 8 February 2013. A reminder to counsel has been prepared.

Committee's decision: Follow-up dialogue ongoing.

State party	Sweden
Case	<i>M.A.M.A. et al.</i> , 391/2009
Decision adopted on	23 May 2012
Violation	Article 3 (deportation to Egypt)
Remedy recommended	To inform the Committee, within 90 days from the date of the transmittal of the decision, of the steps it has taken in accordance with the Committee's observations.

On 23 August 2012, the State party informed the Committee that on 12 and 13 July 2012, the Swedish Migration Board issued permanent residence permits to all complainants as refugees and that thus they do not risk deportation to Egypt.

On 10 April 2013, counsel confirmed the State party's information and therefore agreed to close the case.

At its fiftieth session, the Committee decided to close the follow-up dialogue with a finding of a satisfactory resolution.

State party	Switzerland
Case	<i>Khalsa-Singh et al.</i> , 336/2008
Decision adopted on	26 May 2011
Violation	Article 3 (deportation to India)
Remedy recommended	To inform the Committee, within 90 days from the date of the transmittal of the decision, of the steps it has taken in accordance with the Committee's observations.

Previous follow-up information: A/67/44, chap. VI

On 21 January 2013, counsel informed the Committee that by its judgement dated 4 January 2013, the Federal Administrative Tribunal decided that the Federal Office for Migration should review its decision granting the complainant only a provisional status in Switzerland. In the Tribunal's judgement it is stated that the complainant's request for reconsideration should in fact be considered as a new asylum claim and that the complainant should be granted refugee status. The complainant's counsel attached the judgement of the Federal Administrative Tribunal to his submission.

Counsel was requested to inform the Committee of any future decisions by the Swiss domestic authorities on the matter in the framework of the follow-up procedure. A copy of counsel's submission was transmitted to the State party for information.

Committee's decision: Follow up dialogue ongoing.

State party	Switzerland
Case	<i>Gbadjavi, 396/2009</i>
Decision adopted on	1 June 2012
Violation	Article 3 (deportation to Togo)
Remedy recommended	To inform the Committee, within 90 days from the date of the transmittal of the decision, of the steps it has taken in accordance with the Committee's observations.

On 17 April 2013, the State party informed the Committee that on 19 July 2012, the Federal Office for Migration had awarded Mr. Gbadjavi refugee status and he was therefore granted a residence permit in Switzerland. The complainant is therefore not at risk of expulsion to Togo.

At its fiftieth session, the Committee decided to close the follow-up dialogue with a finding of a satisfactory resolution.

State party	Tunisia
Case	<i>M'Barek, 60/1996</i>
Decision adopted on	10 November 1999
Violation	Articles 12 and 13
Remedy recommended	To carry out an impartial investigation to ascertain whether acts of torture had occurred in this case.

Previous follow-up information: A/66/44, chap. VI; A/67/44, chap. VI

On 14 February 2013, the State party reiterated the same observations as submitted on 7 June 2011 and stated that it would keep the Committee informed of any new information in the case. It emphasized that the exhumation of the body, which is necessary to continue the investigation, is prevented by the family of the deceased which puts to a halt the current procedure.

The State party's submission was transmitted to the complainant with a deadline for response of 22 April 2013. On 22 April 2013, the complainant informed the Committee that following the Tunisian revolution of 14 January 2011, the State party had started giving full attention to the complainant's case. The complainant states that all

“corrupt” judges have been dismissed from the case. The complainant has brought an independent civil action for damages before Tunisian courts. On 1 March 2013, the State authorities have proceeded to the exhumation of the body of the deceased. In accordance with the Committee’s recommendation, a Scottish independent expert has been entrusted with the forensic examination. The procedure is still pending and the result of the forensic examination has not yet been made known to the complainant. The complainant added that a new judge had been assigned to this case. The complainant stated that he would inform the Committee of the result of the examination and of the judicial proceedings.

The complainant’s submission was transmitted to the State party for information.

Committee’s decision: Follow-up dialogue ongoing.

State party	Tunisia
Case	<i>Saadia Ali, 291/2006</i>
Decision adopted on	21 November 2008
Violation	Articles 1, 12, 13, and 14
Remedy recommended	To conclude the investigation into the alleged acts of torture inflicted on the complainant, with a view to bringing those responsible to justice.

Previous Follow-up information: A/67/44

On 14 February 2013, the State party reiterated its previous observations adding that under article 121 of the Tunisian Procedural Code, an investigation by the instructing judge can only be retriggered in the event of new elements. Since the decision to close the investigation on 6 February 2009, no such elements have appeared.

The State party’s observations were transmitted to counsel for comments with a deadline set to 22 April 2013.

Committee’s decision: Follow-up dialogue is ongoing.

State party	Ukraine
Case	<i>Slyusar, 353/2008</i>
Decision adopted on	14 November 2011
Violation	Articles 1, 2, 12, 13 and 14
Remedy recommended	To inform the Committee, within 90 days from the date of the transmittal of the decision, of the steps it has taken in accordance with the Committee’s observations.

On 4 October 2012, the complainant informed the Committee that no measures had been taken by the State party to give effect to the Committee’s decision, such as steps to address the crimes of torture perpetrated by the State party against him and the investigation into those crimes, which to date remain unpunished. No compensation has been awarded and no apology was made. Counsel’s letter was transmitted to the State party for observations.

On 30 November 2012, the State party replied that in October 2003, a criminal case regarding the murder of the complainant's father had been opened. The involvement of the complainant's uncle in the crime was investigated on a number of occasions, but no evidence thereon was revealed.

At present, investigation and search activities are being carried out in connection with the criminal case aimed at a comprehensive and objective examination of the circumstances of the case.

The status of the pretrial investigation has been followed during operative meetings in the Kiev Prosecutor's Office and the General Prosecutor's Office. The General Prosecutor's Office has issued written instructions regarding the activities to be carried out. In spite of the above, the crime remains unsolved. The pretrial investigation remains under the control of the General Prosecutor's Office.

The complainant's allegations regarding the unlawful acts against him by officials of the Solomyanskiy District Police and the alleged refusal to have a criminal case opened against these officials on the use of unlawful methods of investigation were examined on a number of occasions both by the Kiev Prosecutor's Office and the General Prosecutor's Office. On 26 July 2006, it was decided not to open a criminal case against the officials in question. No ground for reviewing this decision exists at present, according to the State party. The complainant has been told that he could appeal to the court, under article 236-1 of the Criminal Procedure Code, against the decision not to open a criminal case.

The State party adds that on 1 August 2006, the complainant applied to the European Court of Human Rights (application No. 34361/06), complaining about the non-respect of the fair trial guarantees during his trial, and his inability to be present in court during the examination of his appeal on 18 May 2006. On 8 March 2012, the European Court concluded that the complainant's rights under article 6, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms had been breached. This judgment is final.

Another case is pending before the European Court of Human Rights (application No. 39797/05), submitted by the complainant's uncle, who claims that the police failed to conduct a proper investigation into his complaint regarding the disappearance of his brother; and also into his complaint accusing his brother's wife and his nephew (i.e. the complainant) of having murdered his brother, in their home, on 16 April 2006.

On 7 January 2013, the complainant stated that his uncle, Yuriy Slyusar, had a direct influence on the criminal investigation of the disappearance of the complainant's father. The complainant also accuses his uncle of potentially having a link with the treatment he himself suffered in the hands of the investigators. Despite numerous requests to the Kiev General Prosecutor to carry out the necessary investigations on his uncle, no such investigations were carried out.

Following the decision of the Solomyanskiy District Prosecutor's Office dated 17 February 2006, the complainant was transported to the temporary detention centre in Kiev. Upon entry, no injuries were detected on the complainant by the temporary detention centre officers. On 22 February 2006, he was transported to the Solomyanskiy Police Station where he was severely tortured to obtain a confession of his father's murder. On 24 February 2006, he wrote a complaint to the investigator of the case to report on the torture suffered. No action was taken. Given that on 17 February 2006 he did not have any injuries and that by 28 February 2006, according to the conclusion of a forensic expert, he was found to have injuries that were about 5 to 12 days old, it is

indisputable that those injuries were inflicted while he was detained at the police station. Those injuries, as attested by the forensic expert, are typical marks of torture.

According to the complainant, the above stated facts clearly confirm the violations committed against him and the fact that those violations were perpetrated by Solomyanskiy police officers.

Despite the Committee's finding of a violation of articles 1, 2, paragraph 1, 12, 13 and 14 of the Convention, the State party did not mention in its submission anything about investigating those crimes following the Committee's decision. The information provided by the State party concerns only steps taken prior to that decision.

According to the complainant, the Committee's decision is considered under Ukrainian law as new evidence in the Single Register of Pretrial investigations and can therefore trigger a new investigation into the alleged violations.

The complainant's submission was transmitted to the State party for observations.

Committee's decision: Follow-up dialogue ongoing.

VII. Future meetings of the Committee

139. In accordance with rule 2 of its rules of procedure, the Committee holds two regular sessions each year. In consultation with the Secretary-General, the Committee took decisions on the dates of its next regular session for 2013 and on the dates of its regular sessions for 2014. Those dates are:

Fifty-first	28 October–22 November 2013
Fifty-second	5–30 May 2014
Fifty-third	27 October–21 November 2014

Additional meeting time for 2013 and 2014

140. The Committee reiterated its appreciation for General Assembly resolution 67/232, in which the Assembly authorized the Committee to continue to meet for an additional week per session as a temporary measure, with effect from May 2013 until the end of November 2014, further to its request to the General Assembly for appropriate financial support to this effect.²⁴

141. The Committee notes that this authorization is important for the Committee to continue to improve its efficiency and methods of work. The additional week has been reflected in the dates of its future meetings indicated above.

²⁴ See *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 44 (A/65/44)*, annex IX.

VIII. Adoption of the annual report of the Committee on its activities

142. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly. Since the Committee holds its second regular session of each calendar year in November, which coincides with the regular sessions of the General Assembly, it adopts its annual report at the end of its spring session, for transmission to the General Assembly during the same calendar year. Accordingly, at its 1168th meeting, held on 31 May 2013, the Committee considered and unanimously adopted the report on its activities at the forty-ninth and fiftieth sessions.

Annexes

Annex I

States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as at 31 May 2013

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,^a succession^b</i>
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994 ^a
Algeria	26 November 1985	12 September 1989
Andorra	5 August 2002	22 September 2006
Antigua and Barbuda		19 July 1993 ^a
Argentina	4 February 1985	24 September 1986
Armenia		13 September 1993 ^a
Australia	10 December 1985	8 August 1989
Austria	14 March 1985	29 July 1987
Azerbaijan		16 August 1996 ^a
Bahamas	16 December 2008	
Bahrain		6 March 1998 ^a
Bangladesh		5 October 1998 ^a
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	25 June 1999
Belize		17 March 1986 ^a
Benin		12 March 1992 ^a
Bolivia (Plurinational State of)	4 February 1985	12 April 1999
Bosnia and Herzegovina		1 September 1993 ^b
Botswana	8 September 2000	8 September 2000
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986
Burkina Faso		4 January 1999 ^a

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,^a succession^b</i>
Burundi		18 February 1993 ^a
Cambodia		15 October 1992 ^a
Cameroon		19 December 1986 ^a
Canada	23 August 1985	24 June 1987
Cape Verde		4 June 1992 ^a
Chad		9 June 1995 ^a
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987
Comoros	22 September 2000	
Congo		30 July 2003 ^a
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995 ^a
Croatia		12 October 1992 ^b
Cuba	27 January 1986	17 May 1995
Cyprus	9 October 1985	18 July 1991
Czech Republic		22 February 1993 ^b
Democratic Republic of the Congo		18 March 1996 ^a
Denmark	4 February 1985	27 May 1987
Djibouti		5 November 2002 ^a
Dominican Republic	4 February 1985	24 January 2012
Ecuador	4 February 1985	30 March 1988
Egypt		25 June 1986 ^a
El Salvador		17 June 1996 ^a
Equatorial Guinea		8 October 2002 ^a
Estonia		21 October 1991 ^a
Ethiopia		14 March 1994 ^a
Finland	4 February 1985	30 August 1989
France	4 February 1985	18 February 1986
Gabon	21 January 1986	8 September 2000

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,^a succession^b</i>
Gambia	23 October 1985	
Georgia		26 October 1994 ^a
Germany	13 October 1986	1 October 1990
Ghana	7 September 2000	7 September 2000
Greece	4 February 1985	6 October 1988
Guatemala		5 January 1990 ^a
Guinea	30 May 1986	10 October 1989
Guinea-Bissau	12 September 2000	
Guyana	25 January 1988	19 May 1988
Holy See		26 June 2002 ^a
Honduras		5 December 1996 ^a
Hungary	28 November 1986	15 April 1987
Iceland	4 February 1985	23 October 1996
India	14 October 1997	
Indonesia	23 October 1985	28 October 1998
Iraq		7 July 2011 ^a
Ireland	28 September 1992	11 April 2002
Israel	22 October 1986	3 October 1991
Italy	4 February 1985	12 January 1989
Japan		29 June 1999 ^a
Jordan		13 November 1991 ^a
Kazakhstan		26 August 1998 ^a
Kenya		21 February 1997 ^a
Kuwait		8 March 1996 ^a
Kyrgyzstan		5 September 1997 ^a
Latvia		14 April 1992 ^a
Lao People's Democratic Republic	21 September 2010	26 September 2012
Lebanon		5 October 2000 ^a
Lesotho		12 November 2001 ^a
Liberia		22 September 2004 ^a

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,^a succession^b</i>
Libya		16 May 1989 ^a
Liechtenstein	27 June 1985	2 November 1990
Lithuania		1 February 1996 ^a
Luxembourg	22 February 1985	29 September 1987
Madagascar	1 October 2001	13 December 2005
Malawi		11 June 1996 ^a
Maldives		20 April 2004 ^a
Mali		26 February 1999 ^a
Malta		13 September 1990 ^a
Mauritania		17 November 2004 ^a
Mauritius		9 December 1992 ^a
Mexico	18 March 1985	23 January 1986
Monaco		6 December 1991 ^a
Mongolia		24 January 2002 ^a
Montenegro		23 October 2006 ^b
Morocco	8 January 1986	21 June 1993
Mozambique		14 September 1999 ^a
Namibia		28 November 1994 ^a
Nauru	12 November 2001	26 September 2012
Nepal		14 May 1991 ^a
Netherlands	4 February 1985	21 December 1988
New Zealand	14 January 1986	10 December 1989
Nicaragua	15 April 1985	5 July 2005
Niger		5 October 1998 ^a
Nigeria	28 July 1988	28 June 2001
Norway	4 February 1985	9 July 1986
Pakistan	17 April 2008	23 June 2010
Palau	20 September 2011	
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,^a succession^b</i>
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986 ^a
Poland	13 January 1986	26 July 1989
Portugal	4 February 1985	9 February 1989
Qatar		11 January 2000 ^a
Republic of Korea		9 January 1995 ^a
Republic of Moldova		28 November 1995 ^a
Romania		18 December 1990 ^a
Russian Federation	10 December 1985	3 March 1987
Rwanda		15 December 2008 ^a
Saint Vincent and the Grenadines		1 August 2001 ^a
San Marino	18 September 2002	27 November 2006
Sao Tome and Principe	6 September 2000	
Saudi Arabia		23 September 1997 ^a
Senegal	4 February 1985	21 August 1986
Serbia		12 March 2001 ^b
Seychelles		5 May 1992 ^a
Sierra Leone	18 March 1985	25 April 2001
Slovakia		28 May 1993 ^b
Slovenia		16 July 1993 ^a
Somalia		24 January 1990 ^a
South Africa	29 January 1993	10 December 1998
Spain	4 February 1985	21 October 1987
Sri Lanka		3 January 1994 ^a
Sudan	4 June 1986	
Swaziland		26 March 2004 ^a
Sweden	4 February 1985	8 January 1986
Switzerland	4 February 1985	2 December 1986
Syrian Arab Republic		19 August 2004 ^a
Tajikistan		11 January 1995 ^a

<i>Participant</i>	<i>Signature</i>	<i>Ratification, accession,^a succession^b</i>
Thailand		2 October 2007 ^a
The former Yugoslav Republic of Macedonia		12 December 1994 ^b
Timor-Leste		16 April 2003 ^a
Togo	25 March 1987	18 November 1987
Tunisia	26 August 1987	23 September 1988
Turkey	25 January 1988	2 August 1988
Turkmenistan		25 June 1999 ^a
Uganda		3 November 1986 ^a
Ukraine	27 February 1986	24 February 1987
United Arab Emirates		19 July 2012 ^a
United Kingdom of Great Britain and Northern Ireland	15 March 1985	8 December 1988
United States of America	18 April 1988	21 October 1994
Uruguay	4 February 1985	24 October 1986
Uzbekistan		28 September 1995 ^a
Vanuatu		12 July 2011 ^a
Venezuela (Bolivarian Republic of)	15 February 1985	29 July 1991
Yemen		5 November 1991 ^a
Zambia		7 October 1998 ^a

Notes:^a Accession (76 States).^b Succession (7 States).

Annex II

States parties that have declared that they do not recognize the competence of the Committee provided for by article 20 of the Convention, as at 31 May 2013

Afghanistan

China

Equatorial Guinea

Israel

Kuwait

Lao People's Democratic Republic

Mauritania

Pakistan

Saudi Arabia

Syrian Arab Republic

United Arab Emirates

Annex III

States parties that have made the declarations provided for in articles 21 and 22 of the Convention, as at 31 May 2013^{a,b}

<i>State party</i>	<i>Date of entry into force</i>
Algeria	12 October 1989
Andorra	22 November 2006
Argentina	26 June 1987
Australia	29 January 1993
Austria	28 August 1987
Belgium	25 July 1999
Bolivia (Plurinational State of)	14 February 2006
Bulgaria	12 June 1993
Cameroon	11 November 2000
Canada	13 November 1989
Chile	15 March 2004
Costa Rica	27 February 2002
Croatia	8 October 1991 ^c
Cyprus	8 April 1993
Czech Republic	3 September 1996 ^c
Denmark	26 June 1987
Ecuador	29 April 1988
Finland	29 September 1989
France	26 June 1987
Georgia	30 June 2005
Germany	19 October 2001
Ghana	7 October 2000
Greece	5 November 1988
Hungary	13 September 1989
Iceland	22 November 1996
Ireland	11 May 2002

<i>State party</i>	<i>Date of entry into force</i>
Italy	10 October 1989
Kazakhstan	21 February 2008
Liechtenstein	2 December 1990
Luxembourg	29 October 1987
Malta	13 October 1990
Monaco	6 January 1992
Montenegro	23 October 2006 ^c
Netherlands	20 January 1989
New Zealand	9 January 1990
Norway	26 June 1987
Paraguay	29 May 2002
Peru	28 October 2002
Poland	12 May 1993
Portugal	11 March 1989
Republic of Korea	9 November 2007
Republic of Moldova	2 September 2011
Russian Federation	1 October 1991
Senegal	16 October 1996
Serbia	12 March 2001 ^c
Slovakia	17 March 1995 ^c
Slovenia	15 August 1993
South Africa	10 December 1998
Spain	20 November 1987
Sweden	26 June 1987
Switzerland	26 June 1987
Togo	18 December 1987
Tunisia	23 October 1988
Turkey	1 September 1988
Ukraine	12 September 2003

<i>State party</i>	<i>Date of entry into force</i>
Uruguay	26 June 1987
Venezuela (Bolivarian Republic of)	26 April 1994

States parties that have only made the declaration provided for in article 21 of the Convention, as at 31 May 2013^a

<i>State party</i>	<i>Date of entry into force</i>
Japan	29 June 1999
Uganda	19 December 2001
United Kingdom of Great Britain and Northern Ireland	8 December 1988
United States of America	21 October 1994

States parties that have only made the declaration provided for in article 22 of the Convention, as at 31 May 2013^b

<i>State party</i>	<i>Date of entry into force</i>
Azerbaijan	4 February 2002
Bosnia and Herzegovina	4 June 2003
Brazil	26 June 2006
Burundi	10 June 2003
Guatemala	25 September 2003
Mexico	15 March 2002
Morocco	19 October 2006
Seychelles	6 August 2001

Notes:

^a A total of 61 States parties have made the declaration under article 21.

^b A total of 65 States parties have made the declaration under article 22.

^c States parties that have made the declaration under articles 21 and 22 by succession.

Annex IV

Membership of the Committee against Torture in 2013

<i>Name of member</i>	<i>Country of nationality</i>	<i>Term expires on 31 December</i>
Ms. Essadia Belmir (Vice-Chairperson)	Morocco	2013
Mr. Alessio Bruni	Italy	2013
Mr. Satyabhooshun Gupt Domah	Mauritius	2015
Ms. Felice Gaer (Vice-Chairperson)	United States of America	2015
Mr. Abdoulaye Gaye	Senegal	2015
Mr. Claudio Grossman (Chairperson)	Chile	2015
Mr. Fernando Mariño Menendez	Spain	2013
Ms. Nora Sveaass (Rapporteur)	Norway	2013
Mr. George Tugushi	Georgia	2015
Mr. Xuexian Wang (Vice-Chairperson)	China	2013

Annex V

**States parties that have signed, ratified or acceded to the
Optional Protocol to the Convention against Torture and
Other Cruel, Inhuman or Degrading Treatment or
Punishment, as at 31 May 2013**

<i>Participant</i>	<i>Signature, succession to signature^b</i>	<i>Ratification, accession,^a succession^b</i>
Albania		1 October 2003 ^a
Argentina	30 April 2003	15 November 2004
Armenia		14 September 2006 ^a
Australia	19 May 2009	
Austria	25 September 2003	4 December 2012
Azerbaijan	15 September 2005	28 January 2009
Belgium	24 October 2005	
Benin	24 February 2005	20 September 2006
Bolivia (Plurinational State of)	22 May 2006	23 May 2006
Bosnia and Herzegovina	7 December 2007	24 October 2008
Brazil	13 October 2003	12 January 2007
Bulgaria	22 September 2010	1 June 2011
Burkina Faso	21 September 2005	7 July 2010
Cambodia	14 September 2005	30 March 2007
Cameroon	15 December 2009	
Cape Verde	26 September 2011	
Chad	26 September 2012	
Chile	6 June 2005	12 December 2008
Congo	29 September 2008	
Costa Rica	4 February 2003	1 December 2005
Croatia	23 September 2003	25 April 2005
Cyprus	26 July 2004	29 April 2009
Czech Republic	13 September 2004	10 July 2006
Democratic Republic of the Congo		23 September 2010 ^a

<i>Participant</i>	<i>Signature, succession to signature^b</i>	<i>Ratification, accession,^a succession^b</i>
Denmark	26 June 2003	25 June 2004
Ecuador	24 May 2007	20 July 2010
Estonia	21 September 2004	18 December 2006
Finland	23 September 2003	
France	16 September 2005	11 November 2008
Gabon	15 December 2004	22 September 2010
Georgia		9 August 2005 ^a
Germany	20 September 2006	4 December 2008
Ghana	6 November 2006	
Greece	3 March 2011	
Guatemala	25 September 2003	9 June 2008
Guinea	16 September 2005	
Honduras	8 December 2004	23 May 2006
Hungary		12 January 2012 ^a
Iceland	24 September 2003	
Ireland	2 October 2007	
Italy	20 August 2003	3 April 2013
Kazakhstan	25 September 2007	22 October 2008
Kyrgyzstan		29 December 2008 ^a
Lebanon		22 December 2008 ^a
Liberia		22 September 2004 ^a
Liechtenstein	24 June 2005	3 November 2006
Luxembourg	13 January 2005	19 May 2010
Madagascar	24 September 2003	
Maldives	14 September 2005	15 February 2006
Mali	19 January 2004	12 May 2005
Malta	24 September 2003	24 September 2003
Mauritania	27 September 2011	3 October 2012
Mauritius		21 June 2005 ^a
Mexico	23 September 2003	11 April 2005

<i>Participant</i>	<i>Signature, succession to signature^b</i>	<i>Ratification, accession,^a succession^b</i>
Montenegro	23 October 2006 ^b	6 March 2009
Nauru		24 January 2013 ^a
Netherlands	3 June 2005	28 September 2010
New Zealand	23 September 2003	14 March 2007
Nicaragua	14 March 2007	25 February 2009
Nigeria		27 July 2009 ^a
Norway	24 September 2003	
Panama	22 September 2010	2 June 2011
Paraguay	22 September 2004	2 December 2005
Peru		14 September 2006 ^a
Philippines		17 April 2012 ^a
Poland	5 April 2004	14 September 2005
Portugal	15 February 2006	15 January 2013
Republic of Moldova	16 September 2005	24 July 2006
Romania	24 September 2003	2 July 2009
Senegal	4 February 2003	18 October 2006
Serbia	25 September 2003	26 September 2006
Sierra Leone	26 September 2003	
Slovenia		23 January 2007 ^a
South Africa	20 September 2006	
Spain	13 April 2005	4 April 2006
Sweden	26 June 2003	14 September 2005
Switzerland	25 June 2004	24 September 2009
The former Yugoslav Republic of Macedonia	1 September 2006	13 February 2009
Timor-Leste	16 September 2005	
Togo	15 September 2005	20 July 2010
Tunisia		29 June 2011 ^a
Turkey	14 September 2005	27 September 2011
Ukraine	23 September 2005	19 September 2006

<i>Participant</i>	<i>Signature, succession to signature^b</i>	<i>Ratification, accession,^a succession^b</i>
United Kingdom of Great Britain and Northern Ireland	26 June 2003	10 December 2003
Uruguay	12 January 2004	8 December 2005
Venezuela (Bolivarian Republic of)	1 July 2011	
Zambia	27 September 2010	

Annex VI

Membership of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2013

<i>Name of member</i>	<i>Country of nationality</i>	<i>Term expires on 31 December</i>
Ms. Mari Amos	Estonia	2014
Mr. Hans-Jörg Viktor Bannwart	Switzerland	2016
Mr. Arman Danielyan	Armenia	2014
Mr. Malcolm Evans (Chairperson)	United Kingdom of Great Britain and Northern Ireland	2016
Mr. Enrique Andrés Font	Argentina	2016
Mr. Emilio Ginés Santidrián	Spain	2014
Ms. Lowell Patria Goddard	New Zealand	2016
Ms. Suzanne Jabbour (Vice-Chairperson)	Lebanon	2016
Mr. Miloš Janković	Serbia	2016
Mr. Paul Lam Shang Leen	Mauritius	2016
Mr. Víctor Madrigal-Borloz	Costa Rica	2016
Mr. Petros Michaelides	Cyprus	2014
Ms. Aisha Shujune Muhammad (Vice-Chairperson)	Maldives	2014
Mr. Olivier Obrecht	France	2014
Ms. June Caridad Pagaduan Lopez	Philippines	2016
Mr. Hans Draminsky Petersen	Denmark	2014
Ms. Maria Margarida E. Pressburger	Brazil	2016
Mr. Christian Pross	Germany	2016
Ms. Judith Salgado	Ecuador	2014
Mr. Miguel Sarre Iguíniz	Mexico	2014
Ms. Aneta Stanchevska	The former Yugoslav Republic of Macedonia	2014
Mr. Wilder Tayler Souto	Uruguay	2014

<i>Name of member</i>	<i>Country of nationality</i>	<i>Term expires on 31 December</i>
Mr. Felipe Villavicencio Terreros	Peru	2014
Mr. Victor Zaharia	Republic of Moldova	2016
Mr. Fortuné Gaétan Zongo	Burkina Faso	2014

Annex VII

Sixth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (January–December 2012)*

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* The sixth annual report of the Subcommittee has been issued separately under symbol CAT/C/50/2.

I. Introduction

1. This sixth annual report, submitted pursuant to article 16, paragraph 3, of the Optional Protocol, marks the end of what might be called the “foundational period” of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Subcommittee). As will be touched on below, five of its founder members stepped down from the Subcommittee at the end of 2012, and as a result the cycle of biannual turnover within its membership has commenced. During the reporting period (January to December 2012) the Subcommittee sought to prepare for this by capitalizing on the wealth of experience currently at its disposal, reflecting on what has worked well and seeking to encapsulate this in its working practices. At the same time, it has continued to allow its methods to evolve, reflecting the changing patterns of expectations concerning its visiting programme, work with national preventive mechanisms (NPMs), States parties and broader engagement within the United Nations and with other international organizations and regional systems. Details of this are set out in the present report, but more can be found on the website of the Subcommittee (<http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>).

2. Although the basic pattern of its work is now established, the Subcommittee will continue to evolve. As the present report highlights, key developments this year have included an increase in the number of visits undertaken, the inauguration of NPM advisory visits, the first grants being made from the Special Fund and the greater use of working groups and regional NPM task forces to drive the work of the Subcommittee. Less visible, but equally significant, has been the rise in the number of replies to visit reports received from States parties, triggering further responses from the Subcommittee in the spirit of ongoing dialogue.

3. The Subcommittee intends to continue to expand its work in fulfilment of its mandate as best it can, convinced that the Optional Protocol offers unparalleled opportunities for the effective prevention of torture, cruel, inhuman and degrading treatment or punishment. However, this ever increasing workload means that members need to be continually engaging in Subcommittee-related activities and that the Subcommittee secretariat is working under unreasonable yet constantly rising levels of pressure. While fully appreciative of the work of the Office of the United Nations High Commissioner for Human Rights (OHCHR) to support the work of the Subcommittee to the maximum of available resources, the Subcommittee is increasingly concerned that it is unable to make the most of the opportunities for torture prevention which the Optional Protocol creates as a result of the practical constraints under which it works.

II. The year in review

A. Participation in the Optional Protocol system

4. As at 31 December 2012, 65 States are party to the Optional Protocol.¹ In 2012, four States ratified or acceded to the Optional Protocol: Hungary (12 January), the Philippines (17 April), Mauritania (3 October) and Austria (4 December).

5. As a result, the pattern of regional participation is now as follows:

¹ For a list of the States parties to the Optional Protocol, see the website of the Subcommittee.

States parties by region

Africa	12
Asia	7
Eastern Europe	18
Group of Latin American and Caribbean States	14
Group of Western European and other States	14

6. The regional breakdown of signatory States which are yet to ratify the Optional Protocol is now as follows:

States that have signed but not ratified the Optional Protocol, by region (total 25)

Africa	9
Asia	2
Eastern Europe	1
Group of Latin American and Caribbean States	2
Group of Western European and Other States	11

B. Organizational and membership issues

7. During the reporting period (1 January to 31 December 2012), the Subcommittee held three one-week sessions at the United Nations Office at Geneva, from 20 to 24 February, from 18 to 22 June and from 12 to 16 November 2012.

8. The Subcommittee membership remained unchanged during 2012.² However, on 25 October 2012, at the fourth Meeting of States parties to the Optional Protocol, 12 members were elected to fill the vacancies arising in respect of members whose terms of office would expire on 31 December 2012. The terms of office of all the newly elected members commenced on 1 January 2013 and will be for a period of four years, expiring on 31 December 2016. In conformity with the Subcommittee's rules of procedure, all new members of the Subcommittee made a solemn declaration at the opening of the February 2013 session before assuming their duties.

9. The Bureau, which was elected for the period February 2011–February 2013, comprised Malcolm Evans as Chairperson and four Vice-Chairpersons, each of whom exercised primary responsibility (under the overall leadership of the Chairperson and in cooperation with each other) for aspects of the Subcommittee's work as provided for in the Optional Protocol. The four Vice-Chairpersons and their areas of primary responsibility were as follows: Mario Coriolano, National Preventive Mechanisms; Zdeněk Hájek, Visits; Suzanne Jabbour, External Relations; and Aisha Muhammad, Jurisprudence and Subcommittee Rapporteur. On 1 October 2012, Mr. Coriolano resigned, following election as a member of the Human Rights Council Advisory Committee.

10. In its fifth annual report (CAT/C/48/3, para. 10), the Subcommittee set out details of the system of regional focal points and regional task forces on NPMs which has been established. The role of the focal points is to undertake liaison activities and facilitate the

² For a list of members and the duration of their mandate, see the website of the Subcommittee (www2.ohchr.org/english/bodies/cat/opcat/index.htm).

coordination of the Subcommittee's engagement within the regions they serve and to lead the work of the regional NPM task forces. The regional focal points are as follows: Africa, Fortuné Zongo; Asia and the Pacific, Lowell Goddard; Europe, Mari Amos; Latin America, Víctor Rodríguez Rescia. During the reporting period, the regional task forces have been developed to form a primary building block of the Subcommittee's work. The task forces meet in parallel during plenary sessions to consider developments relating to NPMs within their region. They then report back to the plenary with recommendations regarding plans for further and future engagement. Based on their regional knowledge and experience, the task forces also make recommendations to the plenary regarding the visiting programme for the forthcoming year, ensuring that the programme of universal visiting is generated in a reasoned and participative manner in accordance with strategic operational criteria, impartially applied.

11. The Subcommittee's working groups on security matters and on medical issues met during the reporting period. The former concluded a protocol on field security during Subcommittee visits. At the seventeenth session of the Subcommittee, the working group on medical issues convened a training workshop on mental health in places of detention, with the participation of eight national experts, and with the generous financial support of the German Ministry of Foreign Affairs and the assistance of the Association for the Prevention of Torture (APT).

12. At its seventeenth session (June 2012), the Subcommittee decided to establish a number of ad hoc working groups, further information on which is provided in chapter IV, sections A and B, below.

13. All the above-mentioned developments reflect the Subcommittee's preference to maximize the potential of its plenary sessions by meeting in subgroups and working groups which facilitate engagement with a broader range of issues, with more depth and focus and in a more inclusive fashion than would otherwise be possible.

C. Visits conducted during the reporting period

14. The Subcommittee carried out five visits in 2012 in fulfilment of its mandate.

15. Two of the visits followed the established pattern of visiting under article 11 (a) of the Optional Protocol. From 18 to 27 April 2012, the Subcommittee visited Argentina, the sixth country visited by the Subcommittee in Latin America. From 19 to 28 September 2012, it visited Kyrgyzstan, the fourth country visited by the Subcommittee in Asia. The Subcommittee had announced its intention to undertake a third visit, to Gabon, during the course of 2012 but this visit has been delayed for operational reasons.

16. In accordance with its mandate under articles 11 (b) and 12 of the Optional Protocol, in 2012 the Subcommittee undertook for the first time short advisory visits on the establishment and functioning of national preventive mechanisms (NPM advisory visits), in Honduras (April–May), Republic of Moldova (October) and Senegal (December). Further information on this development is provided in chapter IV, section A, below.

17. Further summary information on all these visits, including lists of places visited, may be found in the press releases issued following each visit, which are available on the Subcommittee website.

D. Dialogue arising from visits, including publication of the Subcommittee's reports by States parties and national preventive mechanisms

18. The substantive aspects of the dialogue process arising from visits are governed by the rule of confidentiality and are only made public with the consent of the State party in question. At the end of the reporting period the Subcommittee had transmitted a total of 15 visit reports to States parties (3 within the reporting period, to Argentina, Brazil and Mali), one follow-up visit report, two reports arising from an NPM advisory visit to an NPM and two reports arising from an NPM advisory visit to a State party (both within the reporting period, to Honduras and the Republic of Moldova). A total of seven Subcommittee visit reports have been made public following a request from the State party under article 16, paragraph 2, of the Optional Protocol, one of which was within the reporting period, that of Brazil. One visit report arising from the NPM advisory visit to Honduras was made public following a request from the NPM of Honduras.

19. In conformity with established practice, States parties are requested to provide a reply to a visit report within six months of its transmission to the State party, giving a full account of action taken to implement the recommendations which it contains. At the end of this reporting period, the Subcommittee had received nine replies from State parties, four of which were received within the reporting period (Brazil, Lebanon, Mexico and Ukraine). The Subcommittee considers the replies from the following States parties to be currently overdue: Cambodia, Honduras, Liberia and Maldives. Reminder letters have been sent to those States parties. The replies from Bolivia (Plurinational State of), Lebanon, Mauritius and Ukraine remain confidential, while those from Benin, Brazil, Mexico, Paraguay and Sweden have been made public at the request of those States parties.

20. During the reporting period, the Subcommittee provided its own responses and/or recommendations to the replies of Benin, Bolivia (Plurinational State of), Lebanon and Ukraine; such responses had also been transmitted to Mauritius and Sweden previous to this period. All of these currently remain confidential.

21. The Subcommittee has so far conducted one follow-up visit, to Paraguay, with a follow-up visit report transmitted to the State party, to which a reply has been received. Both the follow-up visit report and the follow-up reply have been made public at the request of the State party.

22. The Subcommittee has transmitted reports to the NPM and State party arising from its NPM advisory visits to Honduras and the Republic of Moldova; the reports are still confidential, and the replies thereto are not yet due.

23. An innovation in follow-up dialogue occurred at the seventeenth session of the Subcommittee, when the Subcommittee held a private meeting with the Mexican authorities on the State party's reply to the Subcommittee visit report. In the context of this fruitful meeting with a large Mexican delegation, the State party presented a supplementary reply which formed the basis of a beneficial discussion. At its request, the Subcommittee allowed the participation of the Mexican NPM at this meeting, enabling it to provide oral comments on the Subcommittee visit report, which had previously been made available to it in accordance with the provisions of article 16, paragraph 1, of the Optional Protocol.

E. Developments concerning the establishment of national preventive mechanisms

24. Of the 65 States parties, 43 have officially notified the Subcommittee of the designation of their NPMs, information concerning which is listed on the Subcommittee website.

25. Twelve official notifications of designation were transmitted to the Subcommittee in 2012: Argentina, Armenia, Bulgaria, Croatia, Ecuador, Hungary, Montenegro, Nicaragua, Nigeria, Togo, Ukraine and Uruguay.

26. Twenty-two States parties have therefore not yet notified the Subcommittee of the designation of their NPMs. The one-year deadline for the establishment of an NPM provided for under article 17 of the Optional Protocol has not yet expired for one State party (Philippines). Furthermore, two States parties (Bosnia and Herzegovina and Kazakhstan) have made declarations under article 24 of the Optional Protocol permitting them to delay designation for up to an additional two years. On 9 July 2012, Romania made a request to extend the time frame for its obligation to establish an NPM under article 24, paragraph 2, of the Optional Protocol for a further two-year period. At its forty-ninth session (November 2012), after due representations made by the State party and after consultation with the Subcommittee, the Committee against Torture acceded to this.

27. Eighteen States parties have therefore not complied with their obligation under article 17 of the Optional Protocol, which is a matter of major concern to the Subcommittee.

28. The Subcommittee has continued its dialogue with all States parties which have not yet designated their NPMs, encouraging them to inform it of their progress. Such States parties were requested to provide detailed information concerning their proposed NPMs (such as legal mandate, composition, size, expertise, financial and human resources at their disposal, and frequency of visits). At its seventeenth session, the Subcommittee held meetings with the Permanent Missions of Chile, Nicaragua, Paraguay and Peru, as well as with African States parties to the Optional Protocol, regarding the establishment and functioning of NPMs. At its eighteenth session, the Subcommittee held meetings with the Permanent Missions of Cambodia and Guatemala on NPM-related issues. Members of the Subcommittee are also in contact with other States parties who are in the process of establishing their NPMs. At each Subcommittee session, the NPM task forces review progress towards the fulfilment of each State party's obligation, making appropriate recommendations to the plenary on how the Subcommittee may best assist and advise in this process, in accordance with its mandate under article 11 (b) (i) of the Optional Protocol.

29. The Subcommittee has also established and maintained contact with NPMs themselves, in fulfilment of its mandate under article 11 (b) (ii) of the Optional Protocol. At its sixteenth session, the Subcommittee held a meeting with the Spanish NPM in order to exchange information and experiences and discuss areas for future cooperation. At its seventeenth session, the Subcommittee held a similar meeting with the Slovenian NPM. Finally, at its eighteenth session, the Subcommittee held a meeting with the NPMs of France and Ecuador. It should be noted that at the seventeenth session of the Subcommittee, the Mexican NPM participated in the discussion between the Subcommittee and the Mexican authorities in respect of follow-up to the Subcommittee's visit report on Mexico (see chap. II, sect. D, above). The Subcommittee is also pleased that during 2012, 23 NPMs transmitted their annual reports to the Subcommittee. These have been posted on the website of the Subcommittee and reviewed by the NPM task forces.

30. During the course of the reporting period, Subcommittee members accepted invitations to be involved in a number of meetings at the national, regional and international levels, concerning the designation, establishment and development of NPMs in particular, or the Optional Protocol in general (including NPMs). Those activities were organized with the support of civil society organizations (in particular APT, Amnesty International, the Centro de Estudios Legales y Sociales, the International Rehabilitation Council for Torture Victims, Defence for Children International, the International Federation of ACAT (Action by Christians for the Abolition of Torture), the Hungarian Helsinki Committee, the World Organisation Against Torture, Penal Reform International, and the Optional Protocol Contact Group), academic institutions (the Human Rights Implementation Centre at the University of Bristol, the Ludwig Boltzmann Institute and the American University Washington College of Law), NPMs, States (in particular the Permanent Mission of France to the United Nations in New York), regional bodies such as the African Commission on Human and Peoples' Rights, the Committee for the Prevention of Torture in Africa, the Inter-American Commission on Human Rights, the Council of Europe, the European Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (ODIHR-OSCE), as well as international organizations such as the International Organization of la Francophonie (OIF), the United Nations Office on Drugs and Crime and OHCHR. These events included, inter alia:

- (a) February 2012: Regional consultation on enhancing cooperation between United Nations and African human rights mechanisms on prevention of torture, held in Addis Ababa by OHCHR and the African Commission on Human and Peoples' Rights;
- (b) February 2012: Seminar on "Forensic evidence in the fight against torture", held in Washington by the American University Washington College of Law and APT;
- (c) February 2012: Seminar on "New arrangements for monitoring places of detention in Ireland: the Optional Protocol to the United Nations Convention against Torture", held in Dublin by the Irish Council for Civil Liberties;
- (d) March 2012: "Atlas of Torture Project" held in Asunción by the Ludwig Boltzmann Institute;
- (e) March 2012: Twenty-fifth annual meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, segment entitled "NHRIs and monitoring – focus on OPCAT and detention", held in Geneva by OHCHR;
- (f) March 2012: Regional conference entitled "Combating and Preventing Torture and Ill-treatment in the South Caucasus", held in Tbilisi by ODIHR and Penal Reform International;
- (g) March 2012: Seminar on "The role of the public defence in the prevention of torture", held in Sao Paulo by the Public Defender's Office of Sao Paulo State;
- (h) April 2012: Seminar on "The role of the public defence in the prevention of torture", held in Asunción by the Ludwig Boltzmann Institute;
- (i) April 2012: Seminar on the implementation of the Optional Protocol in Mongolia, held in Ulaanbaatar by APT, Amnesty International, the Asia Pacific Forum and the National Human Rights Commission of Mongolia;
- (j) May 2012: Workshop on the implementation of the Subcommittee visit report on Mexico, held in San Cristobal de la Casas by APT;
- (k) May 2012: Consultations on the Guatemalan NPM, held in Guatemala by OHCHR and the International Rehabilitation Council for Torture Victims;

(l) May 2012: Consultations on the establishment of NPMs, held in Tunis by the World Organisation Against Torture;

(m) May 2012: Round table on “Effective monitoring to prevent torture: promoting OPCAT”, held in Budapest by the Hungarian Helsinki Committee and the Mental Disability Advocacy Center;

(n) May 2012: Event on the follow-up to the visit report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, held in Bishkek by APT;

(o) May 2012: Consultations on the establishment of NPMs, held in Santiago by OHCHR and the Chilean NHRI;

(p) June 2012: Seminar on “The triangular working relationship between SPT, CPT and NPM: inspection in the field of detention on a global, regional and domestic level”, held in Nieuwersluis by the NPM of the Netherlands;

(q) June 2012: Workshop on “Preventing torture in the context of democratic transitions in North Africa”, held in Rabat by OHCHR, APT and the Inter-Ministerial Commission of Morocco;

(r) June 2012: Consultations on the NPM of Panama, held in Panama by APT;

(s) July 2012: Follow-up consultations to the Subcommittee visit, held in Beirut by OHCHR;

(t) August 2012: Seminar on torture prevention in Africa, in particular on the tenth anniversary of the adoption of the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines), held in Johannesburg by APT and the African Commission on Human and Peoples’ Rights;

(u) September 2012: Seminar and consultations on the establishment of the NPM in Turkey, held in Ankara by APT and a consortium of Turkish non-governmental organizations;

(v) December 2012: International Congress on “Children and violence in juvenile justice – the current situation, prevention and response mechanisms: the Latin American experience”, held in Asunción by Defence for Children International with the support of the United Nations Office on Drugs and Crime.

31. Under the framework of the European NPM Project of the Council of Europe/European Union, with APT as implementing partner, the Subcommittee has participated in two thematic workshops: (a) on the immigration removal process and preventive monitoring, in Switzerland in March 2012; and (b) on the removal process: NPM communication with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) and other immigration stakeholders, in Serbia in June 2012. The Subcommittee also participated in consultations on the process of NPM establishment in Ukraine in April 2012.

32. In the context of the tenth anniversary of the adoption of the Optional Protocol by the General Assembly, the Permanent Mission of France to the United Nations in New York organized a seminar entitled “OPCAT+10: Making a Difference in Torture Prevention”, held on 10 May 2012 at United Nations Headquarters. The event was co-sponsored by APT and OHCHR. It gathered international and national experts (including the Head of the French NPM) and was well attended (by nearly 60 State and NGO

representatives). Participants shared their experiences and identified challenges in the developing field of torture prevention.

33. The Subcommittee would like to take this opportunity to thank the organizers of these events for the invitations to participate that were extended to it.

F. The Special Fund under article 26 of the Optional Protocol

34. In accordance with article 26, paragraph 1, of the Optional Protocol, the purpose of the Special Fund is to help finance the implementation of Subcommittee recommendations made after a visit to a State party to the Optional Protocol as well as education programmes of NPMs. The Special Fund is administered by OHCHR in conformity with the United Nations Financial Rules and Regulations and the relevant policies and procedures promulgated by the Secretary-General. As an interim scheme, it was decided that the OHCHR Grants Committee, the advisory body to the High Commissioner for Human Rights, would decide on the eligibility of projects and award grants based on the evaluation criteria set out in the guidelines for applications. This interim scheme will be reviewed in 2013.

35. The Special Fund receives voluntary contributions from Governments, intergovernmental and non-governmental organizations and other private or public entities. To date, it has received a total of US\$ 1,130,462.29 in contributions, from the Czech Republic (\$29,704.98), Maldives (\$5,000), Spain (\$82,266.30), and the United Kingdom of Great Britain and Northern Ireland (US\$ 1,013,491.01). The Subcommittee is convinced that the Special Fund is a valuable tool for furthering prevention of torture and wishes to express its gratitude to these States for their generous contributions.

36. The Special Fund became operational in summer 2011, and the first call for applications was launched in November 2011. The first grants were awarded during 2012. Indeed, under the call for applications for 2012, 69 applications were received, out of which 25 were deemed admissible (those submitted within the deadline and in which the geographic eligibility criteria were met, i.e., projects aimed at implementing recommendations made by the Subcommittee after a visit to a State party, provided those recommendations are contained in a report that has become public by the request of that State party). Nine projects, encompassing a wide range of activities, in accordance with the Subcommittee recommendations, that address the prevention of torture in Benin, Honduras, Maldives, Mexico and Paraguay were approved and grants awarded. The remaining 16 projects were rejected by the Grants Committee, for not meeting the thematic selection criteria established by the guidelines for applications for the period 2011–2012.

37. A new call for applications to the Special Fund was published on 15 August 2012 and closed on 15 October 2012. Under this call, 34 applications were received, out of which 4 were considered inadmissible. The 30 applications deemed admissible (those submitted within the deadline and in which the geographic eligibility criteria were met) concern six of the seven countries that had agreed on the publication of the Subcommittee report following the country visit: Benin, Brazil, Honduras, Maldives, Mexico and Paraguay. Out of those admissible projects, 11 applications were received from governmental bodies, 17 from non-governmental organizations and 2 from NPMs.

38. The Subcommittee is pleased that during the reporting period OHCHR, in its capacity as administrator of the Special Fund, has consulted it regarding the evaluation process of projects under the call for applications for 2012 and the call for applications for 2013. It asked the Subcommittee to identify thematic priorities relating to the countries concerned and this informed the call for applications for 2013, the details of which are available at <http://www2.ohchr.org/english/bodies/cat/opcat/SpecialFund2013.htm>.

39. The Subcommittee is convinced that such focused guidance will greatly assist applicants in presenting their projects. It will also help to enhance the preventive impact of the grants by ensuring they are used to support the most pressing needs, commensurate with the resources available. The Subcommittee is pleased that the maximum amount of the grants has increased and hopes that the fund's success will prompt further donations so this trend may continue. The Subcommittee will continue to review the effectiveness of the fund and to provide advice to its administrators.

III. Engagement with other bodies in the field of torture prevention

A. International cooperation

1. Cooperation with other United Nations bodies

40. As provided for under the Optional Protocol, the Subcommittee Chairperson presented the fifth annual report of the Subcommittee (CAT/C/48/3) to the Committee against Torture at a plenary meeting on 8 May 2012. The Subcommittee and the Committee also took advantage of their simultaneous sessions in Geneva, in November 2012, to discuss a range of issues, both substantive and procedural, that are of mutual concern.

41. In conformity with General Assembly resolution 66/150, the Subcommittee Chairperson presented the fifth annual report of the Subcommittee to the General Assembly at its sixty-seventh session in October 2012. This event also provided an opportunity for the Subcommittee Chairperson to meet with the Chairperson of the Committee against Torture and the Special Rapporteur on the question of torture, who both also addressed the General Assembly.

42. The Subcommittee has continued to be actively involved in the annual Meeting of chairpersons of human rights treaty bodies (the twenty-fourth Meeting was held from 25 to 29 June 2012 in Addis Ababa). In response to the call of the High Commissioner for Human Rights to strengthen the treaty body system, the Subcommittee endorsed the Dublin II outcome document at its seventeenth session. At its eighteenth session, the Subcommittee endorsed the Guidelines on independence and impartiality of members of the human rights treaty bodies (Addis Ababa guidelines) and adapted its rules of procedure to ensure they are in full conformity with the Guidelines. It also adopted a statement on the treaty body strengthening process (available on the Subcommittee website). Further, it also participated in numerous other OHCHR activities (see chap. II, sect. E above).

43. The Subcommittee continued its cooperation with the Special Rapporteur on the question of torture and joined him, along with the Committee against Torture and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, in issuing a statement on the occasion of the International Day in Support of Victims of Torture on 26 June 2012.

44. The Subcommittee continued its cooperation with the United Nations High Commissioner for Refugees, the World Health Organization and the United Nations Office on Drugs and Crime.

2. Cooperation with other relevant international organizations

45. The Subcommittee continued its cooperation with the International Committee of the Red Cross, particularly in the context of its field visits.

46. The Subcommittee is pleased to have begun, during the reporting period, a process of cooperation with OIF by meeting during a plenary session at its sixteenth session. A total of 33 States parties and 11 signatories of the Optional Protocol are members of OIF, and this provides a solid basis for cooperation under the main pillar of the Subcommittee's activities. In 2012, a Subcommittee member participated in the selection of projects to be financed by the OIF aimed at combating and preventing torture.

B. Regional cooperation

47. Through its focal points for liaison and coordination with regional bodies, the Subcommittee continued its cooperation with other relevant partners in the field of torture prevention, including the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Council of Europe, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Commission and ODIHR-OSCE.

C. Civil society

48. The Subcommittee has continued to benefit from the essential support of civil society actors, and in particular the Optional Protocol Contact Network³ (which contributed to each of the Subcommittee's sessions in the reporting period), and academic institutions (including the Human Rights Implementation Centre and the Ludwig Boltzmann Institute). It would like to take this opportunity to thank them for their work in promoting the Optional Protocol and in supporting the Subcommittee in its activities. The Subcommittee would like to express its particular thanks to APT for its support, including its assistance in the organization of the training workshop at the seventeenth session of the Subcommittee.

IV. Issues of note arising from the work of the Subcommittee during the period under review

A. Development of the Subcommittee's working practices

1. Visiting programme

49. To date the majority of the Subcommittee visits, in accordance with its mandate under article 11 (a) of the Optional Protocol, have largely taken the form of "regular visits" to States parties, with one follow-up visit also having been undertaken.⁴ Such visits are an important part of the Subcommittee's mandate, but they do not necessarily provide adequate opportunities for the Subcommittee to fulfil its mandate under article 11 (b) in relation to NPMs.

50. In order to address this gap,⁵ to ensure optimal engagement with all aspects of its mandate, and to make the best use of its expanded membership and expertise, the Subcommittee decided that, in addition to regular and follow-up visits, its annual visiting programme should include a new form of visit focused on engaging with issues concerning

³ For a list of members, see the Subcommittee website.

⁴ Under art. 13, para. 4, of the Optional Protocol.

⁵ Under art. 11 (b) of the Optional Protocol.

the NPM: “NPM advisory visits”. The Subcommittee has developed a new methodology for these visits.

51. During the year in review, three NPM advisory visits were included in the visiting programme. The choice of visits was decided by Subcommittee members after considering the date of ratification of the Optional Protocol by the State; its practice regarding the establishment and development of NPMs, geographic distribution, and size and complexity; preventive monitoring at the regional level; and any specific or urgent issues which might bear upon the positive impact of such a visit, in addition to the possibility of combining visits for practical and budgetary purposes. During its NPM advisory visits the Subcommittee does not visit places of detention on the basis of its own visiting mandate, although it might do so at the invitation of the NPM, in accordance with the normal working practices of the NPM.

52. Following its regular and follow-up visits, the Subcommittee issues confidential reports to States parties. Where the Subcommittee conducts an NPM advisory visit, the Subcommittee will issue two reports: one to the NPM and another to the State party, each of which is confidential to the recipient in accordance with the provisions and approach set out in the Optional Protocol. Both of these reports can, however, be made public with the consent of the recipient as is the case with any other report of Subcommittee.

53. One of the benefits of this new approach is that it will enable the Subcommittee to undertake more visits than in previous years through a combination of regular visits, NPM advisory visits and follow-up visits. It will thereby enable the Subcommittee to fulfil its overall mandate in a universal, non-discriminatory and non-selective fashion. In addition, fiscal constraints and the challenges posed by the secretariat being understaffed — which remain obstacles to the Subcommittee fulfilling its mandate — support this increasingly targeted approach to its work.

2. Activities relating to national preventive mechanisms, outside of the visiting programme

54. The regional task forces formed in 2011 have been successful in building a more meaningful and structured engagement with NPMs. The task forces have initiated communication and dialogue with NPMs, gathering information about the situation in respect of persons deprived of liberty. However, the Subcommittee has observed that while working with NPMs in some countries and regions has been quite productive, this is not always the case. Establishing and maintaining communication and information sharing with some NPMs has been difficult, and this appears to have a direct correlation with the situation regarding the structuring and nature of the functioning of NPMs, in addition to, of course, whether they have been established in the first place. The Subcommittee wishes to highlight the importance of the establishment and, thereafter, the effective operation of an independent NPM, in accordance with the Subcommittee Guidelines, in order to ensure compliance with the Optional Protocol.

55. The Subcommittee will continue its practice of inviting NPMs to its sessions, either in plenary or with regional task forces, to further develop its understanding of how different NPMs carry out their work and to share experiences with them. The Subcommittee finds these exchanges highly beneficial, enriching its understanding and enhancing its capacity to identify, share and disseminate good practice.

3. Development of comments on substantive issues

56. The Subcommittee is aware that the increasing visibility of its comments and approaches to prevention has had the welcome consequence of fostering greater interest in its work by those with experience in relevant fields and a desire that they be able to

contribute to that process. It has therefore decided on a methodology to be followed when developing thematic papers, which includes the possibility of having public consultations with relevant stakeholders at appropriate points in the process of their formulation when the Subcommittee considers it to be beneficial and practical to do so.

57. The Subcommittee has made public a provisional statement on the Standard Minimum Rules for the Treatment of Prisoners and hopes to make public a policy paper on reprisals. The Subcommittee welcomes comments on these issues, with a view to making the documents more holistic.

4. Confidentiality

58. The Subcommittee is fully aware of the need to ensure that it fully respects the principle of confidentiality in its work, this being a central element of the framework surrounding its visiting mandate. The Subcommittee is continually reviewing the practical implications of this principle in order to ensure that it is applied with the least possible impact on its ability to work effectively.

5. Training

59. In order to enhance its knowledge and capacity in monitoring non-traditional places of detention, the Subcommittee initiated and held a two-day workshop on monitoring mental health and social care institutions, with the financial assistance of the Government of Germany and administrative assistance from APT. Its purpose was to enable the Subcommittee to address, during its visits, issues of stigmatization, discrimination, deprivation of human rights, neglect and ill-treatment of people with mental illness and disabilities. The Subcommittee is aware that persons in mental health and social care institutions comprise just one among many groups of vulnerable persons, and is mindful of the position of women, juveniles, members of minority groups, foreign nationals, asylum seekers, persons with disabilities, lesbian, gay, bisexual and transgender persons, and members of other vulnerable groups who are deprived of their liberty. This workshop was the first of its kind and the Subcommittee hopes to develop its knowledge and skills through similar workshops in future.

B. Establishment of ad hoc working groups

60. During 2012, the Subcommittee established a number of ad hoc working groups to consider (a) systemic issues related to the interaction of the Subcommittee with NPMs, (b) engagement with processes concerning the Standard Minimum Rules for the Treatment of Prisoners, (c) induction and continuous training of Subcommittee members, (d) reprisals, and (e) procedural issues, including issues concerning access to places of detention. The working groups report to the plenary, which retains responsibility for decision-making. The Subcommittee believes that the use of working groups allows for more focused consideration of a broader range of issues than would otherwise be possible, and intends to build on this practice to enhance member participation and effective functioning. The Subcommittee regrets the lack of translation facilities for working groups meeting outside of the plenary room, which hampers this more efficient use of session time.

61. The working group on Subcommittee/NPM interaction has highlighted, inter alia:

(a) The need to ensure that the methodologies used by the regional task forces are internally consistent in order to maintain an equality of treatment;

(b) The need to establish a mechanism through which NPMs could correspond with and receive appropriate responses from the Subcommittee;

(c) The importance of developing a questionnaire to collect data from NPMs so that a database with comparable information could be established and maintained;

(d) The value in engaging with NPMs regarding the activities of the Subcommittee, including in country activities.

62. The working group on Standard Minimum Rules has highlighted, *inter alia*, the major contribution which in general it believes the Subcommittee can make to discussions concerning the Standard Minimum Rules. In particular, it has highlighted several areas which might benefit from appraisal, including, but not limited to:

- (a) Language and terminology used in the text;
- (b) Information provided to and complaints received from prisoners;
- (c) Contact with the outside world/social relations and aftercare;
- (d) Religion;
- (e) Persons in vulnerable situations;
- (f) Categorization/special categories;
- (g) Independent inspection;
- (h) Private prisons;
- (i) Preventive approaches to torture, cruel or inhuman or degrading treatment or punishment.

63. The working group on induction and continuous training highlighted, *inter alia*:

(a) The need to prioritize induction and training of new members at the nineteenth session of the Subcommittee;

(b) The need to assist newly elected members through the provision of information, personal support and practical assistance to facilitate their first experiences of the Subcommittee plenary (it being recognized that there is a close interconnection between each of these);

(c) The desirability of revising the Subcommittee rules of procedure regarding the timing of the election of the Bureau.

64. The working group on reprisals highlighted, *inter alia*:

(a) The need to consider developing a formal policy position on responding to the risk of reprisals and the form that such a policy should take;

(b) The need to consider the relationship between the principle of confidentiality and the need to ensure the absence of reprisals;

(c) The need to consider the role and responsibilities of NPMs in relation to the risk of reprisals.

65. The working group on procedural issues, including difficulties of access to places of detention, has highlighted, *inter alia*:

(a) The need to consider practical responses to denial or delay of access to some places of detention;

(b) The need to consider practical responses to difficulties in gaining entry to some rooms/areas in some places of detention;

(c) The need to consider practical responses to barriers placed upon meeting with some persons deprived of liberty, or meeting with them under suitable conditions;

- (d) The use of information provided by civil society organizations;
- (e) Other special procedural issues faced when visiting prisons and police stations.

C. Issues arising from the work of the Subcommittee

66. The Subcommittee wishes to draw attention to some specific issues which have arisen in the course of its work. It has sometimes been unable to spend as much time as it had hoped in detention facilities due to delays in gaining admission or dealing with other bureaucratic barriers. This is a regrettable waste of valuable resources, and States parties should ensure that the Subcommittee is able to enjoy immediate access to all places of detention, areas within places of detention, persons deprived of their liberty and documentation, in accordance with the provisions of the Optional Protocol. Similarly, while the Subcommittee recognizes the continued efforts and support of civil society in the prevention of torture and other cruel, inhuman or degrading treatment or punishment, it would like to stress the importance of ensuring the information and materials provided to the Subcommittee are as accurate and as up to date as possible.

67. The Subcommittee is of the view, as stated previously in a number of public documents, that the term “places of detention”, as found in article 4 of the Optional Protocol, should be given a broad interpretation, to include, inter alia, civil and military prisons, police stations, pretrial detention centres, psychiatric institutions and mental health centres, migrant detention centres, juvenile detention centres and social care institutions. The term extends to any place, whether permanent or temporary, where persons are deprived of their liberty by, or at the instigation of, or with the consent and/or acquiescence of, public authorities. Therefore, an interpretation of “places of detention” that is limited to such traditional places of deprivation of liberty as prisons would be overly restrictive and, in the view of the Subcommittee, clearly contrary to the Optional Protocol.

68. In its fourth annual report (CAT/C/46/2) the Subcommittee commented on its approach to individual cases of torture and ill-treatment encountered during visits to places of detention. It has since learned that this statement has been misunderstood, and been taken as suggesting that the Subcommittee and NPMs should not engage with individual cases at all. This is not the position of the Subcommittee. While it is emphatically not the case that the Subcommittee investigates individual allegations, during many of its country visits it has documented alleged cases of torture and ill-treatment and has included descriptions of such cases in its reports. As explained in the fourth annual report, the Subcommittee finds it useful to analyse such cases in order to identify underlying gaps in protection and make the most efficacious preventive recommendations. This does not mean that the Subcommittee cannot raise issues arising from specific situations which it encounters, and it has occasionally done so. However, this entails disclosing the identity of a victim of torture or ill-treatment, which requires not only the informed consent of the alleged victim but also a careful consideration of the risk of reprisals or other deleterious consequences of doing so. The Subcommittee believes that the misunderstanding of its position may be because it states in its fourth annual report that the Subcommittee has no power to undertake inquiries or to offer reparation. However, the Subcommittee can and does recommend that the authorities do so, and if such recommendations are ignored or not implemented without good reason, the Subcommittee would consider it a lack of cooperation.

V. Substantive issues

69. In this chapter the Subcommittee wishes to set out its current thinking on a number of issues of significance to its mandate.

A. The role of judicial review and due process in the prevention of torture in prisons

1. Summary

70. The erroneous premise that due process ends at the moment of sentencing, and that it does not apply to the actual custodial conditions and regime, encourages the use of torture and ill-treatment in places of detention, and more specifically in prisons for adults and juveniles. In addition to complaints procedures and supervision of such places of detention, there is a need for States to provide a special judicial or similar mechanism to protect the rights of all convicted and pretrial detainees.

2. Introduction

71. In the specific case of prisons, various cultural factors, such as the idea that inmates are “outside society” or that they are “dangerous” persons, or the reactions of the media to public insecurity, contribute to the neglect and vulnerability of people serving prison sentences and those who are in pretrial detention.

72. To overcome this lack of protection for inmates, it must be established in law that detainees retain fundamental rights (including the right to integrity and freedom of conscience) and only a few of their rights are suspended (such as freedom of residence) or restricted (such as the freedoms of assembly and expression). In addition, it must be established and guaranteed that they acquire some rights at the time of detention (such as the rights to food, decent living conditions and health services). There is a lack of mechanisms, procedural rules and remedies that are necessary to enforce this legal framework. In reality, detainees have “rights without guarantees”.

3. Lack of institutional protection

73. The lack of legal protection in places of detention is also related to the rehabilitative or correctional conceptions of punishment,⁶ which have contributed to the predominance of a model whereby prison authorities, technical staff and security guards unilaterally decide the punishment regime.

4. Due process

74. Due process means that certain procedures should be followed so that the State can legitimately give effect to fundamental rights; that is, it establishes a set of requirements

⁶ This involves a vision “shared by the three political and cultural trends that have contributed to the formulation of the [Italian] Constitution and subsequent prison reform: the Catholic trend, which conceives of punishment as reformation of the criminal; the liberal-conservative trend, which is the source of the therapeutic and integrationist view of punishment; and communism in its Leninist and Gramscian versions, inspired by punishment regimes intended to educate and resocialize criminals. Endorsed by such a convergence of cultures, prison reform has been achieved at the price of its transformation into unequal, atypical and uncertain punishment, and the resulting dissolution of guarantees with regard to punishment.” Luigi Ferrajoli, *Derecho y razón* (Madrid, Trotta, 1995), p. 720.

that must be observed so that individuals can defend themselves properly against any act by the State that might affect their rights.

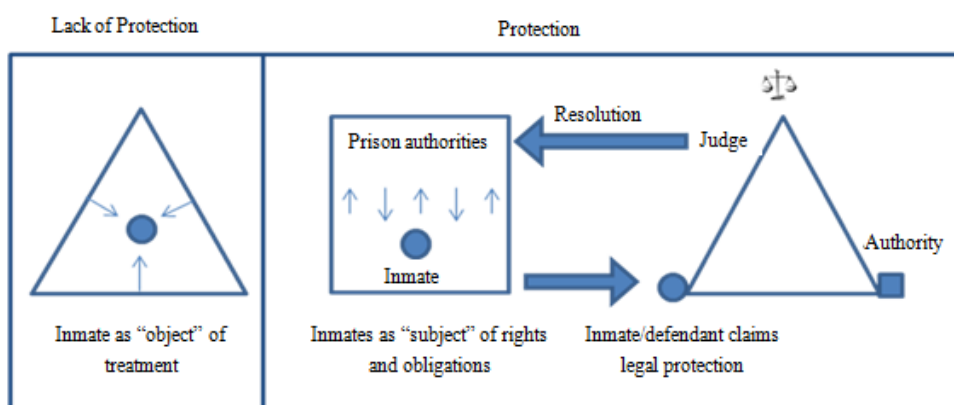
75. Within the criminal justice system, due process should cover not only the determination of penalties but also the safeguarding and protection of all detainees, providing a framework for the relationship between inmates and prison authorities in terms of rights and obligations, including means of obtaining defence and legal remedies.

5. Judicial control

76. Judicial intervention during the period of confinement, by judges other than those who determined the criminal charges, goes hand in hand with due process. In order for inmates to be able to invoke the standards protecting them from negligent or abusive prison authorities, there must be an impartial third party to enforce those norms, given that no one should act as both judge and jury. It is also for this reason that judges on prison enforcement matters should act only within the framework of judicial procedures conducted on an adversarial basis. As part of the criminal justice system, their role is clearly differentiated from that of monitoring bodies, and their resolutions must be fully enforceable against any government authority.

77. If relief is available from the prison administration, the claimant (that is, the inmate making a complaint) might be required to pursue that avenue of redress before proceeding to seek redress from a court.

78. The administrative authority is in charge of executing sentences and pretrial detention orders on a regular basis; however, cases lodged during these periods should fit into a trilateral relationship in which a specialized judge or a similar independent authority occupies the apex of the pyramid while the prison authorities and the inmate are situated at the lower corners in keeping with the equality of arms principle. Under a human rights approach, the inmate ceases to be the “object” of treatment and becomes a “subject” in a legal relationship in order to assert his or her rights:



79. The availability of attorneys with an expertise different from those in charge of criminal defence is essential in order to ensure that persons convicted and in pretrial detention have access to justice in prison.

80. The existence of torture and ill-treatment in places of detention is not a chance occurrence; rather, it is fostered by legislative neglect and judicial inactivity that create a breeding ground for these practices. Progress can be achieved in this area through “effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” (art. 2, para. 1, of the Convention against Torture and

Other Cruel, Inhuman or Degrading Treatment or Punishment, which applies to all signatories to the Optional Protocol).

B. Indigenous justice and the prevention of torture

1. Cultural diversity and indigenous justice

81. The protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples.⁷

82. Respect for cultural diversity implies building an equal relationship between cultures and overcoming imbalances in power relationships based on ideas of superiority or inferiority. It also presupposes that any traditional practice from any culture, including that of the West, which infringes the dignity of individuals and peoples will be challenged.

2. Concept of indigenous justice

83. The recognition of indigenous justice forms part of the collective rights of indigenous peoples as set out in international human rights law. International Labour Organization (ILO) Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries establishes that indigenous and tribal peoples “shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights” (art. 8, para. 2).

84. The United Nations Declaration on the Rights of Indigenous Peoples recognizes that indigenous peoples have the right to maintain and strengthen their own legal institutions (art. 5) as well as the right not to be subjected to forced assimilation or destruction of their culture (art. 8, para. 1). This international instrument further establishes that indigenous peoples have the right to promote, develop and maintain, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards (art. 34) and to determine the responsibilities of individuals to their communities (art. 35).

3. Relationship between the national justice system and the indigenous justice system

85. The coexistence of various legal systems within territories that are under the jurisdiction of a single State represents a crucial challenge for building relationships based on interculturality. The relationship between the national justice system and the indigenous justice system must be based on an equal valuation and recognition of the legal system (whether it be of a positive, customary or mixed nature) and of the authorities who have the power to apply it. A relationship based on respect, cooperation and communication is indispensable.

86. The indigenous justice system should be considered as part of a whole and as having a dialectical and intercultural relationship with the national justice system, so that each system can inspire and enrich the other. This “legal interculturality” is clearly reflected in ILO Convention No. 169, which establishes that “in applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws”, for which purpose “procedures shall be established ... to resolve conflicts which may arise in the application of this principle” (art. 8).

⁷ Convention on the Protection and Promotion of the Diversity of Cultural Expressions, art. 2, para. 3.

4. Limits of the national justice system in proceedings against indigenous persons

87. In cases where the national justice system has jurisdiction over persons of indigenous cultural backgrounds, adequate legal instruments need to be provided to enable, where appropriate, an assessment of the responsibility of these persons (taking into account, for example, cultural predispositions or other grounds that might justify an exemption from criminal liability). In such cases, it is always preferable to try the case within the indigenous justice system.

88. Clearly, any form of imprisonment imposed on indigenous persons by public authorities — including traditional authorities who may, in exceptional cases, hold the person in custody — should be the exception, not the rule. In such circumstances, and especially when the detention is illegal, there is a higher risk of torture or cruel, inhuman or degrading treatment.

89. The legitimacy of detention must be judged according to its lawfulness and proportionality and, in the case of indigenous persons, must take into account various other principles to ensure that it is not an arbitrary measure that carries a risk of torture. This means that, in addition to the legal safeguards that apply to every individual in custody, particular care must be taken to ensure:

(a) That indigenous persons are informed, in their own language, of the reasons for their detention and of their rights;

(b) That their close family or, failing that, the authorities of their community are informed of their detention;

(c) That, from the moment they are detained, they have access, free of charge, to a public defender who speaks their language (or who has an interpreter) and who is familiar with indigenous law or its basic principles, including the possibility of having the matter handled wholly within the indigenous justice system where applicable, or of calling on cultural or anthropological expertise;

(d) That all authorities involved in any way in matters of detention, investigation or sentence enforcement (for example, the public defender's office, the public prosecution service, the criminal investigation police, the officiating judges and other justice officials, and the prison authorities) are familiar with and uphold, with discretion and with a view to taking affirmative action, the minimum legal safeguards and the rights of indigenous persons as recognized by the relevant international instruments;

(e) That when indigenous persons have been legitimately detained under exceptional circumstances, they are held in conditions which are consistent with their personal dignity, and that their right to personal integrity is guaranteed by the State;⁸

(f) That they are placed in the detention centre nearest to their indigenous community and their family, so that they are able to receive frequent visits and follow their traditional practices and customs, which will minimize the risk of their being isolated from their relatives, culture and religion;

(g) That indigenous persons in places of detention are not segregated or subjected to discrimination on account of their status. Nor should they be pushed to abandon their language, traditional dress or customs by means of threats, mockery or humiliation;

⁸ See principle 1 of the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in its resolution 45/111.

(h) That indigenous women in detention enjoy the same protection as indigenous men, and that their dignity is respected as regards practices related to their sexuality and traditional values associated with, inter alia, their appearance, hair, clothes, and nudity;

(i) Indigenous detainees have the right to freedom of expression in the language of their preference. Any ban or restriction on the use of this language is a violation of the rules on the collective treatment of detainees and is particularly serious when the language represents part of a person's identity as a member of his or her indigenous community.

5. Links between indigenous justice and the prevention of torture

(a) Prevention of torture in the indigenous justice system

90. The recognition of indigenous justice as part of the collective rights of indigenous peoples confers a responsibility on indigenous authorities exercising their power to settle disputes. This responsibility involves observance not only of the norms, values and principles which constitute their law but also of internationally recognized human rights, such as the right to personal integrity, and the prohibition of torture and cruel, inhuman and degrading treatment.

91. It is essential to distinguish acts of torture or cruel, inhuman and degrading treatment from practices which are, according to the world view of indigenous peoples, forms of spiritual purification and healing for individuals who have been punished under the indigenous justice system. From an intercultural perspective, these practices, such as ice-cold baths or the use of stinging nettles to purify perpetrators, are consistent with the assertion in the Convention against Torture that "the term 'torture' ... does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions" (art. 1).

(b) Role of indigenous justice in the prevention of torture

92. In modern societies, torture and ill-treatment are closely linked to the notion of State power. In traditional societies, social organization is completely different, as justice is based mainly on consensus and mediation. Thus, the initial stage of what we understand as criminal proceedings does not necessarily involve deprivation of liberty. Torture and ill-treatment are therefore quite rare in traditional societies.

93. Custodial sentences, which the State justice system usually imposes in criminal cases, are barely used in the indigenous justice system, as community ties determine the structure of the individual and collective identity of community members, and imprisonment directly undermines these ties. For many indigenous persons, imprisonment constitutes cruel, inhuman and degrading treatment and even a form of torture.

94. Strengthening the indigenous justice system and its forms of social control and punishment for violating its laws could therefore serve to prevent torture and cruel, inhuman or degrading treatment of indigenous persons.

VI. Looking forward

95. The end of this reporting period sees the departure of 5 of the 10 founder members of the Subcommittee who were elected in October 2006 and who were ineligible for re-election to a further term of office at the meeting of States parties in October 2012. They, and their experiences, will be much missed and it is unfortunate the Subcommittee has lost so many experienced members at this time of transition and development. Departures, however, bring with them the opportunity to welcome new colleagues and the Subcommittee is looking forward with anticipation to welcoming its new members in 2013

and to working with them to develop further new, innovative and effective means of fulfilling its mandate of preventing torture and ill-treatment.

A. Plan of work for 2013

96. The plan of work for 2012 was ambitious, both in scale and in kind. Hitherto, the Subcommittee had undertaken a maximum of three visits in a 12-month period. In order to respond to the increasing number of States parties, and the opportunities presented by the increased membership, that number was doubled to six. Moreover, three of the visits were of an innovative nature, focusing on the establishment and work of the NPM, and thereby bringing into focus the Subcommittee's responsibility under article 11 (b) (ii) and (iii) of the Optional Protocol. For operational reasons, one projected visit, that to Gabon, will now be conducted in 2013.

97. The programme for 2013 looks to consolidate the achievements of 2012 in two ways. First, it maintains the increased tempo of its activities by conducting a further six visits, in addition to the postponed visit from 2013. Secondly, it includes a broader range of forms of visit within a single year than has previously been the case. To that end, the Subcommittee decided at its seventeenth session (June 2012) to conduct the following country visits in 2013: regular country visits to New Zealand, Peru and Togo; NPM advisory visits to Armenia and Germany; and a follow-up visit in accordance with article 13, paragraph 4, of the Optional Protocol.

98. As in previous years, the Subcommittee took account of various factors when selecting countries for visits, giving careful consideration to factors such as the period of time since ratification, the situation as regards the establishment and operation of the NPM, geographic diversity, logistical issues concerning the size and complexity of the State, factors relating to the preventive monitoring at a regional level, the work of other United Nations mechanisms and agencies and perceptions of the benefit to be derived from undertaking a visit in the year ahead.

99. The Subcommittee hopes that as a result of its innovative and evolving working practices it will become more effective and more efficient in achieving its mandate. Working with NPMs has enabled greater strides to be taken in establishing a continued and constructive preventive dialogue. Furthermore, the ad hoc thematic groups are a means through which issues of importance are highlighted and probed.

100. During 2013, in addition to further developing its jurisprudence, the Subcommittee will focus its attention on systemic issues related to the interaction of the Subcommittee with NPMs, Standard Minimum Rules for the Treatment of Prisoners, induction and continuous training, reprisals and procedural issues (including difficulties of access to places of detention).

B. Laying the foundations for future growth and development

101. This reporting period sees the departure of 5 of the 10 founder members of the Subcommittee elected in October 2006 and who were ineligible for re-election to a further term of office. The Subcommittee wishes to place on record its profound sense of loss at the departure of many of its most experienced members who, with their colleagues, established the Subcommittee and laid the foundations for the creation of the Optional Protocol system. They have all made indelible contributions to the development of the Subcommittee and to its work and their absence will be keenly felt. Departures, however, bring with them the opportunity to welcome new colleagues, and the Subcommittee is looking forward with anticipation to welcoming the six new members elected to it by States parties.

102. At its eighteenth session the Subcommittee reflected on its first six years of experience and noted the growing focus on its work related to NPMs, the growth in requests for participation in intersessional activities, and the need to develop further the pace and range of its own visiting programmes. This reflection was also informed by the realities of the support made available to the Subcommittee by the OHCHR. The Subcommittee wishes to pay tribute to the outstanding level of commitment shown by its secretariat, which is reflected in the astonishing workload which staff bear on the Subcommittee's behalf. The Subcommittee is gratified to note the desire to expand support for the Subcommittee set out in the report of the High Commissioner for Human Rights on the treaty body strengthening process (A/66/860). Yet the Subcommittee is conscious that it is perfectly obvious that neither the commitment and dedication of the secretariat nor the modest expansion in resourcing as argued for by the High Commissioner can keep pace with the demands which States parties, NPMs and CSOs are rightly placing on the Subcommittee to fulfil its obligations under the Optional Protocol. In 2012 the Subcommittee was able to conduct only two visits under article 11 (a) of its mandate, while having 65 States parties. This suggests a rate of one such visit every 20 years or more. This is not compatible with the spirit of conducting "regular" visits and ongoing dialogue. We wish to visit all State parties on a cycle similar to the reporting cycles of other treaty bodies about every four or five years. This implies a step change in our current workload, and in our levels of support. Effective prevention demands no less.

103. Moreover, each year the work of the Subcommittee increases exponentially. The establishment of each new NPM and the conduct of each new visit set in motion another train of engagement and dialogue which is ongoing and operates in parallel with, rather than as a substitute for, those already under way. The Subcommittee continues to believe that, in addition to the step change in the level of resources, financial and human, which it desperately needs, it is necessary for the Subcommittee to continue to refine its working practices, broadening its range of partners in order to maximize its preventive impact, and to re-evaluate the manner in which it uses those resources which are at its disposal, including the shape, size and scope of its programme of regular visits.

Annex VIII

Decision of the Committee against Torture, adopted at its forty-ninth session (29 October–23 November 2012), on the request of Romania, under article 24, paragraph 2, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. Romania ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 18 December 1990 and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 2 July 2009, with a declaration that it would postpone the establishment of a national preventive mechanism for three years, in accordance with article 24, paragraph 1, of the Optional Protocol.
2. The Committee received a request from Romania under article 24, paragraph 2, of the Optional Protocol, requesting an extension of this postponement for an additional two years. The State party based its request on “the objective difficulty to finalise the adoption of the national legislation within this period”. The Committee notes with regret that this request was submitted after the respective deadline of 2 July 2012.
3. In addition, the Committee regrets that the second periodic report of the State party, due on 16 January 1996, has been overdue for more than 16 years and notes that the absence of periodic reports prevents the Committee from exercising its supervisory functions, therefore rendering it impossible to assist the State party with recommendations concerning its full implementation of the provisions of the Convention.
4. After consulting on the matter with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 14 November 2012, the Committee decided to accept the request of the State party and extends the postponement of the State party’s obligations under part IV of the Optional Protocol for an additional two years, in accordance with article 24, paragraph 2, of the Optional Protocol, on the basis that the State party will establish the national preventive mechanism within this deadline and according to a precise schedule.
5. In application of this decision, the Committee invites the State party to meet with it during its fiftieth session from 6 to 31 May 2013, in order to present a status report on the measures taken to establish the national preventive mechanism and its precise schedule, as well as on the progress made to submit its long overdue second periodic report to the Committee within the shortest period of time.
6. This decision is made public after being brought to the attention of the State party and the Subcommittee on Prevention.

Annex IX

Joint statement on the occasion of the United Nations International Day in Support of Victims of Torture

The Committee against Torture, the Subcommittee on Prevention of Torture, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence marked the International Day in Support of Victims of Torture with the following statement:

Governments must do more to fulfil their obligations to ensure that torture victims and their families can obtain redress and rehabilitation for the suffering they have endured, United Nations human rights mechanisms have stressed in a joint call.

To mark the United Nations International Day in Support of Victims of Torture on 26 June, they are highlighting the fact that traumatized victims too often struggle to obtain the physical and mental rehabilitation, justice and compensation to which they are entitled.

“Torture unfortunately continues to be practised in many countries, made possible by the dehumanization of the victim, torturer and society at large,” said Claudio Grossman, Chairperson of the Committee against Torture, which last November issued a landmark definition on the right to reparation for victims (general comment No. 3 (2012) on the implementation of article 14 of the Convention).

Victims have the enforceable right to reparation that includes fair and adequate compensation and access to as full rehabilitation as possible. States must also ensure that victims are not exposed to further risk of ill-treatment and that violations are investigated and punished.

The Committee’s stance was reinforced in March by the Human Rights Council; in its resolution 22/21, the Council called on States to not only provide redress for victims of torture but also to ensure that victims are fully involved in the process in order to help them rebuild their lives and reintegrate into society.

“A victim-centred approach requires individual assessment of the victim’s needs and treatment that goes beyond the short term,” said the Special Rapporteur on the question of torture, Juan E. Méndez. “A holistic approach is crucial to ensure professionals work with, rather than on, a person who has been tortured.”

Another key duty on States, the experts stress, is to tackle impunity and strengthen judicial proceedings to prevent torture from continuing.

“Effective redress is not possible without States addressing impunity,” said Pablo de Greiff, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. “In addition to receiving reparation, it is crucial for victims to be involved in truth-seeking exercises, and in judicial processes to ensure effective and impartial investigations, prosecutions and judgements that reflect the gravity of the offence. It is also central for societies to put institutions and mechanisms in place to prevent future violations,” he said.

Rehabilitation of victims is key not only for the individuals affected but for society as a whole, according to Malcolm Evans, Chairperson of the Subcommittee on the Prevention of Torture, which conducts field visits to places of detention. “Wherever and

whenever torture and ill-treatment occur, a meaningful prevention implies prevention for the victims and their relatives. Our committee has learned from direct experience the central role that rehabilitation occupies in the cycle of prevention," he said.

Helping to rebuild lives

The focus on a victim-oriented approach also highlights the need for properly resourced rehabilitation centres, the experts say.

Every year, the United Nations Voluntary Fund for Victims of Torture supports hundreds of such centres to give humanitarian, medical and legal assistance to victims and their relatives.

It is estimated that the Voluntary Fund assists annually between 50,000 and 70,000 victims and their relatives, including Syrian refugee Sabeen, who was kidnapped, repeatedly raped, and saw family members killed in front of her. Sabeen, 24, fled to Jordan, where her mother took her to a centre that receives a grant from the Voluntary Fund to provide therapy and support for torture victims.

Annex X

General comment No. 3 (2012)

Implementation of article 14 by States parties

1. This general comment explains and clarifies to States parties the content and scope of the obligations under article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Each State party is required to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.” The Committee considers that article 14 is applicable to all victims of torture and acts of cruel, inhuman or degrading treatment or punishment (hereafter “ill-treatment”) without discrimination of any kind, in line with the Committee’s general comment No. 2.

2. The Committee considers that the term “redress” in article 14 encompasses the concepts of “effective remedy” and “reparation”. The comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention.

3. Victims are persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term “victim” also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization. The term “survivors” may, in some cases, be preferred by persons who have suffered harm. The Committee uses the legal term “victims” without prejudice to other terms which may be preferable in specific contexts.

4. The Committee emphasizes the importance of victim participation in the redress process, and that the restoration of the dignity of the victim is the ultimate objective in the provision of redress.

5. The obligations of States parties to provide redress under article 14 are two-fold: procedural and substantive. To satisfy their procedural obligations, States parties shall enact legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and bodies are effective and accessible to all victims. At the substantive level, States parties shall ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible.

Substantive obligations: the scope of the right to redress

6. As stated in paragraph 2 above, redress includes the following five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The Committee recognizes the elements of full redress under international law and practice as outlined in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and

Serious Violations of International Humanitarian Law (Basic Principles and Guidelines).¹ Reparation must be adequate, effective and comprehensive. States parties are reminded that in the determination of redress and reparative measures provided or awarded to a victim of torture or ill-treatment, the specificities and circumstances of each case must be taken into consideration and redress should be tailored to the particular needs of the victim and be proportionate to the gravity of the violations committed against them. The Committee emphasizes that the provision of reparation has an inherent preventive and deterrent effect in relation to future violations.

7. Where State authorities or others acting in their official capacity have committed, know or have reasonable grounds to believe that acts of torture or ill-treatment have been committed by non-State officials or private actors and failed to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors in accordance with the Convention, the State bears responsibility for providing redress for the victims (general comment No. 2).

Restitution

8. Restitution is a form of redress designed to re-establish the victim's situation before the violation of the Convention was committed, taking into consideration the specificities of each case. The preventive obligations under the Convention require States parties to ensure that a victim receiving such restitution is not placed in a position where he or she is at risk of repetition of torture or ill-treatment. In certain cases, the victim may consider that restitution is not possible due to the nature of the violation; however the State shall provide the victim with full access to redress. For restitution to be effective, efforts should be made to address any structural causes of the violation, including any kind of discrimination related to, for example, gender, sexual orientation, disability, political or other opinion, ethnicity, age and religion, and all other grounds of discrimination.

Compensation

9. The Committee emphasizes that monetary compensation alone may not be sufficient redress for a victim of torture and ill-treatment. The Committee affirms that the provision of monetary compensation only is inadequate for a State party to comply with its obligations under article 14.

10. The right to prompt, fair and adequate compensation for torture or ill-treatment under article 14 is multi-layered and compensation awarded to a victim should be sufficient to compensate for any economically assessable damage resulting from torture or ill-treatment, whether pecuniary or non-pecuniary. This may include: reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; pecuniary and non-pecuniary damage resulting from the physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the torture or ill-treatment; and lost opportunities such as employment and education. In addition, adequate compensation awarded by States parties to a victim of torture or ill-treatment should provide for legal or specialist assistance, and other costs associated with bringing a claim for redress.

¹ United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147.

Rehabilitation

11. The Committee affirms that the provision of means for as full rehabilitation as possible for anyone who has suffered harm as a result of a violation of the Convention should be holistic and include medical and psychological care as well as legal and social services. Rehabilitation, for the purposes of this general comment, refers to the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.

12. The Committee emphasizes that the obligation of States parties to provide the means for "as full rehabilitation as possible" refers to the need to restore and repair the harm suffered by a victim whose life situation, including dignity, health and self-sufficiency may never be fully recovered as a result of the pervasive effect of torture. The obligation does not relate to the available resources of States parties and may not be postponed.

13. In order to fulfil its obligations to provide a victim of torture or ill-treatment with the means for as full rehabilitation as possible, each State party should adopt a long-term, integrated approach and ensure that specialist services for victims of torture or ill-treatment are available, appropriate and readily accessible. These should include: a procedure for the assessment and evaluation of individuals' therapeutic and other needs, based on, *inter alia*, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol); and may include a wide range of inter-disciplinary measures, such as medical, physical and psychological rehabilitative services; re-integrative and social services; community and family-oriented assistance and services; vocational training; education etc. A holistic approach to rehabilitation which also takes into consideration the strength and resilience of the victim is of utmost importance. Furthermore, victims may be at risk of re-traumatization and have a valid fear of acts which remind them of the torture or ill-treatment they have endured. Consequently, a high priority should be placed on the need to create a context of confidence and trust in which assistance can be provided. Confidential services should be provided as required.

14. The requirement in the Convention to provide these forms of rehabilitative services does not extinguish the need to provide medical and psychosocial services for victims in the direct aftermath of torture, nor does such initial care represent the fulfilment of the obligation to provide the means for as full rehabilitation as possible.

15. States parties shall ensure that effective rehabilitation services and programmes are established in the State, taking into account a victim's culture, personality, history and background and are accessible to all victims without discrimination and regardless of a victim's identity or status within a marginalized or vulnerable group, as illustrated in paragraph 32, including asylum seekers and refugees. States parties' legislation should establish concrete mechanisms and programmes for providing rehabilitation to victims of torture or ill-treatment. Torture victims should be provided access to rehabilitation programmes as soon as possible following an assessment by qualified independent medical professionals. Access to rehabilitation programmes should not depend on the victim pursuing judicial remedies. The obligation in article 14 to provide for the means for as full rehabilitation as possible can be fulfilled through the direct provision of rehabilitative services by the State, or through the funding of private medical, legal and other facilities, including those administered by non-governmental organizations (NGOs), in which case the State shall ensure that no reprisals or intimidation are directed at them. The victim's participation in the selection of the service provider is essential. Services should be

available in relevant languages. States parties are encouraged to establish systems for assessing the effective implementation of rehabilitation programmes and services, including by using appropriate indicators and benchmarks.

Satisfaction and the right to truth

16. Satisfaction should include, by way of and in addition to the obligations of investigation and criminal prosecution under articles 12 and 13 of the Convention, any or all of the following remedies: effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification, and reburial of victims' bodies in accordance with the expressed or presumed wish of the victims or affected families; an official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; judicial and administrative sanctions against persons liable for the violations; public apologies, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to the victims.

17. A State's failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a de facto denial of redress and thus constitute a violation of the State's obligations under article 14.

Guarantees of non-repetition

18. Articles 1 to 16 of the Convention constitute specific preventive measures that the States parties deemed essential to prevent torture and ill-treatment. To guarantee non-repetition of torture or ill-treatment, States parties should undertake measures to combat impunity for violations of the Convention. Such measures include issuing effective, clear instructions to public officials on the provisions of the Convention, especially the absolute prohibition of torture. Other measures should include any or all of the following: civilian oversight of military and security forces; ensuring that all judicial proceedings abide by international standards of due process, fairness and impartiality; strengthening the independence of the judiciary; protecting human rights defenders and legal, health and other professionals who assist torture victims; establishing systems for regular and independent monitoring of all places of detention; providing, on a priority and continued basis, training for law enforcement officials as well as military and security forces on human rights law that includes the specific needs of marginalized and vulnerable populations and specific training on the Istanbul Protocol for health and legal professionals and law enforcement officials; promoting the observance of international standards and codes of conduct by public servants, including law enforcement, correctional, medical, psychological, social service and military personnel; reviewing and reforming laws contributing to or allowing torture and ill-treatment; ensuring compliance with article 3 of the Convention prohibiting refoulement; ensuring the availability of temporary services for individuals or groups of individuals, such as shelters for victims of gender-related or other torture or ill-treatment. The Committee notes that by taking measures such as those listed herein, States parties may also be fulfilling their obligations to prevent acts of torture under article 2 of the Convention. Additionally, guarantees of non-repetition offer important potential for the transformation of social relations that may be the underlying causes of violence and may include, but are not limited to, amending relevant laws, fighting impunity, and taking effective preventative and deterrent measures.

Procedural obligations: implementation of the right to redress

Legislation

19. Under article 2 of the Convention, States parties shall enact “effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” As clarified by the Committee in its general comment No. 2, “States parties must make the offence of torture punishable as an offence under its criminal law, in accordance, at a minimum, with the elements of torture as defined in article 1 of the Convention, and the requirements of article 4.” The failure of States parties to enact legislation that clearly incorporates their obligations under the Convention and criminalizes torture and ill-treatment, and the resulting absences of torture and ill-treatment as criminal offences, obstructs the victim’s capacity to access and enjoy his or her rights guaranteed under article 14.

20. To give effect to article 14, States parties shall enact legislation specifically providing a victim of torture and ill-treatment with an effective remedy and the right to obtain adequate and appropriate redress, including compensation and as full rehabilitation as possible. Such legislation must allow for individuals to exercise this right and ensure their access to a judicial remedy. While collective reparation and administrative reparation programmes may be acceptable as a form of redress, such programmes may not render ineffective the individual right to a remedy and to obtain redress.

21. States parties should ensure that their domestic laws provide that a victim who has suffered violence or trauma should benefit from adequate care and protection to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

22. Under the Convention, States parties are required to prosecute or extradite alleged perpetrators of torture when they are found in any territory under its jurisdiction, and to adopt the necessary legislation to make this possible. The Committee considers that the application of article 14 is not limited to victims who were harmed in the territory of the State party or by or against nationals of the State party. The Committee has commended the efforts of States parties for providing civil remedies for victims who were subjected to torture or ill-treatment outside their territory. This is particularly important when a victim is unable to exercise the rights guaranteed under article 14 in the territory where the violation took place. Indeed, article 14 requires States parties to ensure that all victims of torture and ill-treatment are able to access remedy and obtain redress.

Effective mechanisms for complaints and investigations

23. The Committee has, in its concluding observations, identified other State obligations that shall be met in order to ensure that the article 14 rights of a victim are fully respected. In this regard, the Committee underscores the important relationship between States parties’ fulfilment of their obligations under article 12 and 13, and their obligation under article 14. According to article 12, States parties shall undertake prompt, effective and impartial investigations, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction as the result of its actions or omissions and, as set out in article 13 and affirmed by the Committee in its general comment No. 2, ensure that impartial and effective complaints mechanisms are established. Full redress cannot be obtained if the obligations under articles 12 and 13 are not guaranteed. Complaints mechanisms shall be made known and accessible to the public, including to persons deprived of their liberty, whether in detention, psychiatric facilities, or elsewhere, via, for example, telephone hotlines or confidential complaints boxes in detention facilities, and to persons belonging to vulnerable or marginalized groups, including those who may have limited communication abilities.

24. At the procedural level, States parties shall ensure the existence of institutions competent to render enforceable final decisions through a procedure established by law to enable victims of torture or ill-treatment to secure redress, including adequate compensation and rehabilitation.

25. Securing the victim's right to redress requires that a State party's competent authorities promptly, effectively and impartially investigate and examine the case of any individual who alleges that she or he has been subjected to torture or ill-treatment. Such an investigation should include as a standard measure an independent physical and psychological forensic examination as provided for in the Istanbul Protocol. Undue delays in initiating or concluding legal investigations into complaints of torture or ill-treatment compromise victims' rights under article 14 to obtain redress, including fair and adequate compensation and the means for as full rehabilitation as possible.

26. Notwithstanding the evidentiary benefits to victims afforded by a criminal investigation, a civil proceeding and the victim's claim for reparation should not be dependent on the conclusion of a criminal proceeding. The Committee considers that compensation should not be unduly delayed until criminal liability has been established. Civil liability should be available independently of criminal proceedings and the necessary legislation and institutions for such purpose should be in place. If criminal proceedings are required by domestic legislation to take place before civil compensation can be sought, then the absence of or undue delay in those criminal proceedings constitutes a failure on the part of the State party to fulfil its obligations under the Convention. Disciplinary action alone shall not be regarded as an effective remedy within the meaning of article 14.

27. Under article 14, a State party shall ensure that victims of any act of torture or ill-treatment under its jurisdiction obtain redress. States parties have an obligation to take all necessary and effective measures to ensure that all victims of such acts obtain redress. This obligation includes an obligation for State parties to promptly initiate a process to ensure that victims obtain redress, even in the absence of a complaint, when there are reasonable grounds to believe that torture or ill-treatment has taken place.

28. The Committee strongly encourages States parties to recognize the Committee's competence to consider individual complaints under article 22 to allow victims to submit communications and seek the views of the Committee. The Committee furthermore encourages States parties to ratify or accede to the Optional Protocol to the Convention against Torture in order to strengthen preventive measures against torture and ill-treatment.

Access to mechanisms for obtaining redress

29. The Committee highlights the importance of the State party affirmatively ensuring that victims and their families are adequately informed of their right to pursue redress. In this regard, the procedures for seeking reparation should be transparent. The State party should moreover provide assistance and support to minimize the hardship to complainants and their representatives. Civil proceedings, or other proceedings, should not impose a financial burden upon victims that would prevent or discourage them from seeking redress. Where existing civil proceedings are unable to provide adequate redress to victims, the Committee recommends implementing mechanisms that are readily accessible to victims of torture and ill-treatment, including the establishment of a national fund to provide redress for victims of torture. Special measures should be adopted to ensure access by persons belonging to groups which have been marginalized or made vulnerable.

30. Judicial remedies must always be available to victims, irrespective of what other remedies may be available, and should enable victim participation. States parties should provide adequate legal aid to those victims of torture or ill-treatment lacking the necessary resources to bring complaints and to make claims for redress. States parties shall also make

readily available to the victims all evidence concerning acts of torture or ill-treatment upon the request of victims, their legal counsel, or a judge. A State party's failure to provide evidence and information, such as records of medical evaluations or treatment, can unduly impair victims' ability to lodge complaints and to seek redress, compensation and rehabilitation.

31. The State party should also take measures to prevent interference with victims' privacy and to protect victims, their families and witnesses and others who have intervened on their behalf against intimidation and retaliation at all times before, during and after judicial, administrative or other proceedings that affect the interests of victims. Failure to provide protection stands in the way of victims filing complaints and thereby violates the right to seek and obtain redress and remedy.

32. The principle of non-discrimination is a basic and general principle in the protection of human rights and fundamental to the interpretation and application of the Convention. States parties shall ensure that access to justice and to mechanisms for seeking and obtaining redress are readily available and that positive measures ensure that redress is equally accessible to all persons regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, gender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum seekers, refugees or others under international protection, or any other status or adverse distinction, and including those marginalized or made vulnerable on bases such as those above. Culturally sensitive collective reparation measures shall be available for groups with shared identity, such as minority groups, indigenous groups, and others. The Committee notes that collective measures do not exclude the individual right to redress.

33. Judicial and non-judicial proceedings shall apply gender-sensitive procedures which avoid re-victimization and stigmatization of victims of torture or ill-treatment. With respect to sexual or gender-based violence and access to due process and an impartial judiciary, the Committee emphasizes that in any proceedings, civil or criminal, to determine the victim's right to redress, including compensation, rules of evidence and procedure in relation to gender-based violence must afford equal weight to the testimony of women and girls, as should be the case for all other victims, and prevent the introduction of discriminatory evidence and harassment of victims and witnesses. The Committee considers that complaints mechanisms and investigations require specific positive measures which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation and trafficking are able to come forward and seek and obtain redress.

34. To avoid re-victimization and stigmatization of victims of torture or ill-treatment, the protections outlined in the preceding paragraph equally apply to any person marginalized or made vulnerable on the basis of identities and groups such as those examples listed under the principle of non-discrimination in paragraph 32. In judicial and non-judicial proceedings sensitivity must be exercised toward any such person. Accordingly, the Committee notes that judicial personnel must receive specific training on the various impacts of torture and ill-treatment, including those on victims from marginalized and vulnerable groups, and on how to exercise sensitivity towards victims of torture and ill-treatment, including in the form of sexual or gender-based discrimination, in order to prevent re-victimization and stigmatization.

35. The Committee considers the training of relevant police, prison staff, medical personnel, judicial personnel and immigration personnel, including training on the Istanbul Protocol, to be fundamental to ensuring effective investigations. Furthermore, officials and personnel involved in efforts to obtain redress should receive methodological training in

order to prevent re-traumatization of victims of torture or ill-treatment. This training should include, for health and medical personnel, the need to inform victims of gender-based and sexual violence and all other forms of discrimination of the availability of emergency medical procedures, both physical and psychological. The Committee also urges States parties to establish human rights offices within police forces, and units of officers specifically trained to handle cases of gender-based and sexual violence, including sexual violence perpetrated against men and boys, and violence against children and ethnic, religious, national or other minorities and other marginalized or vulnerable groups.

36. The Committee furthermore underlines the importance of appropriate procedures being made available to address the needs of children, taking into account the best interests of the child and the child's right to express his or her views freely in all matters affecting him or her, including judicial and administrative proceedings, and of the views of the child being given due weight in accordance with the age and maturity of the child. States parties should ensure the availability of child-sensitive measures for reparation which foster the health and dignity of the child.

Obstacles to the right to redress

37. A crucial component of the right to redress is the clear acknowledgement by the State party concerned that the reparative measures provided or awarded to a victim are for violations of the Convention, by action or omission. The Committee is therefore of the view that a State party may not implement development measures or provide humanitarian assistance as a substitute for redress for victims of torture or ill-treatment. The failure of a State party to provide the individual victim of torture with redress may not be justified by invoking a State's level of development. The Committee recalls that subsequent governments as well as successor States still have the obligation to guarantee access to the right of redress.

38. States parties to the Convention have an obligation to ensure that the right to redress is effective. Specific obstacles that impede the enjoyment of the right to redress and prevent effective implementation of article 14 include, but are not limited to: inadequate national legislation, discrimination with regard to accessing complaints and investigation mechanisms and procedures for remedy and redress; inadequate measures for securing the custody of alleged perpetrators, State secrecy laws, evidential burdens and procedural requirements that interfere with the determination of the right to redress; statutes of limitations, amnesties and immunities; the failure to provide sufficient legal aid and protection measures for victims and witnesses; as well as the associated stigma, and the physical, psychological and other related effects of torture and ill-treatment. In addition, the failure of a State party to execute judgements providing reparative measures for a victim of torture, handed down by national, international or regional courts, constitutes a significant impediment to the right to redress. States parties should develop coordinated mechanisms to enable victims to execute judgements across State lines, including recognizing the validity of court orders from other States parties and assisting in locating the assets of perpetrators.

39. With regard to the obligations in article 14, States parties shall ensure both de jure and de facto access to timely and effective redress mechanisms for members of groups marginalized and/or made vulnerable, avoid measures that impede the ability of members of such groups to seek and obtain redress, and address formal or informal obstacles that they may face in obtaining redress. These may include, for example, inadequate judicial or other procedures for quantifying damages which may have a negative disparate impact on such individuals in accessing or keeping money. As the Committee has emphasized in its general comment No. 2, "gender is a key factor. Being female intersects with other identifying characteristics or status of the person ... to determine the ways that women and girls are subject to or at risk of torture or ill-treatment". States parties shall ensure due

attention to gender in providing all the elements cited above in the process of ensuring that everybody, in particular members of groups made vulnerable, including lesbian, gay, bisexual and transgender (LGBT) people, must be treated fairly and equally and obtain fair and adequate compensation, rehabilitation and other reparative measures which respond to their specific needs.

40. On account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them. For many victims, passage of time does not attenuate the harm and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those who have not received redress. States parties shall ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress.

41. The Committee has consistently held that amnesties for the crime of torture are incompatible with the obligations of States parties under the Convention, including under article 14. As was pointed out in general comment No. 2, “amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.” The Committee considers that amnesties for torture and ill-treatment pose impermissible obstacles to a victim in his or her efforts to obtain redress and contribute to a climate of impunity. The Committee therefore calls on States parties to remove any amnesties for torture or ill-treatment.

42. Similarly, granting immunity, in violation of international law, to any State or its agents or to non-State actors for torture or ill-treatment, is in direct conflict with the obligation of providing redress to victims. When impunity is allowed by law or exists de facto, it bars victims from seeking full redress as it allows the violators to go unpunished and denies victims full assurance of their rights under article 14. The Committee affirms that under no circumstances may arguments of national security be used to deny redress for victims.

43. The Committee considers reservations which seek to limit the application of article 14 to be incompatible with the object and purpose of the Convention. States parties are therefore encouraged to consider withdrawing any reservations to article 14 that limit its application so as to ensure that all victims of torture or ill-treatment have access to redress and remedy.

United Nations Voluntary Fund for Victims of Torture

44. Voluntary contributions to international funds for victims of torture play an important role in providing assistance to them. The Committee highlights the important work done by the United Nations Voluntary Fund for Victims of Torture, which provides humanitarian assistance to victims of torture. The Committee highlights also the possibility for States parties to make voluntary contributions to this fund, irrespective of the national measures taken or contributions made.

Monitoring and reporting

45. States parties shall establish a system to oversee, monitor, evaluate, and report on their provision of redress measures and necessary rehabilitation services to victims of torture or ill-treatment. Accordingly, States parties should include in their reports to the Committee data disaggregated by age, gender, nationality, and other key factors regarding redress measures afforded to victims of torture or ill-treatment, in order to meet their

obligation as recalled in general comment No. 2 to provide continual evaluation of their efforts to provide redress to victims.

46. On the implementation of article 14, the Committee has observed the need to provide adequate information on the implementation of article 14 in States parties' reports. Therefore, the Committee wishes to underscore that specific information should be provided on the following:

(a) The number of victims of torture or ill-treatment who have sought compensation through legal, administrative and other means and the nature of the violations alleged; the number of victims who have been awarded compensation; and in what amounts;

(b) The measures taken to assist victims in the direct aftermath of torture;

(c) The rehabilitation facilities available to victims of torture or ill-treatment and the accessibility thereof, as well as the budget allocation for rehabilitation programmes and the number of victims who have received rehabilitative services appropriate to their needs;

(d) The methods available for assessing the effectiveness of rehabilitation programmes and services, including the application of appropriate indicators and benchmarks, and the result of such assessment;

(e) The measures taken to ensure satisfaction and guarantees of non-repetition;

(f) The domestic legislation which provides victims of torture or ill-treatment with the right to remedy and redress, and relevant implementation measures taken by the State party. Where such legislation is lacking, reports should include information on the measures taken by the State party to adopt and implement such legislation;

(g) The measures taken to ensure that all victims of torture or ill-treatment are able to exercise and enjoy their rights under article 14;

(h) The complaints mechanisms available for victims of torture or ill-treatment, including how such mechanisms are made known and accessible to all victims. States parties should also include data disaggregated by age, gender, nationality, location and alleged violation, on the number of complaints received through such mechanisms;

(i) The measures taken by States parties to ensure that all allegations of torture and ill-treatment are effectively investigated;

(j) The legislation and policy measures designed to positively identify victims of torture in order to provide them with redress;

(k) The available avenues for a victim of torture or ill-treatment to obtain redress, including all criminal, civil, administrative and non-judicial procedures, such as administrative reparation programmes, as well as information on the number of victims who have accessed such mechanisms, how many obtained redress and reparative measures, and in what forms and/or amounts;

(l) The legal aid and witness protection available to victims of torture or ill-treatment as well as witnesses and others who have intervened on behalf of victims, including how such protection is made known and how it is made available in practice; the number of victims who have been granted legal aid; the number of persons who have been protected by State witness protection; and the State party's evaluation of the effectiveness of such protection;

(m) The steps taken to implement judgements by national, regional or international courts, including the amount of time lapsed from the date of the judgement and the actual provision of compensation or other forms of redress. States parties should

also include disaggregated data on the number of victims designated to receive reparative measures in court judgements and the number who actually received redress, and for what violations;

(n) The safeguards available for the special protection of members of marginalized or vulnerable groups, including women and children seeking to exercise their rights guaranteed under article 14 of the Convention;

(o) Any such other matters that the Committee may require.

Annex XI

Statement of the Committee against Torture, adopted at its forty-ninth session (29 October–23 November 2012), on the report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies (A/66/860)

1. The Committee against Torture welcomes the report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies (A/66/860), issued in June 2012, and expresses its appreciation for the efforts of the High Commissioner following an extensive participatory process involving all the treaty body system's stakeholders. Efforts to strengthen the treaty body system, including adequate resourcing, are essential for the effective functioning of a system based on treaty obligations and assessments of compliance by independent supervisory bodies composed of independent experts. The adoption of working methods and rules of procedures by the treaty bodies themselves is a basic and fundamental expression of that independence.
2. The Committee will continue to discuss the valuable proposals compiled in the High Commissioner's report and pronounce itself on the specific proposals in due course. The following comments are an initial response to the recommendations contained therein.
3. The Committee welcomes the proposal for the simplified reporting procedure and notes that it initiated this procedure in 2007 through its new optional reporting procedure (lists of issues prior to reporting; see A/62/44, para. 23). The Committee against Torture was the first treaty body to use this procedure. The Committee agrees that establishing page limitations can preserve finances and notes that it has already carried out this proposal with regard to its own concluding observations, lists of issues and lists of issues prior to reporting. The Committee also notes that it has already implemented the recommendation not to request translation of its summary records.
4. The Committee strongly supports the need to fully recognize and reinforce the independence and impartiality of its members while performing their functions. The Committee's rules of procedure set a high standard for the independence and impartiality of its members, consistent with the standards for human rights treaty bodies as reflected in the Addis Ababa Guidelines, which the Committee will consider incorporating into its rules of procedure.
5. The Committee notes the proposal to establish a comprehensive reporting calendar to ensure timely reporting by States parties in accordance with their obligations. However, such a proposal will also require the need to ensure adequate financial and human resources as a prerequisite to the introduction of such a calendar, as well as the cooperation of the States parties. The Committee looks forward to further discussing the proposal and the impact of the calendar on the workload and the working methods of the Committee, as well as for the whole treaty body system.
6. The Committee notes with interest the proposal for an aligned methodology for constructive dialogue between States parties and treaty bodies, and underscores that during its session the Committee conducts meetings of one hour to obtain information from civil society organizations and a dialogue of five hours with each State party. The Committee will consider adopting written guidelines which reflect the relevant proposals in the High Commissioner's report.

7. The Committee further notes with interest the proposals to strengthen the individual communications procedure. It highlights the importance of consistent standards of protection and aligned working approaches in dealing with communications. The Committee welcomes the establishment of a treaty body jurisprudence database.

8. The Committee welcomes the recommendation to adopt short, focused and concrete concluding observations, noting the efforts it has already taken in this regard, and endeavours to continue this work, as mentioned in paragraph 1 above, as well as the importance of offering clear recommendations to the States parties.

9. The Committee welcomes the recommendation to strengthen further its interaction with relevant United Nations entities and civil society organizations. The Committee has affirmed the value of reliable independent information from civil society organizations and of receiving briefings from relevant United Nations entities. The Committee notes that it already meets with United Nations entities and civil society organizations with regard to each report it considers and, as a matter of transparency, makes public all the contributions from civil society organizations received on its website, except when there is fear of reprisals.

10. The Committee supports the recommendations made concerning the need to monitor and put an end to reprisals against human rights defenders after engagement with the Committee. It considers such reprisals to be of great harm to the effort to ensure compliance with the Convention's requirements, and asserts its willingness to take urgent and consistent measures in case of reprisals. For that purpose, the Committee established during its current session rapporteurs on reprisals for its respective functions under articles 19 and 22 of the Convention.

11. The Committee highlights the importance of its follow-up procedure to concluding observations, noting that it has appointed two follow-up rapporteurs since 2003, one on country reports and one on individual communications. It has routinely discussed ways to improve its follow-up procedure to advance the implementation of the Convention's requirements.

12. The Committee welcomes the proposal concerning an aligned consultation process for the elaboration of general comments and will discuss it further.

13. While noting that since 2010 all public sessions involving dialogues with State party delegations have been webcasted in cooperation with non-governmental organizations, the Committee welcomes the different proposals made to enhance the visibility and accessibility of the treaty bodies, such as the introducing of webcasting and videoconferencing, and will further explore these possibilities.

14. The Committee against Torture reiterates the importance of the High Commissioner's proposals and looks forward to further discussing the recommendations of the report of the High Commissioner for Human Rights that are directed to the treaty bodies.

Annex XII

Statement of the Committee against Torture, adopted at its forty-ninth session (29 October–23 November 2012), on the Guidelines on the independence and impartiality of members of the human rights treaty bodies (“the Addis Ababa guidelines”)

1. The members of the Committee against Torture discussed, during its forty-ninth session, the guidelines on the independence and impartiality of treaty body members (the “Addis Ababa Guidelines”, A/67/222, annex I, and Corr.1), which consolidate and reaffirm the rules of procedure and best practices of the 10 United Nations human rights treaty bodies.^a The members of the Committee welcome the initiative taken by the twenty-third and twenty-fourth meetings of the chairpersons of treaty bodies, which prepared these guidelines and recommended them to each committee’s consideration.

2. The members of the Committee also welcome the report of the United Nations High Commissioner for Human Rights on the strengthening the human rights treaty bodies (A/66/860), in which the High Commissioner recalls “the powers of the treaty bodies to decide on their own working methods and rules of procedure, and guarantee their independence as defined in the respective treaties” (p. 11). The High Commissioner’s report affirms that “achieving such a standard of independence and impartiality is a precondition for attaining the ultimate objective of the treaty body system, namely to provide the most objective and respected assessment and guidance to States parties in fulfilling their human rights treaty obligations” (p. 75).

3. The Committee members recall that the Committee is required, in article 18 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to “establish its own rules of procedure” and that, in exercise of this treaty provision, the Committee has set a high standard of independence and impartiality for its members in its rules of procedure (CAT/C/3/Rev.5). Notably, rule 15 addresses the “independence of members” and rule 73 addresses “obligatory non-participation or non-presence of a member in the consideration of a report”.

4. The Committee members note that the Addis Ababa Guidelines echo and affirm the Committee’s rules of procedure, including rule 15, paragraph 1, regarding accountability of its members “to the Committee and to their own conscience”. The guidelines also point out that members “may not be subject to direction or influence of any kind, or to pressure”

^a Each treaty body (except the Committee on Economic, Social and Cultural Rights) is tasked by the treaty itself to adopt its own rules of procedure. See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 18, para. 2; International Covenant on Civil and Political Rights, art. 39, para. 2; International Convention on the Elimination of All Forms of Racial Discrimination, art. 10, para. 1; Convention on the Elimination of All Forms of Discrimination against Women, art. 19, para. 1; Convention on the Rights of Persons with Disabilities, art. 34, para. 10; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 75, para. 1; Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 10, para. 2; International Convention for the Protection of All Persons from Enforced Disappearance, art. 26, para. 6. Note, the rules of procedure are not discussed in the International Covenant on Economic, Social and Cultural Rights, but the Committee has adopted its own rules of procedure, see E/C.12/1990/4/Rev.1.

from their own State or any other State or its agencies. They call for individual members, the Chair and the Committee as a whole “to safeguard the requirements of independence and impartiality of its members”.

5. The members of the Committee against Torture affirm their strong support for the independence and impartiality of all its members, as affirmed in the Addis Ababa Guidelines and look forward to further discussing ways to give effect to these guidelines during the Committee’s upcoming fiftieth session (from 6 to 31 May 2013), including by amending rule 14 of its rules of procedure. The amendment would add the word “independently” to the solemn declaration required of Committee members before assuming their duties following their first election to the Committee.

Annex XIII

Statement of the Committee against Torture, adopted at its fiftieth session, on the Guidelines on the independence and impartiality of members of the human rights treaty bodies (“the Addis Ababa guidelines”) and the amendments to its rules of procedure

1. During its fiftieth session, the Committee against Torture reiterated its strong support for the independence and impartiality of members of the human rights treaty bodies, as affirmed in the Addis Ababa guidelines (A/67/222, annex I, and Corr.1), and further discussed ways to give effect to these guidelines.
2. The Committee revisited these guidelines and their relation vis-à-vis its rules of procedure and, further to its statement of 23 November 2012 on the guidelines (CAT/C/49/3), decided, on 13 May 2013, to amend its rules of procedure to, inter alia, add a third paragraph to rule 15, as follows: “The Addis Ababa Guidelines on the independence and impartiality of members of the human rights treaty bodies are annexed to these rules of procedure. These guidelines are an important tool for the interpretation of the rules concerning the independence and impartiality of the members of the Committee.”

Annex XIV

Revised rules 14, 15 and 109 of the Committee's rules of procedure (CAT/C/3/Rev.6)

Solemn declaration

Rule 14

Before assuming his/her duties after his/her first election, each member of the Committee shall make the following solemn declaration in open Committee:

“I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee against Torture honourably, faithfully, independently, impartially and conscientiously.”

Independence and impartiality of members

Rule 15

1. The independence and impartiality of the members of the Committee are essential for the performance of their duties and require that members serve in their personal capacity and shall neither seek nor accept instructions from anyone concerning the performance of their duties. Members are accountable only to the Committee and their own conscience.
2. In their duties under the Convention, members of the Committee shall maintain the highest standards of impartiality and integrity, and apply the standards of the Convention equally to all States and all individuals, without fear or favour and without discrimination of any kind.
3. The Guidelines on independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines) are annexed to these rules of procedure. These guidelines are an important tool for the interpretation of the rules concerning the independence and impartiality of the members of the Committee.

Obligatory non-participation or non-presence of a member in the examination of a complaint

Rule 109

1. A member shall not take part in the examination of a complaint by the Committee or its subsidiary body if he/she:
 - (a) Has any personal interest in the case or if any other conflict of interest is present; or
 - (b) Has participated in any capacity, other than as a member of the Committee, in the making of any decision; or
 - (c) Is a national of the State party concerned or is employed by that country.

2. Such a member shall not be present during any non-public consultations or meetings of the Committee, as well as during any discussion, consideration or adoption related to this complaint.
3. Any question which may arise under paragraphs 1 and 2 above shall be decided by the Committee without the participation of the member concerned.

Annex XV

Status of reports, as at 31 May 2013

A. Initial reports

The status of initial reports as at 31 May 2013 is as follows:

Initial reports

<i>State party (since)</i>	<i>Overdue since</i>	<i>Due/received on</i>
Andorra (2006)	-	Received 14 November 2012
Antigua and Barbuda (1993)	17 August 1994	-
Bangladesh (1998)	4 November 1999	-
Botswana (2000)	7 October 2001	-
Burkina Faso (1999)	-	Received 8 November 2012
Cape Verde (1992)	3 July 1993	-
Congo (2003)	30 August 2004	-
Côte d'Ivoire (1995)	16 January 1997	-
Dominican Republic (2012)	23 February 2013	-
Equatorial Guinea (2002)	6 November 2003	-
Guinea (1989)	8 November 1990	-
Holy See (2002)	-	Received 7 December 2012
Iraq (2011)	6 August 2012	-
Lao People's Democratic Republic (2012)	-	Due 26 October 2013
Lebanon (2000)	3 November 2001	-
Lesotho (2001)	11 December 2002	-
Liberia (2004)	22 October 2005	-
Malawi (1996)	10 July 1997	-
Maldives (2004)	20 May 2005	-
Mali (1999)	27 March 2000	-
Mozambique (1999)	-	Received 18 October 2012
Nauru (2012)	-	Due 26 October 2013
Niger (1998)	3 November 1999	-

<i>State party (since)</i>	<i>Overdue since</i>	<i>Due/received on</i>
Nigeria (2001)	28 June 2002	-
Pakistan (2010)	23 July 2011	-
Saint Vincent and the Grenadines (2001)	30 August 2002	-
San Marino (2006)	27 December 2007	-
Seychelles (1992)	3 June 1993	-
Sierra Leone (2001)	-	Received 7 February 2013
Somalia (1990)	22 February 1991	-
Swaziland (2004)	25 April 2005	-
Thailand (2007)	-	Received 26 February 2013
Timor-Leste (2003)	16 May 2004	-
United Arab Emirates (2012)	-	Due 19 August 2013
Vanuatu (2011)	11 August 2012	-

B. Periodic reports

The status of periodic reports as at 31 May 2013 is as follows:

Periodic reports

<i>State party (since)</i>	<i>Last examination</i>	<i>Overdue since</i>	<i>Due/received on</i>
Afghanistan (1987)	Initial November 1992	Second 25 June 1996	-
Albania (1994)	Second May 2012	-	Third Due 1 June 2016
Algeria (1989)	Third May 2008	Fourth 20 June 2012	-
Argentina* (1986)	Fourth November 2004	Fifth and sixth 25 June 2008	-
Armenia (1993)	Third May 2012	-	Fourth Due 1 June 2016
Australia* (1989)	Third May 2008	Fourth and fifth 30 June 2012	-
Austria* (1987)	Fourth and fifth May 2010	-	Sixth Due 14 May 2014

<i>State party (since)</i>	<i>Last examination</i>	<i>Overdue since</i>	<i>Due/received on</i>
Azerbaijan* (1996)	Third November 2009	-	Fourth Due 20 November 2013
Bahrain (1998)	Initial May 2005	Second 4 April 2007	-
Belarus* (1987)	Fourth November 2011	-	Fifth Due 25 November 2015
Belgium* (1999)	Second November 2009	-	Third Received 5 July 2012
Belize* (1986)	Initial November 1993	Initial and second 25 June 1996**	-
Benin* (1992)	Second November 2007	Third 30 December 2011	-
Bolivia (Plurinational State of)* (1999)	Second May 2013	-	Third Due 31 May 2017
Bosnia and Herzegovina* (1993)	Second to fifth November 2010	-	Sixth Due 19 November 2014
Brazil* (1989)	Initial May 2001	Second 27 October 2002	-
Bulgaria* (1986)	Fourth to fifth November 2011	-	Sixth Due 25 November 2015
Burundi (1993)	Initial November 2006	-	Second Received 18 April 2012
Cambodia* (1992)	Second November 2010	-	Third Due 19 November 2014
Cameroon (1986)	Fourth May 2010	-	Fifth Due 14 May 2014
Canada (1987)	Sixth May 2012	-	Seventh Due 1 June 2016
Chad* (1995)	Initial May 2009	Second 15 May 2012	-
Chile* (1988)	Fifth May 2009	Sixth 15 May 2013	-
China (incl. Hong Kong and Macao) (1988)	Fourth November 2008	Fifth 21 November 2012	-
Colombia* (1987)	Fourth November 2009	-	Fifth Due 20 November 2013

<i>State party (since)</i>	<i>Last examination</i>	<i>Overdue since</i>	<i>Due/received on</i>
Costa Rica* (1993)	Second May 2008	Third 30 June 2012	-
Croatia* (1992)	Third May 2004	-	Fourth and fifth Received 19 March 2013
Cuba (1995)	Second May 2012	-	Third Due 1 June 2016
Cyprus* (1991)	Third November 2002	-	Fourth Received 30 November 2012
Czech Republic* (1993)	Fourth and fifth May 2012	-	Sixth Due 1 June 2016
Democratic Republic of the Congo (1996)	Initial November 2005	Second to fourth 16 April 2009	-
Denmark* (1987)	Fifth May 2007	Sixth and seventh 30 June 2011	-
Djibouti (2002)	Initial November 2011	-	Second Due 25 November 2015
Ecuador* (1988)	Fourth to sixth November 2010	-	Seventh Due 19 November 2014
Egypt (1986)	Fourth November 2002	Fifth 25 June 2004	-
El Salvador* (1996)	Second November 2009	-	Third Due 20 November 2013
Estonia* (1991)	Fifth May 2013	-	Sixth Due 31 May 2017
Ethiopia (1994)	Initial November 2010	-	Second Due 19 November 2014
Finland* (1989)	Fifth and sixth May 2011	-	Seventh Due 3 June 2015
France (1986)	Fourth to sixth May 2010	-	Seventh Due 14 May 2014
Gabon (2000)	Initial November 2012	-	Second Due 23 November 2016
Georgia* (1994)	Third May 2006	Fourth and fifth 24 November 2011	-
Germany* (1990)	Fifth November 2011	-	Sixth Due 25 November 2015

<i>State party (since)</i>	<i>Last examination</i>	<i>Overdue since</i>	<i>Due/received on</i>
Ghana (2000)	Initial May 2011	-	Second Due 3 June 2015
Greece* (1988)	Fifth and sixth May 2012	-	Seventh Due 1 June 2016
Guatemala* (1990)	Fifth and sixth May 2013	-	Seventh Due 31 May 2017
Guyana* (1988)	Initial November 2006	Second 31 December 2008	-
Honduras* (1996)	Initial May 2009	Second 15 May 2013	-
Hungary* (1987)	Fourth November 2006	Fifth and sixth 31 December 2010	-
Iceland* (1996)	Third May 2008	Fourth 30 June 2012	-
Indonesia (1998)	Second May 2008	Third 30 June 2012	-
Ireland* (2002)	Initial May 2011	-	Second Due 3 June 2015
Israel* (1991)	Fourth May 2009	Fifth 15 May 2013	-
Italy* (1989)	Fourth and fifth May 2007	Sixth 30 June 2011	-
Japan* (1999)	Second May 2013	-	Third Due 31 May 2017
Jordan* (1991)	Second May 2010	-	Third Due 14 May 2014
Kazakhstan (1998)	Second November 2008	Third 21 November 2012	-
Kenya* (1997)	Second May 2013	-	Third Due 31 May 2017
Kuwait* (1996)	Second May 2011	-	Third Due 3 June 2015
Kyrgyzstan* (1997)	Initial November 1999	-	Second Received 3 April 2012
Latvia* (1992)	Second November 2007	-	Third to fifth Received 3 May 2012
Libya* (1989)	Third May 1999	Fourth 14 June 2002	-

<i>State party (since)</i>	<i>Last examination</i>	<i>Overdue since</i>	<i>Due/received on</i>
Liechtenstein* (1990)	Third May 2010	-	Fourth Due 14 May 2014
Lithuania* (1996)	Second November 2008	-	Third Received 8 October 2012
Luxembourg* (1987)	Fifth May 2007	Sixth and seventh 30 June 2011	-
Madagascar (2005)	Initial November 2011	-	Second Due 25 November 2015
Malta* (1990)	Second November 1999	Third 12 December 2000	-
Mauritania (2004)	Initial May 2013	-	Second Due 31 May 2017
Mauritius* (1992)	Third May 2011	-	Fourth Due 3 June 2015
Mexico* (1986)	Fifth and sixth November 2012	-	Seventh Due 23 November 2016
Monaco* (1991)	Fourth and fifth May 2011	-	Sixth Due 3 June 2015
Mongolia* (2002)	Initial November 2010	-	Second Due 19 November 2014
Montenegro* (2006)	Initial November 2008	-	Second Received 24 December 2012
Morocco* (1993)	Fourth November 2011	-	Fifth Due 25 November 2015
Namibia (1994)	Initial May 1997	Second 27 December 1999	-
Nepal (1991)	Second November 2005	Third to fifth 12 June 2008	-
Netherlands* (1988)	Fifth and sixth May 2013	-	Seventh Due 31 May 2017
New Zealand* (1989)	Fifth May 2009	Sixth 15 May 2013	-
Nicaragua (2005)	Initial May 2009	Second 15 May 2013	-
Norway* (1986)	Sixth and seventh November 2012	-	Eighth Due 23 November 2016

<i>State party (since)</i>	<i>Last examination</i>	<i>Overdue since</i>	<i>Due/received on</i>
Panama (1987)	Third May 1998	Fourth 27 September 2000	-
Paraguay* (1990)	Fourth to sixth November 2011	-	Seventh Due 25 November 2015
Peru* (1988)	Fifth and sixth November 2012	-	Seventh Due 23 November 2016
Philippines* (1986)	Second May 2009	Third 15 May 2013	-
Poland* (1989)	Fourth May 2007	-	Fifth and sixth Received 22 May 2012
Portugal* (1989)	Fourth November 2007	-	Fifth and sixth Received 29 August 2012
Qatar (2000)	Second November 2012	-	Third Due 23 November 2016
Republic of Korea* (1995)	Second May 2006	Third to fifth 7 February 2012	-
Republic of Moldova* (1995)	Second November 2009	-	Third Due 20 November 2013
Romania* (1990)	Initial May 1992	Second 16 January 1996	-
Russian Federation* (1987)	Fifth November 2012	-	Sixth Due 23 November 2016
Rwanda (2008)	Initial May 2012	-	Second Due 1 June 2016
Saudi Arabia (1997)	Initial May 2002	Second 21 October 2002	-
Senegal (1986)	Third November 2012	-	Fourth Due 23 November 2016
Serbia* (2001)	Initial November 2008	Second 21 November 2012	-
Slovakia* (1993)	Second November 2009	-	Third Due 20 November 2013
Slovenia* (1993)	Third May 2011	-	Fourth Due 3 June 2015
South Africa (1998)	Initial November 2006	Second 31 December 2009	-

<i>State party (since)</i>	<i>Last examination</i>	<i>Overdue since</i>	<i>Due/received on</i>
Spain* (1987)	Fifth November 2009	-	Sixth Due 20 November 2013
Sri Lanka (1994)	Third and fourth November 2011	-	Fifth Due 25 November 2015
Sweden* (1986)	Fifth May 2008	-	Sixth and seventh Received 11 March 2013
Switzerland* (1986)	Fifth and sixth May 2010	-	Seventh Due 14 May 2014
Syrian Arab Republic (2004)	Initial May 2010	-	Second Due 14 May 2014
Tajikistan (1995)	Second November 2012	-	Third Due 23 November 2016
The former Yugoslav Republic of Macedonia* (1994)	Second May 2008	Third 30 June 2012	-
Togo (1987)	Second November 2012	-	Third Due 23 November 2016
Tunisia (1988)***	Second November 1998	-	Third Received 16 November 2009
Turkey* (1988)	Third November 2010	-	Fourth Due 19 November 2014
Turkmenistan (1999)	Initial May 2011	-	Second Due 3 June 2015
Uganda* (1986)	Initial May 2005	Second 25 June 2008	-
Ukraine* (1987)	Fifth May 2007	-	Sixth Received 4 March 2013
United Kingdom of Great Britain and Northern Ireland (1988)	Fifth May 2013	-	Sixth Due 31 May 2017
United States of America* (1994)	Second to fourth May 2006	Fifth 19 November 2011	-
Uruguay* (1986)	Second November 1996	-	Third Received 14 September 2012
Uzbekistan (1995)	Third November 2007	-	Fourth Received 29 December 2011

<i>State party (since)</i>	<i>Last examination</i>	<i>Overdue since</i>	<i>Due/received on</i>
Venezuela (Bolivarian Republic of) (1991)	Second and third May 2002	-	Third and fourth Received 11 September 2012
Yemen (1991)	Second May 2010	-	Third Due 14 May 2014
Zambia* (1998)	Second May 2008	Third 30 June 2012	-

* State parties that have accepted the optional reporting procedure.

** See *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 44* A/49/44), para. 46.

*** The State party will submit an additional updated report.

Annex XVI

Country Rapporteurs for the reports of States parties considered by the Committee at its forty-ninth and fiftieth sessions (in alphabetical order)

A. Forty-ninth session

<i>Report</i>	<i>Rapporteur 1</i>	<i>Rapporteur 2</i>
Gabon (CAT/C/GAB/1)	Ms. Belmir	Mr. Domah
Mexico (CAT/C/MEX/5-6)	Mr. Mariño	Mr. Gaye
Norway (CAT/C/NOR/6-7)	Mr. Grossman	Mr. Wang
Peru (CAT/C/PER/6)	Ms. Sveaass	Mr. Wang
Qatar (CAT/C/QAT/2/Rev.1)	Ms. Gaer	Ms. Belmir
Russian Federation (CAT/C/RUS/5)	Ms. Gaer	Mr. Bruni
Senegal (CAT/C/SEN/3)	Mr. Mariño	Mr. Grossman
Tajikistan (CAT/C/TJK/2)	Ms. Sveaass	Mr. Tugushi
Togo (CAT/C/TGO/2)	Mr. Bruni	Mr. Gaye

B. Fiftieth session

<i>Report</i>	<i>Rapporteur 1</i>	<i>Rapporteur 2</i>
Bolivia (Plurinational State of) (CAT/C/BOL/2)	Mr. Mariño	Ms. Sveaass
Estonia (CAT/C/EST/5)	Ms. Gaer	Mr. Wang
Guatemala (CAT/C/GTM/5-6)	Mr. Grossman	Ms. Sveaass

<i>Report</i>	<i>Rapporteur 1</i>	<i>Rapporteur 2</i>
Japan (CAT/C/JPN/2)	Mr. Mariño	Mr. Grossman
Kenya (CAT/C/KEN/2)	Mr. Domah	Mr. Wang
Mauritania (CAT/C/MRT/1)	Mr. Domah	Mr. Gaye
Netherlands (CAT/C/NLD/5-6)	Mr. Bruni	Ms. Belmir
United Kingdom of Great Britain and Northern Ireland CAT/C/GBR/5	Mr. Bruni	Ms. Tugushi

Annex XVII

Decisions of the Committee against Torture under article 22 of the Convention

A. Decisions on merits

Communication No. 385/2009: *M.A.F. et al. v. Sweden*

<i>Submitted by:</i>	M.A.F. et al. (not represented by counsel)
<i>Alleged victim:</i>	The complainants
<i>State party:</i>	Sweden
<i>Date of communication:</i>	13 May 2009 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2012,

Having concluded its consideration of complaint No. 385/2009, submitted to the Committee against Torture by M.A.F. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The main complainant, M.A.F., was born in 1971 and is a Libyan national. The other complainants are his wife, Z.A., a Libyan national born in 1970, and their five children. The complainants claim that their deportation to Libya would constitute a violation by the State party of article 3 of the Convention. The complainants are not represented by counsel.

1.2 On 26 June 2009, in application of rule 108, paragraph 1, of its rules of procedure,^a the Committee asked the State party not to expel the complainants to Libya^b while their complaint was being considered.

^a This rule now appears as rule 114, paragraph 1, of the Committee's revised rules of procedure (CAT/C/3/Rev.5).

^b Pursuant to a request of 16 September 2011 by the National Transitional Council, the official name was changed from Libyan Arab Jamahiriya to Libya. References to Libya in the current document should be read accordingly.

The facts as submitted by the complainants

2.1 M.A.F.'s brother was a political activist against the Qaddafi Government who was arrested and sentenced to prison in 2001. After his brother's arrest, the Libyan authorities confiscated the complainant's house and ordered M.A.F.'s employer to dismiss him, accusing him and his family of supporting the opposition to the Qaddafi Government. M.A.F. was subjected to violence and torture during interrogations by the Libyan security forces in January 2001 and again in November 2002, when police broke his nose. Also in November 2002, Z.A. was shoved by police, causing her to fall and lose the foetus she was carrying. In 2003, another of M.A.F.'s brothers was arrested and imprisoned by the Libyan authorities. Both brothers remained in prison at the time of the submission of the complaint. On 4 May 2006, M.A.F. was arrested and imprisoned for two months, during which time he was subjected to torture. Z.A. suffered a nervous breakdown following his detention, and his children were no longer able to attend school, as the family frequently changed their place of residence due to persecution by the Libyan authorities. In March 2007, the Libyan authorities issued a warrant for the arrest of M.A.F., to be enforced prior to 1 September 2007. The complainants decided to seek asylum in a European country. They paid US\$ 15,000 and 30,000 Libyan dinars to a high-ranking Libyan official working in the passport services, who provided the family with false passports under different names. This official travelled with the family to Stockholm, where he took back the false passports before returning to Tripoli.

2.2 Upon the complainants' arrival in Sweden on 28 May 2007, they applied for asylum. Their application was rejected by the Swedish Migration Board on 10 December 2007. The Board noted that neither M.A.F. nor Z.A. had been politically active or convicted of any crime, and they were not able to describe the political activities of M.A.F.'s brother. The Board doubted the accuracy of the family's travel route as stated, in particular their claim to have passed strict airport controls in Tripoli with a smuggler. Overall, the Board found that the means by which the family left the country showed that they were of no interest to the Libyan authorities, and concluded that their return to Libya would not expose them to a real risk of persecution, corporal punishment, torture or any inhuman or degrading treatment by the State authorities.

2.3 The complainants subsequently appealed to the Swedish Migration Court, which rejected the appeal on 16 May 2008. The Court found that the new elements of the complainants' case which had not been raised before the Migration Board lowered their credibility and in some cases conflicted with oral information. These elements included a beating of M.A.F. by the police in November 2002, Z.A. losing a foetus, and a requirement that M.A.F. report regularly to the Libyan authorities following his release from prison. The Court questioned the authenticity of new documents presented to establish the family's identity, which were based on copies. Information provided by the complainants on the situation in Libya was found to be general, and did not show that the family was at particular risk.

2.4 Leave to appeal to the Migration Court of Appeal was denied to the complainants on 30 June 2008. No further appeal is possible.

The complaint

3.1 The complainants claimed that their forcible deportation to Libya by Sweden would amount to a violation of article 3 of the Convention. They invoked the pattern of gross, flagrant and mass human rights violations in Libya under the Qaddafi Government, including the systematic practice of torture by security forces. The complainants further claimed that they were at personal risk, as M.A.F. was previously tortured due to his family's political activism.

3.2 Following the removal of the Qaddafi Government and the establishment of the National Transitional Council, the complainants claim that their forcible deportation would still violate article 3 of the Convention. They invoke instability in the Abu Salim area of Tripoli, and the fact that Z.A.'s cousins fought on the side of Qaddafi during the revolt.

State party's observations on admissibility and the merits

4.1 On 26 February 2010, the State party submitted its observations on the admissibility and the merits. The State party acknowledges that all available domestic remedies have been exhausted. The State party considers that the complainants' assertion that they are at risk of being treated in a manner that would amount to a breach of the Convention fails to rise to the basic level of substantiation required for the purposes of admissibility and is thus inadmissible pursuant to article 22, paragraph 2, of the Convention. The State party refers, for this conclusion, to the Committee's jurisprudence^c and its arguments on the merits, set out below.

4.2 The State party notes that the allegations made by the complainants in their complaint to the Committee were thoroughly examined by the Swedish Migration Board and Migration Court, applying the same kinds of test as those applied by the Committee in its jurisprudence. The State party considers that the credibility that may be attached to an asylum seeker's statements is often of great significance to the assessment of the application, and that national authorities are in a very good position to estimate the credibility of a claim that a person would be at risk of treatment that would violate article 3 of the Convention, especially since they have personal contact with the asylum seeker. Before deciding on this case, the Migration Board conducted two interviews each with the main complainant and his wife, and the Migration Court held an oral hearing, which enhanced their ability to adequately assess the complainants' submissions.

4.3 Regarding the written evidence presented by the complainants to substantiate their claims, the State party notes that the complainants' identity documents were issued on the basis of photocopies of a "family book", with one of the documents dated 2004, despite the fact that it was issued in 2007. The State party considers that the documents are therefore inconclusive in determining the identity of the complainants. The State party further considers that the complainants' failure to provide a satisfactory explanation for not providing adequate identification documents weakens the general credibility of their submissions. In support of the claim that M.A.F. suffered a broken nasal bone as a result of having been subjected to violence by the Libyan police, the complainants submitted, in the national proceedings, a medical journal and a medical certificate from a Swedish doctor, both drawn up in January 2008. These documents do not indicate any connection between the alleged incident and the injury invoked and so do not, in the State party's view, substantiate the complainants' claim. In support of the claim that Z.A. lost a foetus as a result of being pushed by police, the complainants submitted a discharge sheet from a Libyan hospital, dated 3 December 2002. As far as the State party understands, this document does not establish any connection between the alleged incident and the loss of the foetus. In the State party's view, the written evidence adduced by the complainants is not such as to substantiate that they would risk being subjected to treatment contrary to article 3 of the Convention if returned to Libya.

4.4 The complainants have not presented any documents in support of their claim that the family was persecuted and harassed by the Libyan authorities for many years. Since the alleged persecution is said to have gone on for a long time, and involved the arrest,

^c See, for example, communication No. 216/2002, *H.I.A. v. Sweden*, decision adopted on 2 May 2003, para. 6.2.

supervision and interrogation on a regular basis of M.A.F., the State party considers that it could have been expected that some form of written evidence would have been presented in support of the claimants' account of events.

4.5 The State party considers that the complainants' oral and written submissions contain elements of vagueness and inconsistency. In particular, the complainants have failed to provide any explanation as to the nature of the activities of M.A.F.'s brother other than the assertion, which was not submitted until the oral hearing at the Migration Court, that he was contacted on a number of occasions by army officers who provided him with documents. The State party considers it highly improbable that the complainants would have no information about the political activities of M.A.F.'s brother if they had in fact led to the severe consequences described by the complainants.

4.6 The State party considers the complainants' submission as to how they were able to leave Libya in spite of the alleged persecution by the authorities to be vague and inconsistent. Before leaving Libya, the complainants claim to have received help from a man who informed them that M.A.F. was to be arrested before 1 September 2007. The complainants did not initially provide any information about this man, and claimed only at the oral hearing before the Migration Court that he was a friend of M.A.F.'s father, who is a retired colonel, without providing an explanation as to why the man had information about the alleged arrest warrant. The complainants submitted divergent information regarding a second man who helped them escape, claiming in a written submission by their counsel to the Migration Board of 19 September 2007 that he was an acquaintance of Z.A.'s parents, and in the interview by the Migration Board on 10 December 2007 that he was a relative of Z.A. In the written submission by the complainants' counsel to the Migration Board, it is claimed that the police, in connection with M.A.F.'s release from detention in 2006, told him to disappear from the country. The State party would therefore have expected the complainants to have been able to obtain authentic passports. The State party considers that the complainants have submitted vague and inconsistent information in important respects, without providing a satisfactory explanation, which weakens the credibility of their submissions.

4.7 The State party notes that the complainants, during the course of the procedure before the Swedish authorities, added allegations of significance to their application for asylum. It was not until the oral hearing at the Migration Court that the complainants claimed that M.A.F. was regularly subjected to interrogations during the period 2003–2006, that he was subjected to supervision and forced to sign documents on a regular basis for about four months in connection with his release from prison in 2006, and that a warrant for his arrest had been issued in March 2007 following his refusal to comply with the demands of the authorities from late 2006. The State party considers it improbable that the Libyan authorities would take so long to act on his refusal to obey them. Furthermore, in the written submission by the complainants' counsel to the Migration Board of 19 September 2007, it was stated that the Libyan police had not caused M.A.F.'s wife or children any physical harm, but in the appeal to the Migration Court of 9 January 2008, it was claimed that on 23 November 2002 Z.A. was pushed by police in a manner that caused her to lose the foetus she was carrying. The appeal also stated, in addition to what was submitted to the Migration Board, that the police beat M.A.F. on one occasion, causing him a broken nasal bone. The State party considers that the addition of allegations of importance subsequent to the Migration Board's decision to reject the complainants' applications, without a satisfactory explanation as to why this information was initially omitted, weakens the credibility of the complainants' submissions.

4.8 The State party further notes that the complainants' allegations before the Committee are not completely consistent with their statements to the Swedish migration authorities. Before the Committee, the complainants submit that M.A.F. was interrogated

by Libyan security services between January 2001 and November 2002, while they stated to the Swedish migration authorities that this took place for about three years until 2003.

4.9 The complainants allegedly left Libya in May 2007. The State party submits that if the Committee, contrary to the position of the State party, should find that the complainants have substantiated the reasons stated for leaving their home country, there is little to suggest that they would be of interest to the Libyan authorities if deported there now.

4.10 The State party takes the view that the evidence and circumstances invoked by the complainants do not suffice to show that the alleged risk of torture fulfils the requirements of being foreseeable, real and personal. Since the complainants' claim under article 3 fails to rise to the basic level of substantiation, the communication should be declared inadmissible as being manifestly unfounded.

Complainant's comments on the State party's observations

5.1 Prior to submitting his comments, the main complainant provided copies of records of medical visits and additional documents on 22 July 2010 and 2 November 2010.

5.2 On 10 January 2011, M.A.F. submitted his comments on the State party's observations. The complainant attached copies of some of the supporting documentation submitted to the Swedish Migration Board and Migration Court. Regarding the alleged inconsistencies and vagueness in the evidence provided to the Swedish authorities, M.A.F. states that he left Libya under very stressful circumstances where he was very afraid, and in such situations it is not uncommon for a person not to remember everything in detail. He further states that persons participating in political activities with the Libyan opposition have to be very careful, and under these circumstances it is quite natural that his brother did not tell even close relatives about his activities, particularly as he had contacts with and cooperated with army officers.

5.3 M.A.F. further referred to his family's two attempts to obtain residence in Norway and his efforts in travelling to Geneva as indicating that the complainants' fear of violence from the Libyan authorities was real and well grounded.

Additional comments by the parties

6.1 On 25 March 2011, the State party informed the Committee that, due to the security situation in Libya, Swedish authorities were not enforcing removals to the country, and requested that the communication be adjourned until further notice.

6.2 On 20 April 2012, M.A.F. provided additional information. He states that, while his initial claim concerned protection from the former Qaddafi Government, the complainants would still be at risk from the current Government. He notes that in March 2012, an armed clash occurred in the Abu Slem area in Tripoli, and an armed group kidnapped one of his brothers from his sister's house. The kidnappers informed M.A.F.'s family that they belonged to the military council, but the military council claimed not to have any knowledge of the event when contacted by the family. M.A.F. states that he and his family would be at risk of kidnap if deported to Libya. He further states that his house was destroyed in the civil war, that residents of the Abu Slem area of Tripoli, where he lived, are at particular risk of being killed or kidnapped, and referred to reports on the health situation in Libya, as well as the risk of rape. M.A.F. further states that his wife's cousins fought on the side of Qaddafi during the revolt, making her a target for revenge or torture.

6.3 On 10 May 2012, the State party provided additional information. The State party noted that, on 25 February 2010, M.A.F. submitted a new application to the Migration Board for re-examination of his case. M.A.F. claimed that the Libyan authorities subjected him to rape during his imprisonment in 2006, and submitted a copy of a medical journal

dated 23 February 2010 in support of his claim. On 9 July 2010, the Migration Board decided not to grant the complainant a new examination, holding that both the Migration Board and the Migration Court had found reason to question the credibility of his earlier submissions, and that this new claim was merely an addition to those submissions. M.A.F. did not appeal this decision, but subsequently submitted another new application to the Migration Board for re-examination of his case, which was rejected on 26 October 2010. The Migration Board held that, as there had been doubts regarding M.A.F.'s identity, the letter he had submitted from the General People's Committee for General Security summoning the complainant to the Department of Internal Security on 8 April 2008 could not be linked to him. Furthermore, the document was of a simple character and had been submitted only in copy, and so had limited value as evidence. The complainant appealed the Migration Board's decision to the Migration Court. He submitted a letter that he claimed was the original summons from the General People's Committee for General Security, but this letter differed in form and content from that submitted to the Migration Board. On 17 January 2011, the Migration Court rejected the complainant's appeal, holding that neither the Board nor the Court had found that the complainant had made his identity probable and that the document, given its simple character and the lack of details as to how the complainant had obtained it, lacked real value as evidence. On 24 February 2011, the Migration Court of Appeal decided not to grant leave to appeal.

6.4 On 16 September 2011, the complainants were registered by the Migration Board as having absconded.

6.5 The State party notes that the Director for Legal Affairs at the Migration Board issued "legal standpoints" concerning Libya on 21 February 2011, 17 June 2011 and 25 October 2011. The legal standpoint of 25 October 2011 states that there is no functioning system for taking reasonable and necessary measures to prevent people being persecuted or suffering serious harm in Libya. However, given the substantially improved security situation, it may be possible, relevant and reasonable for a person to seek refuge elsewhere in the country, depending on their individual situation. The standpoint identifies particularly vulnerable groups, including those who risk being accused of loyalty to the previous Qaddafi Government, and internally displaced persons belonging to particular minorities. The standpoint notes reports of tensions in Tripoli, notably in and around districts in Abu Slem traditionally loyal to Qaddafi. The State party considers that it is not likely that the alleged risk of torture and the alleged threat of reprisals against the complainants still exist. There is no information to suggest that the complainants belong to a group that is particularly vulnerable, and the level and intensity of violence in Libya are not such that the general security situation itself suffices to establish that removal of the complainants would breach the State party's obligations under article 3 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee also notes the State party's confirmation, in its submission of 26 February 2010, that all domestic remedies have been exhausted pursuant to article 22, paragraph 5 (b).

7.3 The State party submits that the complaint is "manifestly ill-founded" and should not be examined on its merits. The Committee is of the opinion that the arguments before it

raise substantive issues which should be dealt with on the merits and not on admissibility considerations alone.

7.4 Accordingly, the Committee finds the communication admissible and proceeds to its consideration on the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

8.2 The issue before the Committee is whether the expulsion of the complainants to Libya would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 Regarding the complainants' allegations under article 3, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such analysis is to determine whether the complainant runs a personal risk of being subjected to torture in Libya. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture if expelled to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.^d

8.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention,^e which states that the risk of torture need not be highly probable, but it must be personal and present. In this regard, the Committee has established in previous decisions that the risk of torture must be "foreseeable, real and personal".^f As to the burden of proof, the Committee also recalls that it is normally for the complainant to present an arguable case, and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

8.5 Additionally, the Committee recalls that, in accordance with its general comment No. 1, considerable weight will be given to the State party's findings of fact, but the Committee is not bound by such findings and instead has the power of free assessment of the facts based upon the full set of circumstances in every case.

8.6 In assessing the risk of torture in the present case, the Committee notes that the complainants have submitted some documents in support of their initial claim that they would risk torture if returned to Libya under the Qaddafi Government. However, the complainants have submitted no evidence to support their claim that they would currently be in danger of being subjected to torture if returned to Libya, following the revolt and change in government. In his submission of 20 April 2012, M.A.F. referred to general instability in parts of Tripoli and the health situation in the country. He further stated that he

^d See communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

^e *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX.

^f See communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, para. 7.3; No. 285/2006, *A.A. et al. v. Switzerland*, decision adopted on 10 November 2008, para. 7.6; and No. 350/2008, *R.T.-N. v. Switzerland*, decision adopted on 3 June 2011, para. 8.4.

and his family would risk kidnapping or torture if returned, in particular due to his wife's cousins having fought on the side of Qaddafi during the civil war, but provided no documentary evidence in support of these claims.

8.7 The Committee is aware of the human rights situation in Libya but considers that, in particular given the shift in political authority and the present circumstances, the complainants have not substantiated their claim that they would personally be at risk of being subjected to torture if returned to Libya.

8.8 The Committee considers, on the basis of all the information before it, that there is no ground to conclude that the complainants would face a foreseeable, real and personal risk of being subjected to torture if returned to Libya. The Committee therefore concludes that their removal to that country would not constitute a breach of article 3 of the Convention.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Libya by the State party would not constitute a breach of article 3 of the Convention.

Communication No. 389/2009: *R.A. v. Switzerland*

<i>Submitted by:</i>	R.A. (represented by the Service d'Aide Juridique aux Exilé-e-s (SAJE))
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	29 June 2009 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 20 November 2012,

Having concluded its consideration of complaint No. 389/2009, submitted to the Committee against Torture on behalf of R.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1. The complainant, R.A., a national of Turkey born in 1976 and currently residing in Switzerland, maintains that his return to Turkey would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by the Service d'Aide Juridique aux Exilé-e-s (SAJE).

The facts as submitted by the complainant

2.1 The complainant is a Kurdish Alevi. He is originally from the Kurdish village of Tilkiler/Pazarcik, in eastern Turkey, which was annexed by the Turkish army in February 1994. The Kurdistan Workers' Party was active in the region and nearly all Kurdish inhabitants were suspected by the authorities of being in collusion with that party. The complainant and his family were harassed by the authorities. The complainant was also encouraged by the authorities to become a "village guardian", which involves keeping an eye on the inhabitants of the village and reporting them to the authorities if they engage in suspicious political activities. The complainant refused. Following the Turkish army's attack on the village in 1994, the complainant, then aged 18, moved to Gaziantep with his family.

2.2 In August 1995, while the complainant was in a park, talking in Kurdish to three friends from the village, two police cars pulled up beside them. The police officers proceeded to search them and took their identity cards. When the officers realized that they were from Tilkiler, they hit them for no reason, arrested them, and drove them to the police station. In a room at the police station, they beat them with batons. The police officers had told them to wash their hands beforehand in cold water, apparently because this intensifies the pain.

2.3 Some members of the complainant's family have links with Kurdish resistance movements. In fact, a cousin of the complainant on his father's side, H.A., used to belong to the guerrilla movement and is currently in prison serving a life sentence following his arrest in 1995. Another of the complainant's cousins, on his mother's side, is a member of the guerrilla forces.

2.4 In October 1995, the complainant and his family were arrested again and questioned about H.A., but the family had not had any contact with him for a long time. Following this arrest, the complainant was severely beaten, tortured and held in custody at the police station for a day.

2.5 During his military service from 1996 to 1997, the complainant was ill-treated because he was a Kurd and an Alevi. At one point he was made to do forced labour and was placed in disciplinary detention for 10 days as a punishment for speaking Kurdish over the telephone to his mother, who speaks no Turkish.

2.6 In June 2000, during a military operation in the village, the complainant's father was arrested in his field. He had his lunch with him and was accused of taking food to a terrorist organization. When the complainant went to Pazarcik police station to find out what was going on, he was arrested and beaten. He was released the next day, but his father remained in custody.

2.7 The complainant is a supporter of the Democratic People's Party. He carried out propaganda activities and took part in its celebrations and meetings. In June 2001, he visited the Democratic People's Party premises in Antep for a meeting to commemorate the death of "brothers" in prison. This commemoration had been authorized. When he left, he was arrested by the civil police and taken to Akyol police station, where he was falsely accused of spreading Kurdistan Workers' Party propaganda. He was also searched, questioned, ill-treated and held in custody for a day. During the 2002 parliamentary elections, the complainant carried out activities on behalf of the Democratic People's Party and was followed by the police. One of his cousins was a Democratic People's Party candidate in the elections.

2.8 One night in March 2003, the complainant was called and asked to go visit a certain woman. He thought it was to do with his work as a fashion designer, but in fact it was a trap. He was beaten up by strangers. When the police finally arrived, he was bleeding and they took him to hospital, but he received no treatment. They then took him to Akyol police station where, without prior questioning, he was charged with harassing the woman in question and of being a "terrorist". Although injured, he was again beaten and had to spend the night in the police station. When, the following morning, he was able to prove to a judge that he had been called by this woman, he was finally released, with the help of a cousin who was a lawyer, and was cleared of any criminal charges. The woman's family then vowed to take revenge against the complainant, who went into hiding after his release. In June 2003, he moved to Istanbul, where he remained until October 2004.

2.9 The complainant left Turkey in November 2004. He initially filed an application for asylum in Germany, which was rejected in April 2007. He then applied for asylum in Switzerland on 1 October 2007. On 20 January 2009, the Federal Office for Migration dismissed the asylum application on the grounds that, under the Federal Asylum Act (art. 32, para. (2) (f)), there is no need to consider a request for asylum submitted by a person whose application has previously been denied by a European Union country, unless new events have occurred in the intervening period that might justify the granting of refugee status or temporary protection. The Federal Office for Migration deemed that, in the present case, there was no new evidence to justify a re-examination of the case, as the applicant had not returned to Turkey since leaving in 2004.

2.10 A late appeal was lodged by the complainant with the Federal Administrative Court, which found it inadmissible on 5 March 2009. The complainant submitted an application for review of the decision of the Federal Office for Migration on 12 March 2009; the application was accompanied by a number of documents aimed at establishing the danger faced by the complainant if he returned to Turkey. This evidence was intended to show what kinds of political activities members of his family had engaged in and to provide substantiation of that fact by showing that most of them have obtained asylum in Europe. The documents also dealt with the complainant's political activities in Germany and France. The application for review was dismissed on 28 April 2009 by the Federal Office for Migration on the grounds, *inter alia*, that the evidence should have been included in the file that had accompanied the first application submitted to the Federal Office for Migration, since its existence predated that application; that the testimonial evidence from the complainant's family was not conclusive; that there was no substantive evidence that the complainant was wanted by the Turkish police, especially as he had been acquitted in the only criminal proceedings brought against him; and that he lived for a year in Istanbul, where he was not wanted by the police. The Federal Office for Migration therefore concluded that he should be able to find a safe haven there from the alleged persecution of his family.

2.11 On 25 May 2009, the complainant lodged an appeal against this decision with the Federal Administrative Court. That appeal was dismissed by a single judge on 12 June 2009 on the grounds, *inter alia*, that the complainant could find a safe haven within Turkey in Istanbul and that he had not shown that he, personally, was wanted by the Turkish authorities. The Federal Administrative Court concluded that the events that he had described were related to particular circumstances and that the fact that he belonged to a family in which several members engaged in political activities was not sufficient to establish that he would run a real and personal risk. In support of his application to the Committee, the complainant provided further attestations indicating that he was an active member of the Democratic People's Party in Gaziantep and that the Turkish authorities suppress Kurdish activists.

The complaint

3.1 The complainant contends that he has exhausted all domestic remedies in Switzerland. He notes that the Swiss courts dismissed his asylum application on the grounds that he had previously initiated proceedings in Germany. He claims that the State party has therefore failed to fulfil its obligations under article 2 of the Convention. He notes that the Federal Office for Migration waited over a year after the hearings before handing down its decision and that the deadline of five working days to lodge an appeal against its decisions is difficult to meet, given the complexity of the present case, and that he was therefore deprived of sufficient procedural safeguards to allow him to properly defend his case.

3.2 The complainant describes his political activities in Turkey and the close supervision that he was under, primarily due to the well-known activism of members of his family. For these reasons, if he returned to Turkey he would face a personal, real and serious risk of being tortured. His forced repatriation would constitute a violation by Switzerland of article 3 of the Convention against Torture.

State party's observations on the merits

4.1 On 7 January 2010, in its comments on the merits, the State party notes that, in his comments to the Committee, the complainant merely repeats the same arguments that he made to the national authorities. He provides no new information, other than three recent attestations, his birth certificate, family record book or identity card, to challenge the

decisions of the Federal Office for Migration of 20 January and 28 April 2009 and the rulings of the Federal Administrative Court of 5 March and 28 April 2009. He fails to provide the Committee with evidence of the existence of any politically motivated criminal case against him or documents corroborating his allegations of ill-treatment; nor does he give any reason why he was able to live and work in Istanbul for a year without having any problems with the authorities.

4.2 Recalling the wording of article 3, the State party refers to the criteria established by the Committee in its general comment No. 1 (1996) on the implementation of article 3 of the Convention in the context of article 22, in particular paragraph 6 and subsequent paragraphs, which concern the need for there to be a personal, present and serious risk of being subjected to torture in the event of expulsion to the country of origin. The State party notes that the Committee has considered communications on many occasions in which complainants claimed to be at risk of being subjected to torture if they were returned to Turkey. The Committee has observed that the human rights situation in Turkey is a major concern, particularly with regard to the fate of Kurdistan Workers' Party activists, who are frequently tortured by law enforcement officers, and that this practice is not limited to any particular area of the country.^a

4.3 In those cases, when the Committee has reached the conclusion, in respect of article 3 of the Convention, that the complainants were in personal and present danger of being subjected to torture if returned to Turkey, it has done so when it had been established that they were politically associated with the Kurdistan Workers' Party and had been detained and tortured prior to leaving Turkey or when their allegations of torture had been substantiated by independent sources by means of, for example, medical certificates.^b In two communications involving Switzerland, however, the Committee decided that the return of the complainants to Turkey would not expose them to any real risk of torture because the complainants' collaboration with the Kurdistan Workers' Party had not been established.^c

4.4 In the present case, on several occasions the complainant told the domestic authorities that he was a supporter of the People's Democracy Party and Democratic People's Party. However, he has told the Committee that he is a member of both parties, which would mean that his name is known to the police and that he would run the risk of being recognized if he were to return. There is nothing in the present case to suggest that the complainant is wanted in Turkey. Quite to the contrary, he has told the Swiss authorities that he is not wanted by the Turkish authorities. Moreover, the Turkish authorities would not have released the complainant in March 2003 after remanding him in custody if he had really been on the wanted list. This would be all the more surprising in view of the fact that several members of his family had already obtained refugee status in Germany by that time.

4.5 The torture or ill-treatment allegedly suffered by the complainant in the past is one factor to be taken into account in assessing the complainant's risk of being subjected to torture or ill-treatment if returned to his country. The complainant points out that he was repeatedly ill-treated by the Turkish authorities. He has not, however, supplied any evidence to support his claims, either to the domestic authorities or to the Committee.

^a The State party cites communication No. 97/1997, *Orhan Ayas v. Sweden*, Views adopted on 12 November 1998, para. 6.4.

^b *Ibid.*, para. 6.5; see also communication No. 101/1997, *Halil Haydin v. Sweden*, Views adopted on 20 November 1998, para. 6.7.

^c The State party refers to communication No. 112/1998, *H.D. v. Switzerland*, Views adopted on 30 April 1999, para. 6.5; and communication No. 107/1998, *K.M. v. Switzerland*, Views adopted on 16 November 1999, para. 6.6.

4.6 Regarding the complainant's political activities, in his communication he alleges that he was an active member of the People's Democracy Party and/or Democratic People's Party in Turkey. During the hearings held by the Federal Office for Migration, however, he failed to mention any involvement in the People's Democracy Party. As for the Democratic People's Party, on two occasions the complainant stated that he was simply a party supporter and not a member. The statements made during the hearings also show that he held no specific position or function within the People's Democracy Party or the Democratic People's Party. It is also well known that persons prominently involved in a Kurdish political party are always brought before the courts. Yet, the complainant failed to mention a single "political" criminal case. The only criminal proceedings against him related to morality issues; their non-political nature is confirmed by the fact that they were dealt with by the Gaziantep criminal court, which has no authority to rule in political cases. Moreover, in the event, the court acquitted the complainant.

4.7 In addition, there is no indication in the file that the complainant is wanted by the national (or even regional) authorities in Turkey. First, he clearly admitted that he was not wanted at the hearing on 6 December 2007. Second, as already mentioned by the State party, it would make no sense for the police, having remanded him in custody in connection with the above-mentioned criminal proceedings, to release him if he had been wanted.

4.8 The complainant makes particular mention of his political activities in Switzerland and Germany. As he is not known to the Turkish authorities, or wanted by them in connection with his political activities in Turkey, his participation in and/or involvement in the organization of demonstrations in Switzerland is unlikely to attract the attention of the Turkish authorities. Furthermore, these alleged activities were only mentioned at a late stage in the aforementioned proceedings and then only in vague terms.

4.9 The State party points out some inconsistencies in the complainant's allegations and in connection with his credibility. As is clear from the decision issued by the Federal Office for Migration on 20 January 2009, the complainant admitted that he had lied about fleeing the country. Initially, he had claimed to have lived in Istanbul until 27 September 2007, that is, a few days before his arrival in Switzerland. Confronted with the results of inquiries made by the Federal Office for Migration in neighbouring countries, he had to admit that he had concealed his stay in Germany between 2004 and 2007. This has damaged his credibility.

4.10 The State party notes that the complainant's application for asylum was rejected by the German authorities on 16 April 2007. Although some members of his family have obtained refugee status in Germany, the complainant did not appeal against that decision, apparently preferring to move to Switzerland to reapply for asylum on 1 October 2007. In its second decision of 28 April 2009, the Federal Office for Migration concluded that the complainant's claims that he was being sought by the authorities were unconvincing. This conclusion was based, *inter alia*, on the following facts: the absence of any police or judicial documents concerning the initiation of criminal proceedings against the complainant, the latter's acquittal, his own statements at the 6 December 2007 hearing, and the fact that the complainant lived and worked for a year in Istanbul without having any problems with the authorities. At the 6 December 2007 hearing, the complainant actually stated that he was not wanted by the Turkish authorities but that he feared that one of the families in his village had a vendetta against him because he had visited the home of a married woman on the evening of 20 March 2003 while her husband was away. It also remains unclear why the complainant, after openly living and working in Istanbul, could not return there.

4.11 The State party adds that the complainant also argues in his communication that the Swiss authorities never considered his case on the merits. It is true that the Federal Office for Migration dismissed the complainant's asylum application and the Federal

Administrative Court upheld that decision. What is decisive in terms of article 3 of the Convention, however, is not the question of whether a substantive review of the asylum application as such was carried out, but whether a reasoned review was conducted of the legality of returning the applicant to his country in the light of the requirements of article 3 of the Convention. Such a review was, in fact, carried out. The Federal Office for Migration carefully weighed the relevant factors to assess the legality of the complainant's return to Turkey in its decisions of 20 January and 28 April 2009. In its first decision, it referred to the outcome of the asylum proceedings in Germany, a country which had granted refugee status to the complainant's family members but not, after considering his case, to him. The State party does not know why the complainant did not challenge that refusal in the German courts.

4.12 In its ruling of 5 March 2009, in which it dismissed the complainant's appeal on grounds of late submission, the Federal Administrative Court nevertheless considered the various arguments put forward by the complainant to challenge the legality of his expulsion. In its review, the Federal Administrative Court explained its reasons for considering as unfounded the complainant's claims about his risk of being subjected, upon his return, to treatment contrary to article 3 of the European Convention on Human Rights, which provides a level of protection equivalent to that afforded by article 3 of the Convention. The Federal Administrative Court's reasons included the fact that the complainant had stated that he lived for over a year in Istanbul, during which time he had no problems with the authorities; that he had then confirmed that he was not wanted by the authorities of his country of origin; that, if he had been in any danger in Istanbul, he would not have waited for over a year before leaving the city; that asylum proceedings in Germany lasted almost three years and that there is nothing to suggest that the complainant was unable to exercise his rights in Germany, particularly as four of his brothers were granted refugee status in that country and their complete file is therefore in the hands of the German authorities; that the proceedings held by the Federal Office for Migration lasted for over a year, during which time the complainant did not produce any evidence, such as depositions from his brothers who are refugees in Germany; and that the documents submitted to the Federal Administrative Court do not suggest that the Turkish authorities would be aware of the complainant's activism in France and Germany. In response to an appeal lodged as part of the application for review, the Federal Administrative Court once again carried out a risk assessment in its ruling of 12 June 2009. A substantive administrative and judicial review of the risks that the complainant might face in the event of his return to Turkey was thus carried out on several occasions.

4.13 The State party therefore concludes that there is nothing to indicate that there are substantial grounds for fearing that the complainant would run a present and personal risk of being subjected to torture in the event of his return to Turkey.

Complainant's comments on the State party's observations on the merits

5.1 On 16 March 2010, the complainant challenged the State party's argument that he was not wanted by the Turkish authorities. In support of his comments, the complainant cites some of the facts listed in his initial submission (see paragraphs 2.5–2.7).

5.2 The complainant adds that his brother, S.A., a statutory refugee in Germany, who has since become a German citizen, provided a written deposition on 27 January 2009 in which he stated that he had gone to Turkey in May 2008 to attend the burial of one of the male members of the family. The police had searched the house and asked about the complainant. When the brother had remained silent, the police had arrested and questioned him. His passport had been temporarily confiscated. The complainant adds that, in support of his asylum application, he had provided a number of documents, including the Gaziantep Criminal Court's judgement and his remission of sentence, three newspaper articles

showing that his brother had been detained in Turkey,^d documents showing that the complainant is active in the People's Democracy Party in Switzerland, and various photographs of the complainant taken during political demonstrations in Germany and France. The complainant adds that a number of his relatives and close friends from the Pazarcik region had fled Turkey and been granted asylum in Switzerland, Germany and the United Kingdom.

5.3 All of these documents show that the complainant was politically active in Turkey and, in particular, that he was close to the guerrilla movement because of the area he comes from and his family ties. The complainant refers to all the times that he was arrested because of his family connections and his active participation in the People's Democracy Party/Democratic People's Party. The complainant is therefore known to the police, with whom he had personal dealings and by whom he was ill-treated. The complainant recalls that he is still politically active in Switzerland and that, due to his prolonged absence from Turkey, he runs the risk of being targeted by the Turkish authorities, who would be keen to question him about his activities abroad and his links with various Kurdish groups in Europe.

5.4 The complainant considers that the fact that Kurdish political activists and their families are subject to repression is confirmed by reports on the human rights situation in Turkey. First, minorities face systematic repression, and people who defend the rights of minorities are particular targets for persecution and harassment by the courts and others. Persons who publicly assert their Kurdish cultural identity are at risk of harassment and persecution.^e The report issued by the United States Department of State on 25 February 2009, to which the complainant refers at length, also indicates that an overwhelming majority of torture victims are Kurds and that People's Democracy Party members do not carry their party membership cards on them in case they are arrested. As an active member of this organization and having lived for a number of years in Europe, the complainant is therefore particularly at risk.

5.5 The complainant notes that in December 2009, the Turkish Constitutional Court dissolved the Democratic Society Party (a political group which had succeeded the People's Democracy Party after its dissolution in Turkey). This shows that people with close ties to the Kurdistan Workers' Party continue to be watched and to suffer from repression, as do members of the dissolved People's Democracy Party. The Constitutional Court's decision has caused unrest in Istanbul. The situation remains tense.

5.6 In response to the State party's proposal concerning a possible safe haven in Istanbul, the complainant replies that the security situation in the city remains uncertain. The complainant's family lives in Europe, and he therefore no longer has any connections in Turkey, to say nothing of Istanbul, where, even before leaving, he had no social or family network. The conditions under which an internal safe haven could be a solution, which must be such that the complainant would have an opportunity to resettle and live in dignity, are not present. In addition, the Turkish authorities practise repression throughout the country, including Istanbul.

^d These newspaper articles have not been considered by the Federal Office for Migration, as they date back to 1995 and 1999, i.e., prior to the first asylum application. Pursuant to article 66, paragraph 3, of the Federal Act on Administrative Procedure, the Swiss authorities are not obliged to consider such evidence. In the event, the Federal Office for Migration nevertheless stated that those documents were unlikely to influence the results of the analysis previously carried out by those authorities. The arguments put forward by the Federal Office for Migration were confirmed by the Federal Administrative Court in its ruling of 12 June 2009.

^e The complainant cites the report of the United States Department of State on human rights practices in 2008, published on 25 February 2009.

5.7 The complainant also notes that he would have to return through an airport, where he would automatically be checked by the authorities, who would see that he is the cousin of a Kurdistan Workers' Party member who is currently serving a life sentence in prison. It is therefore highly likely that he would be arrested and held indefinitely. The questioning in itself would amount to persecution, which could also put other family members of the complainant in danger. Hence, there is a real risk of the complainant being subjected to torture if returned to Turkey.

5.8 On 1 June 2010, the complainant informed the Committee that he had submitted an application for review to the Federal Office for Migration on 31 May 2010. This application for review is based on the testimony given by the head of the village of Tilkiler on 26 March 2010, in which he talks about the trap into which the complainant is said to have fallen when he went to the home of a married woman (see paragraph 2.8 above).

Additional observations by the State party

6. In a note verbale of 16 July 2010, the State party informed the Committee about the application for review which the complainant had submitted to the Federal Office for Migration on 31 May 2010. According to the State party the Federal Office for Migration dismissed this application on 14 June 2010, and the dismissal was confirmed by the Federal Administrative Court on 9 July 2010. Under the circumstances, the State party informs the Committee that, as an exceptional measure, it is not challenging the admissibility of the communication, since domestic remedies have again been exhausted.

Additional observations by the complainant

7. On 9 July 2012, the complainant provided the Committee with a copy of a ruling of the Federal Administrative Court dated 18 June 2012 concerning a fourth application for review, which had been filed on 23 December 2010 when the case was already before the Committee. On 12 January 2011, the Federal Office for Migration denied this application, which was based on a medical report that stated that the complainant's state of health had deteriorated. Its grounds for doing so were that applicants often become distraught when their applications for asylum are denied, but that it was the duty of medical personnel to help the applicant to accept the fact that he was to return to Turkey and that, once there, appropriate medical follow-up would be available. The Federal Administrative Court had upheld that denial on 18 June 2012, and domestic remedies were therefore exhausted at that point.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint contained in a communication, the Committee against Torture must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

8.2 Although the State party initially challenged the admissibility of the communication under article 22, paragraph 5 (b), of the Convention on the ground that the complainant had submitted an application for review of his asylum application on 31 May 2010, the State party subsequently acknowledged that the decision of the Federal Administrative Court of 9 July 2010 to dismiss this new application had again signalled the exhaustion of domestic remedies. The fourth application for review, to which the complainant makes reference in his additional observations, does not appear to render the communication inadmissible either, since that application has been dismissed. Given that all the admissibility criteria,

including the exhaustion of domestic remedies, have been met, the Committee finds the communication admissible and proceeds with the consideration of the merits.

Consideration of the merits

9.1 The issue before the Committee is whether returning the complainant to Turkey would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return (refouler) a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.2 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Turkey, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in Turkey. However, the question that needs to be determined is whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned.

9.3 The Committee recalls its general comment on the implementation of article 3 of the Convention, in which it states that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to be shown to be highly probable, the Committee recalls that the burden of proof normally falls on the complainant, who must present an arguable case establishing that he runs a "foreseeable, real and personal" risk. The Committee also recalls that, as indicated in its general comment No. 1 (1996),^f while it gives considerable weight to the findings of the State party's bodies, the Committee may freely assess the facts of each case in the light of the particular circumstances.

9.4 In the present case, the Committee considers that the facts as presented do not permit it to conclude that the complainant would personally and currently run a real, foreseeable risk of torture in the event of his return to Turkey. Although the Swiss Federal Office for Migration decided not to consider his case because the complainant's application for asylum had already been considered in Germany (Dublin II Regulation), the complainant's claims that he would run the risk of being subjected to torture were examined by the Federal Office for Migration and subsequently by the Federal Administrative Court. However, the complainant has not made an arguable case that he would run a "foreseeable, real and personal" risk if he were to return to Turkey owing to his ties to an organization that supports the Kurdistan Workers' Party and his family's links with persons connected to the Kurdistan Workers' Party.

9.5 The Committee notes that the complainant has not produced any evidence that he would run a personal risk, such as the existence of any politically motivated criminal proceedings against him, since there is nothing to show that the criminal proceedings which were brought against him in Turkey, and which ended in an acquittal, were politically motivated. The complainant has also failed to document his claims of ill-treatment in the course of his reported arrests in Turkey, or at any rate to provide detailed information on that score, or to explain how he managed to live and work in Istanbul for a year without encountering problems with the Turkish authorities; nor has he furnished evidence to support the idea that the Turkish authorities would be aware of the militant activities of the complainant in France and Germany and that these activities might endanger him in his country of origin. The Committee further considers that the arguments adduced by the complainant regarding the situation of the Democratic Society Party (a political group

^f *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44).*

which succeeded the People's Democracy Party) and the Kurdish population in general are not sufficient to establish that he would run a personal risk.

9.6 Taking into account all the information made available to it, the Committee considers that the complainant has failed to provide sufficient evidence to demonstrate that he would face a foreseeable, real and personal risk of being subjected to torture if returned to his country of origin.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the return of the complainant to Turkey would not constitute a breach of article 3 of the Convention.

Communication No. 392/2009: *R.S.M. v. Canada*

Submitted by: R.S.M. (represented by Carlos Hoyos-Tello)
Alleged victim: R.S.M.
State party: Canada
Date of complaint: 9 July 2009 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 24 May 2013,

Having concluded its consideration of communication No. 392/2009, submitted to the Committee against Torture by R.S.M. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is R.S.M., a citizen of Togo born on 7 February 1965. He contends that his extradition to Togo would constitute a violation of article 3 of the Convention against Torture. The complainant is represented by counsel.

1.2 On 13 July 2009, the Rapporteur on new complaints and interim measures decided not to request interim measures from the State party to suspend the complainant's extradition to Togo.

The facts as submitted by the complainant

2.1 Since 1993, the complainant has been a member of the Union des Forces de Changement (Union of Forces for Change) (UFC), an opposition party in Togo. He was first an ordinary member and was then elected in 2002 to be the leader of the Bé Pa de Souza subsection of the Jeunesse des Forces de Changement (Forces for Change Youth Movement) (JFC). One of his duties was to organize conferences, sporting events and meetings for local youth as a means of boosting recruitment. Many of these young people were arrested while distributing leaflets at his request. Whenever there were arrests, he was sought by the authorities and had to hide out.

2.2 In March 2005, he was chosen to represent his party in the Coalition des Forces Démocratiques (Coalition of Democratic Forces). This coalition was composed of the Alliance pour la Démocratie et le Développement Intégral (Alliance for Democracy and Integral Development) (ADDI), Comité d'Action pour le Renouveau (Action Committee for Renewal) (CAR), Convention Démocratique des Peuples Africains (Democratic Convention of African Peoples) (CDPA), Pacte Socialiste pour le Renouveau (Socialist Pact for Renewal) (PSR), Union des Démocrates Socialistes du Togo (Union of Socialist Democrats of Togo) (UDS-Togo) and the Union des Forces de Changement (UFC). He was involved in the preparation of electoral lists for the 24 April 2005 presidential elections and in the distribution of voting cards at polling station No. 2050 in the Ablogamé No. 2

primary school in Lomé. The complainant told members of the Coalition about irregularities that he had observed while carrying out his duties, including the refusal to register people considered to be opposition supporters and the padding of electoral lists in order to favour the current regime.

2.3 On 2 April 2005, the complainant received a visit from two senior members of the Rassemblement du Peuple Togolais (Togolese People's Assembly) (RPT), the party in power in Togo, who offered him 1 million CFA francs if he would leave the UFC party to become a member of the RPT party and use his influence within the Coalition to encourage young people to vote for the RPT candidate. The complainant states that he turned down this offer.

2.4 On 16 April 2005, the official starting date of the Coalition's election campaign, the complainant was coming back from a meeting chaired by the UFC leader when he was attacked by unidentified persons. He claims that his life was saved by some local youths who heard his cries for help and came to his aid. On 24 April 2005, election day, he worked as a delegated monitor of the Commission Électorale Locale Indépendante (Local Independent Electoral Commission) (CELI) at polling station No. 2018 to ensure that the voting went smoothly. He then received a visit from Ms. S.T., one of the persons who had offered him money on 2 April 2005. Ms. S.T. repeated her offer, but this time she doubled the sum. He again turned it down and informed the other Coalition monitors in attendance at the polling station. Word of what had happened quickly made the rounds at the school where the polling station was located, and the crowd outside booed Ms. S.T. and threw stones at her car. She left the scene with the help of security forces. A few minutes later, Red Beret troops arrived in two army vehicles and began firing tear gas and clubbing people in the crowd. They entered the polling station and tried to remove the ballot boxes, but the crowd stopped them. They then started shooting indiscriminately. The complainant managed to escape by climbing over the school fence.

2.5 On 26 April 2005, when the election results were announced and the RPT candidate was proclaimed to be the victor, the complainant invited young people from his local area and elsewhere to demonstrate peacefully in protest against these results, which he considered to be fraudulent. The military responded violently on behalf of the Government. Homes were ransacked and killings, rapes and other acts of violence were committed.

2.6 The complainant was picked up on 27 April 2005 when he was on his way back to the Catholic mission where he had taken refuge the previous day. At first, he was taken into an area of the bush behind the Headquarters of the Armed Forces where other opposition supporters were being held. On arrival, he was beaten with clubs and rifle butts. The following day, he was doused with water and covered in sand before again being beaten by soldiers. Four days later, he was taken, blindfolded, to a secret detention centre in the north of the country, where he was beaten daily and forced to perform hard labour. Some of his fellow inmates died there. The complainant managed to escape on 3 May 2006 with the help of a soldier who was a former classmate and who recognized him and helped him to get to Benin. However, he was not safe in that country either, because Togolese forces were taking reprisals outside their territory against people who had fled Togo. That was why he decided to leave. On 23 July 2006, armed with a false French passport, he left for France, where he made a stopover before going on to Canada. On 25 July 2006, he arrived in Canada and went to the offices of Citizenship and Immigration Canada in Montreal, where he applied for asylum.

2.7 On 20 June 2007, the Immigration and Refugee Board (IRB) concluded that the complainant was neither a refugee under the 1951 Convention nor a person in need of protection, as he had been found to be lacking in credibility and the Board did not believe that he was involved in the UFC party. On 17 December 2007, leave to apply for judicial review of this decision was denied by the Federal Court of Canada, with no reason being

given. On 10 April 2008, as he was subject to a removal order, he was summoned by the Canada Border Services Agency in order to make arrangements for his departure. On that occasion, he was offered the opportunity to file a pre-removal risk assessment (PRRA) application, which he submitted on 23 April 2008.

2.8 On 7 April 2009, the PRRA application was rejected and the complainant was ordered to leave Canada. On 15 June 2009, he applied for leave and judicial review of this decision before the Federal Court of Canada. That application was rejected on 22 September 2009, with no reason being given. Meanwhile, an application for a stay of the removal order had been rejected by the Canada Border Services Agency and his departure date had been set for 10 July 2009.

The complaint

3.1 The complainant claims that his return to Togo would constitute a violation of article 3 of the Convention. He states that he would not be safe in his country because of his UFC membership and he fears not only that he would be arrested again, but that he would be murdered. Owing to his dissident activities and his fight for democracy, he was detained and subjected to conditions of detention comparable with those found in concentration camps. He claims that the decision to deny his PRRA application fails to take into account the situation in Togo. He is still an active political dissident within the UFC party, which in itself is a dangerous activity in a country under military rule. His escape from the military camp and the fact that he witnessed serious human rights violations in that camp (forced labour, the burial of persons who had died from exhaustion, physical and psychological torture, summary executions, etc.) only add to the risk that he faces.

State party's observations on admissibility and the merits

4.1 On 10 February 2010, the State party submitted its observations on the admissibility and on the merits of the case. It maintains that the complainant's allegations before the Committee have been thoroughly examined by the Canadian authorities, who have concluded that they are completely unfounded. The complaint provides no new evidence that might alter this conclusion.

4.2 On 11 September 2006, in support of his application for asylum, the complainant submitted a completed Personal Information Form to the Refugee Protection Division of the Immigration and Refugee Board of Canada. Subsequently, at a hearing during which he was accompanied by his lawyer, he was questioned at length by the Board about his political activities and his claims that he had been targeted by the Togolese Armed Forces. The Board found his responses to be unsatisfactory and full of inconsistencies and contradictions, and it gave no weight to the evidence that he had entered regarding his political affiliations. The Board rejected the complainant's explanations as to why the Togolese authorities had not arrested him at any time between 2002 and the April 2005 elections even though he had allegedly been targeted by them because of his political activities. It concluded that the complainant was wholly lacking in credibility with respect to his political affiliations as a member of the UFC party since 1993, as a representative of the Coalition of Democratic Forces in 2005 and as a delegated monitor of the Electoral Commission on election day. The Board therefore did not believe that the complainant had been arrested and held from 27 April 2005 to 3 May 2006.^a

^a In its decision, a copy of which is in the file, the Board draws attention to inconsistencies in the complainant's account. For example, he claimed to have been sought by the authorities since 2002. Asked to explain why he had not been arrested until 2005 while continuing to carry out his political activities, he replied that he was not sleeping at home, but was instead moving from place to place,

4.3 The PRRA application was based chiefly on the same claims that the complainant had made before the Immigration and Refugee Board. The complainant had added that he had written and produced a play entitled *Togo: A Reign of Terror*, in which he denounced the current regime, and said that the play had been put on in various towns in 2004 and 2005. All the people who had been in the play had had to flee Togo because they had been targeted as opponents of the regime currently in power. The PRRA officer had noted that the complainant had not produced any credible documentation to corroborate his claim that he had put on such a play; nor had he explained why he had not submitted this information when he was applying for asylum. As for the general situation in Togo, the officer had taken note of the documentation submitted by the complainant and other reports regarding the commission of serious human rights violations during the 2005 elections. The current Government has, however, taken steps to improve its justice system and to combat corruption and impunity, particularly with respect to the abuses committed in 2005. The Government also reached a broad political agreement with opposition parties in April 2006. In addition, in June 2005 it established the High Commission for Repatriates and Humanitarian Action to ensure that protective measures and assistance were provided to persons who were returning to the country after having fled from the conflict that had broken out after the 2005 elections. The general population had played a very active part in the elections of 14 October 2007, which had taken place peacefully. In view of the complainant's failure to prove that he would personally be at risk, and given the current situation in Togo, the officer had found that there was no evidence that the complainant would run a risk of being subjected to torture or to cruel or unusual treatment or punishment or that his life would be in danger in Togo.

4.4 In conjunction with his application for leave and judicial review of the PRRA officer's decision, on 8 July 2009 the complainant submitted a request for a stay of the removal order that was to be carried out on 10 July 2009. On that same date, the Federal Court denied the request for a suspension of the order because the complainant had failed to demonstrate: (1) that his request was based on a serious issue; (2) that he was at risk of suffering irreparable harm; or (3) that the balance of (in)convenience was in his favour.

4.5 On 13 July 2009, a warrant for the arrest of the complainant was issued after he had failed to present himself at the Montreal airport on 10 July 2009, at which time he was to be removed from Canada. Agents of the Border Services Agency attempted to act on the arrest warrant but were unable to locate the complainant at his home.

and that it would have taken the deployment of thousands of soldiers to enter every house in his neighbourhood to find him. The Board rejected these explanations as unreasonable and did not believe that the complainant had been targeted by the authorities in Togo before 2005. The document entitled "Mandate for Coalition Representatives" which he furnished bore the signature of the Coalition's Chairperson, but that signature was a photocopy. The voting card shown by the complainant to the Board contained errors in the entries showing his age and profession. Since he claimed that, as a Coalition representative, he had to oversee the registration and issuance of voting cards, he was asked to explain why he had not corrected the errors on his own voting card. He replied that he had not been at liberty to do so, but that he had reported the errors to the Coalition. He became totally confused when asked to state when and how he had reported those errors. The Board had found that the complainant had not proven that he had been appointed as a representative of the Coalition for the 2005 elections. The complainant could not give a credible explanation for why, in his presentation of the facts of the case, he had failed to mention that he had reported the first visit of Ms. S.T. to the Coalition authorities at a meeting on 7 April 2005, after which he had apparently been assigned bodyguards when travelling, even though he had reported having informed the Coalition of the second visit of Ms. S.T. Nor did the Board give any weight to his UFC membership card, which was dated 28 July 2005, a date on which he was allegedly in prison. In addition, the explanations he gave for how he had obtained it were contradictory.

4.6 The State party contends that the complaint is inadmissible on the ground of failure to exhaust domestic remedies under article 22, paragraph 5 (b), of the Convention. The complainant could have applied for a visa exemption and permanent resident status on humanitarian grounds (known as an “H&C application”) and, if that application had been denied, could have applied for leave and judicial review before the Federal Court of Canada. The complainant has given no explanation for his failure to exhaust these remedies; nor has he furnished any evidence to show that the application of these remedies would be unreasonably prolonged or that they would be unlikely to provide him with the effective relief that he is seeking to obtain with the assistance of the Committee.

4.7 The State party also asserts that the complaint is inadmissible under rule 113 (b) of the Committee’s rules of procedure because it has not been sufficiently substantiated. The complainant chiefly bases his case on his claim that he was tortured during the time that he was held in detention (27 April 2005 to 3 May 2006) because of his political activities and that this could happen again if he were to be sent back to Togo. Even if he had established that he was tortured during his alleged detention, that would not be enough to establish that he would be at risk of being subjected to torture in the future if he were to be sent back. The Immigration and Refugee Board considers that the complainant is lacking in credibility and that the evidence he has produced to substantiate his political activities is worthless, particularly in terms of his involvement in the UFC party and his role as a representative of the Coalition of Democratic Forces. His account of the events in question, which was marked by contradictions and inconsistencies, and the evidence that he produced did not convince the Immigration and Refugee Board that he had actually been held in detention during the period that he said he had been. In addition, the PRRA officer was of the opinion that the complainant had not substantiated his membership in the UFC party, nor had he proven that he was sought by the Togolese authorities or that he would be personally in danger in Togo. After examining the documents submitted to it, the Federal Court had found no reason to set those findings aside.

4.8 The complaint submitted to the Committee does not contain any new evidence that would call the Canadian authorities’ conclusions into question. The complainant claims that he would run the risk of being summarily executed because of his escape and because he has witnessed and been subjected to human rights violations, including physical and psychological torture. Yet he has not provided evidence that he, personally, is wanted by the Togolese authorities. He has not provided any evidence that he belongs to the UFC party or substantiated his alleged political activities. To back up his claim that being a political opponent who belongs to the UFC party is dangerous in itself, he cites the public documents that he submitted with his PRRA application. However, as the PRRA officer concluded, these documents are general in nature and do not demonstrate that there are substantial grounds for believing that he would personally be at risk of being arrested and thus in danger of being tortured. Furthermore, these documents do not indicate that torture is systematically used in Togolese prisons or that it is so widespread or so widely tolerated that the whole of the prison population is in danger. According to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding his mission to Togo in April 2007, the Government has put numerous measures in place that have improved prison conditions, including the situation with regard to ill-treatment, since 2005. The report makes no mention of the secret concentration camps that the complainant claims exist.^b In the Special Rapporteur’s 2009 follow-up report on the action taken pursuant to the recommendations he had made in the report on his 2008

^b A/HRC/7/3/Add.5.

mission to Togo, he takes note with satisfaction of the measures introduced for that purpose.^c

4.9 The State party does not dispute the veracity of NGO reports of human rights violations during the April 2005 elections. Publicly available documents do not, however, indicate that there has been any repetition of those events since then. In the Special Rapporteur's 2009 report, he says that the October 2007 elections went smoothly. Moreover, a thorough review of the documentary evidence indicates that the position of political dissidents has been improving. In August 2006, the Government and all opposition parties signed a broad political agreement under which the opposition's right to take part in public affairs is recognized. The evidence submitted by the complainant therefore does not provide grounds for concluding that he would run the risk of being arrested in Togo simply because he is a member of the UFC party and is an active political dissident. And even if he were to be at risk of arrest, that would not mean that there was reason to believe that the complainant would personally be in danger of being subjected to torture.

4.10 According to the State party, independent, impartial Canadian experts have analysed the complainant's claims in accordance with the applicable laws and the principle of equity. In the absence of proof of an obvious error, abuse of process, bad faith, obvious bias or serious procedural irregularities, the Committee should not substitute its own findings for those of the Canadian authorities. It is the duty of the courts of States parties to the Convention to assess the facts, weigh the evidence and, in particular, to evaluate the credibility of the parties in each case. In the State party's view, the complainant has not demonstrated that the Canadian authorities' decisions are flawed in any way that would provide grounds for the Committee to overrule them.

4.11 The State party submits, as an additional argument to its observations on admissibility and on the same grounds, that the complaint should be dismissed on the merits as it fails to demonstrate any violation of article 3 of the Convention.

Complainant's comments on the State party's submission

5.1 The complainant submitted his comments on the State party's submission on 21 April 2010. With respect to the State party's argument that the complainant should have applied for a visa exemption and permanent resident status on humanitarian grounds, he refers to the Committee's jurisprudence in communication No. 133/199 (*Falcon Ríos v. Canada*), in which the Committee decided that this kind of appeal is not a remedy that must be exhausted in order to satisfy the requirement of exhaustion of domestic remedies.

5.2 With regard to the evidence relating to personal risk, the complainant reaffirms his earlier claims. He contends that there is still a risk of torture and appends newspaper articles concerning protests and arrests of members of the opposition in Togo following the presidential elections of 4 March 2010. He states that he has demonstrated that the Canadian authorities who considered his case were not impartial and that his case has been flawed by obvious error, abuse of process, bad faith, bias and serious procedural irregularities.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any complaint contained in a communication, the Committee against Torture must decide whether the communication is admissible under article 22 of

^c A/HRC/10/44/Add.5.

the Convention. As required under article 22, paragraph 5 (a), of the Convention, the Committee has ascertained that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any complaint unless it has ascertained that the complainant has exhausted all available domestic remedies. This rule does not apply where it has been established that the application of remedies has been unreasonably prolonged or that these remedies are unlikely, after a fair trial, to bring effective relief to the alleged victim.

6.3 The Committee takes note of the State party's argument that the complaint should be declared inadmissible under article 22, paragraph 5 (b), of the Convention because the complainant did not apply for a visa exemption and permanent resident status on humanitarian grounds (known as an "H&C application"). In that regard, the Committee recalls that, at its twenty-fifth session, in its final observations on the report of the State party, it considered the question of requests for ministerial stays on humanitarian grounds. At that time, the Committee observed that, although the right to assistance on humanitarian grounds is a remedy under the law, such assistance is granted by a minister on the basis of purely humanitarian grounds, rather than on any legal basis, and is thus *ex gratia* in nature. The decision depends on the discretionary authority of a minister and thus of the executive.^d The Committee also refers to its case law,^e according to which the principle of exhaustion of domestic remedies requires the petitioner to use remedies that are directly related to the risk of torture in the country to which he would be sent, not those that might allow him to stay where he is for reasons unrelated to the risk of torture. Consequently, in the light of its case law on the subject, the Committee finds that, in this instance, the failure to apply for a visa exemption and permanent resident status on humanitarian grounds does not constitute a failure to exhaust domestic remedies and is therefore not an obstacle to the complaint's admissibility.

6.4 As to the allegations made regarding a violation of article 3 of the Convention, the Committee is of the opinion that the arguments put forward by the complainant regarding the risk of torture that he would face if he were to be sent back to his country raise substantive issues which should be dealt with on the merits, rather than on admissibility alone. The Committee therefore declares the complaint to be admissible.

Consideration of the merits

7.1 The issue before the Committee is whether the removal of the complainant to Togo would constitute a failure by the State party to fulfil its obligation under article 3, paragraph 1, of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 The Committee recalls its jurisprudence and its general comment concerning the implementation of article 3, in which it has established that the burden is upon the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion while taking note of its general comment, the Committee also recalls that, under article 22, paragraph 4, of the Convention, it shall consider communications received in the light of all information made available to it by or on behalf of the individual and by the State party concerned, and that, under that article it

^d See communication No. 133/1999, *Falcon Ríos v. Canada*, decision of 23 November 2004, para. 7.3, and communication No. 333/2007, *T.I. v. Canada*, decision of 15 November 2010, paras. 6.3 and 6.4.

^e Communication No. 170/2000, *A.R. v. Sweden*, decision of 23 November 2001, para. 7.1.

thus has the power of free assessment of the facts of a case based upon the full set of relevant circumstances.

7.3 The Committee must determine whether there are substantial grounds for believing that the complainant would personally be in danger of being subjected to torture in Togo. In order to do so, it must, in accordance with article 3, paragraph 2, of the Convention, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass human rights violations. However, the Committee recalls that the aim of its determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country. Additional grounds must be adduced to show that the individual concerned would personally be at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not necessarily mean that a person cannot be considered to be in danger of being subjected to torture under the specific circumstances applying to that person's case.

7.4 The Committee is aware that the human rights situation in Togo is worrying and, in fact, it referred to serious human rights violations, especially in places of detention, in its concluding observations on the State party's second periodic report, which it considered in November 2012.^f Nonetheless, the Committee notes that the facts as presented to it do not provide it with grounds for concluding that the complainant would personally face a present, foreseeable and real risk of torture if he were sent back to Togo. The complainant has not provided sufficient evidence to establish his ties with the Union for Forces for Change or the nature of his activities as a member of that political party. He has not furnished evidence that he is sought by the authorities and is in danger of being arrested. He has not provided evidence or detailed information to support his claims that he was detained and tortured. He has provided no medical record or other document concerning any after-effects that would corroborate his alleged arrest or the ill-treatment that he says he was subjected to while being held in detention between April 2005 and May 2006. The arguments put forward regarding the human rights situation existing in Togo after his arrival in Canada do not suffice to establish the existence of a personal risk.

7.5 Taking into account all the information made available to it, the Committee has concluded that the complainant has failed to establish that he would face a foreseeable, real and personal risk of being subjected to torture if he is sent back to Togo at this time.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the State party's decision to return the complainant to Togo would not constitute a breach of article 3 of the Convention.

^f CAT/C/TGO/CO/2.

Communication No. 406/2009: *S.M. v. Switzerland*

Submitted by: S.M. (represented by counsel, T.H.)
Alleged victim: The complainant
State party: Switzerland
Date of complaint: 10 November 2009 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2012,

Having concluded its consideration of complaint No. 406/2009, submitted to the Committee against Torture by S.M. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, her counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is S.M., a national of Ethiopia born on 2 June 1979 in a refugee camp in Kassala, Sudan.^a The complainant is an asylum seeker whose application for asylum was rejected; at the time of submission of the complaint, she was awaiting deportation to Ethiopia. She claims that her deportation to Ethiopia would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, T.H.

1.2 On 10 and 25 November 2009, the complainant asked the Committee to request the State party not to deport her to Ethiopia while her complaint is under consideration by the Committee. On 25 November 2009, the Committee, through its Rapporteur on new complaints and interim measures, transmitted the complaint to the State party, without requesting interim measures of protection under former rule 108, paragraph 1, of the Committee's rules of procedure.^b Further to the complainant's repeated request of 21 April 2011 to suspend her deportation to Ethiopia, the Rapporteur on new complaints and interim measures again decided not to issue a request for interim measures of protection.

^a The complainant appears under four different spellings of her first and last names, two different dates of birth and two different countries of nationality, Ethiopia and Somalia, in the transcript of the interview held by the Federal Office for Migration on 29 March 2007, the decision of the Federal Office for Migration of 22 June 2007 and the judgement of the Federal Administrative Court of 23 October 2009.

^b Rule 114, paragraph 1, of the current rules of procedure (CAT/C/3/Rev.5).

The facts as presented by the complainant

2.1 The complainant was born in a refugee camp in Kassala, Sudan. As a teenager she returned to Gondar and Dire-Dawas, Ethiopia, with her mother. She submits that in Ethiopia, being a Christian she was harassed by persons of Islamic faith. In 2001, she left for Kenya. One year later, she flew from Nairobi to Zurich, where she applied for asylum on 7 March 2002.

2.2 On 7 October 2002, the Federal Office for Refugees, later replaced by the Federal Office for Migration, rejected the complainant's asylum request and ordered her to leave Switzerland. The Swiss Asylum Appeals Commission, replaced by the Federal Administrative Court as of 1 January 2007, did not consider her appeal for formal reasons (see also para. 4.1 below).

2.3 On 22 December 2006, the complainant submitted a second asylum request, this time on the basis of her political activities in Switzerland. She states that she is a founding member of the support group for the Coalition for Unity and Democracy (CUD; outside of Ethiopia often referred to as KINIJIT or CUPD) in Switzerland, which aims to strengthen the rule of law in Ethiopia by changing the regime. She is allegedly one of the most prominent members in Switzerland and she has taken an active part in dozens of demonstrations and public events, often figuring as a speaker. The complainant is a spokesperson for the cantonal section of the group in Basel. In April of 2006, she participated in the founding meeting of KINIJIT at the University of Geneva and took active part in discussions and attended subsequent KINIJIT events, often being accompanied by prominent opposition leaders.

2.4 The Federal Office for Migration interviewed the complainant on 29 March 2007 and rejected her second asylum request on 22 June 2007. Her appeal against this decision was rejected by the Federal Administrative Court on 23 October 2009. Following the latter judgement, the complainant was requested to leave Switzerland by 25 November 2009. The complainant submits that if she fails to leave voluntarily, she will be forcibly returned to Ethiopia.

2.5 The complainant submits that the Federal Administrative Court has acknowledged that she was a founding member of the KINIJIT movement and that she participated in various demonstrations and other political activities. It, however, pointed out that according to the Court's jurisprudence, political activities in exile would only lead to the recognition of a refugee status if political persecution in the country of origin was a highly probable result. While accepting the complainant's claim that members of the Ethiopian opposition in exile were closely monitored by the Ethiopian authorities, the Federal Administrative Court concluded that there were no indications that the complainant might have attracted their attention due to her political activities. In addition, it found that the complainant neither held a prominent position within the Swiss KINIJIT organization that was part of the international KINIJIT movement, nor was she one of its five executive leaders. The Federal Administrative Court established that her main task was to disseminate information. It also stated that the complainant's identity had not been established, as she has not submitted any documents, and that she has not been able to establish that she would face a real risk of torture in case of her return to Ethiopia.

2.6 The complainant submits that her speech at the founding meeting of KINIJIT was recorded on a DVD, which also features many prominent opposition leaders. She does not doubt that the Ethiopian embassy has knowledge of the content of this video recording. She also claims that the decision of the Federal Administrative Court is inconsistent with its prior jurisprudence, since another Ethiopian national has been found to fulfil the refugee

criteria in similar circumstances.^c The complainant adds that she was one of the most active KINIJIT members from the very beginning. She spoke out on numerous occasions and attended demonstrations in front of the United Nations as early as in 2005. She was present at the time of filing a petition with the United Nations at Geneva in October of 2007 and had been photographed together with Ato Mistre Haile Selassie, the leader of KINIJIT in Switzerland, on that occasion. Other photographs show her with a megaphone as a demonstration leader, speaking to the crowd assembled in front of the United Nations Office at Geneva. On yet another occasion, she was photographed together with Obang Metho, the Director of International Advocacy for the Anuak Justice Council. The complainant argues that her involvement in the activities of KINIJIT has been consistent over time and that she is one of its leading figures. She adds that the Ethiopian authorities who closely monitor the activities of dissidents abroad must have noticed her outstanding commitment to the KINIJIT movement in Switzerland.

2.7 According to the complainant, the Federal Administrative Court held that it must have been noticed by the Ethiopian authorities that political activities of its nationals abroad intensified after a negative decision on the asylum requests. She infers from this finding that, firstly, the Ethiopian authorities know about the result and status of its nationals' asylum procedures in Switzerland. This, in turn, presupposes a degree of observation which would involve every single Ethiopian asylum seeker, making it extremely hard for them not to be identified. Secondly, the moment of establishment of the KINIJIT in Switzerland had nothing to do with her asylum requests, since she is genuinely committed to the movement's political objectives and has dedicated a large part of her private life to voicing her concerns. The complainant argues, therefore, that the allegation made by the Federal Administrative Court that the Ethiopian authorities distinguished between "real" and "fake" opponents is completely unjustified. She also refers in this context to the anti-terrorism law passed by the Ethiopian House of Peoples' Representatives on 7 July 2009, which contains a broad definition of "terrorist acts".^d The complainant adds that, pursuant to this law, any kind of public political dissent can lead to a lengthy conviction, since the Ethiopian authorities fail to make a distinction between political criticism and terrorism.

2.8 As to her identity,^e the complainant submits that she has never given a false name to the asylum authorities in Switzerland. She applied for asylum under her original (Muslim) name S.M. During the asylum interview, she once mentioned that she also had a Christian name, A.A., which she adopted after returning from Sudan to Ethiopia with her family. The complainant adds that the fact that she was unable to present any identity papers should not be used against her, considering that she lived in Ethiopia only for four years.

2.9 The complainant submits that police torture is still widespread in Ethiopia and refers to a report by the Human Rights Watch,^f which documents the use of torture by police and military officials in both official and secret detention facilities across Ethiopia.

^c Reference is made to the judgement of the Federal Administrative Court No. D-5398/2006, dated 24 June 2009, in relation to the asylum application of "A." against the Federal Office for Migration.

^d Reference is made to Human Rights Watch, "Analysis of Ethiopia's draft anti-terrorism law", 30 June 2009; Christian Ehret, "Ethiopia lawmakers pass controversial new anti-terrorism law", *Jurist*, 9 July 2009.

^e See footnote a above.

^f Reference is made to Human Rights Watch, "UK: Ethiopian 'assurances' no guarantee against torture", 17 September 2009.

The complaint

3. The complainant claims that her forcible deportation to Ethiopia would amount to a violation by Switzerland of her rights under article 3 of the Convention, since she risks being arrested, interrogated and subjected to torture or other inhumane and degrading treatment by the Ethiopian authorities as a result of her political activities in Switzerland.

State party's observations on the merits

4.1 On 25 May 2010, the State party submitted its observations on the merits. As to the facts, it adds that, on 5 November 2002, the complainant appealed to the Asylum Appeals Commission against the decision of the Federal Office for Refugees on her first asylum request. In its interlocutory decision of 14 November 2002, the Commission found that the complainant's appeal did not provide for sufficient reasons, gave her extra time to supplement the appeal and asked her to make an advance payment of the fees by 29 November 2002. On 9 December 2002, the Commission decided not to examine the complainant's appeal, since she neither supplemented it nor made the requested advance payment.

4.2 The State party submits that the complainant argues before the Committee that she would run a personal, real and serious risk of being subjected to torture if returned to her country of origin, because of her political activities in Switzerland. She does not present any new elements that would call into question the judgement of the Federal Administrative Court of 23 October 2009, which was made following a detailed examination of the case, but rather disputes the assessment of the facts and evidence by the Court. The State party submits that it will demonstrate the validity of the Court's decision, in the light of article 3 of the Convention and the jurisprudence of the Committee and its general comments, and maintains that the deportation of the complainant to Ethiopia would not constitute a violation of the Convention by Switzerland.

4.3 The State party submits that according to article 3 of the Convention, the States parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds for believing that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.⁶ The existence of gross, flagrant or mass violations of human rights is not in itself a sufficient basis for concluding that an individual might be subjected to torture upon his or her return to his or her country, and additional grounds must exist for the risk of torture to qualify under the meaning of article 3 as "foreseeable, real and personal".

4.4 Regarding the general human rights situation in Ethiopia, the State party submits that the elections in Ethiopia in May 2005 and August 2005 have strengthened the representation of opposition parties in the Parliament. It recognizes that, although the Ethiopian Constitution explicitly recognizes human rights, there are many instances of arbitrary arrests and detentions, particularly of members of opposition parties. In addition, there is a lack of an independent judiciary. However, being a member or supporter of an opposition political party does not, in principle, lead to a risk of persecution. It is different

⁶ The State party refers to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 (*Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX*), paras. 6 and 8, and the Committee's jurisprudence in communications No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, para. 10.2, and No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998, paras. 6.3 and 6.5.

for persons who hold a prominent position in an opposition political party.^h In the light of the above information, the competent Swiss asylum authorities have adopted differentiated practices to determine the risk of persecution. Individuals who are suspected by the Ethiopian authorities to be members of the Oromo Liberation Front or the Ogaden National Liberation Front are considered at risk of persecution. With regard to persons belonging to other opposition groups, such as CUD, the risk of persecution is assessed on case-by-case basis, in accordance with the above criteria. With regard to monitoring political activities in exile, the State party submits that according to the information available to it, the Ethiopian diplomatic or consular missions lack the personnel and structural resources to systematically monitor the political activities of opposition members in Switzerland. However, active and/or important members of the opposition, as well as activists of organizations who are campaigning for the use of violence, run the risk of being identified and registered and, therefore, of being persecuted if returned.

4.5 The State party notes that the complainant does not claim to have suffered torture or to have been arrested or detained by Ethiopian authorities and submits that it is, therefore, not surprising that her second asylum request of 22 December 2006 was based exclusively on her political activities in Switzerland. It further argues, with reference to the Committee's general comment No. 1 (para. 8 (e)), that another element to be taken into account when assessing the complainant's risk of being subjected to torture if returned to her country of origin is whether she has engaged in political activities in Ethiopia. The State party notes in this regard that the complainant does not claim to have been politically active in her home country.

4.6 As to the complainant's political activities in Switzerland, the State party notes that she made her respective claims before the asylum authorities approximately three years after submitting the first asylum request and two years after the end of the first asylum procedure. Furthermore, the complainant appeared under multiple identities and nationalities from the beginning of the first asylum procedure and her true identity has not been established to this day.

4.7 The State party notes that the complainant claims to have been one of the most active KINIJJIT members from the moment the organization was established. She refers, inter alia, to her speech at the founding meeting of KINIJJIT, her participation in several demonstrations and her presence at the time of filing a petition with the United Nations at Geneva. The State party maintains that numerous political demonstrations attended by the complainant's compatriots take place in Switzerland, that photographs or video recordings showing sometimes hundreds of people are made publicly available by the relevant media and that it is unlikely that the Ethiopian authorities are able to identify each person, or that they even have knowledge of the affiliation of the complainant with the above organization.

4.8 The State party submits that the complainant's claims were the subject of an extensive analysis by the Federal Administrative Court and that the latter noted in particular that she did not claim to be a member of the steering committee of KINIJJIT Switzerland, composed of five members. To the contrary, in the complainant's own words, her role is to disseminate information about demonstrations and meetings of KINIJJIT, but she is not involved, for example, in their organization. In addition, she has participated in several demonstrations, made an oral statement at a meeting of KINIJJIT on 29 April 2006 and appears in the photographs showing a group of people upon the filing of a petition to the United Nations at Geneva on 22 May 2008.

^h The State party refers to the operational guidance note on Ethiopia published by the Home Office of the United Kingdom of Great Britain and Northern Ireland in March 2009, para. 3.7.9.

4.9 In this regard, the State party submits that the Ethiopian authorities are focusing all their attention on individuals whose activities go beyond “the usual behaviour”, or who exercise a particular function or activity that could pose a threat to the Ethiopian regime. However, the complainant presented no political profile when she arrived in Switzerland and the State party deems it reasonable to exclude that she has subsequently developed such a profile. The State party maintains that the documents produced by the complainant do not show activity in Switzerland able to attract the attention of the Ethiopian authorities. The fact that the complainant is identified in photographs and video recordings is not sufficient to demonstrate a risk of persecution if returned. It is difficult, for obvious practical reasons, to identify the participants of a large demonstration if they are not previously known to the Ethiopian authorities.

4.10 The State party submits that there is no evidence that the Ethiopian authorities have opened criminal proceedings against the complainant or that they have adopted other measures against her.

4.11 As to the complainant’s claim that she is a victim of the conflicting jurisprudence by the Federal Administrative Court, the State party submits that there are considerable differences between the complainant’s case and the other case mentioned in her communication to the Committee.ⁱ The latter case involved an individual who had held important positions within the Ethiopian army, had knowledge of sensitive data and was in close contact with the opposition before her flight. Hence she fell within the category of persons exposed to a high risk of monitoring by the Ethiopian authorities abroad. In the complainant’s case, however, the Federal Office for Migration and the Federal Administrative Court did not deem convincing the complainant’s claim that she has a function within the Ethiopian diaspora in Switzerland able to attract the attention of the Ethiopian authorities.^j In other words, the complainant has not established that if returned to Ethiopia she would run a risk of ill-treatment because of her political activities in Switzerland.

4.12 The State party submits that, in the light of the above, there is no indication that there are substantial grounds for fearing that the complainant’s return to Ethiopia would expose her to a foreseeable, real and personal risk of torture, and invites the Committee to find that the return of the complainant to Ethiopia would not constitute a violation of the international obligations of Switzerland under article 3 of the Convention.

The complainant’s comments on the State party’s observations

5.1 On 21 April 2011, the complainant commented on the State party’s observations. She notes that recent reports^k suggest that the Ethiopian authorities are closely monitoring opposition movement and frequently arresting not only its leaders but also followers and supporters. She adds that only the increased interest in the *whole*^l of the opposition movement of the Ethiopian authorities — and not only its leaders — can explain the extent of monitoring and surveillance currently implemented by the Zenawi regime. The

ⁱ See footnote c above. A copy of the judgement was provided by the State party and is available on file.

^j Reference is also made, inter alia, to communications No. 375/2009, *T.D. v. Switzerland*, decision adopted on 26 May 2011; No. 393/2009, *E.T. v. Switzerland*, decision adopted on 23 May 2012; and No. 414/2010, *N.T.W. v. Switzerland*, decision adopted on 16 May 2012.

^k Reference is made to the United States Department of State, 2010 Country Reports on Human Rights Practices: Ethiopia, 8 April 2011; Human Rights Watch, *World Report 2011* (New York, 2011), pp. 121–126; Freedom House, *Freedom on the Net 2011*, pp. 132–140; The Economist Intelligence Unit Limited, “Country report: Ethiopia”, April 2011, p. 9.

^l Emphasis added by the complainant.

complainant reiterates her initial claim that she is not a mere KINIJIT supporter but a cantonal representative, who often appears as a speaker on the occasion of political events. She further notes that she maintains personal contacts with leading personalities of the Ethiopian opposition worldwide and that she has been photographed with them on many occasions. Therefore, the complainant argues that it must be assumed that she has indeed been identified by the Ethiopian authorities.

5.2 The complainant further submits that incidents of torture or other prohibited treatment are frequently reported in Ethiopia. Thus, even a mere arrest that is not followed by a conviction may entail mistreatments, in particular in cases of female detainees.^m The complainant argues that there is a real and imminent risk that she would face torture or other inhuman and degrading treatment in detention if she were forcibly returned to Ethiopia, and reiterates her request for interim measures of protection.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party has recognized that the complainant has exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 The issue before the Committee is whether the removal of the complainant to Ethiopia would violate the State party's obligation under article 3 of the Convention not to expel or to return (refouler) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Ethiopia. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

^m Reference is made to the United States Department of State, 2010 Country Reports (note k above); and Human Rights Watch, submission to the Committee against Torture on Ethiopia, September 2010.

7.3 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being “highly probable” (para. 6), the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a “foreseeable, real and personal” risk.ⁿ The Committee further recalls that in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned,^o while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.4 The Committee notes that the State party has drawn its attention to the fact that the complainant appeared under multiple identities and nationalities from the beginning of the first asylum procedure and that her true identity has not been established to this day. The Committee also takes note of the information furnished by the complainant on this point. It considers, however, that the inconsistencies in the complainant’s account do not constitute an obstacle for the Committee’s assessment of the risk of torture in case of her deportation to Ethiopia.

7.5 The Committee has noted the complainant’s submissions about her involvement in the activities of KINIJJIT in Switzerland. It also notes that she claims to be one of the most active KINIJJIT members and that she has been from the moment this organization was established, and that she, inter alia, gave a speech at the founding meeting of KINIJJIT, participated in several demonstrations and was present at the time of filing a petition with the United Nations at Geneva. The Committee further notes that the complainant has not claimed to have been arrested or ill-treated by the Ethiopian authorities, nor has she claimed that any charges have been brought against her under the anti-terrorism law or any other domestic law. The Committee further notes the complainant’s claim that the Ethiopian authorities use sophisticated technological means to monitor Ethiopian dissidents abroad, but observes that she has not elaborated on this claim or presented any evidence to support it. The Committee also notes that the State party has disputed this claim, as well as the complainant’s reference to the inconsistencies in the jurisprudence of the Federal Administrative Court in relation to the evaluation of the risk faced by the nationals of Ethiopia in case of their return to the country of origin (see paras. 2.6 and 4.11 above). In the Committee’s view, the complainant has failed to adduce sufficient evidence about the conduct of any political activity of such significance that would attract the interest of the Ethiopian authorities, nor has she submitted any other tangible evidence to demonstrate that the authorities in her home country are looking for her or that she would face a personal risk of being tortured if returned to Ethiopia.

7.6 The Committee finds accordingly that the information submitted by the complainant, including the absence of any political activities in Ethiopia prior to her departure from the country and the low-level nature of her political activities in Switzerland, is insufficient to establish her claim that she would personally be exposed to a substantial risk of being subjected to torture if returned to Ethiopia. The Committee is concerned at the many reports of human rights violations, including the use of torture in Ethiopia,^p but

ⁿ See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003; and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

^o See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

^p The Committee notes that Ethiopia is also a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and recalls its 2011 concluding observations (CAT/C/ETH/CO/1), paras. 10–14.

recalls that for the purposes of article 3 of the Convention the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

8. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the complainant to Ethiopia would not constitute a violation of article 3 of the Convention.

Communication No. 412/2010: A.A.R. v. Denmark

Submitted by: A.A. (represented by counsel)
Alleged victim: The complainant
State party: Denmark
Date of communication: 30 September 2009 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 13 November 2012,

Having concluded its consideration of complaint No. 412/2010, submitted to the Committee against Torture by A.A. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is A.A., a national of Iraq, born on 27 December 1963, who was deported from Denmark to Iraq on 2 September 2009. The complainant submits that his detention in Denmark as a refused asylum seeker from 18 June 2009 to 2 September 2009, including in solitary confinement, amounted to a violation of articles 16 and 2 of the Convention. He further claims to be a victim of a violation by the State party of article 12, for failure to carry out a proper investigation into the alleged violations of articles 16 and 2 of the Convention. Moreover, he claims that his deportation constituted a violation by Denmark of article 3, paragraph 1, of the Convention as it was foreseeable that he would be subjected to torture upon return as he had been subjected to torture and ill-treatment in Iraq in 2005 and that he was exposed to threats from the families of nine other inmates who were executed. The complainant is represented by counsel.

1.2 The complainant requested that the Committee issue interim measures of protection to allow him to travel back to Denmark so that the examination according to article 12 of the Convention may be carried out, in order to allow for exhaustion of domestic remedies in Denmark. In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention on 26 February 2010. The Committee decided not to issue a request for interim measures.

Facts as presented by the complainant

2.1 The complainant submits that he had nine friends who worked for the intelligence service of Saddam Hussein and served in his palaces. When visiting one of them in 1995, he was detained, as it turned out that these friends were members of the Communist Party. The complainant was tortured in order to have him confess that he also belonged to the Communist Party. All nine of his friends were executed and the complainant was sentenced to seven years' imprisonment for holding back information on them. During the two first years of imprisonment, he was exposed to severe torture, including kicks to the crotch and

beating with electrical wires. After the complainant's release in February 2002, he started to fear revenge from the family members of the nine executed persons, who threatened the complainant's family as they thought he was responsible for their fate. In November 2002, the complainant's house was searched by the intelligence service, and when the complainant fled, he was shot in the leg.

2.2 On 27 December 2002, the complainant arrived in Denmark and submitted a request for asylum based on the fact that he had been imprisoned for seven years in Iraq for political reasons, that he had been tortured during his detention and that he was exposed to threats from the families of nine friends who had been executed. On 11 June 2004, the Refugee Appeals Board rejected the complainant's asylum request, as Saddam Hussein's regime was no longer in power, stating that the fear from families is of a private character, and that the complainant could reside in another part of Iraq. On 22 January 2008, the complainant's request to reopen the case based on the same facts and information of continuing threats from the families of the nine executed friends was rejected.

2.3 On 31 August 2009, a second attempt to reopen his asylum case, based on a report by the Medical Group of Amnesty International on his past torture, was rejected. In the report, dated 12 February 2009, his torture is described in detail. The report concludes that the complainant shows clear physical marks of torture and many symptoms of post-traumatic stress disorder. Following the rejection of his second attempt to reopen the asylum case, no further remedies were available to the complainant.

2.4 After the rejection of the complainant's first asylum request by the Danish Refugee Board, during the period 2004–2009, he was subjected to "motivational incentives" with the purpose of provoking a voluntary return to Iraq, including the termination of allowances, a food box instead of food money, moving between asylum centres, and frequent reporting to the immigration police. In the same period, 2004–2009, the complainant's health deteriorated, as ascertained by the respective psychiatric and medical reports of 13 April 2004, 12 February 2009, 6 July 2009 and 7 September 2009.

2.5 On 13 May 2009, the State party signed a Memorandum of Understanding with the Government of Iraq concerning the return of rejected asylum seekers, with the priority of voluntary returns, but also covering forced returns. On 18 June 2009, the complainant was detained in the Ellebaek Institution for Detained Asylum Seekers. During his stay in the Ellebaek detention centre, the complainant experienced twice that other rejected asylum seekers were woken up in the middle of the night and forcefully taken on a flight to Bagdad, thus causing fear and severe flashbacks of the complainant's torture experiences from Iraq.

2.6 On 5 August 2009, Inge Genefke, MD,^a and Bent Sørensen, MD,^b submitted a complaint and a request for investigation to the Danish police, claiming a violation of articles 16, paragraph 1, and 12 with regard to the complainant's detention, and of article 3, paragraph 1, of the Convention, if the complainant were to be deported to Iraq. They claimed inhuman treatment of the complainant in breach of article 16 by keeping him in detention since 18 June 2009, despite the fact that he was a victim of torture. They requested the authorities to perform an investigation into the complainant's detention in accordance with article 12 of the Convention. The police referred the complaint to the State prosecutor, who referred it to the Immigration Service.

^a The founder of the Medical Rehabilitation Centre for Torture Victims and the International Rehabilitation Council for Torture Victims.

^b A former member of the Committee against Torture and the European Committee for the Prevention of Torture.

2.7 As a disciplinary measure following unrest between a group of asylum seekers and staff of the Ellebaek detention centre, the complainant was put in solitary confinement in Vestre Prison from 9 to 10 August 2009, and his isolation continued for two more days following his transfer back to the Ellebaek detention centre. During the complainant's isolation, his psychiatric condition deteriorated.

2.8 On 1 September 2009, the Ministry of Refugee, Immigration and Integration Affairs, which examined the complainant's request for a residence permit on humanitarian grounds,^c requested a clarification of the medical certificates by Dr. Østergaard of 28 August in support of the complainant's claim that his solitary confinement constituted torture. On 2 September 2009, however, the complainant was unexpectedly deported to Iraq.

2.9 The complainant's counsel is in contact with the complainant through the complainant's wife, who is residing in Denmark. According to the complainant's wife, the complainant lives in hiding near Mosul, Iraq. She also alleges that the complainant was detained upon arrival in Bagdad for about 27 hours and obliged to report regularly to the airport police, which remains in possession of his original documents. After his arrival, the complainant received new threats from the families of his nine friends who were executed.

The complaint

3.1 The complainant claims that his detention as a rejected asylum seeker, awaiting deportation, in Ellebaek detention center from 18 June 2009 to 2 September 2009, including two days of detention in solitary confinement at Vestre Prison, amounted to a violation of articles 16, paragraph 1, and 2 of the Convention, since it caused the complainant to experience severe flashbacks from his seven years of imprisonment in Iraq, during which he had been regularly subjected to torture, and led to renewed mental suffering.

3.2 He further claims to be a victim of a violation by the State party of article 12 of the Convention, for failure to carry out a proper investigation into the alleged violations of articles 16 and 2 of the Convention by the State party. The complainant maintains that this is underscored by the fact that he was unexpectedly deported from Denmark on 2 September 2009, before the last medical report had been received by the State party.

3.3 The complainant submits that domestic remedies should be considered exhausted, as a request with reference to investigation under article 12 was sent to the police, which forwarded it to the State prosecutor, who referred it to the Immigration Service. However, before the start of the investigation, the complainant was forcibly deported and the investigation was made impossible.

3.4 Moreover, he claims that his deportation constituted a violation by Denmark of article 3, paragraph 1, of the Convention, as he had been subjected to torture and ill-treatment in Iraq in 2005, and he would be exposed to threats from the families of nine friends who had been executed in 1995.

State party's observations on admissibility and merits

4.1 On 26 August 2010, the State party submitted observations in respect of both the admissibility and the merits of the complainant's communication. In its observations, the State party submits that the complaint should be declared inadmissible, or alternatively that no violation of the provisions of the Convention has occurred.

^c It is unclear from the file when the complainant filed this request.

4.2 The State party recalls that the complainant entered Denmark on 27 December 2002, and applied for asylum, stating that he had been detained in Iraq from 1995 until February 2002 and subjected to torture; that he fled his home in November 2002 when the Iraqi authorities searched for him; and that he feared revenge, especially from three families of executed fellow prisoners, if he returned to his country of origin.

4.3 The Danish Immigration Service refused asylum to the complainant on 10 March 2004, with the motivation that the fact of having been subjected to physical outrages did not in itself justify asylum, since the former Iraqi regime was no longer in power in Iraq and opponents of the former Iraqi regime did not risk persecution upon return to Iraq.^d Even though it accepted that the families of the complainant's fellow prisoners might search for him, this could not justify asylum as there were no travel restrictions in Iraq, and the complainant could therefore take up residence somewhere else in Iraq if he did not want to take up residence in his home region. Finally, the Danish Immigration Service found that the situation in Iraq, although generally unsafe, did not justify asylum.

4.4 The State party accepts that the complainant was imprisoned in 1995 by the former Iraqi authorities due to his friendship with several members of the special security organization in the presidential palace who were members of the Communist Party. During his arrest, the intelligence service tried to extract a confession from the complainant that he was also a member of the Communist Party. During the trial before a special court, the complainant's friends were sentenced to death and subsequently executed, while the complainant was sentenced to seven years' imprisonment. The complainant was subjected to torture during his prison stay, as demonstrated by scars and permanent injuries. Upon his release in February 2002, the complainant was placed under surveillance. Following a night search of his house by the intelligence service, the complainant left Baghdad on 18 November 2002. The complainant's spouse was arrested in December 2002 and was detained for two months.

4.5 In addition, the families of the executed friends had threatened the complainant's family after the fall of Saddam Hussein's regime. The main recipients of the threats, including death threats, were the complainant's family-in-law, in particular his brother-in-law. The families had inquired about what happened during the trial at which the complainant's friends had been sentenced to death. As there was no evidence available from the court, the complainant was unable to prove that he had had nothing to do with their deaths. The complainant fears revenge from the family members of the nine executed persons if he returns to Iraq.

4.6 In its decision of 11 June 2004, the Refugee Appeals Board found that the complainant's detention and the house search in November 2002 did not justify granting asylum in 2004. In that connection, the Board emphasized that Hussein's regime was no longer in power in Iraq.

4.7 Even though the Refugee Appeals Board considered as verified that the complainant's family had received threats from family members of the executed friends, it reiterated that this was a private-law issue of insufficient strength to justify asylum. The Board further found that the complainant could take up residence elsewhere than in Baghdad. Finally, the Board found that the general situation in Iraq did not in itself justify asylum. In that connection, it found that the background information available showed that Iraqis could move freely in the entire country. The Board also found that the complainant did not meet the conditions for a residence permit and that there was no basis for assuming

^d The decision was taken following the suspension of asylum proceedings of Iraqi nationals between 20 March 2003 and 28 October 2003.

that the complainant, upon return to his country of origin, risked the death penalty or being subjected to torture or inhuman or degrading treatment. The Board upheld the decision of the Danish Immigration Service of 10 March 2004, and the complainant was ordered to leave Denmark immediately, as provided for by section 33, paragraphs 1 and 2, of the Aliens Act.

4.8 On 8 July 2004, the complainant stated that he did not want to leave voluntarily or to be assisted in his return to Iraq. Therefore, he was subjected to incentive measures in the form of discontinuation of cash benefits, transfer to a return centre and the imposition of a duty to report to the police twice a week.

4.9 On 29 June 2005, the complainant applied to the Ministry of Refugee, Immigration and Integration Affairs for a residence permit on humanitarian grounds. The complainant appended a supporting opinion of 13 April 2004 from a psychiatrist, from which it appeared that he had received treatment since November 2003 due to medium to severe post-traumatic stress disorder and that he suffered from and was being treated for mental sequelae following torture. On 29 August 2005, the Ministry refused the complainant's application for a residence permit on humanitarian grounds, as it found that no essential humanitarian considerations of such strength existed as to conclusively make it appropriate to grant the application. In that connection, it observed that even though the complainant suffered from post-traumatic stress disorder, the disorder was not, according to the Ministry's practice, sufficient to justify the issuance of a residence permit on humanitarian grounds.

4.10 On 14 March 2007, the Danish Refugee Council requested the Refugee Appeals Board to reopen the asylum proceedings. On 22 January 2008, the Board refused the request for the reopening of the proceedings. In addition to reiterating the reasoning behind its negative decision of 11 June 2004, the Board considered it unlikely that the complainant would still be pursued for actions which he had not committed and which were solely based on the assumptions of the bereaved families.

4.11 On 20 January 2009, Leif Bork Hansen, a priest, requested the Refugee Appeals Board to reopen the complainant's asylum case, referring to an upcoming examination by the Medical Group of Amnesty International in Denmark. On 21 February 2009, this request was supplemented by the report of the Medical Group of 12 February 2009. By letter of 21 February 2009, the complainant again applied for a residence permit on humanitarian grounds. The letter enclosed the report from the Medical Group, from which it appeared that the complainant suffered from obvious physical and mental effects of the torture to which he had been subjected in Iraq and that he had many symptoms compatible with post-traumatic stress disorder.^e On 30 April 2009, the Ministry of Refugee, Immigration and Integration Affairs refused the complainant's request for the reopening of the application for a residence permit on humanitarian grounds.

4.12 Pursuant to the Memorandum of Understanding of 13 May 2009 between Denmark and Iraq, the National Police requested the Danish Embassy in Baghdad in May and June 2009 to submit a number of cases to the Iraqi authorities for the purpose of readmission, including the complainant's case. However, the Iraqi authorities considered the complainant's identification documents to be false, making it impossible to identify him as

^e According to the Medical Group of Amnesty International report, the complainant suffered from memory and concentration difficulties, sleeping difficulties, nightmares and depressed mood, he avoided contact with others and was tense and irascible. There were also both subjective and objective physical symptoms: he had constant pain in his shoulders and arms, he had injuries to his shoulders and lower arms, and suffered from diabetes.

an Iraqi national. It was decided to bring the complainant before an Iraqi delegation, which would arrive in Denmark in August 2009, in order to assess his Iraqi nationality.^f

4.13 On 18 June 2009, the complainant was deprived of his liberty and was transferred to the Ellebaek Institution for Detained Asylum Seekers with a view to his deportation. The complainant was brought before Hillerød District Court on 19 June 2009, which found the deprivation of liberty lawful and fixed a time limit of 16 July 2009 for his detention. The Court held that his “presence in connection with identification hearings and implementation of his return to Iraq cannot be ensured by less interfering measures than deprivation of liberty”. The order of Hillerød District Court was upheld by the High Court of Eastern Denmark on 23 June 2009. The period of deprivation of liberty was subsequently regularly extended until the complainant’s return on 2 September 2009.

4.14 By letter of 16 July 2009, the complainant’s counsel again requested the Ministry of Refugee, Immigration and Integration Affairs to reopen the application for a residence permit on humanitarian grounds, submitting a copy of a medical record from the Avnstrup Centre, where the complainant had been treated for a hernia on 16 January 2009. By letter of 29 July 2009, the Ministry again refused to reopen the examination of the complainant’s case regarding a residence permit on humanitarian grounds, as a hernia and type 2 diabetes were not considered very serious physical illnesses that could justify the issuance of a residence permit on humanitarian grounds. By letter of 4 August 2009, the complainant’s counsel submitted further medical information to the Ministry, which considered the letter as yet another request for the reopening of the application for a residence permit on humanitarian grounds. On 6 August 2009, the Ministry refused the complainant’s request for reopening with reference to its previous decisions of 30 April and 29 July 2009.

4.15 By letter of 5 August 2009, Ms. Genefke and Mr. Sørensen made a claim against the Danish authorities with the North Sealand Police about violations of articles 3 and 16 of the Convention. With reference to article 12 of the Convention, Ms. Genefke and Mr. Sørensen requested the police to initiate an investigation. The police forwarded the letter to the Regional Public Prosecutor.

4.16 On 9 August 2009, violent unrest arose in the unit of the Ellebaek Institution in which the complainant was placed. The staff identified the complainant as a very active participant in the unrest. Against that background, he was temporarily excluded from association with other detainees.^g As the Ellebaek Institution did not have enough places for all detainees to be excluded from association for the participation in the unrest, the

^f On 20 August 2009, the complainant was brought before the Iraqi delegation in Denmark, which confirmed that he was an Iraqi national.

^g The complainant was temporarily excluded from association pursuant to section 63 (2), cf. section 63 (1) (i) and (iii), of the Danish Sentence Enforcement Act as the Ellebaek Institution assessed that there was reason to assume that it was necessary to exclude him from association to prevent criminal activities or violent behaviour, and also assessed that there was reason to assume that he exhibited gross or frequently repeated impermissible behaviour obviously incompatible with continued association with other detainees. The Ellebaek Institution did not have enough places for all participating detainees to be excluded from association, and therefore the complainant was placed in the Vestre Prison from 9 August 2009 at 8:30 p.m. and held until the next day at 4:43 p.m., when the requisite capacity had been provided through replacement of other detainees. The complainant’s temporary exclusion from association was terminated on 13 August 2009 at 4:20 p.m., when it was considered possible to restore association in the unit. The complainant’s role in the unrest was made the subject of a disciplinary interview, and he was ordered to be segregated for four days for his part in the unrest. However, the institution did not enforce the sanction as he had already been temporarily excluded from association for almost four days during the investigation of the events.

complainant was placed in the Vestre Prison until the next day. The complainant's temporary exclusion from association was terminated on 13 August 2009.

4.17 With regard to article 3 of the Convention, the State party argues that it is the responsibility of the complainant to establish a prima facie case for the purpose of admissibility of the communication^h and to present an arguable case concerning the merits.ⁱ It continues that it is the complainant who "must establish that he/she would be in danger of being tortured ... and that such a danger is personal and present".^j

4.18 As concerns the assessment of whether there were substantial grounds for believing that the complainant would be in danger of being subjected to torture when returned to Iraq, the State party refers to the three decisions of the Refugee Appeals Board which dealt with the issue of torture. According to the State party, the incident of past torture is only one of the elements in examining a risk of being tortured if the complainant were returned to his country of origin.^k It makes a reference to the Committee's jurisprudence according to which it must be considered whether or not the torture occurred recently and in circumstances which are relevant to the prevailing political realities in the country concerned.^l The State party concludes that the part of the complaint alleging a violation of article 3 of the Convention is inadmissible as manifestly unfounded. Should the Committee find this part of the complaint admissible, the State party argues that the existence of substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Iraq has not been established.

4.19 In regard to articles 2 and 16 of the Convention, the State party points out that the decision on the complainant's temporary exclusion from association was made by the Ellebaek Institution. He was excluded from association from 9 August 2009 at 8:30 p.m. until 13 August 2009 at 4:20 p.m. The State party submits that a decision on temporary exclusion from association of an inmate can be appealed to the Department of Prisons and Probation under the Ministry of Justice,^m and that there is no evidence to indicate that the complainant had appealed the decision of the Ellebaek Institution to the Department. The State party thus submits that this part of the communication should be declared inadmissible for non-exhaustion of available and effective remedies. The State party objects to the complainant's claims that his temporary exclusion from association constituted "torture" according to article 1 (in conjunction with article 2) or, alternatively, "cruel, inhuman or degrading treatment or punishment" according to article 16. The State party claims, making a reference to the Committee's concluding observations and jurisprudence,

^h Committee against Torture, general comment No. 1 (1997) on the implementation of article 3 of the Convention, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr.1), annex IX, para. 4.

ⁱ *Ibid.*, para. 5.

^j *Ibid.*, para. 7; communications Nos. 270/2005 and 271/2005, *E.R.K. and Y.K. v. Sweden*, decision adopted on 30 April 2007, paras. 7.2 and 7.3; No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006, paras. 7.1 and 7.2; No. 180/2001, *F.F.Z. v. Denmark*, Views adopted on 30 April 2002, paras. 9 and 10; and No. 143/1999, *S.C. v. Denmark*, Views adopted on 10 May 2000, paras. 6.4 and 6.6.

^k Communications No. 235/2003, *M.S.H. v. Sweden*, decision adopted on 14 November 2005, para. 6.5, and No. 277/2005, *N.Z.S. v. Sweden*, decision adopted on 22 November 2006, para. 8.5. See also communications No. 225/2003, *R.S. v. Denmark*, decision adopted on 24 May 2004, para. 6.2; No. 90/1997, *A.L.N. v. Switzerland*, Views adopted on 19 May 1998, para. 8.3; and No. 61/1996, *X, Y and Z v. Sweden*, Views adopted on 6 May 1998, para. 11.2.

^l See *M.S.H. v. Sweden*, para. 6.5. The Government also refers to communications No. 220/2002, *R.D. v. Sweden*, decision adopted on 2 May 2005, para. 8.3; and No. 245/2004, *S.S.S. v. Canada*, decision adopted on 16 November 2005, para. 8.4.

^m See section 97 of the Remand Custody Order. Reference is made to section 2.3.2.

that “solitary confinement” in general does not fall within the definition of torture,ⁿ and that temporary exclusion pursuant to the Sentence Enforcement Act does not constitute torture as it can only be applied when necessary, such as to prevent escape, criminal activities or violent behaviour.

4.20 The State party argues that article 16 of the Convention does not involve a general prohibition of exclusion from association. The Government concedes that exclusion from association may, in specific cases, depending on the circumstances of the case, amount to “cruel, inhuman and degrading treatment or punishment”. Nonetheless, the State party submits that the complainant’s temporary exclusion only for a brief period did not constitute cruel, inhuman or degrading treatment contrary to article 16 of the Convention, given the overall assessment of the circumstances of the complainant’s involvement in the violent unrest that broke out in the Ellebaek Institution on 9 August 2009, as well as the fact that the complainant was interviewed by a psychologist and continued to receive medical treatment during his exclusion from association. Moreover, the State party challenges the medical certificates by Dr. Østergaard of 28 August and 7 September 2009 in support of the complainant’s claim that the temporary exclusion constituted torture, as the doctor was not the complainant’s treating physician. In addition, the State party submits that the complainant received an explanation of the background of the temporary exclusion prior to its commencement, whereupon he kept composed and calm. The State party adds that there were no restrictions on the complainant’s right to receive booked visits and that his cell was equipped with TV and he could take one hour’s outdoor exercise alone. The only restrictions imposed on the applicant during his stay in the Vestre Prison were that he was not allowed to associate with other inmates in cells and to take outdoor exercise in association with others. A similar regime applied to his exclusion from association in the Ellebaek Institution.

4.21 In its observations on article 12 of the Convention, the State party acknowledges that this article also applies in cases of “cruel, inhuman or degrading treatment or punishment”. Referring to the Committee’s jurisprudence interpreting the scope of the obligation to investigate acts of torture or ill-treatment,^o the State party submits that the complainant was assessed by a psychiatric consultant of the Copenhagen Prisons on 6 July 2009, and that there was no indication that his health had deteriorated so much during the temporary exclusion from association that there were reasonable grounds to fear that the exclusion from association would constitute inhuman treatment within the meaning of the Convention. As of 6 July 2009, the complainant received treatment with chlorprothixene, which he also received during his temporary exclusion from association. The psychiatric consultant also recommended that treatment with antidepressants could be considered if the complainant were to remain in detention for a long period.

4.22 The State party acknowledges its duty to initiate an investigation if there are reasonable grounds, regardless of the origin of the suspicion. However, in the present case, the complaint submitted by Mr. Sørensen and Ms. Genefke prior to the complainant’s temporary exclusion from association did not constitute such reasonable grounds. The “information” provided by Mr. Sørensen and Ms. Genefke did not contain such new

ⁿ The State party makes a reference to the concluding observations on the fifth periodic report of Denmark (CAT/C/DNK/CO/5, para. 14), in which the Committee against Torture recommended that Denmark “should limit the use of solitary confinement as a measure of last resort, for as short time as possible under strict supervision and with a possibility of judicial review”. In the State party’s view, the Committee did not state that solitary confinement in general falls within the definition of torture, nor this could be inferred from the Committee’s jurisprudence, which had not specifically dealt with this issue.

^o See communication No. 59/1996, *Abad v. Spain*, Views adopted on 14 May 1998.

information about the circumstances during the complainant's deprivation of liberty, including information on the complainant's health, as could, in the State party's view, have implied a duty to initiate an investigation under article 12 of the Convention. According to the State party, the "information" only contained a request to the Danish authorities to initiate an investigation under article 12, but did not present any arguments in support thereof, other than the reference to the fact that the complainant had previously been subjected to torture and therefore had an increased risk of flashbacks if imprisoned.^P Moreover, according to the State party, the complainant did not at any time allege that he had been subjected to any mistreatment during his detention at the Ellebaek Institution, including the time he spent as temporarily excluded from association. The State party notes in particular that the complainant expressly stated during the interview at the Ellebaek Institution that he did not want to complain of any staff behavior. Against this background, the State party has been of the view that no reasonable ground existed to believe that the complainant was subjected to an act of cruel, inhuman or degrading treatment or punishment while he was temporarily excluded from association.

4.23 The State party concludes that no violations of the Convention occurred in the present case.

Complainant's comments on the State party's observations on admissibility and merits

5.1 In his comments dated 22 November 2010, the complainant's counsel recalled relevant facts of the case.

5.2 With reference to article 12 of the Convention, the complainant opposes the allegations of the State party that the complainant "seemed satisfied and kept composed and calm" during the exclusion from association. He also contests the State party's statement that the complaint submitted by Mr. Sørensen and Ms. Genefke on 5 August 2009, prior to his temporary exclusion from association, did not constitute a reasonable ground for initiating an investigation according to article 12 of the Convention. The two referred experts are considered as the leading experts on issues of torture, and their complaint on behalf of a victim of torture or ill-treatment alleging a risk of flashbacks and deterioration of his mental health as a result of the previously incurred torture should have been considered as a reasonable ground for further investigations. Moreover, the complainant points out that the complaint of 5 August 2009 targeted the conditions of detention since 18 June 2009, not just a punitive four-day exclusion from association, and the deprivation of liberty as a form of torture or ill-treatment against a former victim of torture. In addition, as the complainant was put in a punitive cell, which was even worse for his health condition, this should have been considered as an additional reason to carry out an investigation pursuant to article 12 of the Convention, as demanded by the two experts on behalf of the complainant. Except for the reference to a psychiatric report of 6 July 2009 and the complainant's treatment with chlorprothixene in order to contain his anxiety when in detention, the State party has not, in counsel's view, convincingly explained the frequency and type of medical examination that was afforded to him as a former victim of torture prior to and during his detention. According to the complainant, the examination of his health condition was never done by the State party but only on a private initiative of the

^P The State party also refers to the fact that the complainant's health following his temporary exclusion from association, taking into account also the contents of the two medical certificates issued by Dr. Østergaard on 28 August 2009 and 7 September 2009, respectively, was assessed in connection with the examination by the Ministry of Refugee, Immigration and Integration Affairs of the complainant's request for the reopening of the application for a residence permit on humanitarian grounds that was refused on 4 December 2009.

medical doctor who concluded, on 28 August 2009, that his health condition had seriously deteriorated. Furthermore, the complainant submits that the certificate was rejected as new evidence by the Ministry of Refugee, Immigration and Integration Affairs on 1 September 2009 as the medical certificate was “not signed” by Dr. Østergaard. Although the Ministry requested that a new and signed medical certificate by Dr. Østergaard be resubmitted by 8 September 2009, the State party deported the complainant to Iraq on 2 September 2009.

5.3 In addition, the complainant reasserts that by refusing to initiate the investigation of his medical condition the State party remained without the basic knowledge concerning the complainant’s suffering due to the previous torture and inhuman treatment in Iraq and the new suffering caused by the detention and use of a punitive cell in Denmark, in violation of articles 2 and 16 and article 12 of the Convention. Contesting the State party’s claim that the complainant in the present case did not at any time allege that he had been subjected to any ill-treatment during his detention at the Ellebaek Institution, the complainant submits that a request for investigation was filed on his behalf on 5 August 2009, followed by a number of letters and e-mails by his counsel. Moreover, he submits that the State party’s claim of the complainant’s alleged statement during an interview to the effect that “he did not want to complain of any staff behaviour”, cannot be considered as proof that he withdrew the complaint of 5 August 2009 by Mr. Sørensen and Ms. Genefke. Finally, the complainant makes a distinction between the possibility to complain about the “concrete behaviour” of individual staff members and to complain against the decision to initiate the use of the punitive cell and transfer the complainant to the Vestre Prison, which is used for ordinary criminals. In the complainant’s view, the inhumane treatment was first and foremost incurred by the decision to detain the complainant and to transfer him to a punitive cell in Vestre Prison.

5.4 As regards the alleged violation of article 3 of the Convention, the complainant submits that his deportation was initiated on 25 August 2009 when the State Police enquired with the Ministry of Refugee, Immigration and Integration Affairs, the Appeals Board and the Immigration Service whether the police could proceed with the deportation. The complainant asserts that the violation of article 3 of the Convention took effect on 2 September 2009, when the deportation was carried out. He also submits that he was deported to Iraq without an investigation into his health condition resulting from the previously incurred torture and inhuman treatment. He adds that the deportation was carried out in disregard of the report by the Medical Group of Amnesty International of 12 February 2009, as well as of the medical certificate of 28 August 2009. He concludes that his deportation prior to the expiry of a seven-day time limit for the resubmission of a new and signed medical certificate to the Ministry of Refugee, Immigration and Integration Affairs underscores an allegedly clear-cut violation of article 3 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee shall not consider any communication unless it has ascertained that the individual has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of the remedies has been unreasonably prolonged, or that it is unlikely to bring effective relief to the alleged victim.

6.3 The Committee notes that the State party has challenged the admissibility of the complaint in regard to the claims of a violation of articles 2 and 16 on the ground there was no evidence to indicate that the complainant had appealed the decision of the Ellebaek Institution regarding a temporary exclusion from association to the Department of Prisons and Probation. The Committee notes that the State party requested that this part of the complaint be declared inadmissible for non-exhaustion of all available and effective domestic remedies. However, the Committee notes that the subject matter before it is not exclusively relating to the detention in temporary exclusion from association but to the entire period of detention as of 18 June 2009. The Committee notes that the complainant's detention in Ellebaek Institution was upheld by Hillerød District Court on 19 June 2009 and the High Court of Eastern Denmark on 23 June 2009. In the circumstances, the Committee concludes that it is not precluded by the requirements of article 22, paragraph 5 (b), of the Convention, from considering the complaint.

6.4 The Committee further notes that the State party has challenged the admissibility of the complaint in regard to the claim of a violation of article 12 on the ground that the allegations submitted on behalf of the complainant of being subjected to torture or cruel, inhuman or degrading treatment or punishment did not present a prima facie case and thus did not imply a duty upon the State party to investigate. The Committee is of the opinion that the allegations under article 12 raise substantive issues which should be dealt with on the merits and not on admissibility. The Committee thus considers this part of the complaint admissible.

6.5 The Committee notes that the State party has challenged the admissibility of the complaint in regard to a violation of article 3 on the grounds that the complainant has failed to establish a prima facie case for the purpose of admissibility of the communication. The Committee however is of the opinion that the allegations raise substantive issues which should be dealt with on the merits and not on admissibility. The Committee considers the part of the complaint in regard to article 3 admissible.

6.6 As the Committee finds no further obstacles to admissibility, it declares the complaint admissible and proceeds to its consideration on the merits.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

Confinement

7.2 The first issue before the Committee is whether the confinement of the complainant, a former victim of torture, in Ellebaek Institution amounts to torture or to other cruel, inhuman or degrading treatment or punishment contrary to articles 2 and 16 of the Convention.

7.3 The Committee considers that, when detention of refused asylum seekers is applied as a last resort, its duration should be limited, medical checks upon arrival in detention facilities should be ensured, and a medical and psychological follow-up by a specially trained independent health expert should be provided when signs of torture or traumatization have been detected during the asylum proceedings.⁹ In the instant case, the Committee notes that the overall duration of the complainant's detention was less than three

⁹ See, for example, the concluding observations of the Committee against Torture on the fifth periodic report of Germany (CAT/C/DEU/CO/5), para. 24 (a), (b) and (c).

months and that both the initial detention and its extensions underwent judicial reviews. The Committee further notes that the complainant received a psychiatric examination on 6 July 2009, some three weeks after his detention in Ellebaek Institution, and was given medication. In the circumstances, the Committee concludes that the detention of the complainant did not amount to violations of article 16 and of article 2 of the Convention.

Exclusion from association

7.4 With regard to the question of whether the author's detention in "exclusion from association" constituted a separate violation of article 16, the Committee notes the State party's argument that the temporary exclusion from association pursuant to the Sentence Enforcement Act was applied as necessary, for a limited period of time, and was proportionate to a legitimate objective of preventing violent behaviour, and that it was not contrary to article 16, given the overall assessment of the circumstances of the complainant's involvement in the violent unrest that broke out in the Ellebaek Institution on 9 August 2009. The Committee considers that the particular conditions of solitary confinement, the stringency of the measure, its duration, the objective pursued and its effect on the person concerned must all be taken into account when determining whether or not it amounts to a violation of article 16 of the Convention. The Committee notes that the complainant's exclusion from association did not exceed four days; that during that period of time he was visited by his girlfriend, his lawyer, a psychologist and a medical doctor; and that he had a television in his cell. In the circumstances, the Committee concludes that the complainant's detention in exclusion from association did not amount to a separate violation of article 16 of the Convention.

Article 12 claim

7.5 The Committee notes that counsel alleges a violation of article 12 of the Convention, since the State party did not conduct an investigation after the report was filed by Mr. Sørensen and Ms. Genefke on 5 August 2009 and since, moreover, the complainant was removed from the territory of the State party before any examination of the complaint that his detention constituted a violation of the Convention had taken place. In this context, the Committee notes the State party's statement that the complaint submitted by Mr. Sørensen and Ms. Genefke during the complainant's detention, preceding his temporary exclusion from association, did not constitute reasonable grounds to initiate an investigation under article 12 of the Convention, since it did not refer to any instances of torture or ill-treatment other than a general reference to the negative effects of the detention on the complainant's health. The Committee further notes the State party's assertion that the complainant did not, at any time, allege that he had been subjected to any mistreatment during his detention.

7.6 The Committee recalls its jurisprudence on the contents and scope of article 12, according to which State authorities have the obligation to proceed to an investigation *ex officio*, wherever there are reasonable grounds to believe that acts of torture or ill-treatment have been committed.[†] In the instant case, however, no allegations have been made by the complainant or on his behalf that he had been subjected to acts of torture or ill-treatment other than the general allegation that his detention as such, in the light of his particular vulnerability as a former victim of torture, amounted to a violation of the Convention. The Committee recalls its previous jurisprudence that an investigation under article 12 must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved therein.[§] In the circumstances of the

[†] *Abad v. Spain*, para. 8.2.

[§] *Ibid.*, para. 8.8, and communication No. 161/2000, *Dzemajl et al. v. Serbia and Montenegro*, decision adopted on 21 November 2002, para. 9.4.

present case, where the sheer fact of detention was alleged to constitute the violation of the Convention, the Committee considers that no reasonable purpose would have been served by such an investigation. Accordingly, the Committee considers that the facts before it do not disclose a violation of article 12 of the Convention by the State party.

Article 3 claim

7.7 The last issue before the Committee is whether the forced removal of the complainant to Iraq violated the State party's obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainant would have been personally in danger of being subjected to torture.

7.8 In assessing the risk, the Committee must take into account all relevant considerations pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would have been personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

7.9 The Committee recalls that the aim of such determination is to establish whether the individual concerned would have been personally at a foreseeable and real risk of being subjected to torture on return to that country. The Committee also recalls its general comment No. 1 on the implementation of article 3, in which it stated that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion", but that "the risk does not have to meet the test of being highly probable", and that the risk must be personal and present.¹ In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.² The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned,³ while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.10 In the present case, the Committee notes that the State party has acknowledged and taken into account the fact that the complainant had been subjected to torture in the past when evaluating the existence of a personal risk of torture the complainant might face if returned to his country, including in all three decisions of the Refugee Appeals Board which have dealt with this issue. The Committee further notes that in 2009 the complainant had submitted that he would be exposed to a risk of torture exclusively based on threats from the families of his friends who were executed in 1995. The Committee recalls that the State party's obligation under article 3 is to refrain from forcibly returning a person to another State where there are substantial grounds for believing that there is a risk of torture.

¹ Paras. 6 and 7.

² See, inter alia, communications No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005 and No. 226/2003, *T.A. and S.T. v. Switzerland*, decision adopted on 6 May 2005.

³ See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

The Committee observes that the complainant in the present case has failed to substantiate that he was in such danger.

7.11 In the light of the above, the Committee concludes that the existence of substantial grounds for believing that the complainant would have been in danger of being subjected to torture upon return to Iraq has not been established. The Committee therefore concludes that his removal to that country did not constitute a breach of article 3 of the Convention.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's detention as a refused asylum seeker from 18 June 2009 to 2 September 2009 did not amount to a violation of articles 16 and 2 of the Convention, that his rights under article 12 of the Convention have not been violated and that his removal to Iraq by the State party did not constitute a breach of article 3 of the Convention.

Communication No. 416/2010: *Ke v. Australia*

Submitted by: Ke Chun Rong (represented by counsel,
Veronica Mary Spasaro)

Alleged victim: The complainant

State party: Australia

Date of complaint: 15 March 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 5 November 2012,

Having concluded its consideration of complaint No. 416/2010, submitted to the Committee against Torture by Veronica Mary Spasaro on behalf of Ke Chun Rong under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Ke Chun Rong, a national of China, born on 30 October 1962; at the time of the submission of the communication, he was residing in Australia. The complainant requested and was denied a Protection Visa under the Australian Migration Act 1958 and was asked to leave the country. At the time of the submission he was detained in the Villawood Immigration Detention Centre in Sydney and was facing deportation. He claims that his forced return to China would constitute a violation by Australia of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Veronica Mary Spasaro from the non-governmental organization Balmain for Refugees.

1.2 Under rule 114 (former rule 108) of its rules of procedure (CAT/C/3/Rev.5), the Committee requested the State party, on 31 March 2010, to refrain from expelling the complainant to China while his communication is under consideration by the Committee.

The facts as presented by the complainant

2.1 The complainant is a Chinese citizen who claims to be a regular practitioner and leader of Falun Gong, which he joined in 1995 when he moved to Fuzhou, China. He is married and has two sons, still living in China. According to the complainant, in 1996 he returned to his home village of Cuihou, where he began organizing a local group to practice Falun Gong. He claims that he instructed new practitioners and had a leadership role. The complainant stresses that when the Chinese authorities made Falun Gong illegal in 1999, his Falun Gong materials were confiscated by the police, who threatened to close the clothing business he had opened in his home village. Since then he continued to practice Falun Gong secretly with others.

2.2 The complainant claims that, on 15 August 2001, he was arrested and detained by the police in Fuqing City Detention Centre because he was a Falun Gong group leader and had organized Falun Gong practitioners to protest against the detention of one of their members. The complainant states that he was held in detention for 16 days, and was interrogated and tortured nearly every day. On one occasion he was tortured and interrogated for four hours continuously. He claims that he was handcuffed to iron bars and suffered repeated electric shocks on his back. He also states that he was burned with cigarettes on the back of his neck and that the handcuffs cut into his wrists and hands. The complainant claims that after his release he was under police surveillance and therefore went into hiding. He decided to leave China on 12 December 2004, after hearing that a former fellow Falun Gong practitioner from his village had revealed under torture his name as his Falun Gong teacher. He obtained a legal passport and visa to go to Australia by using family connections. He arrived in Australia on 12 December 2004 and came to Sydney on 17 December 2004. The complainant claims that he left China to avoid arrest and persecution, and continued to practice Falun Gong when he arrived in Australia.

2.3 On 20 January 2005, the complainant applied for a Protection Visa under the Australian migration legislation. His application was refused by an immigration department officer on 7 March 2005 without an interview. Subsequently the Refugee Review Tribunal, on 23 May 2005, wrote to advise him that it was unable to make a favourable decision on the information in its possession and invited him to give evidence at a hearing on 22 June 2005. The complainant did not receive the invitation for the hearing and, on 22 June 2005, in his absence, the Tribunal confirmed the decision of the immigration department not to grant him a Protection Visa and found there was a lack of evidence of his practice of Falun Gong as well as a lack of details in his claims. It also pointed out the fact that the passport with which the complainant came to Australia was issued some two and a half years after his alleged detention.

2.4 On 12 October 2005, the complainant lodged an appeal to the Federal Magistrates Court against the decision of the Refugee Review Tribunal. In the appeal he complained about the fact that he was unaware of the invitation to the hearing and that he had no chance to provide information about his Falun Gong practice. The appeal was dismissed on 13 March 2007, since the Court found that the Tribunal had complied with its statutory obligations in the making of its decision and that the decision was not affected by jurisdictional error. In July 2007, the complainant left Sydney for Perth for work reasons and was arrested there, for overstaying his visa, on 11 February 2009. On 18 February 2009, he introduced a request for ministerial intervention under sections 417 and 48B of the Migration Act, on his own. On 13 March 2009, he was transferred to the Villawood Immigration Detention Centre in Sydney and on 28 April 2009 his request was refused by the Ministerial Intervention Unit, which found that the request did not comply with the Minister's Guidelines for assessment of such requests.

2.5 In May 2009, the complainant decided to seek the assistance of the non-governmental organization Balmain for Refugees. On 14 July 2009, the organization sent, on behalf of the complainant, another ministerial intervention request to the Minister under sections 417 and 48B of the Migration Act. It contained new evidence and information on the torture he endured and his practice of Falun Gong, including further details on the complainant's persecution and torture in China, witness statements from Falun Gong practitioners in China on the complainant's practice of Falun Gong and subsequent arrest, a witness statement from the complainant's roommate in Sydney attesting to his regular practice of Falun Gong in Australia, and a medical report from an independent psychiatrist in Sydney, dated 10 June 2009, relating to the complainant's incarceration in China. On 8 January 2010, the ministerial intervention was refused. The complainant states that the Ministerial Intervention Unit found his claims were fully dealt with by the delegate of the Minister for Immigration, Multicultural and Indigenous Affairs and the Refugee Review

Tribunal in 2005 and were assessed again in April 2009 in his first request for ministerial intervention. It also found that there was no evidence to suggest that he possessed the profile of someone the Chinese authorities would consider could oppose the Government in an effective and organized way, and that his low profile of Falun Gong practice in Australia meant that he was not a person of interest to the Chinese authorities if he were to be returned to China.

2.6 On 3 February 2010, following this ministerial refusal, the complainant lodged an appeal to the Federal Court of Australia against the previous decision of the Federal Magistrates Court dated 13 March 2007. Since the appeal was outside the prescribed time limits, the complainant made an application for an extension of the time within which he might file and serve a notice of appeal. On 12 March 2010, the Federal Court of Australia dismissed the complainant's application for an extension of time.

2.7 The complainant submits that he made no application to the High Court of Australia to appeal the judgment of the Federal Court of Australia, because, in line with the findings of the United Nations Human Rights Committee, any appeal to the High Court would "not have constituted an effective remedy" given that the Federal Court had already determined it was unable to consider merit arguments. A last request for ministerial intervention was submitted to the Minister for Immigration and Citizenship on 15 March 2010, with new information and evidence. This request had not been answered at the time of submission of the initial communication by the complainant.

2.8 The complainant claims that his application for a Protection Visa was obstructed from the start by the registered migration agent^a assisting him, who failed to provide specific details and supporting evidence for his protection claims and, among others, did not detail the extent and nature of the torture he had endured. He stresses that the migration agent's negligence was also the reason why he never had the opportunity to appear before the Refugee Review Tribunal to present his claims in person and in more detail, as the latter supplied a wrong address to the Tribunal and failed to inform the complainant of the date and time of the hearing. The complainant further claims that during the hearing before the Federal Magistrates Court he was unrepresented and had no documents with him because the migration agent had refused to represent him in court.

2.9 The complainant also submits that in July 2005, while he was in Australia, he learned that the police went again to his home in Cuihou village, trying to determine his whereabouts. He stresses that his sons were suspended from school in order to force him to give himself up to police. The complainant claims that, at the time of the submission of the communication, he was continuing his practice of Falun Gong in the Villawood Immigration Detention Centre.

The complaint

3. The complainant claims that if he is returned to China, given his arrest, detention and recorded profile as a Falun Gong leader, he would be subjected to interrogation immediately upon arrival at the airport, which may lead to a period of detention for further

^a According to the official website of the Department of Migration and Citizenship of the Australian Government (www.mara.gov.au/), migration agents must be registered with the Office of the Migration Agents Registration Authority (MARA). MARA is defined as "a discrete office attached to the Department of Immigration and Citizenship", the functions of which are set out in section 316 of the Migration Act 1958. Registered migration agents are bound by a code of conduct and are required to have an in-depth knowledge of Australian migration law and procedure and meet high professional and ethical standards. Applicants for any type of visa are advised by the website to use a migration agent to submit their applications.

questioning and result in infliction of torture. The complainant claims that this forcible return would constitute a violation by Australia of article 3 of the Convention, since he would be exposed to a high risk of further torture.

State party's observations on the admissibility and the merits

4.1 On 31 October 2011, the State party submitted that the communication should be ruled inadmissible as unsubstantiated or, should the Committee be of the view that the allegations are admissible, they should be dismissed as being without merit.

4.2 The State party submits that the complainant had arrived in Australia on 12 December 2004 on a Business (Short Stay) Visa and that, on 20 January 2005, he applied for a Protection Visa under the Migration Act 1958, claiming refugee status. In his application he alleged that he had started practicing Falun Gong in 1995, became a teacher in his area and that in 2001 he had been arrested, detained and tortured for two weeks, after organizing a group of practitioners to seek the release of other detained Falun Gong practitioners.

4.3 On 5 March 2005, the complainant's application was rejected by a delegate of the Minister for Immigration, Multicultural and Indigenous Affairs. On 6 April 2005, the complainant appealed to the Refugee Review Tribunal, which, on 23 May 2005, wrote to advise him that it was unable to make a favourable decision on the information in its possession and invited him to give evidence at a hearing on 22 June 2005. Since he did not attend the hearing, on that date the Tribunal confirmed the refusal. The Tribunal decided that the complainant's claims about being a Falun Gong practitioner and having a well-founded fear of persecution in China were not credible. The complainant sought judicial review of the Tribunal's decision by the Federal Magistrates Court of Australia, claiming that he had never received the letter inviting him to attend a hearing; however, on 13 March 2007, the Court found that there was no error made by the Tribunal and dismissed the application. On 3 February 2010, the complainant applied to the Federal Court of Australia for an extension of time to appeal the Federal Magistrates Court's decision, but the latter dismissed his application on 12 March 2010.

4.4 The State party further submits that after the complainant's Bridging E Visa expired on 10 April 2007, he remained unlawfully in the country until 11 February 2009, when he was taken into immigration detention, and that he remained in the Villawood Immigration Detention Centre from 13 March 2009 to 15 August 2011, when he was placed in community detention by the Minister for Immigration and Citizenship. It further submits that between 5 October 2005 and 15 March 2010 the complainant lodged three separate ministerial intervention requests, each of which was assessed as not meeting the Ministerial Guidelines for referral to the Minister.^b

4.5 The State party maintains that it is the responsibility of the complainant to establish a prima facie case for admissibility, and that in the present case he had failed to substantiate that there is a foreseeable, real and personal risk that he would be subjected to torture by the

^b The State party submits that the Migration Act "confers discretionary, non-delegable and non-compellable powers upon the Minister to intervene in cases if it is considered by the Minister to be in the public interest to do so". The Minister is authorized "to substitute a decision of the RRT [Refugee Review Tribunal] with a decision more favourable to the applicant", and the latter has issued guidelines that he will generally consider applications "only in cases that exhibit one or more unique or exceptional circumstance, including where there are circumstances that provide a sound basis for believing that there is a significant threat to a person's personal security, human rights or human dignity upon return to their country of origin and where there are circumstances that may bring into consideration Australia's obligations, under treaties".

Chinese authorities if returned to China. It recalls that the Refugee Review Tribunal held that the complainant's claims were not credible, that the Tribunal was not satisfied that the complainant was a Falun Gong practitioner, because his claims lacked important details, namely, he gave few details about the nature of his practice and did not display knowledge of the philosophy of Falun Gong beyond what was publicly available. Further, the Tribunal did not accept that the author had been monitored, detained or mistreated by the Chinese authorities. The Tribunal reached those conclusions due to the lack of detail in the initial claim and "without the opportunity to test the claims at a hearing, it was not prepared to accept the author's claims". The State party submits that the Refugee Review Tribunal "was not satisfied that the author was a person to whom Australia had protection obligations under the Refugee Convention" and that, on appeal, the Federal Magistrates Court was not persuaded that the applicant had not attended the Tribunal hearing "as a result of any fraud or error by his migration agent".

4.6 The State party further submits that the complainant had provided information regarding details of past ill-treatment in the course of the domestic proceedings and ministerial intervention requests, as well as documents, and that this information had been assessed by the domestic procedures. It maintains that the domestic legal system in Australia offers a "robust process of merits and judicial review" to ensure that any error made by an initial decision maker can be corrected. It recalls that the author appealed to the Refugee Review Tribunal, the Federal Magistrates Court and the Federal Court of Australia and no error had been identified.

4.7 The State party submits that apart from allegations of past ill-treatment the complainant does not specify what treatment he might suffer if returned to China, but that he had made "limited claims" in relation to possible treatment he might face.^c He had further alleged that his family was targeted by the authorities due to his Falun Gong practice, but in another statement he indicated that his family was doing well. The State party submits further that a statement provided by the complainant's mother on 17 February 2010 contains only information regarding the period when he was in China, but does not provide any information on "interaction with the Chinese authorities" since his departure.^d The State party maintains that the above statement does not provide any substantial grounds to support the complainant's allegation that he would be subjected to torture or mistreatment upon his return to China.

4.8 As to the merits of the case, the State party reiterates that there are no substantial grounds to believe that the complainant will be in danger of being subjected to torture by the Chinese authorities, that his claims for protection in Australia have been properly determined according to the Australian law, that he does not disclose any information that has not already been considered in the domestic proceedings and that he had benefited from the "robust process of merits and judicial review" to ensure that any error made by an initial decision maker had been corrected. It further maintains that the documents provided by the complainant, including witness affidavits, personal statements and medical reports, although not provided in relation to the Protection Visa application, had been duly considered by the immigration department during the consideration of the ministerial intervention requests. It maintains that there is little credible evidence provided by the complainant to establish that there is a personal and present risk of torture upon his return and reiterates that his claims under article 3 of the Convention should be dismissed for lack of merits.

^c The State party specifies that in one of the complainant's personal statements he had stated that if he was sent back to China he would suffer mistreatment which may threaten his life.

^d The complainant's mother's statement was submitted to support one of his ministerial intervention requests.

The complainants' comments on the State party's observations

5.1 On 6 February 2012, the complainant submitted that the State party's submission fails to acknowledge the impact of the complainant's claim that he has been the victim of the negligence, incompetence or fraud of a migration agent and as a result the Government's claim that "the domestic legal system in Australia offers a robust process of merits and judicial review" is rendered largely irrelevant in his case. He maintains that as a result of the actions of his migration agent he was unable to participate fully in the domestic legal system in order to have his protection claims fully considered. Further, he maintains that new evidence and information submitted by him, which had been omitted by his migration agent at an earlier stage, had been summarily dismissed by the Government as lacking in credibility. He also maintains that he has not been interviewed in person by an agent of the Government with responsibility for assessing his protection claims at any stage of the proceedings.

5.2 The complainant challenges the State party's submission that he failed to establish a prima facie case that he faces a foreseeable, real and personal risk of being subjected to torture upon deportation, and maintains that he submitted, with the last ministerial intervention request, the following: eye witness statements from family members and Falun Gong practitioners in China attesting to his practice, arrest, detention and torture by the police;^e medical evidence supporting the consistency of the complainant's scar marks with the claimed torture, including burn marks and injuries sustained from a combination of shackling, burns and beatings with an electric baton;^f psychiatric evidence supporting diagnosis of post-traumatic stress disorder, consistent with the claimed torture; and a further detailed statement from the complainant on the persecution and torture experienced by him in China, including an explanation for his delayed escape.

5.3 The complainant submits that there remains in China continuing and sustained Government-initiated oppression and persecution of Falun Gong, the purpose of which is to completely eradicate the practice. He refers to the International Religious Freedom Report issued in September 2011 by the United States Department of State, which indicates that detentions of Falun Gong practitioners continue, and notes that since 1999 about 6,000 Falun Gong practitioners had been sentenced to jail sentences and some 100,000 had been subjected to "administrative sentences" of one to three years internment in camps. The report also states that neighbourhood groups were reportedly instructed to report on Falun Gong members, and refers to several cases in which Falun Gong practitioners had been arrested and disappeared and to one case where a practitioner, sentenced to internment in a camp, had been tortured. The complainant submits that the Chinese authorities have a record of his involvement in Falun Gong and that they are aware that he has been out of the country for some time. He believes that if returned he will be interrogated immediately on arrival, which may lead to his arrest, detention, internment in a labour camp and further torture. The complainant maintains that the country background information, together with his personal record of Falun Gong practice, arrest and torture in the past establish firm

^e The complainant had submitted: a witness statement from his mother, who witnessed his arrest on 15 August 2001 and attests to his detention for 15 days, as well as to two further visits of the police during which they conducted searches of the house and were seeking to locate him; a witness statement from Falun Gong practitioners who were present when he went to the local police station to petition for the release of another Falun Gong practitioner; a witness statement attesting to his arrest in 2001; witness statements from individuals who shared a Falun Gong practice with him in 1995/96; and a statement from the Falun Gong practitioner who organized the payment of bribes to secure his release from detention.

^f The complainant submitted a medical certificate issued by Dr. Fleri of International Health and Medical Services, dated 1 February 2010.

grounds to believe that he would personally face a foreseeable and real risk of torture if returned to China.

5.4 The complainant submits that his protection claims have not been considered properly by the domestic processes available in Australia, and in particular that they have not been subjected to a “robust process of merits review”. At the stage when his protection claims were submitted, there was no opportunity granted for an interview, which he believes would have allowed him to provide convincing testimony to support his claims. He maintains that his migration agent failed to prepare properly his application for a Protection Visa, that he failed to disclose himself as a registered migration agent on the Protection Visa and Refugee Review Tribunal applications, and that he submitted to the authorities wrong information as to the address of the complainant.

5.5 The complainant further maintains that the Federal Magistrates Court and other federal courts have no jurisdiction to review the matters of his case. According to the privative clause referred to in part 8, division 1 of the Migration Act 1958, federal courts are limited to decisions relating to jurisdictional error and cannot review whether an asylum seeker is or is not a refugee under the 1951 Convention relating to the Status of Refugees. If a jurisdictional error is found, the matter is remitted to another Refugee Review Tribunal. Where there exists “migration agent fraud” in a person’s protection application, that may be found to amount to jurisdictional error, but such findings are rare. Where a “lesser finding of migration agent negligence or dishonesty” is made, that is not considered a jurisdictional error and the court cannot rule that the case be returned to the Refugee Review Tribunal for a further hearing opportunity.

5.6 The complainant maintains that in his case evidence to support the misconduct of his migration agent has been disregarded^g and that the Federal Magistrates Court does not refer to the existence or not of a migration fraud, but merely states that “the Tribunal was entitled to exercise its discretion as it did pursuant to s.426A of the Act to proceed to make its decision on the review without taking any further action to enable the applicant to appear before it”.^h In making requests for ministerial interventions he primarily sought the approval of the Minister to enable him to reapply for a Protection Visa, but he was repeatedly denied that opportunity. The complainant submits that both the Federal Magistrates Court and the Federal Court of Australia had recognized that he was not aware of the invitation to appear for an interview before the Refugee Review Tribunal,ⁱ but nevertheless he was not given an opportunity for an interview. Instead, the Ministerial

^g To prove that he used a particular migration agent the complainant had submitted a business card of the agent and receipts for payment for English translation of documents, issued by his office. Nonetheless, the migration agent allegedly did not disclose that he had prepared the application and the appeal. The complainant also maintains that, although he had notified the immigration department of a change in his address on 14 March 2005, through the official change of address form, on 6 April 2005, when his appeal to the Refugee Review Tribunal was lodged, the migration agent used the old, and therefore incorrect, address that was noted on the Protection Visa application.

^h The complainant refers to paragraph 30 of the Federal Magistrates Court’s decision, *Szhie v. Minister for Immigration and Citizenship and the Refugee Review Tribunal*, file number SYG2929 of 2005, dated 13 March 2007 (copy provided by the complainant).

ⁱ The complainant refers to paragraph 30 of the Federal Magistrates Court’s decision (*ibid.*), which states that “the fact that the applicant was unaware of the invitation is not an error on the part of the Tribunal”, and to paragraph 40 of the decision of the Federal Court of Australia, case *Szhie v. Minister for Immigration and Citizenship and the Refugee Review Tribunal*, file number NSD 95 of 2010, dated 12 March 2010, which states “I accept and find that the applicant was not told by any person of the date, time and place of the Tribunal hearing and that he did not receive the Tribunal’s letter dated 23 May 2005” (copy provided by the complainant).

Intervention Unit rejected his requests based on the “existence of inconsistencies” and summarily dismissed the new evidence presented by him.^j

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party has recognized that the complainant has exhausted all available domestic remedies.

6.3 The Committee takes note of the State party’s argument that the communication should be declared inadmissible as manifestly unfounded. The Committee considers, however, that the complaint raises substantive issues under article 3 of the Convention, which should be examined on the merits. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 The issue before the Committee is whether the removal of the complainant to China would violate the State party’s obligation under article 3 of the Convention not to expel or to return (refouler) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to China. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

7.3 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, that “the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable”,^k but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.^l The Committee recalls that under the terms of general comment No. 1, it gives

^j See para. 5.2 and footnote d above.

^k *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX, para. 6.*

^l See, inter alia, communications No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November

considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.4 The Committee further recalls general comment No. 1 (para. 5), according to which the burden to present an arguable case is on the author of a communication. The Committee notes the State party's submission that in the present case the complainant had failed to substantiate that there is a foreseeable, real and personal risk that he would be subjected to torture by the authorities if returned to China, that his claims had been reviewed by the competent domestic authorities, in accordance with the domestic legislation, and that the latter were "not satisfied that the author was a person to whom Australia had protection obligations under the Refugee Convention". However, the Committee is of the view that the author has submitted sufficient details regarding his affiliation with the Falun Gong practice, such as information on the practice, statements of persons who have participated in it together with the complainant, statements of individuals testifying to his arrest and detention by the authorities, as well as medical evidence corroborating his account of having experienced torture while in detention.

7.5 The Committee notes that the above claims and evidence have not been sufficiently verified by the Australian immigration authorities. The Committee observes that the review on the merits of the complainants' claims regarding the risk of torture that he faced was conducted predominantly based on the content of his initial application for a Protection Visa, which he filed shortly after arriving in the country, without knowledge or understanding of the system. The Committee further observes that the complainant was not interviewed in person either by the immigration department, which rejected his initial application, or by the Refugee Review Tribunal, and therefore he did not have the opportunity to clarify any inconsistencies in his initial statement. The Committee is of the view that complete accuracy is seldom to be expected from victims of torture.^m The Committee further observes that both the Federal Magistrates Court's decision and the decision of the Federal Court of Australia recognize that the complainant was not informed of the Refugee Review Tribunal's invitation for a hearing. The Committee also observes that the State party does not dispute that Falun Gong practitioners in China have been subjected to torture, but bases its decision to refuse protection to the complainant in the assessment of his credibility. In this context, the Committee finds that in determining whether there were substantial grounds for believing that the complainant would face a foreseeable, real and personal risk of being subjected to torture if deported to his country of origin, the State party has failed to duly verify the complainant's allegations and evidence, through proceedings meeting the State party's procedural obligation to provide for effective, independent and impartial review as required by article 3 of the Convention. The Committee, therefore, finds that the complainant has not had access to an effective remedy against the decision to reject his application for a Protection Visa. Accordingly, the Committee concludes that the deportation of the complainant to his country of origin would constitute a violation of article 3 of the Convention.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the deportation of the complainant to China would constitute a violation of article 3 of the Convention.

2005, and No. 226/2003, *T.A. v. Sweden*, decision adopted on 6 May 2005.

^m See *Alan v. Switzerland*, communication No. 21/1995, Views adopted on 8 May 1996, para. 11.3.

9. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken in accordance with the above observations.

Communication No. 417/2010: Y.Z.S. v. Australia

Submitted by: Y.Z.S. (represented by counsel)
Alleged victim: The complainant
State party: Australia
Date of complaint: 30 March 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2012,

Having concluded its consideration of complaint No. 417/2010, submitted to the Committee against Torture on behalf of Y.Z.S. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Y.Z.S., a national of China. He requested and was denied a Protection Visa under the Australian Migration Act 1958. At the time of the submission of the complaint he was detained in the Villawood Immigration Detention Centre in Sydney and was notified that he would be removed back to China on 1 April 2010. He claimed that his forced return to China would constitute a violation by Australia of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel.

1.2 The complainant's request for interim measures under rule 114 (former rule 108) of the Committee's rules of procedure (CAT/C/3/Rev.5) was denied by the Rapporteur on new complaints and interim measures on 31 March 2010.

Factual background

2.1 The complainant is a 54-year-old Chinese citizen who claims to be a Falun Gong practitioner, a movement which he joined in 1996. He was working in a factory in China. He claims that he also invited others to join in Falun Gong practice in his factory in Shenyang. According to the complainant, he was arrested on 20 August 1999 and detained in Zhangshi Labour Camp until 19 August 2000 for practising Falun Gong. He contends that he was tortured in detention, and that the trauma associated with this torture was such that he attempted suicide.

2.2 On 2 October 2002, the complainant arrived in Australia on a "676 Visitor Visa" (short stay) for New Zealand and Australia. He then left Australia on 9 October 2002. On 1 October 2003, he came to Australia for the second time (second visit) on another short-stay visa. On 10 October 2003, he applied for a Protection Visa on grounds of persecution as a Falun Gong practitioner. His application was refused by an officer of the Department of Immigration, Multicultural and Indigenous Affairs on 24 December 2003.

2.3 The complainant filed an appeal with the Refugee Review Tribunal. On 24 March 2004, the Tribunal rejected the appeal in his absence. It noted that the complainant failed to appear at a hearing scheduled on 18 March 2003, that he had advised the Tribunal that he did not want to give oral evidence, and that he had further consented that the Tribunal proceed to make a decision without his appearance. The complainant contends that he did not wish to attend the above-mentioned hearing as he had learned that the migration agent had fabricated some of the facts of his claim, and that he therefore feared to confront that agent during the hearing. In the complainant's absence, the Tribunal adopted a decision refusing protection on the ground that the complainant's application: (a) contained no details about the nature of his practice of Falun Gong; (b) gave no details of how he became organizer of his group; (c) lacked information about police violence; and (d) gave insufficient details of the brainwashing he was allegedly subjected to for three months.

2.4 It was not until May 2007 (i.e., three years after the Refugee Review Tribunal's decision) that the complainant applied for judicial review before the Federal Magistrates Court of Australia, and explained that his migration agent had not given the correct factual information about his claims. On 10 September 2007, the Court dismissed his application, on the ground that the complainant would have had the chance to put the true facts to the Refugee Review Tribunal if he had attended the hearing. The complainant's appeal to the Federal Court of Australia against the Federal Magistrates Court decision was dismissed on 12 December 2008. The complainant mentions that he did not apply to the High Court of Australia for special leave to appeal the judgment of the Federal Court as it would not have constituted an effective remedy, because the Federal Court had already determined it was unable to consider merits arguments.

2.5 The complainant also sought seven ministerial interventions between 2004 and 2009, but all requests were refused. On 29 March 2010, his last ministerial intervention request was also refused and he was informed that he would be removed at noon on 1 April 2010.

The complaint

3. The complainant claims that if he were returned to China, he would be subjected to torture and his forcible return would constitute a breach by Australia of his rights under article 3 of the Convention.

State party's observations on the admissibility and the merits

4.1 On 3 November 2011, the State party submitted that the complaint should be ruled inadmissible as unsubstantiated or, should the Committee be of the view that the complainant's allegations are admissible, they should be dismissed as being without merit.

4.2 The State party further provides a summary of facts and allegations advanced by the complainant. The complainant is a Chinese national who arrived in Australia on a subclass 676 (Tourist) visa in Australia on 2 October 2002. He departed Australia on 9 October 2002 and then re-entered Australia on 1 October 2003 on a subclass 676 (Tourist) visa. On 10 October 2003, the complainant applied to the immigration department for a Protection Visa under the Migration Act 1958, claiming the status of refugee under the Convention relating to the Status of Refugees 1951. In his Protection Visa application, the complainant claimed that he had started practising Falun Gong in China in 1997 and had been an organizer in his local area. He claimed that during 2003 he was arrested and detained for three months after printing Falun Gong pamphlets and distributing them in mailboxes. The complainant alleged that he was forced to attend "brainwashing" classes in a "re-education centre" for three months and was released with reporting conditions when he wrote a letter renouncing his beliefs.

4.3 On 24 December 2003, a delegate of the Minister for Immigration refused the complainant's Protection Visa application. The complainant sought a merits review by the Refugee Review Tribunal on 13 January 2004. On 25 February 2004, the Tribunal invited the complainant to give evidence at a hearing on 18 March 2004. On 16 March 2004, the complainant advised the Tribunal in writing that he did not wish to give evidence and consented to the Tribunal proceeding to make a decision in his absence. The Refugee Review Tribunal affirmed the immigration department's decision on 15 April 2004. The Tribunal concluded that the complainant's claims about his Falun Gong activities and practice were not credible. It was not prepared to accept the complainant's claims without the opportunity to test his claims at a hearing and due to the lack of detail in the complainant's claims. Specifically, the Tribunal did not accept that the applicant was a Falun Gong practitioner or that he had received adverse attention from Chinese authorities as a result of his activities.^a

4.4 On 11 May 2007, the complainant sought judicial review of the decision of the Refugee Review Tribunal by the Federal Magistrates Court. The complainant sought an appeal on the grounds that he had never received a letter from the Tribunal notifying him to attend the hearing and he claimed that his migration agent had not informed him of the hearing. The Court found that he was aware of the date of the Tribunal hearing and that he had been invited to attend the hearing.^b Because of the general unreliability of the complainant's evidence to the Court, the Court was not persuaded that the complainant did not attend the Tribunal hearing as a result of a fraudulent statement by his migration agent. On 19 September 2007, the Federal Magistrates Court dismissed the appeal on the basis that there was no jurisdictional error affecting the Tribunal's decision.^c On 6 November 2008, the complainant applied to the Federal Court of Australia for an extension of time to appeal the decision of the Federal Magistrates Court. The Federal Court dismissed the application on 12 December 2008.

4.5 The complainant's Bridging E Visa expired on 25 May 2005. He remained unlawfully in the community until 11 May 2007, when he was granted a new Bridging E

^a According to the Refugee Review Tribunal decision (available on file), the complainant did not provide any details about the nature of his Falun Gong practice, or on where or how often he practised. He claimed that he was a Falun Gong organizer in his area but did not provide details about when or how he came to be an organizer, how many members were in his group or where the group practised. He also claimed that after the Government began to suppress Falun Gong, the police caused his groups many problems, committed acts of violence and destroyed their books, tapes and documents. However, he provided no particulars about the nature of the violence committed by police or when the alleged incidents of violence and destruction of property had occurred.

^b The Court found that the complainant had signed a "Response to Hearing Invitation", in which he had stated "I do not want to come to a hearing, I consent to the Tribunal proceeding to make a decision on the review without taking any further action to allow or enable me to appear before it".

^c According to the immigration department minutes (available on file), the migration authorities pointed to a series of inconsistencies in the complainant's claims. He commenced judicial review at the Federal Magistrates Court in relation to the Refugee Review Tribunal decision on 11 May 2007, nearly three years after the Tribunal upheld the immigration department's decision. His ground of appeal was that he did not receive the notification letter inviting him to attend the Refugee Review Tribunal hearing. In another statement submitted to the Federal Magistrates Court on 27 August 2007, the complainant said that he did not learn, until shortly before commencing litigation, that there was a review application with the Tribunal that had failed. However, during the Federal Magistrates Court hearing held on 4 October 2007, the complainant admitted that he had signed all the documents in relation to his Protection Visa application and that he was aware at the time that his application was passing through a staged process of consideration. The evidence provided by the complainant during the Protection Visa process has proven to lack credibility, including his claim that his migration agent misrepresented him and advised him against attending the Refugee Review Tribunal hearing.

Visa on the basis of his judicial review. He was granted successive Bridging E Visas, of which the most recent expired on 2 June 2008. The complainant remained unlawfully in the community until he was located by police on a traffic matter. As a result, he was detained at Villawood Immigration Detention Centre on 3 November 2008.

4.6 Between 7 May 2004 and 29 December 2009, the complainant lodged nine separate ministerial intervention requests under sections 48B and/or 417 of the Migration Act. The first section 417 Migration Act request was referred to the Minister on a schedule; the Minister declined to intervene in February 2005. Each of the subsequent requests was assessed as not meeting the ministerial guidelines for referral to the Minister.

4.7 In his request for ministerial intervention of 4 October 2007, the complainant raised claims that he had been held in a “re-education through labour camp” from 20 August 1999 to 19 August 2000 because he practiced Falun Gong. The complainant provided copies of some documents, namely a notice of release from the Zhangshi Labour Reform Centre from 20 August 1999 to 19 August 2000 and a copy of a medical report dated 28 August 1999 for a self-inflicted injury.^d These documents were considered by the immigration department when provided in the complainant’s ministerial intervention requests. The assessment of the ministerial intervention request dated 6 December 2007 found that the information contained in the notice of release from a labour reform centre contradicted his original claim made in his Protection Visa application that he had been detained for a three-month period sometime after March 2003. The assessment also noted that the complainant did not provide original documentation, which meant it was not possible to be certain of its authenticity.

4.8 In the ministerial intervention request of 6 December 2007, the complainant also submitted a translated copy of a business licence purported to have been issued by the Government of China in relation to his business, the Shenyang City Weil Li Compressor Accessory Factory. The licence states that the business was established on 18 May 2001. This contradicts information provided by the complainant in his Protection Visa application, in which he stated that he was a worker in the same factory from January 1980 until March 2003. The assessment of the ministerial intervention request found that the evidence concerning the complainant’s business interests, including over the period of his alleged detention, would appear to undermine his claim of past persecution. The complainant did not provide any new information in support of his claims in his subsequent requests for ministerial intervention to alter these findings.

4.9 The complainant was removed involuntarily to China on 1 April 2010.

4.10 With regard to the admissibility and merits of the complaint, the State party submits that the complainant’s claims are inadmissible, or, in the alternative, without merit, because he has not provided sufficient evidence to substantiate his claims. Should the Committee find that the allegations are admissible, the State party submits that the claims are without merit as they have not been supported by evidence that there is a real risk of torture as defined by article 1 of the Convention. The State party argues, with reference to the Committee’s general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22^e and rule 113 (b) of its rules of procedure, that it is

^d The medical report of the Fourth Hospital affiliated with China Medical University refers to the following diagnosis: an incised wound in the left forearm, complete tear of the left thumb extensor and long muscles, complete tear of the left thumb’s abducent and long muscles and separation of a nerve in the left forearm. The report indicates that these injuries were caused as a result of self-mutilation.

^e *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX), para. 4.*

the responsibility of the complainant to establish a prima facie case for purposes of admissibility, and that the complainant has failed to substantiate that there is a foreseeable, real and personal risk that he would be subjected to torture by Chinese authorities if returned to China. The State party further submits that the obligation under article 3 must be interpreted with reference to the definition of torture set out in article 1 of the Convention.^f The obligation of non-refoulement is confined to torture and does not extend to cruel, inhuman or degrading treatment or punishment,^g this distinction being retained in the Committee's jurisprudence.

4.11 The State party submits that a State party would be in breach of its non-refoulement obligations under article 3 of the Convention when an individual is found to be *personally*^h at risk of such treatment should he or she be returned to his or her country of origin. The existence in a country of a consistent pattern of gross, flagrant or mass violations of human rights does not in itself constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture on his or her return, therefore additional grounds must be adduced to show that the individual concerned would be personally at risk.ⁱ The onus of proving that there is "a foreseeable, real and personal risk of being subjected to torture" upon extradition or deportation rests on the applicant.^j The risk need not be "highly probable", but it must be "assessed on grounds that go beyond mere theory and suspicion".^k The Committee has expressed a view that while the risk does not have to meet the test of being highly probable, the danger must be personal and present.^l

4.12 The Refugee Review Tribunal found that the complainant's claims were vague and un-particularized. The Tribunal was not satisfied that the complainant was a Falun Gong practitioner, because the complainant's claims lacked details in important aspects. The complainant had claimed that he had begun to practise Falun Gong at the end of 1997, however gave no details about the nature of his practice, or where or how often he practised. Furthermore, the complainant had claimed to be a Falun Gong organizer, however had not provided any further details about these activities. The Tribunal also noted that the complainant had made claims regarding suppression of Falun Gong by the police and "brainwashing classes" that he was forced to attend for three months. However, he had not provided particulars regarding the violence committed by the police or the brainwashing classes.^m The Tribunal concluded that due to the lack of detail in the complainant's claims and without the opportunity to test the claims at a hearing, it was not prepared to accept the complainant's claims that he was a Falun Gong practitioner and had come to the adverse attention of the Chinese authorities as a result of these activities. The Tribunal was not satisfied that the complainant was a person to whom Australia had protection obligations under the Convention relating to the Status of Refugees.ⁿ On appeal, the Federal Magistrates Court was not persuaded that the applicant had not attended the Tribunal hearing as a result of any fraudulent statement of his migration agent.^o

^f Reference to communication No. 83/1997, *G.R.B. v. Sweden*, Views adopted on 15 May 1998, para. 6.5.

^g Committee's general comment No. 1, para. 1.

^h Emphasis as appears in the original submission.

ⁱ Reference is made to communication No. 177/2001, *H.M.H.I v. Australia*, Views adopted on 1 May 2002, para. 6.5.

^j Communication No. 203/2002, *A.R. v. Netherlands*, Views adopted on 14 November 2003, para. 7.3.

^k *Ibid.*

^l Committee's general comment No. 1, para. 7.

^m Refugee Review Tribunal Decision N04/48189, 24 March 2004, pp. 7–8.

ⁿ *Ibid.*

^o *SZKPX v. Minister for Immigration and Anor* [2007] FMCA 1597, 10 September 2007.

4.13 Although the complainant provided information in the course of his domestic proceedings and ministerial intervention requests regarding details of past ill-treatment, this information has been duly assessed by domestic processes. The domestic legal system in Australia offers a robust process of merits and judicial review to ensure that any error made by an initial decision maker can be corrected. In this case, the complainant appealed to the Refugee Review Tribunal, the Federal Magistrates Court and the Federal Court of Australia and no error was identified. The documents provided by the complainant through ministerial intervention requests have been considered by the immigration department in the ministerial intervention assessment of 6 December 2007 as well as in subsequent assessments. Therefore, the State party submits that no new evidence has been provided in the complaint to substantiate the complainant's claims that has not already been considered in domestic processes.

4.14 Apart from allegations of past ill-treatment, which have been considered by domestic processes, the complainant's complaint also does not specify what treatment he might suffer under article 3 of the Convention; he does not provide any evidence regarding what form of torture he is likely to suffer in China. The State party therefore submits that the complainant has failed to provide sufficient evidence to substantiate his allegations regarding a potential breach of article 3 of the Convention. Therefore his complaint should be ruled inadmissible.

4.15 Should the Committee find the complainant's allegations admissible, the State party submits that there are not substantial grounds to believe that the complainant will be in danger of being subjected to torture upon return to China. His claims for protection in Australia have been properly determined according to domestic law. The complainant does not disclose any information in his complaint that has not already been considered in domestic processes. He has used a number of opportunities available to him to appeal the initial Protection Visa decision by the immigration department and no error was identified. The documents provided by the complainant, including the notice of release from the re-education through labour camp as well as the photocopy of a medical report dated 28 August 1999, although not provided in relation to the Protection Visa application, have been duly considered by the immigration department in previous ministerial intervention requests. The State party submits that there is no credible evidence provided by the complainant in his complaint to establish that he faces a personal and present danger of torture, therefore his claims under article 3 of the Convention should be dismissed for lack of merits.

The complainants' comments on the State party's observations

5.1 On 12 January 2012, counsel provided comments on behalf of the complainant. She submits that she has no further information about what happened to the complainant after he was removed to China on 1 April 2010.

5.2 Counsel challenges the State party's argument that the complaint is inadmissible for lack of substantiation of a foreseeable, real and personal risk of torture upon return of the complainant to China, and refers to the evidence already brought to the attention of the Minister or Ministerial Intervention Unit of the immigration department. She maintains that the following supporting documents present compelling evidence that the complainant has suffered serious persecution and fears similar persecution on his return to China: (a) the notice of release from Zhangshi Labour Reform Centre, confirming that the complainant had been imprisoned from 10 August 1999 to 20 August 2000; (b) the medical report of the Fourth Hospital affiliated with China Medical University;^p (c) the report by the

^p See footnote d above.

Commonwealth Ombudsman submitted to the Secretary of the immigration department, which indicates that during counselling sessions with the Service for the Treatment and Rehabilitation of Torture and Trauma Survivors, the complainant spoke of his torture and trauma in China and a report was sent informing the immigration department that he suffered from post-traumatic stress disorder; (d) the ministerial intervention request dated 23 July 2009 containing a description of the torture the complainant feared if he were to be removed to China, which is based on the torture he suffered during his year of hard labour and beatings as a prisoner in the “re-education through labour camp”; (e) the second ministerial intervention request dated 9 September 2009, in which the complainant reiterates his suffering and gives more details of his year-long persecution in the re-education through labour camp; (f) the ministerial intervention request dated 20 December 2009, containing more details of the complainant’s ongoing trauma due to his detention for one year in the re-education through labour camp; (g) the diagram of the complainant’s scars from 1999 (dated 10 September 2009).

5.3 Counsel further submits that an application for protection is first decided by the immigration department officer who is appointed as the delegate of the Minister. In the event the delegate refuses the application for protection, an application for review can be made to the Refugee Review Tribunal. She refers to the Tribunal’s findings of 24 March 2004, as summarized by the State party in its observations, that due to the lack of detail in the complainant’s claims and without the opportunity to test the claims at a hearing, the Tribunal was not prepared to accept that he was a Falun Gong practitioner and had come to the adverse attention of the Chinese authorities as a result of those activities. Counsel claims that the Tribunal came to this conclusion despite the absence of any new information or explanation other than the information before the delegate of the immigration department, which came to a different view, accepting the complainant’s practice of Falun Gong. Neither the lack of detail in his claims nor his absence from the Refugee Review Tribunal hearing are justifications for finding that he was not a Falun Gong practitioner.

5.4 In response to the State party’s statement that the domestic legal system offers a robust process of merits and judicial review to ensure that any error made by an initial decision maker can be corrected, counsel submits that judicial review is a very limited process and the above statement does not accurately reflect the reality that the Federal Magistrates Court has its hands tied in the process of judicial review. Nor do the discretionary and non-appellable powers of the Minister provide a robust process for merits review. The privative clause in part 8, division 1 of the Migration Act 1958 limits the Federal Courts to deciding jurisdictional error (legal error) and excludes courts from reviewing whether an asylum seeker is or is not a refugee under the Convention relating to the Status of Refugees. If jurisdictional error is found, the matter is remitted to another Refugee Review Tribunal. The privative clause of the Migration Act therefore removes from the courts the power to decide whether the Tribunal has made a fair decision about persecution claims or to remedy credibility issues. Time limits of 35 days to apply to the Federal Magistrates Court for review of a Tribunal decision exclude asylum seekers whose agents did not inform them they had been refused a Protection Visa by the Tribunal or who have no one to explain how to apply to a court or how to get a waiver of fees if they cannot afford the court costs.

5.5 Counsel further submits that ministerial intervention requests are discretionary and cannot be appealed in court. Adverse ministerial decisions do not include the reasons why the Minister or officers in his Ministerial Intervention Unit have declined to intervene, and merely state that “the request did not meet the guidelines” or “the Minister declined to intervene”. The reasons for these decisions can be requested under freedom of information legislation, but this takes time and the delay often puts the asylum seeker in danger of removal. Those assisting asylum seekers to write ministerial intervention requests are often reduced to guesswork in the haste to submit a request to stop removals. Any request the

Ministerial Intervention Unit refers to the Minister lists the history of decision-making and reasons why the different parties make their different claims as to why the Minister should or should not intervene. The Minister may decline even when there are strong reasons presented for his intervention. The Minister's guidelines specify that all first requests for ministerial intervention under section 417 are referred to the Minister for possible consideration (counsel's emphasis). This lack of ministerial accountability has been highlighted in many Parliamentary reviews.⁹ Although the Minister intends to change this system of discretion in future, such changes were not available for the complainant. Counsel claims that the complainant's allegations have never been properly heard because of limitations in the ministerial intervention process, and reiterates that the complainant's allegations are corroborated by the evidence supplied.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. In the absence of any objection from the State party in this respect, the Committee finds that the complainant has complied with article 22, paragraph 5 (b) of the Convention.

6.3 The Committee takes note of the State party's argument that the complaint should be declared inadmissible for lack of substantiation. The Committee however considers that the arguments before it raise substantive issues under article 3 of the Convention which should be dealt with on the merits and not on admissibility considerations alone. As the Committee finds no further obstacles to admissibility, it declares the present complaint admissible.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present complaint in the light of all information made available to it by the parties concerned.

7.2 The issue before the Committee is whether the removal of the complainant to China violated the State party's obligation under article 3 of the Convention not to expel or to return (refouler) a person to another State where there were substantial grounds for

⁹ Counsel submits that the most thorough review by the Senate Legal and Constitutional References Committee, in its June 2000 report *A Sanctuary under Review: An Examination of Australia's Refugee and Humanitarian Determination Processes*, refers to the shortcomings of ministerial discretion, indicating that some aspects of the present structure of ministerial discretion under section 417 seem to run counter to the absolute nature of the non-refoulement obligation under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Minister may choose to exercise his discretion to allow a person who has established a case under the Convention to stay, but equally he or she may not. Furthermore, the discretionary power granted to the Minister is to be exercised only "if the Minister thinks it is in the public interest to do so". Theoretically, the Minister could decide that it is not in the public interest to exercise his discretion so as to allow a person fearing torture in his or her home country to remain in Australia.

believing that he or she would have been in danger of being subjected to torture. The Committee must evaluate whether there were substantial grounds for believing that the complainant would have been personally in danger of being subjected to torture upon return to China. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

7.3 The Committee recalls its general comment No. 1, that “the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable” (para. 6), but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.^f The Committee further recalls its general comment No. 1, paragraph 5, according to which the burden to present an arguable case is on the complainant. The Committee notes the complainant’s claims under article 3 and his argument that he produced sufficient evidence corroborating his allegations of past torture suffered as a result of his Falun Gong activities in China, and that any inconsistencies in the account of facts is due to fabrication of some of the facts by his migration agent at the time of submission of his Protection Visa application.

7.4 The Committee also takes note of the State party’s arguments that the complainant failed to provide any details about the nature of his activities as a Falun Gong practitioner in China and regarding the violence allegedly committed by police against him in his Protection Visa application, that the version of facts regarding his detention in China advanced in his ministerial intervention requests is in contradiction with his original claim made in the initial application, and that he had the opportunity to clarify such inconsistencies and provide further details and evidence about his claims by attending the hearing of the Refugee Review Tribunal, but declined the invitation and requested the Tribunal to take a decision in his absence. The State party also argues that the information and evidence provided by the complainant in support of his allegations, including as part of his numerous ministerial intervention requests, had been reviewed in the course of domestic proceedings and was deemed neither credible nor sufficient in order to establish that the complainant faced a personal and present danger of torture upon return to China.

7.5 The Committee recalls that under the terms of its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.^g

7.6 In the instant case, the Committee notes the lack of details provided by the complainant concerning his Falun Gong activities and several inconsistencies in his account of facts that undermine the general credibility of his claims, as well as his failure to provide any compelling evidence corroborating his claims. In the light of this, the Committee agrees with the determination of the State party’s competent authorities that the complainant’s arguments concerning the inconsistencies in his claims, his delayed application for judicial

^f See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, Views adopted on 14 November 2003, paragraph 7.3; No. 285/2006, *A.A. et al. v. Switzerland*, decision adopted on 10 November 2008, para. 7.6; No. 322/2007, *Njamba and Balikosa v. Sweden*, decision adopted on 14 May 2010, para. 9.4.

^g See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010.

review of the Refugee Review Tribunal decision, his failure to attend the Tribunal hearing, and his claim about the alleged fraudulent behaviour of his migration agent lack credibility. The Committee further observes that the complainant was able to leave China freely on two occasions and travel to Australia, and that in such circumstances it is difficult to conclude that he was of interest to the Chinese authorities.

7.7 Taking into account all the information made available to it, the Committee considers that the complainant has failed to provide sufficient evidence to demonstrate that he faced a foreseeable, real and personal risk of being subjected to torture at the time he was deported back to China.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainant to China did not constitute a violation of article 3 of the Convention.

Communication No. 430/2010: Abichou v. Germany

<i>Submitted by:</i>	Inass Abichou (née Seifeddine), represented by Action by Christians for the Abolition of Torture (ACAT-France)
<i>Alleged victim:</i>	Onsi Abichou (the complainant's husband)
<i>State party:</i>	Germany
<i>Date of complaint:</i>	25 August 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 21 May 2013,

Having concluded its consideration of communication No. 430/2010, submitted by Inass Abichou under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, her counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant, Inass Abichou (née Seifeddine), born on 22 August 1983 in Beirut, Lebanon, and residing in France, submits the complaint on behalf of her husband, Onsi Abichou, born on 21 August 1982 in Zarzis, Tunisia, who is of French nationality and was detained in Saarbrücken prison in Germany at the time of the submission of the complaint to the Committee. She contends that the extradition of Mr. Abichou to Tunisia would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by Action by Christians for the Abolition of Torture (ACAT-France).^a

1.2 Under rule 114 (former rule 108) of its rules of procedure (CAT/C/3/Rev.5), on 25 August 2010 the Committee requested the State party not to extradite Mr. Abichou to Tunisia while this complaint is under consideration by the Committee.

1.3 On 26 August 2010, the complainant's counsel informed the Committee that the State party had extradited Mr. Abichou to Tunisia on 25 August 2010. In the same correspondence, counsel confirmed the complainant's desire to have the Committee continue with its consideration of the communication.

1.4 On 21 January 2011, the Rapporteur on new complaints and interim measures, acting on behalf of the Committee, decided that the admissibility of the complaint should be examined together with its merits.

^a On 19 October 2001, Germany recognized the competence of the Committee to receive and consider individual complaints under article 22 of the Convention.

The facts as submitted by the complainant

2.1 On 17 October 2009, Onsi Abichou, a French citizen, was arrested by German police during an identity check in Germany, where he had gone for professional reasons. After confirming his identity, the police officers arrested him on the grounds that he was subject to an international arrest warrant issued by Tunisia on 14 March 2008. Mr. Abichou was subsequently held in the Saarbrücken remand prison. The detention order against him was renewed several times by the Regional High Court on the grounds that, taking into account the severe penalty to which he would be subject in Tunisia, there was a substantial risk that he would flee if granted provisional release.

2.2 The case against Mr. Abichou in Tunisia involves the following events: On 15 February 2008, a person named Mohamed Jelouali was arrested at the port of Goulette, Tunisia, as he was about to board a ship to Genoa. At the time he was behind the wheel of a lorry from which customs officials had just seized some cannabis. During his interrogation, Mohamed Jelouali revealed the name of one of his alleged accomplices, Mohamed Zaied, who was arrested on that same day at Tunis airport as he was about to board a flight to France. During his interrogation, Mohamed Zaied, “confessed”,^b quite possibly under duress, to having made a similar shipment of cannabis in October–November 2007 with the help of Mr. Abichou.

2.3 Following the interrogations, legal proceedings were brought against five people, only two of whom, Mohamed Jelouali and Mohamed Zaied, were in fact arrested; the other suspects were deemed to have absconded by the presiding judge. The suspects are to be tried in two different cases^c dealing with the same facts and events.

2.4 On 14 March 2008, the deputy public prosecutor issued two international arrest warrants for Mr. Abichou in the two cases. At that time, Mr. Abichou was in France and had not been troubled in any way by the judicial authorities. On 28 April 2008, the Interpol office in Tunis sent the Interpol General Secretariat a request for his arrest and extradition to Tunisia.

2.5 On 27 June 2009, the Tunis court of first instance (the Fourth Criminal Chamber) sentenced Mr. Abichou in the two cases under consideration^d to life imprisonment and to a 5-year immediately enforceable, non-deferrable term of imprisonment for forming a gang in Tunisia and abroad for the purpose of committing drug-related offences.

2.6 On 24 October 2009, following the arrest of Mr. Abichou by the German police, the investigating judge of the Eighth Bureau of the Tunis court of first instance sent a request from the Tunisian authorities addressed to the German judicial authorities for the extradition of Tunisian citizen Onsi Abichou. On 25 March and 6 May 2010, the State party sent two notes verbales to Tunisia requesting diplomatic assurances that Mr. Abichou’s rights would be protected in the event of his extradition to Tunisia. In response, the Tunisian Ministry of Foreign Affairs sent two letters^e in which it provided diplomatic assurances that the proceedings that would be initiated upon Mr. Abichou’s extradition would be conducted in accordance with the International Covenant on Civil and Political Rights, which has been ratified by Tunisia, and, in the event of a conviction, Mr. Abichou would serve his sentence in a prison that abided by the United Nations Standard Minimum Rules for the Treatment of Prisoners.

^b In inverted commas in the original complaint.

^c Cases No. 17911/09 and No. 17946/09.

^d See paragraph 2.3. The judge decided to combine the two sentences pursuant to article 56 of the Tunisian Criminal Code.

^e The dates of which are illegible (apparently dated 13 May 2010).

2.7 On 20 May 2010, the Saarland Regional High Court determined that the extradition would be lawful, thereby authorizing the German Ministry of Foreign Affairs to formally order the extradition of Mr. Abichou. Assisted by his counsel, Mr. Abichou challenged the decision of 20 May 2010 on the grounds that the Regional High Court had failed to rule on several lines of argument that he had put forward, notably those dealing with the risk of torture. Although the appeal had no suspensive effect, the prosecuting authorities agreed not to extradite Mr. Abichou until the Court had ruled on these points.

2.8 On 8 July 2010, the German Ministry of Foreign Affairs sent a note verbale to the Tunisian embassy in Berlin in which it confirmed the Government's consent to the extradition of Mr. Abichou. It was not until 19 August 2010 that, at his request, the counsel of Mr. Abichou was apprised of the contents of this correspondence.

2.9 On 12 July 2010, the Saarland Regional High Court upheld its decision of 20 May 2010 on the grounds that, although aware of reports from international non-governmental organizations concerning the risk of torture in Tunisia, the Court put its trust in the Tunisian Government. Furthermore, the Court cited a lack of evidence of any direct threat to the applicant.

2.10 On 22 July 2010, Mr. Abichou submitted an urgent appeal to the German Constitutional Court for interim measures and requested it to set aside the Regional High Court's decision. This petition was rejected on 28 July 2010. The Saarbrücken prosecuting authorities then sent a letter to the central office of the German Criminal Investigation Department in Wiesbaden requesting that it make arrangements for Mr. Abichou's extradition.

2.11 On 20 August 2010, Mr. Abichou submitted a request for interim measures^f to the European Court of Human Rights pursuant to rule 39 of the Rules of Court. The application was rejected by the Court on 23 August 2010, with no reason for the rejection being given.

2.12 On 25 August 2010, the complainant learned that the extradition of her husband, Mr. Abichou, would take place on that same day at 1 p.m. The extradition was carried out as planned on 25 August 2010.

The complaint

3.1 The complainant refers to the concluding observations of the Human Rights Committee on the report of Tunisia, adopted on 28 March 2008,^g and states that torture is routinely used in Tunisia as an investigation method in cases involving prisoners of conscience and ordinary prisoners. The latter are almost invariably subjected to cruel, inhuman or degrading treatment, including kicks, slaps and punches, during interrogation. Uncooperative suspects are subsequently subjected to torture.^h Torture is used to extract

^f In her subsequent comments on the State party's observations on the merits, the complainant went on to specify that the two requests for interim measures were made on 3 and 19 August 2010.

^g According to which the Committee was shown to be "concerned about serious and substantiated reports that acts of torture and cruel, inhuman or degrading treatment or punishment are being committed in the territory of the State party. According to some of these reports: (a) some judges refuse to register complaints of ill-treatment or torture; (b) some inquiries ordered subsequent to such complaints take an unreasonable amount of time; and (c) some superiors responsible for the conduct of their agents, in violation of article 7 of the Covenant, are neither investigated nor prosecuted" (CCPR/C/TUN/CO/5, 28 March 2008, para. 11).

^h The complainant refers to a report by the World Organization against Torture (OMCT) and the Tunisian Association against Torture (ALTT) ("Note sur le suivi des recommandations du Comité des droits de l'Homme par la Tunisie", published in August 2009), which refers to what it describes as the very frequent use of torture by police officers and prison wardens against persons who have been

confessions from ordinary prisoners concerning alleged crimes and to conclude unsolved cases.

3.2 According to the complainant, the assurances given by the Tunisian Government in its two notes verbales that it would safeguard the physical and psychological integrity of Mr. Abichou are of no value, as Tunisia has failed to honour its diplomatic assurances to a State from which it was requesting the extradition or return of one of its citizens in the past.ⁱ Furthermore, during a telephone conversation with the complainant's counsel, the lawyer of Mohamed Jelouali, a defendant in the same case, said that his client claimed to have been assaulted by the customs officials who had arrested him, then tortured by police officers at the Goulette police station, to whom he had been handed over on the same day. He was repeatedly punched, kicked and beaten with truncheons for five days following his arrest. He was interrogated during the course of his first night in custody in order to deprive him of sleep. He was not brought before an investigating judge until 25 days after his arrest, in violation of Tunisian law, which limits the duration of police custody to 6 days. Mohamed Jelouali and his lawyer gave this information to the investigating judge, the judges of the court of first instance and the appeal judges, but none has taken appropriate action to address these gross violations of the victim's rights. According to his lawyer, the second defendant in the same case, Mohamed Zaied, suffered similar treatment. The two decisions of 27 June 2009 delivered by the Tunisian court of first instance both referred to the use of torture against Mohamed Zaied and Mohamed Jelouali, which had been reported by their lawyers and used as an argument for the defence. However, the judge, without providing any substantive reasons, refused to take the use of torture into account in the two cases.^j

3.3 In view of the frequent use of torture in Tunisia, and considering the ill-treatment of the two defendants arrested in the same case, there is a substantial risk that Mr. Abichou would also be subjected to torture or inhumane or degrading treatment in the event of his extradition to Tunisia, in violation of article 3 of the Convention.

State party's observations on admissibility

4.1 On 19 October 2010, the State party contested the admissibility of the communication under article 22, paragraph 5 (a), of the Convention.

arrested or convicted and detainees in ordinary criminal cases.

ⁱ The complainant refers to the case of Sami Ben Khemais Essid, who was extradited from Italy in June 2008 and tortured by State security officials in the Ministry of the Interior a few months after his arrival in Tunisia. The Italian authorities had cited the Tunisian Government's diplomatic assurances as justification for the extradition (European Court of Human Rights, *Ben Khemais v. Italy*, Case No. 247/07, 24 February 2009).

^j Case No. 17946: Whereas the defence rests its case on the claim that the confession made by the accused [Mohamed Zaied] during the preliminary investigation was obtained under duress and is unsubstantiated, this confession is corroborated by circumstantial evidence consisting principally of the items seized from the accused and their arrest after the events that are the subject of the present case. The Court is therefore entitled to refuse to set it aside, given the weakness of the argument (Tunis court of first instance, Case No. 17946, hearing of 27 June 2009, p. 22 of the sworn translation of the judgement supplied for inclusion in the case file by the complainant). Case No. 17911: Whereas the defence rests its case on the claim that the incriminating testimony recorded by the investigator was obtained by force and is unsubstantiated, this testimony has been corroborated by circumstantial evidence consisting principally of the items seized and confiscated and the quantity of drugs that had been expertly loaded into a lorry and were ready for export. The Court has therefore rejected this argument (Tunis court of first instance, Case No. 17911, hearing of 27 June 2009, p. 27 of the sworn translation of the judgement supplied for inclusion in the case file by the complainant).

4.2 The State party notes that Onsi Abichou, of French and Tunisian nationality, was sentenced in absentia to life imprisonment on several counts of large-scale smuggling and drug trafficking. Mr. Abichou was the subject of an Interpol notice, which led to his arrest in Saarbrücken on 17 October 2009. Tunisia had requested his extradition so that he could be made to serve his sentence. In accordance with the State party's extradition procedures, the extradition was approved by the Saarbrücken Regional High Court, which determined that Tunisian law allowed appeals in cases where a verdict had been delivered in absentia and that, even though Mr. Abichou had been sentenced to life imprisonment, he could be eligible for parole after 15 years in prison. Consequently, the German Government had authorized the extradition. The Tunisian Government had been notified of this decision by note verbale on 8 July 2010.

4.3 Mr. Abichou appealed against this decision before the German Constitutional Court, arguing that he would face a substantial risk of torture if extradited to Tunisia and that the judgement against him was based on evidence obtained under torture. The Constitutional Court rejected the appeal. Consequently, on 23 August 2010,^k Mr. Abichou submitted an application to the European Court of Human Rights (Application No. 33841/10) under articles 3 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and under Protocol No. 7 of that same Convention, although it has not been ratified by the State party. In the same application, Mr. Abichou also submitted a request for interim measures under rule 39 of the Rules of Court. The Court rejected his request, however.

4.4 According to the State party, it was only once the European Court of Human Rights had rejected Mr. Abichou's request to have the State party suspend the extradition proceedings that he turned to the Committee and submitted the present communication. The Rapporteur on new complaints and interim measures requested the State party to refrain from proceeding with the extradition of Mr. Abichou to Tunisia. This request was conveyed to the State party on 25 August 2010. However, it did not reach the competent authorities of the State party until after Mr. Abichou had been extradited. Consequently, the State party was not in a position to comply with the Committee's request for interim measures. According to the State party's records, the Permanent Mission of the State party in Geneva received the Committee's request for interim measures on 25 August 2010 at 12.05 p.m. The person responsible for such matters immediately (at 12.10 p.m.) sent the information to the Human Rights Unit of the Ministry of Foreign Affairs in Berlin by e-mail. At that stage the message was handled directly by the Ministry departments responsible for international legal matters. At 1.39 p.m. the Ministry of Justice was informed of the Committee's request. The appropriate person immediately contacted the regional authority in charge of extradition proceedings (Saarland Ministry of Justice). This person was informed that Mr. Abichou had been handed over to the Tunisian authorities at Frankfurt airport at around 1.15 p.m.

4.5 The State party is of the view that the amount of time taken for the transmission of the Committee's request for interim measures on behalf of Mr. Abichou was entirely reasonable, taking into account the time required to alert the competent authorities at the State level. Under the circumstances, the amount of time allowed for a response from the State party was too short. The State party believes in the necessity of acting promptly in matters relating to article 3 of the Convention and reaffirms its commitment to comply with the requests of the Rapporteur on new complaints and interim measures under rule 108 of the Committee's rules of procedure.

^k According to the complainant's initial communication, the matter had been referred to the European Court of Human Rights on 20 August 2010.

4.6 The State party adds that the communication is inadmissible *in limine* under article 22, paragraph 5 (a), of the Convention,¹ since Mr. Abichou had submitted an application to the European Court of Human Rights concerning the same events. Furthermore, the Court had rejected his request for interim measures. That case was based on the same argument as the one made before the Committee, namely that Mr. Abichou would face a substantial risk of torture if returned to Tunisia. The fact that Mr. Abichou alleged additional violations of the European Convention on Human Rights in his application to the European Court of Human Rights is of no consequence. The State party adds that interim measures should not be used in cases which are clearly inadmissible under article 22, paragraph 5 (a), of the Convention.

Complainant's comments on the State party's submission

5.1 On 23 December 2010, the complainant commented on the State party's observations. She rejects the State party's argument that the communication should be declared inadmissible under article 22, paragraph 5 (a), of the Convention on the grounds that Mr. Abichou had requested interim measures before the European Court of Human Rights, under rule 39 of the Rules of Court, whereby Germany would be instructed to stay the extradition order pending the matter's referral to the Court and the Court's ruling on the merits of the case.

5.2 According to the complainant, the application submitted to the European Court of Human Rights by Mr. Abichou, through his counsel, is entitled "Rule 39 application". Consequently, the Court's decision to reject the request related only to the application made under rule 39. According to the complainant, at no point had a request seeking a reversal of the German judicial officials' authorization of the extradition of Mr. Abichou to Tunisia been referred to the Court or had the Court rendered its views on the merits of such an application. Only the Committee against Torture had received such a request, so it could be concluded that "the same matter has not been, and is not being, examined under another procedure of international investigation or settlement", as required by article 22, paragraph 5 (a), of the Convention.

5.3 Regarding the issue of the State party's non-compliance with the Committee's request for interim measures, which the State party attributed to an overly short deadline, the complainant states that it was only on the morning of 25 August 2010 that Mr. Abichou learned he would be extradited that same afternoon, even though the German judicial authorities had requested the judicial police to provide the date of extradition two weeks in advance.^m According to the complainant, the fact that the authorities decided to expedite the extradition left her with no other choice but to refer the matter to the Committee a few hours before the extradition took place.

State party's observations on the merits

6.1 On 19 April 2011, the State party submitted its observations on the merits of the communication. The State party refers, first of all, to the admissibility of the communication. It rejects the complainant's argument that the application submitted by Onsi Abichou to the European Court of Human Rights was no more than a request for interim measures and that, as a result, the Court did not consider the case on the merits, thus

¹ The State party refers to communication No. 305/2006, *A.R.A. v. Sweden*, decision adopted on 30 April 2007, para. 6.2.

^m The complainant refers to a message dated 28 July 2010 sent by the Saarbrücken prosecutor to the Wiesbaden investigative police concerning the procedures to be used for Mr. Abichou's extradition (see para. 2.10).

not precluding the admissibility of the communication for consideration by the Committee under article 22, paragraph 5 (a), of the Convention. According to the State party, the complainant's interpretation is erroneous, since the procedures of the European Court of Human Rights do not allow for the separate consideration of a request for interim measures. Such protection measures serve merely to suspend an expulsion order while the case is being considered by the Court. Moreover, it is apparent that the application was filed with the Court in due form by Onsi Abichou under article 34 of the European Convention on Human Rights.ⁿ In any event, this was the only way to submit a request for interim measures to the Court, and Onsi Abichou's lawyer could not have been ignorant of this fact. On 12 August 2010, the European Court of Human Rights informed Onsi Abichou that his request for interim measures had been denied. On 24 August 2010, the Court informed him that his application would be presented to the Court as soon as possible. His lawyer had to have known that his submission to the Court was considered to be an application on the merits and would be treated as such. The State party adds that it requested and, on 7 February 2011, obtained confirmation from the Court that Onsi Abichou's petition was indeed a complete application that was pending before the Court. It was only at that time that the complainant, realizing that the Committee would not remain unaware of these facts for much longer, decided to withdraw the application from the European Court of Human Rights. This demonstrates that the complainant knew that the application was pending before the Court. According to the State party, what is at issue is a deliberately false statement on the part of the complainant and, consequently, an abuse of the right to submit a communication within the meaning of article 22, paragraph 2, of the Convention. Therefore, the State party asks the Committee to reject the complaint on the ground that it constitutes an abuse of the right to submit a communication, as well as on the basis of article 22, paragraph 5 (a), of the Convention.

6.2 With regard to the merits of the case, and while specifying that it submits these observations even though it remains convinced that the communication has no legal basis, the State party points out that the extradition procedure provides for two different screening procedures. Any extradition request must first be approved by a higher regional court, which bases its decision on information from a variety of sources, including non-governmental ones, about the human rights situation in the requesting State. The person concerned is free to submit any information about the potential risks to which he or she claims to be exposed. After the approval of a request by a higher regional court, the Government of the State party must still decide whether to authorize the extradition. The Ministry of Justice considers whether the requirements for extradition — including the State party's obligations under international law — have been met. The Ministry of Foreign Affairs must also approve the extradition. At all stages of the proceedings, reports from both governmental and non-governmental sources are consulted in order to arrive at a realistic assessment of the situation in the requesting State. If necessary, conditions may be attached to the approval of the extradition.

6.3 The State party indicates that it is familiar with the reports cited by the complainant in her complaint, which give rise to serious concerns about the human rights situation in Tunisia. The decision to extradite Onsi Abichou was taken following a scrupulous, detailed evaluation of the specific risks to which he would be exposed. The Ministry of Foreign Affairs requested diplomatic assurances from the Tunisian authorities that, inter alia, Onsi

ⁿ The pertinent paragraph of the application reads as follows: "The applicant submits an application alleging a violation by Germany of article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, article 4 of Protocol No. 7 to the same Convention and article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (para. 11).

Abichou would be entitled to a retrial in which the rights set out in the International Covenant on Civil and Political Rights would be upheld and that, in the event of a new conviction, he would be incarcerated in a detention facility that complies with the United Nations Standard Minimum Rules for the Treatment of Prisoners. The Tunisian Ministry of Foreign Affairs provided such assurances to the State party on 8 May 2010.^o In arriving at its decision, the Saarbrücken Regional High Court, which had jurisdiction to approve the extradition request, took into consideration reports relating to the human rights situation in Tunisia from the State party's Ministry of Foreign Affairs, Amnesty International and the United States Department of State. On the basis of these reports, the Court found that it could not rule out the possibility that suspects in Tunisia were subjected to illegal treatment, but that there was no indication that the Tunisian authorities had instigated or acquiesced to such treatment, at least not in connection with crimes that did not have to do with terrorism.

6.4 As to the claims that individuals who provided testimony leading to Onsi Abichou's conviction had been tortured, the Saarbrücken Regional High Court considered that those allegations had not been substantiated. In addition, Mr. Abichou's conviction had been based on other corroborating evidence. Furthermore, since Mr. Abichou's right, under Tunisian law, to request a trial *de novo* had been explicitly confirmed by the Tunisian authorities in the assurances that they provided to the State party, the Court considered that there was no reason to think that Onsi Abichou would not receive a fair trial. The State party adds that the Saarbrücken Regional High Court also took note of the concerns relating to conditions of detention in Tunisia that were described in the above-mentioned reports, but considered that the assurances provided by Tunisia, to the effect that Onsi Abichou would be incarcerated in a detention facility that complies with the United Nations Standard Minimum Rules for the Treatment of Prisoners, ruled out such risks. The competent courts and authorities of the State party thus carefully considered the risks entailed by the extradition of Onsi Abichou to Tunisia. In addition, the German Embassy in Tunis followed up on these diplomatic assurances, and officials from the French Embassy in Tunis (given Mr. Abichou's French citizenship) took over Onsi Abichou's case.^p Moreover, the German Embassy followed the progress of his new trial at first instance, as well as the appeal procedure.^q There has been no indication that Onsi Abichou has been subjected to torture or to other inhuman treatment.

6.5 On the question of exposure to the risk of torture, the State party states that it is aware of the substantial risk to which certain groups of suspects are exposed and that this may be regarded as constituting a systematic practice. Nevertheless, in the view of the Government of Germany, Onsi Abichou does not belong to any of the groups that could be considered to be exposed to such a risk. The complainant refers to the judgement of the European Court of Human Rights in the case of *Ben Khemais v. Italy*, in which the Court explicitly enumerated the specific risks faced by persons suspected of terrorist activities.

^o The assurances which were provided were as follows: (i) If the judicial decisions constituting the basis for the request for Mr. Abichou's extradition are challenged, the ensuing proceedings will provide for the consideration of all the relevant facts of the case; (ii) The proceedings to be undertaken will be such as to ensure that the defendant is able to question the witnesses against him and his co-defendants; (iii) The proceedings to be undertaken will be conducted in accordance with the International Covenant on Civil and Political Rights, which has been ratified by Tunisia; (iv) If Mr. Abichou is convicted, he will serve his sentence in a prison that complies with the United Nations Standard Minimum Rules for the Treatment of Prisoners; (v) In accordance with the rule of speciality, Mr. Abichou will not be tried on any charges other than those indicated in the extradition request of 24 October 2009; and (vi) Mr. Abichou will be eligible for parole under articles 353 ff. of the Code of Criminal Procedure.

^p The State party does not elaborate on this point.

^q The Tunis Court of Appeal handed down its decision on 19 May 2011 (see para. 7.1 below).

Onsi Abichou does not fall into that category. If charges of that nature had been brought against him, it is very unlikely that he would have been extradited. The Committee will be able to draw its own conclusions from the fact that the European Court of Human Rights, taking due account of its jurisprudence over the question of extradition to Tunisia, nevertheless rejected Onsi Abichou's request for interim measures on several occasions.

6.6 The State party adds that the weight of diplomatic assurances differs depending on whether they are provided in connection with cases of extradition or of deportation. It is reasonable to assume that a requesting State will wish to avoid jeopardizing future extradition requests by failing to respect the assurances it extends to another State. This is all the more true in cases not involving any political overtones or suspected terrorist activity, as in the present instance, which is a simple case of drug trafficking. For these reasons, the State party maintains that its courts and authorities correctly assessed the risk to which Onsi Abichou would be exposed as a result of his extradition to Tunisia. At the time of the decision, there was no indication that Mr. Abichou would be subjected to torture, that the Tunisian authorities would fail to honour their assurances or that they would fail to act if a complaint of that nature were to be made. Consequently, this decision does not contravene article 3 of the Convention. The State party therefore requests that the Committee rule that the complaint is inadmissible on the ground that it constitutes an abuse of the right to submit a communication or, alternatively, that it constitutes a violation of article 22, paragraph 5 (a), of the Convention. Should the Committee decide that the complaint is admissible, the State party requests that the Committee declare it to be unfounded.

State party's additional submission

7.1 On 27 May 2011, the State party submitted additional information to the Committee, informing it that, on 19 May 2011, the Tunis Court of Appeal had acquitted Onsi Abichou of all charges against him and that he had been released. The German Embassy followed the proceedings, and it appears that Onsi Abichou was released on the basis of statements made by defence witnesses.

7.2 According to the State party, these facts demonstrate that the Tunisian authorities honoured their diplomatic assurances, which bears out the State party's previous observations on the admissibility and merits of the communication.

Complainant's comments on the State party's observations on admissibility and on the merits

8.1 In her comments of 26 June 2011, the complainant argues that, at the time of the submission of her initial complaint to the Committee on 25 August 2010, the subject matter dealt with in her application had not been examined by the European Court of Human Rights and that neither Onsi Abichou nor his lawyer knew that an application was pending before that body. The complainant recalls the distinction that must be made, in her opinion, between a communication and a request for interim protection measures. Article 22, paragraph 5 (a), of the Convention precludes the Committee from considering any communication that has been or is being examined under another international procedure, but it does not apply to requests for interim protection measures for obvious reasons related to the need to give priority to protecting a person's physical and mental integrity, over and above any other procedural consideration.

8.2 At the request of ACAT-France (counsel for the complainant), on 3 and 19 August 2010, the law firm of William Bourdon submitted requests for interim measures to the

European Court of Human Rights pursuant to rule 39 of the Rules of Court, in which he requested that the Court ask Germany to stay Onsi Abichou's extradition to Tunisia.^r On 12 and 23 August 2010, the Court rejected these requests.^s The Court's decisions concerned only the requests made under rule 39 (interim measures) of the Rules of Court. Hence, the Court never ruled on the claim currently under consideration by the Committee. Therefore, it cannot be argued that the subject matter dealt with in the claim contained in the communication submitted to the Committee has already been examined under another international procedure.

8.3 When the second request for interim measures was rejected, an official of the Court called Mr. Bourdon on the telephone to ask if he wished the Court to consider the application on the merits, to which Mr. Bourdon replied in the negative, in keeping with the wishes of ACAT-France and Onsi Abichou's family. Mr. Bourdon did not make any further submissions to the Court concerning the matter, and since then has not dealt with Onsi Abichou's case, which is being handled exclusively by ACAT-France. It was only after Mr. Bourdon's law firm received the letter addressed to the German Government by the European Court of Human Rights, on 7 February 2011, that Mr. Bourdon and ACAT-France realized that, contrary to their instructions, the case remained pending before the Court.

8.4 ACAT-France thereupon asked Mr. Bourdon to rectify this mistake as a matter of urgency, which he did by drafting a letter to the Court on 8 March 2011 in which he reminded it that, after its rejection of the second request for interim measures, he had informed the Court of his wish for it not to examine the application on the merits. In a letter dated 25 March 2011, the registrar of the Court replied that Mr. Bourdon should have withdrawn the application in writing and that, because of his failure to do so, the application had been maintained. On 7 April 2011, at the express request of Mr. Bourdon, the Court finally struck Onsi Abichou's application off its list of cases. Since ACAT-France did not take part in the exchanges between Mr. Bourdon's firm and the registry of the European Court of Human Rights, it is not in a position to determine who is responsible for the misunderstanding, and it requests that the Committee ensure that Onsi Abichou, who bears no responsibility whatsoever for this misunderstanding, does not suffer as a result of it.

8.5 As to the merits, the complainant challenges the State party's assertions that the reports it consulted did not establish that Onsi Abichou faced a substantial risk of torture because he was not being prosecuted in connection with terrorism-related offences. The complainant refers in this regard to numerous reports (mostly from non-governmental sources)^t that were sent to the European Court of Human Rights on 19 August 2010 along

^r Since the person in charge of Onsi Abichou's case at ACAT was not a lawyer, the services of a lawyer had been sought.

^s The complainant attaches the Court's decision of 12 August 2010.

^t Report of 2009 of the United States Department of State, cited by the State party in its observations, which refers to the case of Abdelmottaleb Ben Marzoug, who was tortured on 12 March 2009 by security forces who wished to coerce him into confessing that he had participated in a fight in a coffee shop; 2009 report of the World Organization Against Torture (OMCT) and the Tunisian Association against Torture (ALTT), which makes repeated references to the torture of prisoners convicted of ordinary criminal offences; 2010 report of ACAT-France, *A World of Torture*, which notes that persons suspected of having committed an ordinary criminal offence are almost routinely subjected to cruel, inhuman or degrading treatment, such as being kicked, slapped or punched during questioning. The report goes on to say that, according to statements gathered from victims and lawyers, the vast majority of arrested persons are subjected, at a minimum, to insults, slaps and kicks during questioning at police or national guard stations. It also states that recalcitrant suspects may be subjected to torture (statement by lawyer Mohamed Abbou, dated 18 August, concerning the use of

with the request for interim measures in respect of Onsi Abichou, which mention the use of torture against prisoners prosecuted for ordinary criminal offences. The complainant refers once more to the judgement of the European Court of Human Rights in the case of *Ben Khemais v. Italy*, which was cited by the State party in an effort to show that the risk of torture applies only to persons suspected of terrorist activities. The fact that this judgement concerns a person who was suspected by the Tunisian authorities of having participated in terrorist activities and who was subjected to torture does not mean, conversely, that persons in Tunisia under prosecution for other types of offences do not run the risk of being subjected to torture. Many credible sources have documented the use of torture against political opponents, trade unionists, journalists and others arrested in connection with events unrelated to the struggle to combat terrorism.^u

8.6 Regarding the issue of diplomatic assurances, the complainant observes that three of the diplomatic assurances provided to the State party by Tunisia were not honoured: (1) “In the new trial, the right of the accused to question, through the presiding judge, the witnesses against him and his co-defendants will be guaranteed pursuant to section 143 of the Code of Criminal Procedure.” At Mr. Abichou’s new trial, which was granted following his extradition by Germany, the Tunisian judge Mehrez Hammami (who was relieved of his duties following the Tunisian revolution) refused to allow the confrontation of witnesses. He sentenced the accused to life imprisonment on 11 December 2010 solely on the basis of confessions obtained under torture from his alleged accomplices. Allowing Onsi Abichou to confront his alleged accomplices would have provided them with an opportunity to describe the torture to which they had been subjected during questioning.^v (2) “The new trial will be in accordance with the standards set forth in the International Covenant on Civil and Political Rights, which was ratified by Tunisia pursuant to Act No. 30 of 29 November 1968, thus affording the accused an effective defence.” Onsi Abichou was sentenced on 11 December 2010, the day of the first hearing, without his lawyer, Radhia Nasraoui, having been permitted to submit arguments in respect of the merits. (3) “If convicted, Onsi Abichou will serve his sentence in a prison that complies with the United Nations Standard Minimum Rules for the Treatment of Prisoners.” As noted by the United States Department of State in its 2009 report, which was consulted by the authorities of the State Party, “prison conditions generally did not meet international standards”. This finding was confirmed by ACAT-France in its 2010 report entitled *A World of Torture*.^w

8.7 The complainant rejects all aspects of the State party’s assertion that Onsi Abichou’s acquittal on appeal and subsequent release on 19 May 2011 demonstrate that Tunisia honoured its assurances. If Onsi Abichou was able to receive a fair trial on appeal, it was not as a result of the diplomatic assurances provided by the former Tunisian Government but rather a consequence of the positive changes that came in the wake of the revolution of 14 January 2011 and the efforts of ACAT-France and Radhia Nasraoui, the lawyer of the

torture against persons suspected of drug trafficking).

^u United States Department of State, Amnesty International, ACAT-France, International Federation for Human Rights (FIDH), Human Rights Watch and World Organization Against Torture (OMCT).

^v The complainant refers to the ACAT-France press release of 15 November 2010 entitled “Another parody of justice in Tunisia”.

^w ACAT-France, *A World of Torture* (2010), p. 187: Conditions of detention in Tunisian prisons are deficient in every respect. Overcrowding is a recurring problem. According to former inmates’ accounts compiled by ACAT-France, prisoners are often required to sleep two or three to a bed, or else on the floor. Sanitation facilities, consisting of a faucet and a toilet, are shared by some one hundred prisoners. Normally each prisoner is entitled to shower once a week, but this right is sometimes denied, either because there are too many prisoners or in order to punish an inmate. Owing to poor conditions of hygiene, diseases spread very quickly. Access to treatment is limited and deprivation of care is often used as a punishment, especially for political prisoners.

accused, to focus attention on the case. These efforts had made it possible to exercise the right to confront witnesses – an unprecedented procedure in Tunisian legal practice. The State party deliberately fails to take into account the radical political change that made Onsi Abichou's acquittal possible and overlooks the unfair trial to which he was subjected at first instance, one month before the revolution. The complainant refers to the error committed by the Saarbrücken Regional High Court, which had held that Onsi Abichou's conviction was also based on other corroborating evidence, rather than solely on statements by witnesses who had been tortured. According to the complainant, Onsi Abichou's acquittal by the Tunisian judge who heard the appeal demonstrates that this was not true.

8.8 Lastly, in response to the argument advanced by the State party that the allegations of acts of torture perpetrated against Onsi Abichou's alleged accomplices were not substantiated,^x the complainant refers to two written records of interviews conducted in the Mornaguia prison on 21 March 2011 by ACAT-France with prisoners Mohamed Zaied and Mohamed Jelouali. These records attest to the torture inflicted on Onsi Abichou's alleged accomplices during the investigation.^y She also cites the complaint of torture prepared by Mohamed Abbou, Mohamed Zaied's lawyer, and filed with the public prosecutor attached to the Tunis court of first instance on 19 April 2011. The complainant concludes by reiterating that these records, which are corroborated by numerous documentary sources, attest to the use of torture in Tunisia and are sufficient to prove that Onsi Abichou was exposed to a substantial and serious risk of torture at the time of his extradition to Tunisia. Most of this information was available to the State party at the time when it carried out the extradition. The fact that Onsi Abichou was not tortured upon arriving in Tunisia — no doubt due in large part to the attention focused on his case, especially by the media — cannot retrospectively justify the actions of the State party. For these reasons, the complainant invites the Committee to find that the State party acted in violation of article 3 of the Convention and of the interim measures requested by the Committee.

Issues and proceedings before the Committee

Failure to comply with the Committee's request for interim measures pursuant to rule 114 of its rules of procedure

9.1 The Committee regrets that its request for interim measures was not respected. It recognizes the State party's efforts to transmit the Committee's request for interim measures as expeditiously as possible, given the circumstances, and concludes that, in the present instance, the State party cannot be said to have failed to meet its obligations under article 22 of the Convention.

^x See para. 6.4 above.

^y According to witnesses, the two prisoners were beaten at the time of their arrest on 15 February 2008 and then were savagely tortured during the 10 days that they were held in police custody at the border station. They were finally brought before the investigating judge prior to being transferred to Mornaguia prison. For the purposes of an additional investigation requested by the judge, the two prisoners were brought back to the Kabaria anti-drug brigade, where they were tortured again. The two were ultimately sentenced to life imprisonment by the Tunis court of first instance, presided over by Judge Mehrez Hammami, who was discharged from his duties following the revolution. Mohamed Jelouali reportedly spoke to the investigating judge about the torture to which he had been subjected; the judge reportedly replied that he deserved what he got. For his part, Mohamed Zaied appears to have been clearly dissuaded by the doctor who saw him upon his admission to Mornaguia prison from speaking about the fact that he had been tortured. Mohamed Zaied and Mohamed Jelouali are suffering from serious physical and psychological sequelae of the torture to which they were subjected.

Consideration of admissibility

10.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this regard, the Committee notes that Onsi Abichou submitted an application (registered under No. 33841/10) to the European Court of Human Rights and that this application related to the same matter as the one before the Committee. Nevertheless, the Committee notes that the application was withdrawn and struck off the Court's list of cases on 7 April 2011 before having been considered on the merits by that instance. Consequently, the Committee considers that the provisions of article 22, paragraph 5 (a), of the Convention do not preclude its consideration of the complaint.^z

10.2 In the absence of any further obstacle to the admissibility of the communication, the Committee proceeds with the consideration of the merits under article 3 of the Convention.

Consideration of the merits

11.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

11.2 The Committee must determine whether, by extraditing the alleged victim to Tunisia, the State party failed to fulfil its obligation under article 3, paragraph 1, of the Convention to refrain from expelling or returning a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee stresses that it must take a decision on this question in the light of the information which the authorities of the State party had or should have had in their possession at the time of the extradition. Subsequent events are useful only in assessing what information the State party actually had or should have had at the time of extradition.^{aa}

11.3 The Committee recalls that the aim of such a determination is to establish whether the person in question was personally at a foreseeable and real risk of being subjected to torture upon his return to Tunisia. The Committee also recalls its general comment No. 1 (1997) on the implementation of article 3, according to which "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable"^{bb} but must be personal and present. In this regard, the Committee has determined that the risk of torture must be foreseeable, real and personal.^{cc} The Committee further recalls that, pursuant to its general comment No. 1, it gives considerable weight to findings of fact made by organs of the State party concerned,^{dd} but that it is not bound by such findings and instead is empowered, by virtue of article 22, paragraph 4, of the Convention, to undertake a free assessment of the facts based on the full set of circumstances in each case.

11.4 In assessing whether the State party's extradition of the alleged victim to Tunisia was in violation of article 3 of the Convention, the Committee must take into account all

^z See communication No. 215/2002, *M.J.A.G.V. v. Sweden*, decision adopted on 11 November 2003, para. 6.1.

^{aa} See communication No. 428/2010, *Kalinichenko v. Morocco*, para. 15.2 and communication No. 233/2003, *Agiza v. Sweden*, decision adopted on 20 May 2005, para. 15.2.

^{bb} *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44)*, annex IX, para. 6.

^{cc} See, inter alia, communication No. 258/2004, *Mostafa Dadar v. Canada*, decision adopted on 23 November 2005, and communication No. 226/2003, *T.A. v. Sweden*, decision adopted on 6 May 2005.

^{dd} See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such a determination is to establish whether the individual concerned was personally at risk of being subjected to torture in the country to which he was to be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not, as such, constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances. By arriving at a determination on the existence of a foreseeable, real and personal risk of torture, the Committee expresses no opinion as to the veracity or gravity of the criminal charges against Onsi Abichou at the time of his extradition.

11.5 The Committee recalls that the prohibition against torture is absolute and non-derogable and that no exceptional circumstances whatsoever may be invoked by a State party to justify acts of torture.^{ee} While taking note of the follow-up measures implemented by the State party, the Committee recalls that diplomatic assurances cannot be used as a justification for failing to apply the principle of non-refoulement as set forth in article 3 of the Convention.^{ff} The Committee takes note of the arguments advanced by the complainant to the effect that, in view of the frequent use of torture in Tunisia and the ill-treatment inflicted on the two other defendants arrested in the same case, there was a substantial risk that Onsi Abichou would also be subjected to torture or to inhuman or degrading treatment in the event of his extradition to Tunisia. The Committee also takes note of the State party's argument that Onsi Abichou did not belong to groups that were exposed to such a risk, since he did not face charges linked to terrorism. The State party has also pointed out to the Committee that the extradition request was accompanied by diplomatic assurances from Tunisia indicating that Onsi Abichou would be afforded a trial *de novo* in which the rights recognized in the International Covenant on Civil and Political Rights would be respected and that, in the event of a new conviction, he would be incarcerated in a detention facility that complied with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

11.6 Notwithstanding the diplomatic assurances that were provided, the Committee must consider the actual human rights situation in Tunisia at the time of the extradition of the complainant's husband. The Committee refers to its concluding observations of 1998, issued in connection with the second periodic report of Tunisia (CAT/C/20/Add.7), in which it states that it is "particularly disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police, which, in certain cases, resulted in death in custody".^{gg} More recently, in 2008, the Human Rights Committee, following its consideration of the periodic report of Tunisia (CCPR/C/TUN/5), indicated that it was "concerned about serious and substantiated reports that acts of torture and cruel, inhuman or degrading treatment or punishment are being

^{ee} See Committee against Torture, general comment No. 2 (2007) on the implementation of article 2 by States parties, *Official Records of the General Assembly, Sixty-third Session, Supplement No. 44* (A/63/44), annex VI, para. 5.

^{ff} See communication No. 444/2010, *Abdussamatov et al. v. Kazakhstan*, decision adopted on 1 June 2012, para. 13.10.

^{gg} *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 44* (A/54/44), para. 72.

committed in the territory of the State party”^{hh} The Human Rights Committee further noted that it was “concerned by reports that, in practice, confessions obtained through torture are not excluded as evidence in a trial”.ⁱⁱ This information is corroborated by numerous non-governmental sources cited both by the complainant and by the State party, the latter having acknowledged the worrisome human rights situation prevailing in Tunisia at the time of Onsi Abichou’s extradition, going so far as to consider that the “illegal treatment of suspects in Tunisia could not be ruled out”.

11.7 Therefore, the authorities of the State party knew or should have known at the time of Onsi Abichou’s extradition that Tunisia routinely resorted to the widespread use of torture against detainees held for political reasons and against detainees charged with ordinary criminal offences. The Committee further takes note of the complainant’s claim that two other defendants in the same case were tortured in order to extract confessions from them, not only when they were being held in police custody, but also, after the investigating judge ordered that further inquiries be conducted, during the time that their trial was being held. The Committee gives due weight to the information provided and documented by the complainant on this subject, including the testimony of the two defendants themselves and the complaints of torture that they lodged with the Tunisian courts, which were dismissed without verification or investigation. The acts of torture that were presumably inflicted on these two individuals served only to increase the personal risk to which Mr. Abichou was exposed, since, once extradited to Tunisia, he was given a new trial and was therefore subject to further judicial proceedings, including further inquiries, and, given the circumstances, thus stood a real risk of being subjected to torture or ill-treatment. The fact that diplomatic assurances were obtained was not sufficient grounds for the State party’s decision to ignore this obvious risk, especially since none of the guarantees that were provided related specifically to protection against torture or ill-treatment. The fact that Onsi Abichou was ultimately not subjected to such treatment following his extradition cannot be justifiably used to call into question or minimize, retrospectively, the existence of such a risk at the time of his extradition. The Committee concludes that the complainant has demonstrated that Onsi Abichou faced a foreseeable, real and personal risk of being subjected to torture at the time of his extradition to Tunisia. It follows that his extradition from the State party constituted a violation of article 3 of the Convention.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the information before it discloses a violation by the State party of article 3 of the Convention.

13. In conformity with rule 118 (formerly rule 112), paragraph 5, of its rules of procedure, the Committee urges the State party to provide redress to Onsi Abichou, including adequate compensation. The Committee also wishes to be informed, within 90 days, of the steps taken by the State party to give effect to the present decision.

^{hh} CCPR/C/TUN/CO/5, para. 11 (see footnote g above).

ⁱⁱ *Ibid.*, para. 12.

Communication No. 431/2010: Y. v. Switzerland*

Submitted by: Y. (represented by counsel, Oliver Brunetti)
Alleged victim: The complainant
State party: Switzerland
Date of complaint: 31 August 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 21 May 2013,

Having concluded its consideration of complaint No. 431/2010, submitted to the Committee against Torture by Oliver Brunetti on behalf of Y. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, her counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Y., a Turkish national. She claims that her deportation to Turkey would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel, Oliver Brunetti.

1.2 Under rule 114 (former rule 108) of its rules of procedure (CAT/C/3/Rev. 5), the Committee requested the State party, on 3 September 2010, to refrain from expelling the complainant to Turkey while her communication is under consideration by the Committee. The State party acceded to this request.

The facts as presented by the complainant

2.1 The complainant is a Turkish national of Kurdish origin, born in Istanbul. She started working for the Mesopotamia Cultural Centre (MCC) in Istanbul in 1997, where she gave folk-dance lessons. She comes from a family well known for its liberal pro-Kurdish political views and activities.

2.2 The complainant shares a remarkable physical resemblance with her elder sister, X. Her sister was very active politically and joined the Leninist Guerrilla Troops of the illegal Communist Labour Party of Turkey/Leninist. On this account, she was wanted by the police, who regularly searched for her at their home and threatened to arrest the complainant, in order to force X. to surrender. The complainant's sister was arrested in 1995 and was tortured by the police to make her disclose her activities for the Communist Labour Party of Turkey/Leninist. Since she refused to do so, the police began again to

* The text of the individual (dissenting) opinion of Mr. Alessio Bruni, member of the Committee, is appended herewith.

threaten the family in order to force X. to talk. The complainant was held under arrest for one day and beaten by the police in order to force her sister to testify.

2.3 In 2001–2002, the complainant's sister participated in a countrywide death-fast carried out by political prisoners and refused food for 180 days. She was released from prison on parole for six months, together with many other participants in the hunger strike, in order to restore her health. She had to commit to live at her parents' home, to cease the hunger strike and to return to prison after six months. Despite tight surveillance by the security authorities, the family managed to organize X.'s escape to Switzerland. She was granted asylum in Switzerland on 31 October 2003. In 2006, the Turkish police put her on the International Criminal Police Organization (INTERPOL) list. On 29 April 2008, after becoming aware that X. lived in Switzerland, the Turkish authorities requested her extradition; the request was refused by Switzerland based on the principle of non-refoulement.

2.4 Since the arrest of her sister in 1995, the complainant had visited her in prison at least once a week and during the hunger strike every day. During each visit, the complainant was detained by the prison guards. She was singled out at the end of the visit, was body searched, her face was palpated and her fingerprints were taken. Apparently the security personnel suspected that she might make use of her physical resemblance to her sister in order to replace her and allow her to leave the prison. The complainant was put under surveillance, she was regularly followed and her telephone was tapped, the authorities apparently suspecting her of engagement in the same activities as her sister and of having taken over her activities in the political underground movement. The fact that the complainant had begun to work for the MCC further increased their suspicion. The MCC is considered an institution of the Kurdish Workers Party (PKK) and is closely monitored by the Turkish security authorities.

2.5 On 1 February 1998, the police raided the complainant's house and arrested her. She was taken into custody for seven days, was blindfolded and was brutally mistreated, including in the area of her private parts, sexually harassed and deprived of food. She was indicted for possession of an illegal leaflet and for attending the funeral of a politically active person, but was released for lack of evidence. However, the persecution by police and security authorities continued. She was regularly arrested for short periods, interrogated and intimidated either during the visits to her sister in prison or at her workplace.

2.6 Following her sister's escape in August 2002, the police continued surveillance of the complainant. They were convinced that X. was hiding within the country and they evidently hoped that the complainant would lead them to her. They were also concerned that the complainant would make use of the physical resemblance with her sister to allow X. to move freely. In addition, the intimidation was a means to maintain pressure on X. to surrender. Also, the complainant herself had become highly suspicious to the authorities not only because of her close ties to X., but also for her own activities within the MCC. When they realized in 2006 that X. had fled Turkey, the surveillance intensified, since the complainant had become the only target and was suspected of having helped her sister to escape and of taking over her role in the political underground movement.

2.7 Due to this constant surveillance and intimidation and marked by her various arrests and mistreatments, the complainant developed severe mental health problems. She was afraid to leave the house, and each time she did so she feared that she might be arrested and mistreated again. In 2002 she had turned to the well-known TOHAV Rehabilitation Centre, which specializes in mental health treatment for torture victims, and followed their rehabilitation programme from 2002 to 2006. In 2006, she stopped the treatment for fear of being followed and arrested, since TOHAV, itself a prominent advocate of human rights and prevention of torture, was very exposed.

2.8 In spring 2008, the complainant felt no longer able to live under these circumstances, practically a prisoner in her own house under constant fear. A cousin of hers had been arrested by the police during a first of May demonstration in 2007 and was told by the police that their family should be exterminated. The complainant was strongly advised by her lawyer to leave the country for her own safety. She arranged her illegal departure for Switzerland, where she arrived on 11 September 2008. The complainant has been informed by her parents that since her escape the police had repeatedly searched for her at her parents' home.

2.9 The complainant applied for asylum on 15 September 2008. She attended an initial hearing with the Federal Office for Migration on 25 September 2008, and a second hearing on 22 June 2009. On that occasion she submitted documentary evidence in support of her allegations.^a On 19 March 2010, the Federal Office for Migration rejected her application. It stated that, even though the complainant might have indeed suffered certain threats and intimidations, the intensity of the persecutions as reported by the complainant appeared exaggerated; it would not appear reasonable that the Turkish authorities would have persecuted her repeatedly over a period of many years for the same matter; rather, an indictment would surely have been issued had there really been a suspicion against her. The Federal Office stated that, if the complainant had really been suspected of aiding and abetting her sister's escape, a criminal case would have been initiated against her. Moreover, the allegation that she had been detained each time she visited her sister in prison seemed highly improbable, because such behaviour by the prison authorities would appear to be totally inefficient. The Federal Office further pointed to several inconsistencies in the complainant's allegations regarding the various periods of persecution by the authorities. It finally concluded that the intensity and persistence of the persecutions in the past and, as a consequence, the likelihood of persecution in the future, was not sufficiently credible.

2.10 Further, the Federal Office for Migration found the complainant's allegations of arrest and ill-treatment in 1998 credible and corroborated by significant evidence, however those events dated back too far to allow for the necessary causal link to her present asylum request. The Federal Office noted that, while persecution for one's own past illegal political activities and those of relatives was widespread in Turkey until the late 1990s, this was no longer the case, adding that the situation in Turkey had improved considerably since 2001 and since Turkey had issued new guarantees for criminal proceedings in 2005. Therefore, it stated that, even though it might still be conceivable that a person suspected of having contact with a wanted person or who engaged with illegal organizations might be exposed to police measures, such measures in the majority of cases would no longer qualify as persecutions warranting asylum. The Federal Office considered the events of 1998 and some persecution in the past as credible, but found not credible the claim that the complainant would still suffer persecution as intensely as alleged. Finally, the Federal Office concluded that there was no evidence that upon her return to Turkey the complainant would, with significant probability, face treatment contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2.11 On 21 April 2010, the complainant filed an appeal with the Federal Administrative Tribunal, and submitted additional documents in support of her allegations. She stressed that the persecution had various phases, in parallel with the procedures against her sister and her own engagement with the MCC. Accordingly, the police had various reasons for

^a She submitted, inter alia, newspaper clippings on arrests of MCC members; the transcript of the arrest, house search and confiscation report; the transcript of her interrogation by the anti-terrorist department; the indictment by the Supreme State Prosecutor of the State Security Court of Istanbul; newspaper articles on her release.

engaging in the surveillance, intimidation, arrest and ill-treatment, such as to put pressure on her sister to surrender and then to talk; to prevent the complainant from covering for her sister by taking advantage of their physical resemblance and from taking over her sister's illegal activities; to pressure her for her activities within the PKK linked with the MCC; and to punish her for the illegal activities of her sister and her escape from the country. As to the fact that she had not been arrested for helping her sister to escape in 2002, the complainant pointed out that blame for her sister's to escape had been placed on her because her resemblance had allowed her sister to move freely and thus to escape. Obviously this was not a criminal offence that could lead to an indictment.

2.12 Regarding the inefficiency of detaining her each time she visited her sister in prison, the complainant recalled that the purpose of these measures was to prevent her from replacing her sister in prison and thus letting her escape. She also put forward various arguments to explain that there were no inconsistencies in her allegations, contrary to the claims of the Federal Office for Migration. As to the causal link between the uncontested traumatic events of 1998 and her escape in 2008, the complainant stressed that she had clearly not based her asylum request on these events alone but rather on the continuous intimidations, surveillance, arrests and molestations by security forces from the time her sister had started her illegal activities until the complainant finally fled Turkey in 2008.

2.13 In her appeal the complainant also rejected the view of the Federal Office for Migration that the human rights situation in Turkey had improved considerably and that the risk of persecution for one's own past activities or those of close relatives was unlikely, and referred to the recent case law of the Federal Administrative Tribunal (for example, its decision of 8 September 2005, EMARK 2005/21), according to which the relevant legislative changes that had been implemented recently in Turkey in reality had not materialized; the security forces of Turkey continued to crack down on members of Kurdish organizations; torture was still so widespread that it must even be considered standard official practice; and family members of suspected Kurdish activists continued to be at risk of severe repression. She also made reference to numerous recent reports of international and domestic organizations on the human rights situation in Turkey and submitted as supporting documentation reports by Amnesty International (2009),^b Human Rights Watch (2010)^c and the Swiss Refugee Council (2008).^d

2.14 The complainant also indicated in the appeal that, since her arrival in Switzerland, she had had several breakdowns. She finally argued that, in view of the severe persecution, intimidation, arrests and mistreatment she had suffered until her escape from Turkey for her own and her sister's activities, the zeal demonstrated by the Turkish authorities to get hold of her sister through her, the fact that since her escape the police had continued to search for her at her parents' home and the still critical human rights situation in Turkey, in particular for Kurdish activists and their relatives, she would be at high risk if returned to Turkey, and her forced return would also severely damage her very fragile mental health.

2.15 On 5 August 2010, the Federal Administrative Tribunal issued its judgement on the merits of the case, upholding the decision of the Federal Office for Migration. It confirmed the view of the Federal Office, finding credible the events of 1998 and some intimidation incidents the complainant had suffered afterwards. However, it found not credible the persecutions that had allegedly occurred after 2002 as it appeared very unlikely that the Turkish authorities would have continued to persecute the complainant for many years without finding out prior to 2008 that her sister had obtained asylum in Switzerland. The

^b "Turkey", in *Amnesty International Report 2009: The State of the World's Human Rights*.

^c Human Rights Watch, "Turkey", in *World Report 2010*, pp. 455–459.

^d Swiss Refugee Council, country report on Turkey (2008).

fact that no indictment had been issued against the complainant for allegedly helping her sister to escape demonstrated that the Turkish authorities considered her blameless with respect to this event. The Tribunal considered that the complainant had invented essential elements of her persecution in order to support her asylum request, and concluded that neither her allegations nor the documents available indicated that she would face a real risk of treatment contrary to article 3 of the European Convention on Human Rights or article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment upon her return to Turkey. Finally, it stated that the complainant did not suffer from any disease that could impede the execution of the removal order.

2.16 On 9 August 2010, the Federal Office for Migration requested the complainant to leave Switzerland by 6 September 2010.

2.17 The complainant states that following her departure from Turkey she suffered several breakdowns. In June 2010 she consulted a psychiatrist and followed the prescribed psychotherapy. After learning of the judgement of the Federal Administrative Tribunal, she suffered a mental health crisis and the psychiatrist adapted her therapy to crisis intervention. According to a medical report of 23 August 2010, the complainant suffers from depressive episodes with somatic syndromes, dissociative convulsions and a suspected (the diagnosis was still ongoing at the time of submission of the complaint) post-traumatic stress disorder. The report considered that the then condition of the complainant would not allow for her return to Turkey. Her fear that she would be arrested and mistreated again upon return led to dissociative convulsions. Her return to Turkey would lead to further deterioration of her state of health with a serious risk of suicide. On 26 August 2010, the medical report was submitted to the Basel cantonal office for migration in charge of the enforcement of the deportation order, together with a request to suspend her deportation for medical reasons.

The complaint

3.1 The complainant claims that her deportation to Turkey would be in violation of article 3 of the Convention. She maintains that, upon return, she would be detained, interrogated, intimidated and mistreated by the police. She could also be subjected to the same system of constant surveillance, persecution, detentions and intimidation she had suffered in the past, which had led to severe mental health problems.

3.2 In support of her allegations, the complainant recalls that: (a) she had been arrested and severely mistreated for seven days in 1998, a fact not contested by the Swiss migration authorities; (b) she had been arrested repeatedly for short periods of time when visiting her sister in prison; (c) she has been under tight surveillance with regular intimidation and short-term detentions ever since her sister engaged in illegal pro-Kurdish activities; (d) she has worked for many years for the MCC, an organization considered by the Turkish authorities closely linked to the PKK; (e) her sister has been sentenced to lifelong imprisonment for illegal pro-Kurdish activities and for the alleged murder of a policeman, and her extradition from Switzerland had been refused based on the principle of non-refoulement; (f) the Turkish authorities know or would know upon the complainant's re-entry into Turkey that she has been in Switzerland with her sister, where she had sought asylum; (g) numerous international organizations as well as the recent case law of the Federal Administrative Tribunal confirm that the human rights situation in Turkey has remained largely unchanged, particularly for Kurds, and that arbitrary arrests, mistreatment and torture of persons accused of pro-Kurdish activities or their close relatives are still to be considered standard procedure; (h) she has suffered from mental illness for many years, has been treated by the TOHAV torture rehabilitation centre in Istanbul for four years and is under treatment with a psychiatrist who has confirmed that she would not be able to cope with another arrest by the Turkish authorities.

State party's observations on the admissibility and the merits

4.1 By note verbale of 16 February 2011, the State party submitted its observations. It provides a brief summary of the facts of the complainant's case and of her allegations in the context of the asylum proceedings which reflects the information supplied by the complainant in paragraphs 2.1–2.8 above. The State party notes that the complainant claims before the Committee that she would be arrested and ill-treated upon return to Turkey, in violation of article 3 of the Convention. She further claims that she suffers from mental health problems and that, in case of return, she runs a serious risk of suicide. The State party submits that, with the exception of the allegation concerning her mental health problems, the complainant relies on the same facts and claims as have been submitted before national authorities, and provides no new information that would call into question the decision of the Federal Office for Migration of 19 March 2010 and the judgement of the Federal Administrative Tribunal of 5 August 2010.

4.2 The State party submits that, according to article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds to believe that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The State party recalls the criteria established by the Committee in its general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22^e which require the complainant to prove that he or she runs a personal, present and substantial danger of torture if deported to his or her country of origin. The existence of such a risk must be assessed on grounds that go beyond mere theory or suspicion; the alleged facts need to demonstrate that such a risk is serious. The State party recalls that paragraph 8 of the Committee's general comment requires, *inter alia*, that the following information be taken into account when assessing the risk of expelling someone: evidence of the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights; allegations of torture or ill-treatment in the recent past as well as the existence of evidence from independent sources in this regard; the complainant's political activities in and outside his or her country of origin; existence of evidence as to the credibility of the complainant; and existence of relevant factual inconsistencies in the complainant's claim.

4.3 In order to assess whether there are serious grounds to believe that a complainant would be at risk of torture in case of forcible removal, the Committee must take into account all pertinent considerations, in particular the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the receiving State. The purpose of the assessment is however to determine whether the complainant would face a personal risk of being subjected to torture in the country of return. The existence of gross, flagrant or mass violations of human rights is not in itself a sufficient ground for believing that an individual would be subjected to torture upon his or her return to his or her country of origin, and additional grounds must exist for the risk of torture to qualify, within the meaning of article 3, as *foreseeable, real and personal*.^f Conversely, as the Committee has reiterated in its decisions, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.^g

^e *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX.

^f Emphasis as appears in the original submission.

^g Reference is made to communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May

4.4 The State party submits that the Committee has already had the opportunity to examine communications in which complainants of Kurdish origin claimed that they would be exposed to torture should they be returned to Turkey. On that occasion, the Committee noted that the situation of human rights in Turkey was of concern, particularly for PKK militants. However, the Committee has concluded that a particular complainant would face a real and personal risk of torture upon return to Turkey only where additional individual elements could have been established, in particular, the importance of political activities in favour of the PKK, the possible politically motivated criminal charges against a complainant, and the question whether a complainant had been subjected to torture in the past.^h With regard to political activities or former acts of persecution, the Committee gave considerable weight to whether they occurred in the recent past or not.ⁱ

4.5 The State party claims that the complainant has not demonstrated that she would face a foreseeable, real and personal risk of torture if returned to Turkey. The torture or ill-treatment allegedly suffered by her in the past is one of the elements to be taken into account when assessing the risk of torture or ill-treatment in case of return. The complainant claims that she was ill-treated by Turkish authorities during her one-week detention in February 1998. While the 1998 arrest of the complainant was not contested by the Swiss authorities, they noted that more than 10 years had passed since the event. Thus, after examining the current situation of the complainant, the Swiss authorities have found that she has not established a causal link between the events of 1998 and her alleged escape from the country in 2008, and have concluded that there is no current risk of persecution in case of return to Istanbul. In addition, the State party recalls the practice of the Committee that possible ill-treatment in the past does not prove the current risk of torture for a complainant if returned, in particular when such acts have not occurred in the recent past.^j

4.6 The State party submits that the complainant claimed that she would be persecuted because of her sister's past political activities and her sister's escape to Switzerland. She also declared that she had been suspected of supporting the PKK because of her work at the MCC in Istanbul, which also led to persecution. The competent Swiss authorities did not contest the complainant's detention in 1998. Similarly, they found credible her allegations of persecution because of her sister's activities.

4.7 The Federal Office for Migration noted that the complainant contradicted herself regarding the period of time during which she had been harassed by the Turkish authorities. The Federal Office has considered, inter alia, that it was unlikely that the complainant was arrested "each time" she visited her sister in prison because of their physical resemblance. In the circumstances, the Turkish authorities would have had an interest in taking measures to avoid such confusion; more so that during certain periods the complainant had visited her sister in prison daily.

4.8 Other allegations of the complainant were also deemed exaggerated and less realistic. She has also claimed that, over a period of seven years, she had been arrested about once a week. In addition, she had been harassed, threatened and subject to surveillance for years. She claimed that she had been followed almost every day and that

2010, para. 7.2.

^h Reference is made to communications No. 373/2009, *Aytulun and Güclü v. Sweden*, decision adopted on 19 November 2010, paras. 7.6–7.7; No. 281/2005, *Pelit v. Azerbaijan*, decision adopted on 1 May 2007, paras. 2.3, 7.3 and 11; No. 135/1999, *S.G. v. Netherlands*, decision adopted on 12 May 2004, para. 6.5; No. 214/2002, *M.A.K. v. Germany*, decision adopted on 10 September 2002, para. 13.6.

ⁱ Reference is made to *N.S. v. Switzerland*, para. 7.4; and *M.A.K. v. Germany*, para. 13.7.

^j Reference is made to general comment No. 1, para. 8 (c) [sic], and communication No. 326/2007, *M.F. v. Sweden*, decision adopted on 14 November 2008, para. 7.6.

the harassment had not stopped even after the police had learned that her sister was abroad. The Swiss authorities considered that it seemed illogical that the police would intimidate the complainant for the same reason for many years, with the frequency and persistence she had alleged.

4.9 The State party sees no reason to depart from the Federal Administrative Tribunal finding that it seems unrealistic that the Turkish authorities have invested so much in the surveillance and monitoring of the complainant, especially noting that her sister had already left Turkey in 2002. During the hearing of 22 June 2009, the complainant alleged that in March 2008 she and her family had informed the police that her sister had fled the country. It seems likely that, by claiming uninterrupted surveillance, the complainant is trying to create a link between the events of 1998 and her departure for Switzerland in 2008.

4.10 With regard to the complainant's allegation that she was suspected of having helped her sister to escape, the Swiss migration authorities have rightly pointed out that the complainant cites statements of fact which would normally lead to a criminal charge. However, no criminal proceedings have been initiated against her. The Swiss migration authorities have finally considered that no sufficient causal link between the problems and persecution suffered by the complainant in 1998 and her alleged reasons for fleeing the country in 2008 had been established. The persecution that the complainant was able to substantiate before the Swiss authorities in fact dates back to more than 10 years before her departure. Therefore, the Federal Administrative Tribunal concluded that the problems the complainant had encountered in the 1990s were no longer relevant to her asylum claim. The Federal Office for Migration pointed out, *inter alia*, that the human rights situation in Turkey has improved considerably in the past years, especially in view of the accession negotiations with the European Union. For these reasons, the Federal Office and the Tribunal have not considered it likely that the complainant would currently be subject to persecution in Istanbul.

4.11 The State party recalls that there are no criminal proceedings pending against the complainant. Moreover, she has not indicated that members of her immediate family — including her parents living in Istanbul — are being persecuted. It is only before the Committee that she claims that the police have searched for her at her parents' home since her escape in 2008. The State party observes that the complainant does not claim to have been politically active in Switzerland or to have cooperated with members of the PKK, either in Turkey or in Switzerland. Finally, the State party cannot exclude that the complainant would be questioned by the Turkish authorities upon return to Istanbul. However, even if this were the case, there is no indication that she would be subject to ill-treatment or torture.

4.12 The State party recalls that the principle of non-refoulement within the meaning of article 3 of the Convention is applicable only in cases where a person risks, in a case of expulsion or extradition, being subjected to torture as defined in article 1 of the Convention. Any other treatment a person might suffer abroad, even inhuman or degrading treatment, does not fall within the scope of article 3.^k In view of the foregoing, and in the light of the Committee's practice in other cases involving deportations to Turkey, the State party is of the view that the complainant cannot be considered a person who would face a real and personal risk of torture within the meaning of article 1 of the Convention if she were to be returned to Istanbul.

^k Reference is made to communication No. 201/2002, *M.V. v. Netherlands*, views adopted on 2 May 2003, para. 6.2.

4.13 As to the complainant's allegation that she suffers from mental health problems, in particular from depression with somatic syndrome, that there is a suspicion of post-traumatic stress disorder and that she would be at serious risk of suicide if forcibly returned to Turkey, the State party finds it surprising that she has not invoked her mental health problems during the asylum proceedings. During the hearing of 22 June 2009, she clearly stated that she did not have any health problems. Furthermore, the alleged cause/origin of the complainant's mental problems is by no means proven; a suspected post-traumatic stress disorder cannot be considered as an important indication of her persecution in Turkey. In any event, the mere fact that the complainant suffers from mental health problems today cannot be considered a sufficient reason not to proceed with the deportation. The State party recalls the Committee's position that the aggravation of a person's state of physical or mental health owing to his or her deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment that would be in violation of the Convention. This practice was confirmed in several decisions. The Committee has rejected communications in which the complainants had been able to establish that they had suffered from severe post-traumatic problems caused by past ill-treatment, as well as communications in which a risk of suicide in case of return had been substantiated.¹

4.14 In the light of the Committee's practice, the complainant's sufferings do not reach the threshold required to prevent the enforcement of the deportation, especially since treatment is available in her home country and adequate and accessible medical facilities exist in Istanbul. The State party finally indicates that in case of risk of suicide the Swiss authorities take the necessary measures to ensure the safety of the person concerned, such as, for example, expulsion accompanied by a doctor. Taking into account the complainant's health condition, Federal Office for Migration had, for example, decided to delay her deportation.

4.15 In the light of the foregoing, the State party submits that there are no substantial grounds for believing that the complainant would face a real and personal risk of torture upon return to Turkey. Her allegations do not permit to conclude that the deportation would expose her to a foreseeable, real and personal risk of torture. Therefore, her deportation to Turkey would not constitute a violation of article 3 of the Convention.

The complainant's comments on the State party's observations

5.1 On 20 April 2011, the complainant provided her comments. As regards the summary of facts given by the State party, she clarifies that the severe ill-treatment she suffered during her seven days under arrest in 1998 has been corroborated by strong evidence and that both the Federal Office for Migration and the Federal Administrative Tribunal have expressly accepted the described events as proven. She further clarifies that her fear in case of return is twofold: first, it must be expected that she would be detained by the police immediately upon her entry into Turkey and would be interrogated, intimidated and mistreated; second, it must be expected that she would be put under the same system of constant surveillance, persecution, detentions and intimidation she had suffered before escaping from Turkey and which had led to her severe mental health problems. As to the State party's reference to the criteria set out in the Committee's general comment No. 1, she notes that the criterion in paragraph 8 (c) refers not only to whether there exists independent

¹ Reference is made to communications No. 228/2003, *T.M. v. Sweden*, views adopted on 18 November 2003, paras. 2.6, 2.8, 3.2 and 6.2; No. 220/2002, *R.D. v. Sweden*, decision adopted on 2 May 2005, paras. 3.3, 5.1 and 7.2; and No. 227/2003, *A.A.C. v. Sweden*, decision adopted on 16 November 2006, para. 7.3.

proof of torture — as outlined by the State party — but also to whether the torture had any after-effects. This clarification is important as she suffered such after-effects.

5.2 With respect to the State party's observations on the human rights situation in Turkey and the reference to the Committee's case law on returns to Turkey (see paras. 4.3–4.4 above), the complainant reiterates the individual elements contributing to the real risk as outlined in her complaint. In addition, she recalls again the case law of the Federal Administrative Tribunal, which was confirmed in a judgment of 25 October 2010 (E-6587/2007), that persecution of relatives of politically active persons (hereinafter "family persecution") continued to be applied by the Turkish authorities and that such repression could be the basis for serious risk in the sense of article 3 of the Swiss Asylum Act. The Tribunal further stated that the probability of becoming exposed to such family persecution was particularly high in cases where the politically active family members were wanted by the police and the authorities had cause to believe that the relative in question had close contact with the wanted family member. The Tribunal, quoting numerous reports by international organizations, confirmed that the human rights situation in Turkey had essentially remained unchanged since 2005. Based on the above, the complainant claims that in her case the Tribunal has not complied with its own case law, according to which she runs a risk of being persecuted if returned to Turkey.

5.3 With regard to the State party's argument about the lack of a sufficient causal link between her arrest in 1998 and her escape from Turkey in 2008, the complainant recalls that her asylum request was not based only on the events of 1998, but also on the continued persecution and intimidation she suffered until she left Turkey in 2008, as well as on the risk of family persecution she runs because of her close relationship with her sister. Therefore, the events in 1998 mark one important element among others in establishing the risk of torture in case of return to Turkey and must be seen in the context of ongoing persecution she suffered until the recent past and the significant risk of family persecution she is running. Accordingly, the State party's reference to the case of *M.F. v. Sweden* does not seem warranted, as in that case the Committee had no information, other than the ill-treatment suffered by the complainant six years earlier, on why the complainant should have been of interest to the authorities.

5.4 The complainant notes that the State party in principle admits the key elements on which the complaint is based, that is, the severe mistreatment in 1998, her subsequent harassment by the Turkish authorities (although it contests the intensity and duration of such harassment) and the political activities of her sister leading to significant risk of family persecution. She contests the State party's argument about contradictions regarding the periods of time during which she had been harassed by the Turkish authorities, claiming that no such discrepancies exist, as she has already explained in detail in her appeal against the negative decision of the Federal Office for Migration.

5.5 In response to the State party's observations that her claims of repeated detention and harassment seem unlikely (para. 4.8 above), that it would appear improbable that the Turkish authorities would persecute her for years and then be informed in 2008 by her own family about the fact that her sister had actually left Turkey (para. 4.9), and that she was not indicted for having helped her sister flee Turkey (para. 4.10), the complainant reiterates the arguments put forward in her appeal against the decision of the Federal Office for Migration (see para. 2.11 above), and adds that it does not seem improbable at all that the prisons guards would have detained, searched and harassed her after each of her visits to her sister in prison, since such measures would make sense from the prison guards' view only if carried out without exception.

5.6 The complainant submits that neither the Federal Office for Migration nor the Federal Administrative Tribunal provide any evidence as to the alleged improvements of the human rights situation in Turkey, nor do they comment in any way on the numerous

reports stating the contrary. She further recalls that the views taken by the State party on this point contradict the Tribunal's own case law, as outlined above, and refers to the reports by Amnesty International, Human Rights Watch and the United States Department of State supplied as evidence.^m She also refers to the concluding observations issued by the Committee in November 2010, where it again expressed serious concerns on the human rights situation in Turkey.ⁿ

5.7 The complainant contests the State party's argument that she claimed that the police had continued to search for her at her parents' home after she left Turkey in the summer of 2008 only before the Committee, since this fact was brought to the attention of the Federal Administrative Tribunal in her appeal. In response to the State party's contention that, even though she might be questioned by the police upon return, there is no indication that this would lead to ill-treatment or torture, the complainant reiterates her arguments put forward in paragraphs 3.1 and 3.2 above.

5.8 The complainant submits that she did not mention her health problems upon arrival in Switzerland because she was hopeful that they would disappear. Moreover, her mental health problems are of a nature that makes it difficult for her to talk about them and she would not easily disclose them when asked in a general way, as was the case during the hearing with the Swiss authorities. As to the State party's argument that the origin of her health problems is not proven, she refers to the medical report issued by her psychiatrist on 23 August 2010, which indicates that she had developed mental health problems around 2000, after she had been visiting her sister in prison for years and had been regularly detained and intimidated, and following her detention and severe ill-treatment in 1998. At that time she suffered from dissociative convulsions, muscle tension and loss of consciousness which required emergency hospitalizations. The report also refers to her treatment at the TOHAV centre from 2002 until 2006 and mentions that, as a result of the increased surveillance and persecution by the police after 2006, she almost completely withdrew to her home, which further increased her mental health problems and ultimately made her leave Turkey in 2008. In Switzerland she felt useless, helpless and depressed, and was plagued with memories of the humiliation of the police detentions and the torture she had suffered. She also felt unable to bear any further negative experiences, and feared that she would harm herself in such a case. Based on these observations by the psychiatrist, the complainant considers it established that her mental health problems are caused by her treatment by the Turkish authorities in the past.

5.9 The complainant submits that the mental health problems are one of several elements on which her claim under article 3 is based, and therefore the Committee's decisions quoted by the State party, according to which a person's state of health is generally insufficient, in the absence of additional factors, to amount to degrading treatment and thus prevent the deportation, are not relevant to her case. She does not contest that, in principle, adequate medical treatment is available in Turkey. The real problem is, however, that a return into the sphere of surveillance and intimidation by the State authorities which were the very cause of the mental health problems would fundamentally prevent adequate treatment in Turkey.

5.10 The complainant rejects the State party's conclusion that no serious reasons exist to believe that she would face a real and personal risk of torture if returned to Turkey. She

^m "Turkey", in *Amnesty International Report 2010: The State of the World's Human Rights*; Human Rights Watch, "Turkey" (footnote c above); United States Department of State, "2010 human rights report: Turkey".

ⁿ The complainant appears to refer to the Committee's concluding observations on Turkey (CAT/C/TUR/CO/3).

considers that there are multiple elements establishing such a risk both with respect to her personally and individually and with respect to the human rights situation in Turkey generally. The complainant refers to the documentation submitted in support of the existence of a real risk of torture upon return, and notes that the State party has not commented on some of these documents, for example (a) the letter dated 1 April 2010 in which her lawyer confirmed the severe persecution experienced by her until her escape from Turkey and that her life and safety would be in danger if she were to be returned; (b) the letter from TOHAV centre confirming that she received treatment from 2002 to 2006; and (c) the various reports by international organizations on the human rights situation in Turkey. She reiterates her allegations that her deportation to Turkey would constitute a violation of article 3 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim contained in a complaint, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 In the present case, the Committee notes that the State party has not contested the admissibility of the present complaint on any grounds. The Committee considers that the complainant's allegation under article 3 has been sufficiently substantiated, declares the complaint admissible and proceeds to its examination on the merits.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 The issue before the Committee is whether the removal of the complainant to Turkey would constitute a violation by the State party of its obligation under article 3 of the Convention not to expel or to return (refouler) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Turkey. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

7.3 The Committee recalls its general comment No. 1, according to which "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (para. 6), but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.^o The Committee further

^o See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, views adopted on 14 November 2003, para. 7.3; No. 285/2006, *A.A. et al. v. Switzerland*, decision adopted on 10 November 2008, para. 7.6; No. 322/2007, *Njamba and Balikosa v. Sweden*, decision adopted on 14 May 2010, para. 9.4.

recalls its general comment No. 1, according to which the burden to present an arguable case is on the complainant (para. 5). In the present case, the Committee notes that the complainant's claim that she would run a risk of being tortured if she is returned to Turkey is based on the following: she had been detained and tortured in 1998; she had been subjected to short-term arrests when visiting her sister in prison; ever since her sister had fled the country in 2002, she had been under surveillance and subjected to harassment, intimidation and detention because of her sister's political activities and because of suspicion that she had made use of her physical resemblance to facilitate her sister's escape from Turkey; her own activities within the Mesopotamia Cultural Centre in Istanbul; and the risk of family persecution she runs on account of her close family relationship with her sister.

7.4 The Committee notes that, while the complainant's arrest and ill-treatment in 1998 is uncontested, the State party argues that the complainant failed to establish a link between those events and her departure from Turkey in 2008. Furthermore, the State party finds exaggerated the alleged uninterrupted harassment and surveillance by Turkish authorities for years, including after the complainant's sister fled the country in 2002, and argues that the authorities would have taken other measures had she been of interest to them.

7.5 The Committee recalls that under the terms of its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned,^p while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.6 In assessing the risk of torture in the present case, the Committee takes note of the complainant's arrest and ill-treatment in 1998 and of the allegation that she suffers from mental health problems because of ill-treatment in the past and the continuous harassment and persecution by the Turkish authorities. In this regard, the Committee observes that the complainant submits as documentary evidence a confirmation by the TOVAH Rehabilitation Centre that she has been under treatment from 2002 to 2006, as well as a medical report dated 23 August 2010 issued by a Swiss psychiatrist who, inter alia, refers to a suspected post-traumatic stress disorder. The Committee further notes the State party's arguments that the complainant has not invoked her mental health problems during the asylum proceedings, that the alleged origin of these problems is not proven, that a suspected post-traumatic stress disorder cannot be considered an important indication of her persecution in Turkey, and that treatment for her condition is available in Turkey.

7.7 The Committee recalls that the ill-treatment or torture suffered in the past is only one element to be taken into account, the relevant question before the Committee being whether the complainant currently runs a risk of torture if returned to Turkey. While it is accepted that she was tortured in the past, it does not necessarily follow that, 15 years after the events occurred, she would still be at risk of being subjected to torture if returned to Turkey in the near future.^q In this regard, the Committee observes that the complainant claims to have been subjected to continuous surveillance, harassment, short-term arrests and persecution until her escape to Switzerland in 2008, but has failed to provide elements which would show that this would amount to torture. Moreover, although she claims that authorities "apparently" suspected her of having taken over her sister's activities in the political underground movement, she has not presented any evidence that she has ever been summoned for interrogation or has been indicted for such suspected involvement with the

^p See, inter alia, *N.S. v. Switzerland*, para. 7.3.

^q See, for example, communication No. 245/2004, *S.S.S. v. Canada*, decision adopted on 16 November 2005, para. 8.4.

PKK; neither has she supplied any evidence corroborating her claim that the police has searched for her at her parents' home since her escape to Switzerland. The Committee also notes that the complainant has never claimed that her family members living in Istanbul are being persecuted in connection with her sister's and her own escape to Switzerland. Furthermore, it is uncontested that the complainant herself has not been sentenced, prosecuted for, or accused of, any crime in Turkey; that she has not been politically active in Switzerland; and that she has not been cooperating with members of the PKK either in Turkey or in Switzerland.

7.8 The Committee takes note of the information submitted by the parties on the general human rights situation in Turkey. It notes the information presented in recent reports that, overall, some progress was made on observance of international human rights law, that Turkey pursued its efforts to ensure compliance with legal safeguards to prevent torture and mistreatment through its ongoing campaign of "zero tolerance" for torture^r and that the downward trend in the incidence and severity of ill-treatment continued.^s Reports also indicate that disproportionate use of force by law enforcement officials continues to be a concern^t and cases of torture continue to be reported.^u However, the Committee notes that none of these reports mention that family members of PKK militants are specifically targeted and subjected to torture. As to the complainant's allegation that she would be arrested and interrogated upon return, the Committee recalls that the mere risk of being arrested and interrogated is not sufficient to conclude that there is also a risk of being subjected to torture.^v

7.9 In the light of the above considerations, the Committee considers that the facts as presented do not permit it to conclude that the complainant's return to Turkey would expose her to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention. Accordingly, the Committee concludes that her removal to Turkey would not constitute a breach of article 3 of the Convention.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainant to Turkey would not constitute a violation of article 3 of the Convention.

^r United States Department of State, "Turkey 2012 human rights report", p. 5.

^s European Commission, "Turkey 2012 progress report" (10 October 2012), p. 19. Available from http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf.

^t *Ibid.*, pp. 19 and 72.

^u See United States Department of State, "Turkey 2012 human rights report".

^v Communication No. 57/1996, *P.Q.L. v. Canada*, views adopted on 17 November 1997, para. 10.5.

Appendix

Individual opinion of Committee member Mr. Alessio Bruni (dissenting)

It is my opinion that the forced removal of the complainant would constitute a breach by the State party of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for the following reasons:

(a) It appears from the information submitted to the Committee that the complainant belongs to a family well known in Turkey for its pro-Kurdish political views and activities considered illegal by the Government. The complainant's sister was arrested for her political activities in favour of the illegal Communist Labour Party in 1995 and accused of the killing of a policeman in a shooting during her arrest. She was tortured and imprisoned for life. When she was released on parole for six months, in 2002, she escaped to Switzerland where she was granted asylum in 2003. Turkey requested her extradition, but Switzerland refused it on the principle of non-refoulement;

(b) The fact that the complainant belongs to a family of persons wanted by the Turkish police authorities and that she is the sister of a person whose extradition was refused by the State party on the principle of non-refoulement is an element of personal, real and foreseeable risk for the complainant of being subjected to mistreatment, if she is returned to Turkey. She would be arrested and interrogated and most probably exposed to treatment contrary to article 1 of the Convention to obtain information on her family members and their activities abroad. She had been threatened already when the police was looking for her sister in 1995 and in 2002;

(c) The State party argues that the complainant's parents living in Istanbul have not been persecuted. This can be easily explained by the fact that they live in Istanbul and, therefore, they have no useful first-hand information to give to police authorities with regard to other family members' activities abroad;

(d) The complainant would attract the interest of the Turkish police authorities also because:

(i) She is suspected of having used her extraordinary resemblance to her sister to help her in her evasion. It should be noted, in this connection, that because of her resemblance, she had been briefly arrested several times when she had visited her sister in prison. The reasons for these arrests would have been to prevent her from replacing her sister in prison and allowing her sister to escape. The State party argues that the suspicion by police authorities that the complainant could have used the resemblance to her sister to help her escape from prison should have led to a criminal charge against the complainant. This was not necessary while the complainant was still under surveillance by the police, which was trying to intercept her contacts with her sister, but this could be the case if she is returned to Turkey;

(ii) In Turkey, from 1997 to 2004, the complainant worked for the Mesopotamia Cultural Center (MCC), an institution allegedly belonging to the PKK and subjected to close monitoring by security authorities;

(iii) Following her sister's escape, in August 2002, the complainant was allegedly kept under surveillance by the police for four years;

(iv) On 1 February 1998 the complainant was arrested, detained for seven days and tortured for her illegal activities and then released for lack of evidence. These

events, as well as subsequent persecution suffered by the complainant, are considered credible by the State party. However, in the State party's view, there is no sufficient causal link between these events and her departure for Switzerland in 2008. On the contrary, it appears that a clear causal link emerges from the following elements: her arrest and mistreatments in 1998 and the constant surveillance and intimidation of her from 2002 to 2006 are the root cause of her mental problems, as medically reported. No other causes for those problems emerge from the information submitted to the Committee by the complainant or the State party. In this connection, it should be noted that she was treated in the TOHAV Rehabilitation Centre, which is specialized in the mental health treatment of torture victims, from 2002 to 2006, and by a psychiatrist, in 2010. For the reasons indicated above, she had to find a country in which she could live without constant fear. That country, for her, was evidently Switzerland where her sister had found asylum;

(e) It should be noted also that a medical report, dated 23 August 2010, issued by a Swiss psychiatrist refers to a suspected post-traumatic stress disorder. The psychiatrist considered that the then condition of the complainant would not allow for her return to Turkey;

(f) The State party is of the view that the health status is not an important indication of persecution in Turkey, but it does not exclude it. This element added to the other elements listed above make the complainant extremely fragile and currently expose her to severe mistreatment or even torture if she is returned to her country;

(g) It may be recalled, in this connection, that general comment No. 1 of the Committee provides that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of highly probable" (para. 6). It appears that the elements listed above go beyond mere theory or suspicion and that the risk for the complainant is personal, real and foreseeable although the degree of probability cannot be measured.

The reported cases of torture and impunity of its perpetrators, referred to in the concluding observations on the third periodic report of Turkey considered by the Committee against Torture in November 2010 (CAT/C/TUR/CO/3) and in the concluding observations of the Human Rights Committee on the initial report of Turkey considered in October 2012 (CCPR/C/TUR/CO/1) corroborate, among others, the situation of risk in which the complainant would find herself if she is returned to her country.

(Signed) Alessio **Bruni**

Communication No. 432/2010: *H.K. v. Switzerland*

Submitted by: H.K. (represented by counsel, T.H.)
Alleged victim: The complainant
State party: Switzerland
Date of complaint: 1 September 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2012,

Having concluded its consideration of complaint No. 432/2010, submitted to the Committee against Torture by H.K. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, her counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is H.K., a national of Ethiopia born on 28 July 1973. The complainant is an asylum seeker whose application for asylum was rejected; at the time of submission of the complaint, she was awaiting deportation to Ethiopia. She claims that her deportation to Ethiopia would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, T.H.

1.2 On 8 September 2010, under former rule 108, paragraph 1, of the Committee's rules of procedure,^a the Committee requested the State party not to deport the complainant to Ethiopia while her complaint was under consideration by the Committee.

The facts as presented by the complainant

2.1 The complainant is originally from Addis Ababa, where she was working as a secretary for a coffee trade company. In December 2004, she became involved with the newly founded Coalition for Unity and Democracy movement (CUD, also known as KINIJJIT or CUDP). She started supporting the movement and helped to organize events and demonstrations. In May 2006, she was arrested by members of the Ethiopian military and imprisoned for one month.^b After having suffered severe ill-treatment in custody, the complainant was released on bail. She was, however, still under surveillance by the Ethiopian authorities and feared being apprehended again. In June 2007, she was given an opportunity to attend a conference in Geneva as her employer's representative. The

^a Rule 114, paragraph 1, of the current rules of procedure (CAT/C/3/Rev.5).

^b A copy of the document issued by the Addis Ababa City Administration Police Commission was submitted to the Committee by the complainant on 8 September 2010 and is available on file in the original language (Amharic) with an unofficial English translation.

complainant seized the opportunity to be able to leave Ethiopia legally and applied for asylum in Switzerland for the first time on 25 June 2007.

2.2 The complainant submits that she continued her political activism in Switzerland. Since October 2007, she has been an active member of KINIJIT and currently holds a position as the cantonal representative of Lucerne for the KINIJIT Support Organization in Switzerland (KSOS), where she plays an active role in arranging meetings, encouraging new members and organizing demonstrations. Moreover, she often speaks at protest events and publishes critical comments and articles on the Internet. The complainant is also a member of the Association des Ethiopiens en Suisse (AES), which often organizes demonstrations against the Ethiopian authorities.

2.3 On 25 July 2007, the Federal Office for Migration decided not to pronounce itself on the merits of the complainant's asylum request and ordered her expulsion from Switzerland. Her appeal against this decision was rejected by the Federal Administrative Court on 11 December 2008.

2.4 On 24 April 2009, the complainant submitted a second asylum request, in which she indicated her political activities in Switzerland and submitted photographs, leaflets, articles written by her, comments added by her on discussion forums, a confirmation letter from KSOS, a letter from AES and a Human Rights Watch report as evidence. The Federal Office for Migration interviewed the complainant on 30 October 2009 and rejected her second asylum request on 12 November 2009. The Federal Office noted that the complainant had not been able to credibly demonstrate any politically motivated persecution by the Ethiopian authorities on the occasion of her first asylum procedure. There was, therefore, no reason to assume that she had been noticed by the Ethiopian authorities as a dissident prior to her departure or that she had been registered in any way as a regime critic or a political activist. Thus, in the opinion of the Federal Office for Migration, there was also no reason to assume that the complainant had been watched by the Ethiopian authorities after her arrival in Switzerland.

2.5 The Federal Office for Migration also held that the information provided by the complainant during the oral hearing of 30 October 2009 did not suggest that she held a prominent position within KSOS. Moreover, there were no indications that the Ethiopian authorities had noticed the complainant's membership in KSOS or had taken any detrimental measures against her. Furthermore, her activities for AES, an association that declares itself as politically independent and is mostly involved in cultural activities, were of a rather limited scope. The Federal Office for Migration considered as proven that the complainant was, like many of her compatriots, politically active in exile. The evidence submitted by her demonstrated, however — as in numerous other similarly documented asylum requests — that in Switzerland many activities of dissidents in exile take place for only a few months. Subsequently, group photographs that are often arranged and depict hundreds of people are published in the corresponding media. Even though the photographs submitted by the complainant depicted her holding a megaphone in the front row of demonstrators, this was not considered sufficient by the Federal Office for Migration to make her appear to be a potentially destabilizing regime critic. The Federal Office pointed out that she had not been the only protester to chant slogans and that her name was not indicated on the photographs published on the Internet. Thus, it could not be concluded that the complainant was more exposed than others.

2.6 As to the political articles published by the complainant on the Internet, the Federal Office for Migration held that in the light of the fact that hundreds of anti-Government articles were published on the Internet, it could not be concluded that she had attracted any particular attention of the Ethiopian authorities. Even if they were informed about the political activities of the nationals in exile, they would be in no position to monitor and identify every single person, considering the high number of Ethiopian nationals living

abroad. Moreover, the Ethiopian authorities should be aware of the fact that many Ethiopian emigrants try, for mainly economic reasons, to gain a residence permit in Europe, and particularly in Switzerland, before or after the conclusion of their asylum procedures, therefore dedicating themselves to anti-Government activities, such as participation in demonstrations, publication of photographs and texts, etc.

2.7 The Federal Office for Migration concluded, therefore, that the Ethiopian authorities did not have an interest in singling out a particular person, unless his or her activities were perceived as a tangible threat to the political system. In the complainant's case, there were no indications to suggest that she was active or particularly exposed. The complainant definitely did not belong to the targeted group of hard-core dissident activists in exile who were of interest to the Ethiopian authorities.

2.8 The complainant's appeal against the decision of the Federal Office for Migration was rejected by the Federal Administrative Court on 6 August 2010. Following the latter judgement, the complainant was requested to leave Switzerland by 9 September 2010. The complainant submits that if she fails to leave voluntarily, she will be forcibly returned to Ethiopia.

2.9 In addition to the reasons given by the Federal Office for Migration for rejecting the complainant's second asylum request, the Federal Administrative Court found that the articles published on the Internet could not lead to an unambiguous identification of the complainant by the Ethiopian authorities. On the one hand, the five different signatures would not prove her original authorship. On the other hand, it could not be ruled out that a different person with the same name as the complainant was in fact the author of these articles.

2.10 Overall, the Federal Administrative Court concluded that the complainant did not leave an impression of being a high-profile and potentially destabilizing regime critic who would justify the Ethiopian secret service's interest in her. Thus, she would neither be at risk of political persecution nor of being subjected to torture or other inhumane and degrading treatment if she were returned to Ethiopia.

2.11 The complainant submits that, contrary to the assessment made by the Federal Administrative Court, she has a well-founded fear of having been perceived and registered as a dissident activist by the Ethiopian authorities and she would face a real risk of being subjected to treatment contrary to the Convention if she were deported to Ethiopia, for the following reasons:

(a) The Ethiopian Government is actively and closely monitoring the opposition movement,^c both within Ethiopia and in exile. Following recently adopted anti-terrorism legislation, the crackdown on political dissidents by the Ethiopian authorities has intensified. A provision of the above-mentioned legislation establishes a penalty of 20 years' imprisonment for "whosoever writes, edits, prints, publishes, publicizes, disseminates, shows, makes to be heard any promotional statement encouraging, supporting or advancing terrorist acts",^d and one analysis states that "the legislation conflated political opposition with terrorism".^e The complainant also refers to an analysis by Human Rights

^c Reference is made to a report of the Committee to Protect Journalists, "Attacks on the press in 2008: Ethiopia", 10 February 2009; United States Department of State, 2009 Country Reports on Human Rights Practices: Ethiopia, 11 March 2010; "Ethiopia arrests 35 suspects in alleged coup plot", Voice of America, 26 April 2009.

^d Reference is made to a report of the Committee to Protect Journalists, "Attacks on the press 2009: Ethiopia" (16 February 2010).

^e Ibid.

Watch, which states that “government opponents and ordinary citizens alike face repression that discourages and punishes free expression and political activity”.^f Publications on the Internet critical of the Ethiopian authorities are of particular concern to the Government, as nationals turn more and more to the Internet for information. In support of her argument, the complainant refers to the Freedom House report “Freedom of the press 2009: Ethiopia”, which states that the Ethiopian authorities monitored and blocked opposition websites and blogs, including news websites run by Ethiopians living abroad;

(b) There are numerous and unambiguous reports that the Ethiopian police is applying methods of torture against political opponents and critics.^g Random arrests and lengthy pretrial detentions are common. Torture is often used to extract confessions and information. The complainant refers to a report by the Human Rights Watch^h that documents the use of torture by police and military officials in both official and secret detention facilities across Ethiopia;

(c) The quality and content of the complainant’s critical articles, in which she harshly criticizes the regime of the Prime Minister of Ethiopia, Meles Zenawi, are of a level that suggests that the Ethiopian authorities would have a vital interest in monitoring her. The complainant is a well-educated intellectual who eagerly follows current political developments. Moreover, she is well connected within the dissident movement in exile, a fact that is demonstrated by the publication of her articles on the well-known dissident website *cyberethiopia.com* and her long-standing membership in KSOS. In addition, the complainant actively engages in online discussions and comments on the other activists’ entries. In the light of a well-documented crackdown on opponents in Ethiopia and the authorities’ practice of systematically monitoring critical websites and actively trying to identify outspoken critics, it is highly probable that the complainant’s identity is known to the Ethiopian secret service;

(d) As to the argument of the Federal Administrative Court that the complainant had not established that she had personally written the articles in question, the complainant submits that the Swiss asylum authorities are best positioned to know whether there is indeed another person of Ethiopian nationality called H.K. in Switzerland, who is active within the Ethiopian dissident movement and publishes articles under the name of H.K. (Switzerland). According to the complainant, this argument amounts to a rather unlikely speculation, since her current country of residence and her e-mail address have been mentioned in the articles, she has submitted an Ethiopian identification card to the Swiss asylum authorities and has thereby proved her identity. If the Ethiopian authorities are aware that a person with the name of H.K. publishes critical articles, it can be deduced that they would suspect the complainant of being that person if she were to be returned from Switzerland to Ethiopia.

The complaint

3. The complainant claims that her forcible deportation to Ethiopia would amount to a violation by Switzerland of her rights under article 3 of the Convention, since she, as an active and outstanding member of the Ethiopian dissident community, risks being subjected to torture or other cruel and inhumane or degrading treatment by the Ethiopian authorities as a result of her political activities in Switzerland.

^f Reference is made to Human Rights Watch, *World Report 2009* (New York, 2009), p. 71.

^g United States Department of State, 2009 Country Reports; Human Rights Watch, *World Report 2010* (New York, 2010), p. 120.

^h “UK: Ethiopian ‘assurances’ no guarantee against torture”, 17 September 2009.

State party's observations on the merits

4.1 On 24 February 2011, the State party submitted its observations on the merits. It recalls the facts of the complaint and notes the complainant's arguments before the Committee that she would run a personal, real and serious risk of being subjected to torture if returned to her country of origin, because of her political activities in Switzerland, especially those in which she had been engaged after the judgement of the Federal Administrative Court of 11 December 2008. She does not present any new elements that would call into question the decisions of the Swiss asylum authorities, which were made following a detailed examination of the case, but rather disputes the assessment of the facts and evidence by them. The State party maintains that the deportation of the complainant to Ethiopia would not constitute a violation of the Convention by Switzerland.

4.2 According to article 3 of the Convention, the States parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds for believing that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.ⁱ The existence of gross, flagrant or mass violations of human rights is not in itself a sufficient basis for concluding that an individual might be subjected to torture upon his or her return to his or her country, and additional grounds must exist for the risk of torture to qualify under the meaning of article 3 as "foreseeable, real and personal".

4.3 Regarding the general human rights situation in Ethiopia, the State party submits that the elections in Ethiopia in May 2005 and August 2005 have strengthened the representation of opposition parties in Parliament. It recognizes that, although the Ethiopian Constitution explicitly recognizes human rights, there are many instances of arbitrary arrests and detentions, particularly of members of opposition parties. In addition, there is a lack of an independent judiciary. However, being a member or supporter of an opposition political party does not, in principle, lead to a risk of persecution. It is different for persons who hold a prominent position in an opposition political party.^j In the light of the above information, the competent Swiss asylum authorities have adopted differentiated practices to determine the risk of persecution. Individuals who are suspected by the Ethiopian authorities to be members of the Oromo Liberation Front or the Ogaden National Liberation Front are considered at risk of persecution.

4.4 With regard to monitoring political activities in exile, the State party submits that according to the information available to it, the Ethiopian diplomatic or consular missions lack the personnel and structural resources to systematically monitor the political activities of opposition members in Switzerland. It is, therefore, not surprising that the Immigration and Refugee Board of Canada was unable to find any information proving that such observation indeed existed.^k However, active and/or important members of the opposition,

ⁱ The State party refers to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 (*Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX*), paras. 6 and 8, and the Committee's jurisprudence in communications No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, para. 10.2, and No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998, paras. 6.3 and 6.5.

^j The State party refers to the operational guidance note on Ethiopia published by the Home Office of the United Kingdom of Great Britain and Northern Ireland in March 2009, para. 3.7.9.

^k Reference is made to the Immigration and Refugee Board of Canada, "Éthiopie : information sur l'existence d'éléments prouvant que des agents du gouvernement surveillent les manifestations hostiles à l'Éthiopie en Europe et en Amérique du Nord (2006-février 2007)", 13 March 2007.

as well as activists of organizations who are campaigning for the use of violence, run the risk of being identified and registered and, therefore, of being persecuted if returned.

4.5 With reference to the Committee's general comment No. 1 (para. 8 (b)), the State party submits that torture or ill-treatment allegedly suffered by the complainant in the past is one of the elements that should be taken into account in assessing the risk of him or her being subjected to torture or ill-treatment if returned to the country of origin. In this regard, the State party recalls the complainant's claim that she had been ill-treated during her detention in May 2006. It adds, however, that this allegation was not substantiated by the complainant before the Swiss asylum authorities during the first asylum procedure and that the document issued by the Addis Ababa City Administration Police Commission which she had submitted to the Committee¹ does not change the previously made assessment. It is, therefore, not surprising that the complainant did not maintain this claim in her second asylum request of 24 April 2009. The State party is, however, astonished that the complainant raised this claim before the Committee without presenting supporting evidence.

4.6 As to the political activities in which the complainant engaged in her home country, the State party submits that during the first asylum procedure she mentioned, inter alia, that she was politically active in Ethiopia. Although the complainant claimed to be a member of KINIJIT, she could provide only superficial and vague information about the opposition group in question. One would expect, however, more specific knowledge from someone who, like the complainant, received a university education and claimed to be interested in the political life of his or her home country.

4.7 The State party further notes that the complainant left Ethiopia legally approximately a year after her detention. She arrived in Zurich on 4 June 2007 on a passport issued on 8 February 2007 upon her request and without encountering any difficulties, by a direct flight from Addis Ababa to attend a conference in Geneva as a representative of her employer. The complainant seems to have destroyed her passport after her arrival and spent about three weeks with her compatriots before finally applying for asylum on 25 June 2007. Such behaviour appears to be rather surprising in the light of the complainant's claimed political activities and her alleged persecution by the Ethiopian authorities. Furthermore, she presented the transport documents and referred to the conference only towards the end of her first asylum procedure.^m

4.8 The State party submits that the assessment made by the Swiss asylum authorities during the complainant's first asylum procedure is not altered by the document confirming her detentionⁿ that was presented by the complainant to the Committee on 8 September 2010 and that had previously been examined by the Federal Administrative Court.^o According to this document, the complainant had been *convicted*^p by a federal court, whereas she did not mention the existence of such a conviction either before the Swiss asylum authorities or in her complaint to the Committee. The State party also notes that the document in question is contradictory, because the first paragraph states that the complainant is charged and, according to the second paragraph, she was sentenced to one month in prison. In the light of all these elements, the State party seriously questions the authenticity of the said document. It concludes by endorsing the conclusion of the Federal

¹ See footnote b above.

^m Reference is made to the judgement of the Federal Administrative Court of 11 December 2008.

ⁿ See footnote b above.

^o See footnote m above.

^p Emphasis added by the State party.

Administrative Court⁹ that the complainant had no political profile prior to her departure from Ethiopia.

4.9 As to the complainant's political activities in Switzerland, the State party notes that the complainant claims to have participated in numerous demonstrations against the Ethiopian authorities, written articles and contributed to the cyberethiopia.com forum, as well as held positions within two political movements in exile. The State party notes that the Federal Office for Migration and the Federal Administrative Court made a detailed assessment of whether there was a risk for the complainant to be subjected to torture or to inhuman or degrading treatment on the account of her alleged activities if returned to Ethiopia. In relation to the complainant's claim of being a member of AES, the State party argues that according to the commercial registry, AES is a politically neutral organization which is involved exclusively in cultural activities. Therefore, the complainant is not at risk of being persecuted on account of her membership in that organization.

4.10 In relation to the complainant's claim of being the cantonal representative of Lucerne for KSOS, the State party notes that her role in this organization was the subject of the asylum interview by the Federal Office of Migration on 30 October 2009. After having been unable to describe her concrete role as the cantonal representative, the complainant finally admitted that there was no hierarchical structure in the canton of Lucerne. The State party adds that it is also apparent from the minutes of the interview that the role of the complainant in two events that she attended in 2009 was indistinguishable from that of many other participants. The complainant was also involved in raising money and participated in a meeting organized by the Zurich KINIJI/CUDP.

4.11 As to the articles allegedly published by the complainant on the Internet, the State party points out that they have also been the subject of a detailed assessment by the Federal Office for Migration and the Federal Administrative Court. The Federal Office for Migration took into account the explanations given by the complainant during the asylum interview and held that, given the number of comparable articles, the articles written by the complainant would not have attracted any particular attention of the Ethiopian authorities. The fact that she could provide only superficial and vague information about her political activities in Ethiopia during the first asylum procedure is yet another element that brings into further question the complainant's authorship of these articles, in addition to the reasons put forward by the Federal Administrative Court.^f

4.12 The State party concludes that it is unlikely that the Ethiopian authorities have taken note of the complainant's recent activities. The Ethiopian authorities are focusing all their attention on individuals whose activities go beyond "the usual behaviour", or who exercise a particular function or activity that could pose a threat to the Ethiopian regime. However, the complainant did not present such a profile, be it political or otherwise, when she arrived in Switzerland and the State party deems it reasonable to exclude that she has subsequently developed such a profile. The State party maintains that the documents produced by the complainant do not show activity in Switzerland able to attract the attention of the Ethiopian authorities. The fact that the complainant is identified in photographs and video recordings is not sufficient to demonstrate a risk of persecution if returned.

4.13 In this regard, the State party maintains that numerous political demonstrations attended by the complainant's compatriots take place in Switzerland and in other countries, that photographs or video recordings showing sometimes hundreds of people are made publicly available by the relevant media and that it is unlikely that the Ethiopian authorities

⁹ See footnote m above.

^f Reference is made to the judgement of the Federal Administrative Court of 6 August 2010.

are able to identify each person, or that they even have knowledge of the affiliation of the complainant with the above-mentioned organizations.

4.14 The State party submits that there is no evidence that the Ethiopian authorities have opened criminal proceedings against the complainant or that they have adopted other measures against her. Accordingly, the Federal Office for Migration and the Federal Administrative Court did not deem convincing the complainant's claim that she has a function within the Ethiopian diaspora in Switzerland able to attract the attention of the Ethiopian authorities.^s In other words, the complainant has not established that if returned to Ethiopia she would run a risk of ill-treatment because of her political activities in Switzerland.

4.15 The State party submits that, in the light of the above, there are no substantial grounds for fearing that the complainant's return to Ethiopia would expose her to a foreseeable, real and personal risk of torture, and invites the Committee to find that the return of the complainant to Ethiopia would not constitute a violation of the international obligations of Switzerland under article 3 of the Convention.

The complainant's comments on the State party's observations

5.1 On 5 May 2011, the complainant commented on the State party's observations. She notes that, according to recent reports, the Ethiopian authorities have increased their efforts to control the expression of dissent over the Internet^t and that they indeed try to identify opposition activities by analysing photos and video recordings of demonstrations, at least within Ethiopia.^u The complainant also refers to the worsening human rights situation in Ethiopia and to the authorities' efforts to restrict freedom of expression.^v She submits that the State party did not address the reports cited in her complaint to the Committee that suggest that the Ethiopian authorities were indeed monitoring different forms of dissent very closely. The country of origin information request referred to by the State party^w was published in early 2007 and it cannot, therefore, be considered a reliable source to refute her claim that she would be subjected to persecution on the account of her political activities if she were to be forcibly returned to Ethiopia.

5.2 The complainant notes that, according to the State party's asylum law, a new asylum request must contain evidence that incidents which *have occurred since the last asylum decision*^x are relevant to the determination of a refugee status. The reasons for seeking asylum that have already been presented during the earlier asylum procedure may only be invoked through a request for revision, in which case new evidence substantiating these grounds must be presented. In this regard, she maintains her claims of having been imprisoned and severely ill-treated in May 2006. The complainant argues that, contrary to the State party's appreciation, it is not surprising that she did not make these claims on the occasion of the second asylum request. The Swiss asylum authorities did not deem this allegation credible when she presented it during the first asylum procedure and she could

^s Reference is also made, inter alia, to communications No. 375/2009, *T.D. v. Switzerland*, decision adopted on 26 May 2011; No. 393/2009, *E.T. v. Switzerland*, decision adopted on 23 May 2012; and No. 414/2010, *N.T.W. v. Switzerland*, decision adopted on 16 May 2012.

^t Reference is made to the United States Department of State, 2010 Country Reports on Human Rights Practices: Ethiopia, 8 April 2011, and Freedom House, *Freedom on the Net 2011*, pp. 132–140.

^u United States Department of State, 2010 Country Reports.

^v Reference is made to Reporters Without Borders, "Newspapers and journalists face threats and legal pressure", 21 March 2011; and Human Rights Watch, *One Hundred Ways of Putting Pressure: Violations of Freedom of Expression and Association in Ethiopia* (2010).

^w See footnote k above.

^x Emphasis added by the complainant.

not present any new evidence substantiating her claims during the second asylum procedure. Filing a request for revision without being able to present new evidence would have been a futile and costly endeavour.

5.3 As to her political activities within Ethiopia, the complainant reiterates that she was a member of KINIJIT prior to her arrival in Switzerland. She submits that during the asylum interview in relation to the first asylum request, she had answered all questions about KINIJIT correctly but had not been asked to explain the organization's ambitions or structure in more detail. Furthermore, the interview lasted for only two hours, including interpretation into Amharic. She argues, therefore, that the alleged inability to provide information cannot be held against her. The complainant adds that she has never been asked by the Swiss asylum authorities whether or not she had been convicted. Furthermore, the translation of the document confirming her detention^y was done by the complainant herself and she is not a professional translator.

5.4 In relation to her political activities in Switzerland, the complainant reiterates that she has been a member of KSOS since October 2007 and is a cantonal representative. She states that she has published many well-informed and critical articles against the regime of Meles Zenawi and regularly contributes to the blogs. In support of her claims the complainant submits copies of an article and eight blog entries that have been written by her since she submitted her complaint to the Committee.

5.5 The complainant notes that the State party essentially refers to the decision of the Federal Office for Migration and states that she is not likely to have been identified as a regime critic by the Ethiopian authorities. She argues, however, that this decision was taken in November 2009 and that since then she has become one of the most active members of the Ethiopian dissident movement in Switzerland. She has published several articles on the political developments in Ethiopia and takes a leading role in the course of demonstrations. The complainant concludes that, given the increased efforts of the Ethiopian authorities to control the expression of criticism, she would be at risk of being apprehended and detained upon her return to Ethiopia.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party has recognized that the complainant has exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

^y See footnote b above.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 The issue before the Committee is whether the removal of the complainant to Ethiopia would violate the State party's obligation under article 3 of the Convention not to expel or to return (refouler) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Ethiopia. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

7.3 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable" (para. 6), the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a "foreseeable, real and personal" risk.^z The Committee further recalls that in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned,^{aa} while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.4 In assessing the risk of torture in the present case, the Committee notes the complainant's claims that she had been imprisoned and severely ill-treated by the Ethiopian military in May 2006. It further notes the State party's argument that this allegation was not substantiated by the complainant before the Swiss asylum authorities during her first asylum procedure and that it was not invoked by her in the second asylum request. The Committee also notes that the State questions the authenticity of the document confirming her detention that was allegedly issued by the Addis Ababa City Administration Police Commission. The Committee also takes note of the information furnished by the complainant on these points. It observes in this regard that she has not submitted any evidence supporting her claims of having been severely ill-treated by the Ethiopian military prior to her arrival in Switzerland or suggesting that the police or other authorities in Ethiopia have been looking for her since. The complainant has also not claimed either before the Swiss asylum authorities or in her complaint to the Committee that any charges have been brought against her under the anti-terrorism law or any other domestic law.

7.5 The Committee further notes the complainant's submissions about her involvement in the activities of KSOS and AES. It notes, in particular, that she claims to be one of the most active members of the Ethiopian dissident movement in Switzerland, regularly publishing critical articles against the Ethiopian authorities on the Internet and contributing to the opposition blogs. It also notes that the State party questions the complainant's

^z See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003; and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

^{aa} See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para.7.3.

authorship of the articles and blog entries in question. The Committee further notes the complainant's claim that the Ethiopian authorities use sophisticated technological means to monitor Ethiopian dissidents abroad, but observes that she has not elaborated on this claim or presented any evidence to support it. In the Committee's view, the complainant has failed to adduce sufficient evidence about the conduct of any political activity of such significance that would attract the interest of the Ethiopian authorities, nor has she submitted any other evidence to demonstrate that the authorities in her home country are looking for her or that she would face a personal risk of being tortured if returned to Ethiopia.

7.6 The Committee concludes accordingly that the information submitted by the complainant, including the unclear nature of her political activities in Ethiopia prior to her departure from that country and the low-level nature of her political activities in Switzerland, is insufficient to show that she would personally be exposed to a risk of being subjected to torture if returned to Ethiopia. The Committee is concerned at the many reports of human rights violations, including the use of torture in Ethiopia,^{bb} but recalls that for the purposes of article 3 of the Convention the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

8. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the complainant to Ethiopia would not constitute a violation of article 3 of the Convention.

^{bb} The Committee notes that Ethiopia is also a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and recalls its 2011 concluding observations (CAT/C/ETH/CO/1), paras. 10–14.

Communication No. 435/2010: G.B.M. v. Sweden

<i>Submitted by:</i>	G.B.M. (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	5 October 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2012,

Having concluded its consideration of complaint No. 435/2010, submitted to the Committee against Torture by G.B.M. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is G.B.M., a national of the United Republic of Tanzania born in 1968, who at the time of the initial submission of the communication was in Sweden. He claimed that his forcible return to Tanzania would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is not represented by counsel.

1.2 On 4 November 2010, the Committee, acting through its Rapporteur on new complaints and interim measures, rejected the complainant's request for interim measures of protection under article 108, paragraph 1, of the Committee's rules of procedure (CAT/C/3/Rev.4).

1.3 Subsequently, in May 2012, the complainant informed the Committee that he had been forcibly removed from Sweden, but that he escaped during a stopover on his way to the United Republic of Tanzania, and he currently resides in a third country.^a

The facts as submitted by the complainant

2.1 The complainant worked as a journalist in the United Republic of Tanzania. On 31 August 2008, he arrived in Sweden to participate in training organized by the Institute for Further Education of Journalists at the Kalmar University. On 16 or 17 September 2008, the complainant received a phone call from a colleague in Tanzania, informing him that the police wanted to interrogate him concerning an article of a political nature he had written prior to his departure to Sweden (this was also confirmed by the complainant's wife). The article, published in a local newspaper on 3 August 2008, concerned the status of Zanzibar in relation to the mainland. Afraid, the complainant applied for asylum on 22 September 2008.

^a In this connection, see also paras. 4.17 and 5.1 below.

2.2 On 4 February 2008, he was interviewed by the Swedish Migration Board. On that occasion, he explained that in 2002 he had faced criminal charges after he had written an article criticizing the parliament and that during the interrogation he had been subjected to torture^b and detained without a trial for two months. The charges against him were dropped only in 2004. Furthermore, on 15 December 2007, the Ministry of Information, Culture and Sports of the United Republic of Tanzania banned the complainant from exercising his profession as he had written articles defaming the leaders of the country.

2.3 On 5 June 2009, the complainant's application was rejected by the Swedish Migration Board. The Board based its decision mainly on a human rights report of the United States Department of State concerning the United Republic of Tanzania, wherein it was stated that Tanzania ensures and respects the freedom of expression and political freedom. In addition, the Board considered that the complainant's persecution in 2002 by the Tanzanian authorities did not justify a decision granting him asylum, because of the time elapsed.

2.4 On an unspecified date, the complainant appealed against the Board's decision with the Migration Court. On 28 May 2010, his appeal was rejected by the Court, which found the complainant's explanation of the reasons for seeking asylum unconvincing. The Court concluded that there were not enough grounds to believe that the complainant was facing a risk of being persecuted if returned to the United Republic of Tanzania and that the circumstances of the case were not sufficient to show that he was in need of protection.

2.5 On 6 August 2010, the complainant requested the Migration Court of Appeal to grant him a leave to appeal. On 27 August 2010, his request was rejected and the decision of 28 May 2010 of the Migration Court became final. The complainant was subsequently summoned twice by the Migration Board concerning the possible date of his deportation and as a consequence he decided to hide.^c

The complaint

3. The complainant claims that in case of return to the United Republic of Tanzania, he would be arrested and subjected to torture there, in breach of the State party's obligations under article 3 of the Convention.

State party's observations on admissibility and merits

4.1 By note verbale of 4 May 2011, the State party submitted its observations on the admissibility and merits. It notes that the complainant's application for a permit to stay was assessed under the 2005 Aliens Act, which was partially amended in January 2010. The Migration Board, thus, carries out the initial examination, whereas appeals against its decisions are examined by one of the three existing migration courts and the Migration Court of Appeal is the final instance.

4.2 The State party explains that an initial interview with the complainant was held on 22 September 2008, during which he stated that he had worked as a journalist for a newspaper called *Tanzania Daima* in Dar es Salaam. Because of an article he wrote in early August 2008, he was at risk of being sentenced to imprisonment and tortured if returned to

^b In this regard, the complainant submitted together with his present communication a copy of a medical record, dated 20 July 2002 and issued by the Maswa Council Hospital in the United Republic of Tanzania.

^c In May/June 2012, the complainant informed the Committee that he was forcibly expelled from Sweden, but that on his way to the United Republic of Tanzania he was able to escape and he is located at present in a third country – see para. 5.1 below.

his country of origin. He was a member of an opposition political party called Chadema. In April 2002 he had been arrested and tortured. He had been released at the end of June 2002 and since then, until 2004, when the charges against him were dropped, he had to report to the police authorities twice a week. A second interview was held on 4 February 2009.

4.3 On 5 June 2009, the Migration Board rejected the complainant's application. In its decision, the Board referred to the section "Freedom of speech and press" in the United States Department of State's annual human rights reports for the United Republic of Tanzania from 2006 to 2009, according to which the freedom of expression as a right is encompassed in the Constitution of Tanzania; the President has publicly expressed his support for freedom of the press, journalists are generally able to publish articles and the authorities allow the opposition free access to the media; and the political party Chadema's newspaper *Tanzania Daima* is published daily. The Board also noted that in addition, according to the reports by the Committee to Protect Journalists–Tanzania, the complainant was a correspondent for the daily newspaper *Mwananchi* and was accused of "contempt of parliament" after he claimed in an article, dated 7 April 2001, that some proposed reforms would benefit the party in Government. The complainant was arrested and interrogated,^d but was released without charge several hours later. However, he was threatened with further legal action. A prosecutor later stated that he had been instructed by the Parliament to prosecute the complainant, however, the Media Council of Tanzania and other defenders of freedom of expression raised objections, which prevented further charges against the complainant. The same account of events was provided also by the report "State of the Media in Southern Africa" and by the International Press Institute. Consequently, the Board established that the complainant's situation was not such that a residence permit should be issued on the grounds of especially distressing circumstances. It raised doubts as to whether the complainant had indeed been imprisoned for two months in 2002, as well as observed that since 2002 and, in particular, after 2007, when the complainant was banned from reporting on any business performed by the members of the Government, he had not been prevented from working as a journalist and had written a number of articles. Finally, the Board noted that it was extremely peculiar that the newspaper wherein allegedly his political article of 3 August 2008 was published was still operating and had not faced any legal consequences.

4.4 On 22 June 2009, the complainant appealed against the negative decision of the Migration Board to the Migration Court. On 7 May 2010, the Court held a hearing and concluded that it found no reasons to question the fact that the complainant was briefly detained in 2002 or that he was banned from his profession by the authorities in 2007. The Court decided that despite those events, the complainant had continued to work as a journalist in his home country; in addition, according to the content of his 2008 visa application, he was employed by a newspaper and worked as a journalist and editor on political issues. He had continued to write and publish articles after the events of both 2002 and 2007. The Court also noted that the complainant himself had acknowledged that his employer wanted him to resume his job. In light of this, the Migration Court expressed doubts as to the existence of any threat against the complainant in the United Republic of Tanzania. It also took into account that the 2002 events took place a long time ago, and that the complainant was able, three weeks after the publication of his article, to leave his country legally, without the authorities showing any interest in him. Nor have there been any reports indicating that either the newspaper in question or the complainant himself were of interest to the authorities after the publication of the article. On these grounds, on 28 May 2010, the Migration Court rejected the complainant's appeal.

^d It appears from the case file that the events referred to are the events of 2002.

4.5 On 17 June 2010, the complainant appealed against the judgment of the Migration Court. On 27 August 2010, the Migration Court of Appeal decided not to grant the applicant leave to appeal. Finally, the State party informed the Committee that it had received information from the Swedish Migration Board that the complainant had left Swedish territory on 20 November 2010.

4.6 As to the admissibility of the communication, the State party explains that it is not aware of the same matter being or having been subject to another procedure of international investigation or settlement, and that, with reference to article 22, paragraph 5 (b), of the Convention, domestic remedies have been exhausted. The State party contends, however, that the complainant's assertion that he is at risk of being treated in a manner that would amount to a breach of the Convention fails to attain the basic level of substantiation required for purposes of admissibility. It submits that the communication is manifestly unfounded, and thus it should be declared inadmissible under article 22, paragraph 2, of the Convention and rule 107, paragraph (b), of the Committee's rules of procedure (CAT/C/3/Rev.4).

4.7 The State party adds that if the Committee declares the communication admissible, on the merits the issue would be whether the expulsion of the complainant would violate the obligation of Sweden under article 3 of the Convention. In this respect, the State party refers to the Committee's jurisprudence, according to which the aim of the determination of whether the forced return of a person to another country would constitute a violation of article 3 of the Convention is to establish whether the individual concerned would be *personally at risk*^e of being subjected to torture in the country to which he or she would be returned.^f It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country.

4.8 As far as the general human rights situation in the United Republic of Tanzania is concerned, the State party submits that according to the section "Freedom of speech and press" in the United States Department of State country reports on Tanzania (2009 and 2010), independent media were active and expressed a wide variety of views without restrictions. According to the same reports, the President of Tanzania publicly expressed support for the press freedom, and journalists were generally able to publish articles alleging, for example, corruption by Government officials, without reprisals. Publications such as the opposition newspaper *Tanzania Daima* are issued on a daily basis. The report also mentioned that in 2009, the Ministry of Information, Culture and Sports convoked four editors to its offices for distorting Government statements and in 2010 it warned the editors of the *Mwananchi* newspaper of possible legal action if the newspaper continued to publish articles criticizing the Government. The State party notes, however, that no further action was taken against those editors and *Mwananchi* continued to publish critical articles. Moreover, according to the Reporters Without Borders 2010 World Press Freedom Index, Tanzania was ranked among the world's top 50 nations in terms of respect for press and media freedom. It also noted that attacks on journalists have decreased in number over the years and journalists work in steadily improving conditions.

4.9 As to the present case, the State party maintains that there may be no doubts that the circumstances referred to in the reports above and in the Migration Board's decision do not in themselves suffice to establish that the forced return of the complainant to the United

^e Emphasis is added by the State party.

^f Communications No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3; and No. 213/2002, *E.J.V.M. v. Sweden*, Views adopted on 14 November 2003, para. 8.3.

Republic of Tanzania would entail a violation of article 3 of the Convention. The Committee, therefore, should determine the complainant's personal risk of being subjected to torture following his removal to Tanzania.

4.10 The State party notes that, according to the Committee's jurisprudence, for the purposes of article 3 of the Convention the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is to be returned.^g In addition, the requirement of necessity and predictability should be interpreted in the light of the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention,^h according to which it is for the complainant to present an arguable case. Moreover, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, although it does not have to meet the test of being highly probable.

4.11 The State party adds that the complainant's claims were examined in accordance with the applicable domestic law, and that several provisions of the Aliens Act reflect the same principle as that laid down in article 3 of the Convention. Thus, the Swedish migration authorities have applied the same test in assessing the risk of being subjected to torture when considering an asylum application under the Act as the Committee would apply when examining a subsequent communication under the Convention.ⁱ The State party emphasizes that the national authorities are well placed to assess the information submitted by an asylum seeker and to appraise his or her statements and claims in view of the fact that they have the benefit of direct contact with the person concerned. In the light of the above, the State party contends that a great weight must be attached to the assessment made by the Swedish migration authorities, which in the present case was well justified.

4.12 Concerning the assessments of the credibility of the complainant's statements, the State party draws the Committee's attention to the fact that the complainant provided the Committee with a document which appears to be a medical record, dated 20 July 2002 and issued by the Maswa Council Hospital in the United Republic of Tanzania. However, no such document was ever presented before the migration authorities. The State party adds that, in any event, it is not clear whether the complainant was examined by a medical doctor specializing in torture injuries, nor how the medical examination was carried out. The State party further notes that the document seems to be a medical record and not a medical report in its strict sense. The document is vague and does not contain any concrete details concerning, for example, the injuries and how they may have occurred. Consequently, the State party considers that the document in question should be given very little, if any, value as evidence. In addition, even if assuming that the medical record would be sufficient to establish that the complainant had been subjected to treatment that may have amounted to torture in the past, this does not indicate that the complainant, thereby, has substantiated his claim that he would currently risk torture in the event of being returned to his country of origin. On the contrary, there are no indications that the complainant will be subjected to such treatment if returned to Tanzania.

4.13 Further, the State party holds that there are doubts as to the veracity of the complainant's assertion about the period of his detention in 2002. The State party points out that both the Committee to Protect Journalists (in its report *Attacks on the Press 2002*, published on 31 March 2003) and the United Nations Educational, Scientific and Cultural Organization (in *Media Legislation in Africa: A Comparative Legal Study*) reported that the

^g Reference is made to communication No. 103/1998, *S.M.R. and M.M.R. v. Sweden*, Views adopted on 5 May 1999, para. 9.7.

^h *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX.

ⁱ Reference is made to chapter 4, sections 1 and 2 of the Act.

complainant was under arrest in 2002, but only for a few hours. This information contradicts the complainant's statement that he was detained between 30 April and the end of June 2002.

4.14 The State party notes that the article which allegedly attracted the attention of Tanzanian authorities was published on 3 August 2008. However, on 27 August 2008, the Police Control Office of the Ministry of Immigration in the United Republic of Tanzania issued a passport to the complainant three and a half weeks after the publication of the article, and the complainant was able to travel legally to Sweden. The State party believes that the complainant would have been prevented from leaving his country of origin if he had been targeted by the authorities. In addition, the complainant could work as a journalist and publish articles after the alleged events of 2002 and after having been banned from reporting on any business conducted by members of the Government in 2007. According to his visa application of 28 August 2008, the complainant was employed by the *Tanzania Daima* newspaper as an editor. The State party believes that all this shows clearly that the complainant was not of interest to the authorities when he left his country and that there would be no threat against him there.

4.15 The State party notes that a substantial period of time had elapsed since the events in 2002 and recalls that although past events may be of relevance, the principle aim of the Committee's assessment is to determine whether the complainant currently runs a risk of being subjected to torture upon his arrival in the United Republic of Tanzania.^j In this regard, the State party stresses that the most recent human rights reports generally give a fairly positive picture of the current situation of journalists in Tanzania. According to the above-mentioned reports,^k independent media in Tanzania express a wide variety of views and publish articles that are critical of the Government without restrictions or reprisals. Moreover, when the complainant left Tanzania, he was employed by the opposition's newspaper *Tanzania Daima*. Accordingly, nothing indicates that the complainant would attract the attention of the Tanzanian authorities because of his previous activities in case of his return.

4.16 In conclusion, the State party submits that the evidence and circumstances invoked by the complainant do not suffice to establish that the alleged risk of torture meets the requirements of being foreseeable, real and personal. The complainant has thus not shown substantial grounds for believing that he would run a real and personal risk of being subjected to treatment contrary to article 3 of the Convention if deported to the United Republic of Tanzania. Accordingly, the State party believes that the enforcement of the expulsion order, under the present circumstances, would not constitute a violation of article 3 of the Convention. Since the complainant's claim under article 3 of the Convention fails to rise to the basic level of substantiation, the communication should be declared inadmissible as being manifestly unfounded, according to the State party.

4.17 In view of the fact that the complainant left Sweden on 20 November 2010, the State party finds it relevant for the Committee to establish whether the complainant still wishes to maintain his communication before the Committee. Should the Committee receive information that the complainant does not wish to maintain his communication, the State party invites the Committee to discontinue the communication.

^j Reference is made to communication No. 61/1996, *X. Y. and Z. v. Sweden*, Views adopted 6 May 1998, para. 11.2.

^k See para. 4.8 above.

The complainant's comments on the State party's observations

5.1 On 31 May 2012, the complainant informed the Committee that Sweden had proceeded with his forcible return to the United Republic of Tanzania, but he managed to escape during a stopover in a third country. At the moment, the complainant is hiding in the third country. On 5 June 2012, he submitted his comments to the State party's observations. On the general situation of human rights in Tanzania, he maintains that the State party lacks reliable, genuine, comprehensive and independent information on the general situation there. He further notes that the United States Department of State country reports are not credible, independent or complete. As to the situation of journalists in Tanzania, he refers to different reports from the Internet indicating the ban of newspapers, journalists' protests and searches of independent newspapers' offices and editors' homes in Tanzania.

5.2 On the issue of whether he is still personally at risk of being subjected to torture, the complainant submits that the fact that he is facing such a risk is evident by his past experience in 2002 and the fact that in 2007 he was banned from practicing his profession as a journalist. He notes that the State party has failed to present concrete evidence that he would not be subjected to ill-treatment in the United Republic of Tanzania and adds that the State party, as well as its migration authorities, had based their conclusions on mere assumptions.

5.3 As to the issue of his medical record, the complainant notes that there are no medical doctors specializing in torture injuries in Africa.

5.4 In conclusion, the complainant explains that he wishes to maintain his communication before the Committee as he was forcibly removed and that he is still in need of international protection.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention.

6.2 The Committee has ascertained, as required by article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement, and notes that, as required by article 22, paragraph 5 (b), of the Convention, domestic remedies have been exhausted.

6.3 The Committee has noted that the State party submits that the communication is inadmissible as manifestly unfounded. It considers, however, that the arguments put forward by the complainant raise substantive issues under article 3 of the Convention, which should be dealt with on the merits. Accordingly, the Committee finds no further obstacles to the admissibility and declares the communication admissible, and proceeds with its consideration on the merits.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 In the present case, the issue before the Committee is whether the forcible return of the complainant to the United Republic of Tanzania would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return (refouler) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to his country of origin. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

7.4 The Committee recalls its general comment No. 1 on the implementation of article 3, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being “highly probable”,¹ the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he faces a “foreseeable, real and personal” risk.^m While under the terms of its general comment the Committee is free to assess the facts on the basis of the full set of circumstances in every case, it recalls that it is not a judicial or appellate body, and that it must give considerable weight to the findings of fact that are made by organs of the State party concerned.ⁿ

7.5 In the present case, the Committee notes that the State party’s migration authorities have taken into account the fact that the human rights record of the United Republic of Tanzania was not up to the highest standards, but still moderate in terms of press freedom and the right to freedom of expression. However, while not underestimating the concerns that may legitimately be expressed with respect to the current human rights situation in Tanzania concerning press freedom and the right for freedom of expression, the State party’s authorities and courts have established that the situation in that country does not in itself suffice to establish that the complainant’s forced return there would entail a violation of article 3 of the Convention.

7.6 The Committee notes the complainant’s claim that he was detained and tortured between 30 April 2002 and the end of June 2002. It also notes the State party’s doubts expressed in this connection, i.e. that credible reports attested that the complainant was kept arrested only for few hours in 2002 (see para. 4.13 above). The Committee also notes that the complainant did not specifically refute this information in his comments.

7.7 The Committee also takes note of the period of time elapsed since the events in 2002, and recalls that although past events may be of relevance, the principle aim of its assessment is to determine whether the complainant currently runs a risk of being subjected to torture upon his arrival in the United Republic of Tanzania.^o In this connection, the Committee notes also the State party’s reference to recent human rights reports assessing the current situation of journalists in Tanzania (see para. 4.15 above).

¹ General comment No. 1, para. 6.

^m Ibid., para. 5. See also communication No. 203/2002, *A.R. v. The Netherlands*, Views adopted on 14 November 2003, para. 7.3.

ⁿ See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

^o Reference is made to *X. Y. and Z. v. Sweden*, para. 11.2.

7.8 The Committee further notes that the complainant has not refuted the State party's observations concerning the fact that the article which allegedly attracted the attention of Tanzanian authorities to him was published on 3 August 2008, but that, notwithstanding, the complainant after that date was issued a passport on 27 August 2008 and was able to travel abroad without any obstruction.

7.9 Finally, as to the medical record submitted in the framework of this communication, the Committee observes that the complainant has not provided any explanation as to why he did not present it before the State party's authorities, and that, in any event, nothing in the said record brings additional pertinent details on his alleged past ill-treatment.

8. In the circumstances, and in the absence of any other pertinent information on file, the Committee finds that the complainant has not established that in case of his expulsion to his country of origin he would face a foreseeable, real and personal risk of being tortured within the meaning of article 3 of the Convention.

9. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's forcible return to the United Republic of Tanzania would not constitute a breach of article 3 of the Convention.

Communication No. 439/2010: *M.B. v. Switzerland*

<i>Submitted by:</i>	M.B. (represented by SAJE)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	22 November 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 31 May 2013,

Having concluded its consideration of communication No. 439/2010, submitted to the Committee against Torture by M.B. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is M.B., an Iranian citizen born in 1970. Following the refusal of his application for political asylum in Switzerland, he runs the risk of being returned to the Islamic Republic of Iran. He considers his forced return would constitute a violation by Switzerland of his rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 In accordance with rule 108 of its rules of procedure, when the complaint was registered, on 29 November 2010, the Committee, through its Rapporteur on new complaints and interim measures, requested the State party not to expel the complainant to the Islamic Republic of Iran while his complaint was under consideration.

The facts as presented by the complainant

2.1 The complainant filed an application for asylum in Switzerland in January 2005. In support of his request, he stated that he was an ethnic Arab from the Islamic Republic of Iran, from a city near the Iraqi border, where he had worked as a tailor for 10 years. He has a brother who is politically active and a member of an Arab political party advocating the independence of Khuzestan Province. Specifically, his brother had distributed political tracts (the complainant was unaware of his other activities). His brother had no fixed abode and was in hiding from the authorities. For approximately the past five years, the authorities had made regular visits to the family home in search of his brother, at different times of day and, on average, twice a week, hoping to find out his whereabouts and the precise nature of his activities. Officers searched the house for weapons, among other things, and sometimes beat the members of his family. On one occasion, the authorities saw the brother in question flee the house over the rooftops and they opened fire but did not hit him. After the death of their father, the complainant became the head of the family and thus the target of the authorities' questioning and searches.

2.2 After a year had passed, in 2005, the complainant decided to leave the country to flee from the harassment of the authorities, who were constantly hounding him and invading his privacy.^a

2.3 His younger brother, viewed as being the head of the family following the departure of the complainant, was detained by the Iranian security services for one week; on another occasion, he was reportedly detained for “two or three days”. He was allegedly threatened with prison and was tortured (his genitals were reportedly burned during one such detention).^b His family has also been harassed by the secret service, and one of his brothers has been threatened with prison. The B. family, in a broad sense is a clan residing in the south of the country and has been subjected to surveillance by the authorities; several people with the name B. have been detained and killed, particularly young men, while others have disappeared. The complainant has no way to communicate by phone or mail with his family in the Islamic Republic of Iran, inasmuch as the Iranian authorities monitor the mail and telephone calls.

2.4 In 2006, the complainant participated in a public demonstration in front of the Iranian embassy in Bern with an Arab group. A photograph showing the complainant at the demonstration was posted on a website. According to the complainant, judging by the pressure brought to bear on his brother, the Iranian authorities were thus made aware of the fact that he had demonstrated. In order to protect his relatives back home, the complainant decided to stop all political activities in Switzerland.

2.5 His application for asylum was denied by the Federal Office for Migration on 19 January 2006. On 23 December 2009, the complainant’s counsel filed a request for the Office to reconsider its refusal of his application and its call for his return. The Office considered that request to be a new application for asylum and rejected it on 26 February 2010. No appeal was filed against the Office’s decision. On 1 June 2010, SAJE filed another request for reconsideration, supported by new evidence (it submitted a medical report dated 24 April 2010, according to which the complainant suffered from insomnia, severe distress, anxiety, nervousness and depression, as well as HCV positive viraemia). On 11 June 2010, the Office dismissed the application. On 8 July 2010, SAJE filed an appeal with the Federal Administrative Court against the Office’s decision. The appeal was rejected by a ruling handed down on 3 September 2010, on the grounds that the request for reconsideration had been filed more than 90 days after notification of the last decision of the Federal Office for Migration and that the medical problems were not serious enough to justify reconsideration.^c The complainant believes that the Federal Office for Migration committed an error in its application of the law, as it was required to reconsider his case on the basis of the new evidence adduced, namely the medical report of 24 April 2010. In this context, he refers extensively to the practice of the national authorities whereby they review cases on the basis of evidence submitted after the entry into force of earlier decisions, especially in cases involving non-refoulement to a country where there may be a risk of torture.

^a The complainant explains that he was unable to start a new life elsewhere in the Islamic Republic of Iran because he is uneducated, does not speak Farsi, comes from the Arab minority and, above all, because of the clan structure of Iranian society, whereby people become outsiders if they leave their family and their city to settle in another town without their relatives. He also adds that he did not respond to a call to military service.

^b The complainant provides no explanation as to the reasons for his brother’s detention and persecution.

^c According to the complainant, an application for review may be submitted to the authorities within 90 days of discovery of the grounds for the review, which, in this case means the time when the medical report in question was issued.

2.6 The complainant argues that the political situation of the Arab ethnic minorities is now sufficiently documented, which was not the case when he filed his application for asylum in the State party. He refers to the report of the UK Border Agency entitled *Country of Origin Information* (2009), and notes that around 3 per cent of the population of the Islamic Republic of Iran is of Arab origin, half of whom live in Khuzestan. Since 1999, more than 1 million Arabs have been forcibly displaced with a view to “Iranicizing” these groups by redistributing them among the Iranian population. As more than 80 per cent of Iranian oil is located in Khuzestan, it is a strategic region. Human rights violations such as arbitrary detention, indefinite detention and physical violence mainly affect members of ethnic minorities and, in particular, the Arab minority.

2.7 The complainant explains that, out of fear of crackdowns, Arabs avoid speaking their language in the Islamic Republic of Iran. Arab opposition parties have received support from Iraq in the past and a number of them, acting in secret, advocate independence. The complainant also claims that bomb attacks were carried out in Khuzestan in 2005. In retaliation, the authorities executed eight Arabs and arrested several others. Following the demonstrations in Abadan in 2005 against the poor quality of the water, the population of Khuzestan has been subjected to even greater surveillance and repression, torture during detention is systematic and the capacity of prisons has been seriously exceeded, resulting in inhuman conditions. The complainant adds that summary executions are a frequent occurrence in the Islamic Republic of Iran.^d

2.8 He also notes that the Swiss Federal Administrative Court recognized that the Iranian secret services clearly may monitor political activities carried out against the regime abroad. However, it maintains that the attention of the Iranian authorities is largely focused on persons with a particular profile – persons acting outside the usual framework of mass opposition and whose functions or activities pose a serious and concrete threat to the Iranian regime, with the extent of the danger being decisive.

2.9 The complainant thus maintains that he fulfils several potential criteria for repression in the Islamic Republic of Iran: he is a member of the Arab minority, he belongs to the B. clan, he is from the family of a politically active person who is wanted by the authorities (his brother) and has now become the head of the family, following the death of his father; he took part in an opposition demonstration in Switzerland and believes that the Iranian authorities are aware of this fact. Even if he is not the leader of a political party and his political activities have been short-lived, the complainant believes that when his case is being considered, account should be taken of all the circumstances surrounding it.

2.10 The complainant states that it is difficult to obtain evidence from the Islamic Republic of Iran, where the security services do not document their investigations and where case files remain confidential until they are transmitted to a court. Lastly, he believes that it was quite normal for him not to know the exact name of the party for which his brother was an activist or the exact nature of his brother’s activities, given that such parties operated in secret in the Islamic Republic of Iran.

2.11 Presenting a final point, the complainant believes that he also runs the risk of being tortured in the Islamic Republic of Iran simply because he left the country illegally.

2.12 On the basis of the foregoing considerations, the complainant believes that he should not be returned to the Islamic Republic of Iran, where he would run the risk of being tortured.

^d The complainant refers to the report of the Department of State of the United States of America (2009) on the situation of human rights in the Islamic Republic of Iran, which mentions, inter alia, several violations committed against the Arab minority, including against members of the B. clan.

The complaint

3. The complainant states that if he is expelled to the Islamic Republic of Iran he will certainly be arrested and tortured by the security forces because of his ethnic background, his membership in the B. clan and the fact that he is the relative of a politically active person who is wanted by the authorities (his brother) and is also the head of his family. His forced return would constitute a violation by the State party of his rights under article 3 of the Convention.

State party's observation on admissibility and on the merits

4.1 On 19 May 2010 the State party presented its observations on the admissibility and the merits of the communication. It noted that the complainant is an Iranian of Arab origin and that he has affirmed both to the authorities responsible for asylum and to the Committee that he left the Islamic Republic of Iran because his home had been searched by the Iranian authorities, who were seeking his brother, a member of the Arab political party fighting for the rights of the local Arab population. The complainant would supposedly thus be arrested if he was returned to the country, all the more so as generally the families of political opponents, and Arabs in particular, are victims of repression, discrimination and ill-treatment. Furthermore, in 2006 he took part in a demonstration in front of the Iranian embassy in Bern, where photographs were taken. The fact that he left the Islamic Republic of Iran illegally would also reportedly put him in danger. Lastly, the complainant has also stated that in the light of his health problems, it would be unreasonable to force him to return.

4.2 The State party points out that the complainant entered Switzerland on 15 December 2005 and applied for asylum. On 19 January 2006 his application was denied by the Federal Office for Migration, which also called for the complainant's expulsion. On 2 February 2006 the Swiss Asylum Appeals Commission (whose remit has since been assigned to the Federal Administrative Court) confirmed the ruling. On 23 December 2009 the complainant filed a new asylum application, which was denied by the Federal Office for Migration on 26 February 2010. The complainant did not appeal against this ruling. Nonetheless, on 1 June 2010 he filed a request for reconsideration of his case; that request was rejected by the Federal Office for Migration on 11 June 2010. The Federal Administrative Court upheld that decision by a judgement handed down on 3 September 2010.

4.3 The State party notes that the complainant claims in his communication that in its judgement of 3 September 2010, the Federal Administrative Court did not assess his allegation that he would be tortured if returned to the Islamic Republic of Iran, restricting its review solely to the medical aspects invoked in the case. The State party notes that all the arguments put forward concerning the risk of persecution in the Islamic Republic of Iran were assessed in detail by the competent authorities during the three procedures brought before the Federal Office for Migration. The current communication does not contain any new elements that might change the decisions taken by the Office on 19 January 2006 and 26 February and 11 June 2010, nor the decisions of the higher authority issued on 2 February 2006 and 3 September 2010 upholding the Office's conclusions.

4.4 The State party indicates that the Federal Office for Migration concluded in its first decision that it was unlikely that persecution would result from the fact that a brother was supposedly politically active and points out that the opinion in question was confirmed by the decision of the Federal Administrative Court of 2 February 2006. In its second decision, issued on 26 February 2010, the Federal Office for Migration considered that the subjective reason invoked, i.e., political activity in Switzerland, could not be considered relevant for recognition of refugee status. At the same time the Office emphasized that the general reference to a situation likely to be faced by Iranian Arab citizens, in particular those from certain clans or families, was insufficient to conclude that the complainant ran the risk of

personal persecution. The complainant justified his failure to appeal against this ruling by invoking the fact that his counsel was overburdened. As the Committee has explained in its case law, a failure on the part of counsel cannot be attributed to the State party.^e Furthermore, the complainant provided no explanation as to why he did not entrust his case to one of the numerous organizations defending the interests of asylum seekers in Switzerland.

4.5 The State party then explains that in its third decision, on 11 June 2010, the Federal Office for Migration specified that the fact that one of the complainant's brothers was politically active and that the complainant was ethnically an Arab and had been active in Switzerland had already been assessed in the course of the normal proceedings. As for the medical problems invoked (poly drug use and chronic hepatitis), the Office noted that the issue had been raised too late.

4.6 In the light of the foregoing, the State party denies the affirmation that the competent authorities did not consider on its merits the question of whether the complainant would be at risk of persecution in the Islamic Republic of Iran.

4.7 Concerning the alleged health problems of the complainant, the State party considers that they are not of such gravity that they would render his expulsion to the Islamic Republic of Iran wrongful. Such problems, or the medical certificate attesting to their existence, provide no new elements; they could and should have been invoked well before the complainant's application for reconsideration in 2010, as they had been known to the complainant since 2008. The State party refers to the Committee's practice according to which the aggravation of the condition of an individual's physical or mental health by virtue of a deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of the Convention.^f

4.8 The State party then proceeds to consider the communication from the perspective of article 3 of the Convention. In this connection, it points out that no State party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, and that for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee gave specific form to the elements of article 3 in its case law and in general comment No. 1 (1997),^g which stipulates that complainants must establish that there is a personal, present and serious danger of being subjected to torture in the event of a return to the country of origin. The existence of such a danger must be assessed on grounds that go beyond mere theory or suspicion. The allegations must demonstrate that the danger is serious.

4.9 With reference to paragraphs 8 (b) and 8 (e) of general comment No. 1, the State party notes that the complainant makes no allegations of having been subjected to ill-treatment in the Islamic Republic of Iran and says that he was not politically active there. Regarding his brother's supposed political activities, the State party notes that no proof has been adduced. The State party adds that in its decision of 19 January 2006, the Federal

^e The State party refers in particular to the Committee's decision in *R.S.A.N. v. Canada*, communication No. 284/2006, decision of 17 November 2006, para. 6.4.

^f The State party refers in particular to the Committee's decisions in communications Nos. 220/2002, *R.D. v. Sweden*, of 8 November 2002, para. 7.2, and 227/2003, *A.A.C. v. Sweden*, of 6 February 2003, para. 7.3.

^g *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX, p. 54.

Office for Migration stated that it was unlikely that the complainant's brother would not have been apprehended by the authorities while living at his parents' home, where the security forces had reportedly sought to capture him on numerous occasions. In such circumstances, it did not make sense that only the complainant would flee the country, and not his parents or his brother.

4.10 The State party then notes that both the Federal Office for Migration and the Swiss Asylum Appeals Commission deemed that the complainant's allegations were unfounded concerning problems encountered prior to departure owing to his ethnic background. In its decision of 26 February 2010, the Federal Office for Migration emphasized that the news reports and press articles produced by the complainant in support of his second asylum application contained no new elements to show that the entire Arab community in the Islamic Republic of Iran, and the complainant in particular, were persecuted by the Iranian authorities.

4.11 The State party goes on to note that the complainant also alleged that he was in danger of torture in the Islamic Republic of Iran because he took part in a demonstration in front of the Iranian embassy in Bern, as proven by two photographs. The State party points out in this connection that the Federal Office for Migration noted that the complainant had not begun to be politically active in Switzerland until well after his arrival, while he had never been politically active in the Islamic Republic of Iran. Furthermore, the publication on the Internet of one photograph of a crowd of people, along with hundreds of other such photographs, made it impossible for the Iranian authorities to positively identify each individual's face. The State party points out that the complainant produced neither evidence nor specific indications to support the allegation that his participation in the demonstration in question would make him vulnerable to persecution.

4.12 The State party observes that the Federal Office for Migration also emphasized that, in light of the large number of Iranian citizens living in other countries, when the Iranian authorities are made aware of the political activities of their citizens overseas they cannot maintain surveillance over and monitor each person. Furthermore, they are aware that many Iranian migrants, having left their country above all for economic reasons, try to obtain a European residence permit by carrying out all kinds of activities that are critical of the Iranian regime. The Iranian authorities only identify such individuals if the nature of their activities constitutes a threat to the established political system (Federal Office for Migration, decision of 26 February 2010).

4.13 In this context, in respect of the complainant, the Federal Office for Migration noted that activities such as participation in non-violent demonstrations are not sufficient to establish that a specific danger exists in the event of a return to the Islamic Republic of Iran. The complainant has not held any high-profile political posts in the organizations mentioned, he has no record of political activity in the Islamic Republic of Iran and has not actively shown any interest in political involvement since his arrival in Switzerland. The State party points out that the Federal Office for Migration also considered that the complainant's behaviour in Switzerland was not likely to bring about serious prejudice from the Iranian authorities, especially since there was no indication that the authorities had taken measures against him owing to his activities in the State party. The Office further noted that there was a contradiction between the claim that the complainant was wanted by the Iranian authorities, while according to the complainant's own allegations, they knew that he was in Switzerland at the same time. The Office thus concluded that the complainant did not have a political profile that would expose him to danger in the Islamic Republic of Iran.

4.14 The State party adds that it is impossible to deduce merely from the complainant's participation in one or even more than one demonstration in Switzerland that he would be perceived as a potential threat to the Iranian regime and that he would thus be in danger of

torture upon his return to the country. In any event, the complainant had failed to demonstrate that the Iranian authorities were aware of his participation, and had also failed to show to what extent they considered him to pose a threat because of it. He had also failed to demonstrate that he personally was wanted in the country, or even that his brother was wanted there.

4.15 In the light of the foregoing considerations the State party concludes that the complainant does not run the risk of being tortured if he is returned to the Islamic Republic of Iran.

Complainant's comments on the State party's observations

5.1 The complainant presented his comments on the observations of the State party on 27 June 2011. Regarding the observations relating to his brother, who is politically active in the Islamic Republic of Iran, the complainant explained that he had only recently come to live in his parents' home. Previously, he had lived in another town and visited his parents only occasionally. The complainant also stated to the asylum authorities that his brother had been seen once by security officers fleeing his parents' house by the roof; they had opened fire, but he had managed to escape. The complainant's brother sometimes returned for a week, then left for 10 days, and continued thus, without having a fixed address.^h

5.2 The complainant adds that he chose to flee because he could no longer bear to be constantly harassed by the security services. He feared threats to his physical integrity and to his life. If his brother had not fled the country, that was his personal choice, no doubt related to his involvement in politics; it is not a matter of logic.

5.3 The complainant holds no proof of persecution. The Iranian authorities never officially summoned him, nor did they issue a wanted notice or an arrest warrant for him, or any other document to show that his family was under surveillance. As for his brother's political activities, he pointed out that the regime's repression is so severe that opposition parties must act with the utmost caution; they remain underground and very few documents can attest to the fact they exist. For example, no party membership card is issued. The Swiss authorities have recognized that the political opposition in the country was built upon mistrust and secrecy (JAAC 1999 I No. 63.5, p. 45; JJCRA 1998/4).

5.4 Regarding the arguments about his political activities in Switzerland, the complainant reiterates the points made in his initial communication and adds that the State party is unaware which of those Iranians who took part in public political demonstrations have or have not been identified by the Iranian authorities. In considering the danger of torture in the event of return, it is not enough to rely on mere probabilities or conjecture that the complainant was not recognized by the authorities of his country. For the Iranian authorities, the very fact that the complainant is in Europe is an indication of his opposition to the regime, an indication strengthened by the other elements in the case file: he is a member of a persecuted ethnic minority and of the B. clan, and his brother is politically active and is wanted by the authorities. According to the case law of the European Court of Human Rights, merely participating in a demonstration can bring about arrest, detention and torture (Judgment of 9 March 2010, application No. 41827/07, *R.C. v. Sweden*).

5.5 The complainant adds that the Iranian regime is unpredictable and repressive, guided by ideology and not procedure, and by a political view of the threats it is facing. Even

^h On 9 June 2005 the complainant stated during a hearing as part of the asylum application procedure that his clan, the B. clan, was the largest in Khuzestan Province, and his brother could thus stay anywhere. He also explained that many members of the family, including many young people, had been killed, while others had disappeared.

someone who has never carried out any political activities can be perceived as an opponent if that is the opinion of the regime. The danger of persecution is thus high owing to the very unpredictability of the regime.

Issues and proceedings before the Committee

Examination of admissibility

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It also notes that domestic remedies have been exhausted. Accordingly, the Committee considers that there are no obstacles to admissibility of the complaint. It considers the complaint admissible and thus proceeds immediately to the consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

7.2 The issue before the Committee is whether the State party's deportation of the complainant to the Islamic Republic of Iran would constitute a violation of its obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.3 Regarding the complainant's allegations under article 3, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the Islamic Republic of Iran. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture if expelled to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.

7.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, which states that the risk of torture need not be highly probable, but it must be personal and present. In this regard, the Committee has established in previous decisions that the risk of torture must be "foreseeable, real and personal".ⁱ As to the burden of proof, the Committee also recalls that it is normally for the complainant to present an arguable case, and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

7.5 Additionally, the Committee recalls that, in accordance with its general comment No. 1, considerable weight will be given to the State party's findings of fact, but the Committee is not bound by such findings and instead has the power of free assessment of the facts based upon the full set of circumstances in every case.

ⁱ See communications Nos. 203/2002, *A.R. v. Netherlands*, decision of 14 November 2003, para. 7.3, and 285/2006, *A.A. et al. v. Switzerland*, decision of 10 November 2008, para. 7.6.

7.6 In the present case, the complainant asserts that there is a risk that he will be tortured if returned to the Islamic Republic of Iran because he is from the persecuted Arab minority and from the B. clan, several members of which have already reportedly been killed, with others having gone missing; because of the political activities of his brother, who is wanted by the authorities; and because he took part in a demonstration in front of the Iranian embassy in Bern.

7.7 The Committee notes first of all that the overall human rights situation in the Islamic Republic of Iran can be considered to be problematic in many respects. Nonetheless, it notes that the complainant has never been tortured there, either because of his ethnicity or for any other reason. Even if he claims that his family has been persecuted by the authorities seeking his brother, who is supposedly politically active in the local underground Arab opposition, the complainant produces no evidence in support of this claim. As for his general complaint regarding the persecution of the Arab minority, in particular in the region of Khuzestan, the Committee considers that such a complaint in no case would justify concluding that there is a real, personal and serious danger for the complainant.

7.8 The Committee notes that the complainant was not politically active in his country of origin and thus is not at risk owing to such activities in the event of his return. As for his political activities in Switzerland, the Committee notes that the complainant took part, once, in a demonstration with an Arab group in front of the Iranian embassy in Bern, and that a group photograph showing the complainant was subsequently placed on an Internet page, along with hundreds of other photographs. The Committee notes the argument of the State party, which the complainant did not refute, according to which the demonstration in question involved several dozen participants. The Committee considers that, even if the Iranian authorities were aware of it, the complainant's participation on one occasion in a mass demonstration, in the absence of other elements, does not make it possible to believe that the complainant would run the risk of being subjected to torture or otherwise persecuted in the event of his return to the Islamic Republic of Iran.

7.9 As for the complainant's explanation that, owing to secrecy, it is difficult for him to produce evidence of his allegations or impossible for him to provide further details on the name of the political party in which his brother is supposedly politically active or on his brother's precise activities, the Committee recalls its jurisprudence that it is normally for the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory and suspicion.^j

8. In view of all the foregoing considerations, and having taken into account all the information made available to it, the Committee considers that the complainant has not produced elements sufficient to conclude that he personally runs a real and foreseeable risk of torture if returned to his country of origin.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to the Islamic Republic of Iran would not constitute a breach of article 3 of the Convention.

^j See inter alia *M.F. v. Sweden*, communication No. 326/2007, decision of 14 November 2008, paragraph 7.7; or *Mehdi Zare v. Sweden*, communication No. 256/2004, decision of 12 May 2006, para. 9.5.

Communication No. 463/2011: D.Y. v. Sweden

<i>Submitted by:</i>	D.Y. (represented by counsel, Eva Rimsten from the Swedish Red Cross)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	30 May 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 21 May 2013,

Having concluded its consideration of complaint No. 463/2011, submitted to the Committee against Torture by Ms. Eva Rimsten on behalf of Mr. D.Y. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, her counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Mr. D.Y., a national of Uzbekistan, born on 22 February 1981. He currently resides in Sweden. He claims that his return to Uzbekistan by Sweden would violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel Eva Rimsten (from the Swedish Red Cross).

1.2 Under rule 114 of its rules of procedure, the Committee requested the State party, on 10 June 2011, to refrain from expelling the complainant to Uzbekistan while his complaint was under consideration by the Committee. Upon this request, on 13 June 2011, the Migration Board decided to stay the enforcement of the complainant's expulsion order.

Factual background

2.1 In early 2004, the complainant undertook his military service with the Air Forces, where he served as a guard (lowest rank). In May 2005, the author's unit received the instruction to go to Andizjan (Andijan or Andijon) to suppress a violent demonstration that was being held in this city. Upon arrival, the author was instructed to shoot against demonstrators. He and other soldiers refused to obey this order, since most of the persons were women and children, and laid down their arms. When the superintendent saw this, he pointed his gun at them and threatened to shoot them. Later that same day, when he was back at the military camp, he was arrested by the police and taken to a military prison in Gubah. He was accused of not following orders and of State perfidy. While in prison, he was assaulted and insulted.

2.2 In August 2005, the complainant was released from prison but instructed to report to the police station twice a day, even if he was sick. When he reported to the police, he was often beaten and threatened by policemen. In October 2005, unknown men went to the

complainant's home, one of them showed a police identification card and took him to a police station, where he was interrogated regarding the incident in Andizjan. He was locked in the basement of that police station for three days. During that time, he was beaten and insulted on several occasions. On the third day, he was transferred to a prison in Kashkadarya. He was sentenced by a military court, without a real trial and access to public defence counsel, to three years' imprisonment. He never received a copy of the judgment. While in prison, he was also beaten and threatened by prison staff. After the first year, he was forced to sign different documents. In June 2008, he was released and instructed to report to the police every day. He was not allowed to travel. Each time he reported to the police, he was insulted and humiliated by police officers.

2.3 In December 2008, the complainant left Uzbekistan for Kazakhstan. He travelled by smuggling routes and bribed a person to pass the border control. A few days after he had left, the police went to his house and threatened his wife with imprisonment and torture. Her passport, her children's birth certificates and the couple's marriage certificate were taken away. On 5 or 6 January 2009, his wife also left Uzbekistan, together with their two children, and joined the author in Kazakhstan. The complainant and his wife left their children with a cousin of hers in Kazakhstan and travelled to St. Petersburg in the Russian Federation and then to Sweden by boat, with false Russian passports. Upon arrival in Sweden on 19 January 2009, the complainant, with the false identity of J.B.M., and his wife filed an application for asylum. After informing the authorities about the events they faced in their country of origin, they claimed that they could not return to Uzbekistan as they would risk imprisonment or being killed: the author for having strayed from his obligation to report to the police and not to travel and his wife for breaking her promise to the police to disclose her husband's whereabouts. He submitted birth certificates as proof of identity as J.B.M. No other document of identification or to support his claim was submitted in support of their asylum account.

2.4 On 5 June 2009, the Swedish Migration Board rejected the complainant's asylum application. The Migration Board stated that the narrative in the asylum request was vague and did not disclose information about any form of persecution on the grounds of race, nationality, social group, religion or political beliefs, by the authorities in the country of origin and that there were no reasons to believe that the complainant and his wife would risk any greater penalties than anyone who had committed an offence. The Board further noted that the complainant had not been able to provide any identification documents or written evidence in order to prove that he had been sentenced to three years' imprisonment and that he had travel restrictions or police reporting obligations. Although the Board did not doubt the Uzbek origin of the complainant and his wife, it concluded that his reasons to justify this lack of evidence were contradictory, not probable and therefore not credible.

2.5 According to the Migration Board's decision, the complainant made contradictory declarations as to the possession of identification documents. In his submission through his legal counsel, he stated that his passport, military identity card and driving licence had been seized by the police. However, in the interview at the Migration Board, he and his wife said that they had asked their parents to send his driving licence and his wife's diploma in order to prove their identities. The complainant also withdrew part of his statement as to the demonstration that took place in Andizjan and the location of his regiment, whereas his wife did not remember the route by which she travelled to Kazakhstan, although she alleged that she did not have a passport and had received instructions from her husband. The Migration Board concluded that there was no evidence that they would be subjected to torture or to inhuman or degrading treatment or punishment if returned to Uzbekistan and ordered to expel the complainant and his wife, pursuant to Chapter 8, Section 7 of the Aliens Act (2005:716).

2.6 The complainant appealed the decision to the Migration Court. In his appeal he stated that he had applied for asylum under a false identity (J.B.M.) because he feared for his safety and that his real name was D.Y., born on 22 February 1981. He submitted a student card and a military booklet to prove his real identity and held that all the other information given was correct. He further held that he had two passports; the first one was taken by the military authorities when he was called to do his military service. The second one was obtained through bribery after his marriage. Although the police took his two passports, he managed to renew the second one in 2006, with a bribe, when he reported he had lost it.

2.7 On 1 June 2010, the Court conducted a hearing in the case. The complainant reiterated his previous allegations and reaffirmed that the authorities had seized his identification and personal documents. Nevertheless, he managed to hide the military booklet which he later submitted to the Swedish migration authorities. He did not disclose his real identity to the Swedish authorities because he was afraid that the Uzbek security service would also chase him in Sweden. The identity documents and diploma that he first submitted to the Swedish authorities belonged to someone else. He claimed that, if returned to Uzbekistan, he would be detained, punished and mistreated even more severely than in the past, and would be sentenced to life imprisonment for travelling abroad. He also informed the Court that his children had returned to Uzbekistan and lived with his parents. When he called them by phone they spoke no more than three or four minutes, as the telephone may be intercepted. The police came to visit his parents twice a week and asked about his whereabouts. He also alleged that he had a kidney condition as a result of torture.

2.8 On 14 June 2010, the Migration Court rejected the appeal, ordered the complainant's expulsion from Sweden, and forbade him to return to Sweden without the permission of the Immigration Board for a period of two years. The Court noted that the photo in the military booklet did not resemble him, and that he could not explain why there was a photograph in it of him when he was 18 years old, rather than a photograph at the time he entered military service. Thus, his new identity had not been proven. It further pointed out that he had not submitted any written evidence and that his narrative was vague and characterized by contradictions. Concerning the events in Andizjan, on 13 May 2005, the complainant was not able to describe the existence of road blocks in any detail, to give names of central places, such as Babur Square, where the demonstrators were, and his assertion that helicopters and airplanes shot the demonstrators was not mentioned in any country report. Furthermore, it was not credible that the complainant was able to get a new passport issued while in prison in 2006. Regarding his conviction, he had provided contradictory information. In his initial submission he stated that he was sentenced to three years imprisonment without trial or public defence counsel, but before the Court he stated that he had been convicted "behind closed doors". Therefore, his credibility was low and he was not able to show it was probable that he would risk persecution or be subjected to torture or to inhuman or degrading treatment or punishment upon return to Uzbekistan. On 16 August 2010, the decision to expel the complainant became enforceable.

2.9 On 8 November 2010, a the Swedish Red Cross' doctor examined the complainant in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), and determined the existence of marks related to kicks, punches, cuts with razor blades on the inside of the left arm, burns with a lighter on the left hip and on the right on the back of his leg, hitting with a truncheon on the backs of his legs, scars on the left buttock that could be caused by a penetrating gadget, burns caused by drops of burning plastic on the backside of the right foot, a fracture of a finger caused by kicking. The report concluded that he had been exposed to torture or physical abuse. On 10 February 2011, a psychiatric report was issued indicating that the author suffered from post-traumatic stress disorder and depression associated to his torture history, with a high risk of suicide.

2.10 On 14 February 2011, the author submitted an application to the Migration Board invoking the existence of new circumstances that would provide reasonable grounds for believing that he would be at risk of torture if returned to Uzbekistan. He submitted the Swedish Red Cross' medical reports and argued that he had not realized the importance of proving his past record of torture during his asylum process, and that neither the Migration Board nor the Migration Court had examined whether he had been subjected to torture while in prison. He also argued that he had been afraid that the interpreter, who assisted him during the interviews, would report his statements to the Uzbek authorities. He claimed that the Uzbek authorities infiltrate the asylum processes in Western Europe to control Uzbek citizens seeking asylum. He referred to a report by the Swedish Migration Board, of June 2010, on the situation in Uzbekistan, where it was stated that the use of torture was widespread in Uzbekistan; that between 2008 and 2009 nine persons, who had been involved in the incidents of Andizjan, died as a result of torture, and that, thus, all persons connected to the Andizjan incidents could potentially be at risk.

2.11 On 14 March 2011, the Migration Board decided not to re-examine the complainant's application. It considered that the reasons given by the complainant were not of such nature or dimension as to constitute an impediment preventing the execution of the expulsion order in accordance with Chapter 12 Section 18 of the Swedish Aliens Act. The Board held that the new circumstances invoked in his new application had already been examined by the Migration Board and the Immigration Court. No new circumstances regarding the complainant's need for protection had been invoked and, therefore, there was no ground to re-examine the matter. The complainant appealed this decision to the Migration Court.

2.12 On 7 April 2011, the Migration Court rejected the appeal. The Court found that the claims that he had been severely abused while in prison had already been examined and that his new claims about torture were just a modification or supplement to his previous application. His claims that he was being searched by the police and that his father was at risk of being arrested were new. However, no written evidence thereof was provided. The complainant filed an application for leave to appeal before the Migration Court of Appeal in which he argued that he had provided relevant new evidence regarding torture. The Migration Court of Appeal rejected his application for leave in April 2011. Thus, he claims that all domestic remedies have been exhausted and that the deportation order could be enforced at any time.

The complaint

3.1 The complainant holds that the State party did not assess adequately the risk he would be subject to if he returns to Uzbekistan. He would be at personal risk of being persecuted and tortured, in violation of article 3 of the Convention.

3.2 He argues that, owing to his refusal to shoot at demonstrators, he was imprisoned, humiliated and tortured. He was released from prison, but instructed to report to the police station every day and forbidden to travel. While reporting to the police, he was humiliated and insulted. He left his country of origin because he feared being imprisoned and tortured again. If returned, he would be prosecuted as traitor and could be sentenced to life imprisonment for travelling abroad without authorization. After his departure, his wife was harassed by the police, who threatened her with detention and torture. Currently, the police continues to visit his parents' home and tries to force his father to provide information about his whereabouts.

State party's observations on admissibility and merits

4.1 On 12 December 2011, the State party submitted its observations on admissibility and merits and requested the Committee to declare the complaint inadmissible as

manifestly unfounded, pursuant to article 22, paragraph 2, of the Convention. The State party acknowledges that all available domestic remedies have been exhausted.

4.2 The State party submits that the complainant's summaries of the Immigration Board's decision and Immigration Court's judgment, originally written in Swedish, were of insufficient quality and missed some relevant parts. Therefore, it attaches to its submission a translation of the above-mentioned decision and judgment.

4.3 The information submitted to the Committee about the location where he and his unit were given orders to open fire was not submitted to the Migration Board. It only emerged during the oral hearing at the Migration Court and thus at a fairly late stage in the asylum proceedings. Likewise, the complaint before the Committee states that he was degraded, humiliated, beaten and threatened by the prison guards during his imprisonment in the Kashkadarya prison. However, his written submission to the Migration Board only states that he was subjected to battering during this period.

4.4 The State party argues that, should the Committee conclude that the communication is admissible, the issue before the Committee on the merits is whether the expulsion of the complainant would violate the obligation of Sweden under article 3 of the Convention, not to expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

4.5 As far as the general human rights situation in Uzbekistan is concerned, the State party submits that since Uzbekistan has been a Party to the Convention since 1995, it is assumed that the Committee is well aware of the general human rights situation in this State party. According to reports issued by other States it is clear that the general human rights situation is problematic.^a It further points out that the Director-General for Legal Affairs at the Swedish Migration Board stated that the risk assessment for applicants from certain groups in Uzbekistan who are at particular risk of persecution, such as persons who have any connection with the Andizjan events, must be made with great caution. However, the assessment must, as usual, also include an examination of whether the applicant has made his asylum application credible.^b

4.6 The State party states that, while it does not wish to underestimate the concerns that may legitimately be expressed with respect to the current human rights situation in Uzbekistan, the circumstances referred to in the above-mentioned reports do not in themselves suffice to establish that the complainant's forced return to Uzbekistan would entail a violation of article 3 of the Convention. Article 3, paragraph 1, of the Convention requires that the individual concerned face a foreseeable, real and personal risk of being tortured in the country to which he is to be returned and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, although it does not have to meet the test of being highly probable.^c

^a The State party refers to the 2010 United States of America, Department of State, "Country Report on Human Rights Practice: Uzbekistan" (8 April 2011); the 2010 United Kingdom of Great Britain and Northern Ireland, "Foreign and Commonwealth Office Report – Uzbekistan" (31 March 2011); the *Mänskliga rättigheter i Uzbekistan 2010 – 2010* Swedish Ministry of Foreign Affairs' Report on Human Rights in Uzbekistan. It also refers to the 2011 Human Rights Watch, "World Report 2011: Uzbekistan". As to the events in Andijan and their repercussions, it refers to the report published on 21 June 2010 by the Swedish Migration Board, *Uzbekistan-Allmän bakgrund och aktuell situation*; Human Rights Watch, "Saving its Secrets": *Government Repression in Andijan* (May 2008); and the International Crisis Group, "Uzbekistan: The Andijon Uprising" (25 May 2005).

^b The State party refers to Swedish Migration Board's document entitled *Rättschefens kommentar angående förhållandena i Uzbekistan*, published on 6 May 2011.

^c The State party refers to the complaint No. 103/1998, *S.M.R. and M.M.R. v. Sweden*, decision adopted

4.7 The Swedish migration authorities and courts apply the same test in assessing the risk of being subjected to torture when considering an asylum application under the Act, as the Committee would apply when examining a subsequent communication under the Convention.^d The national authorities are in a very good position to assess the information submitted by an asylum seeker and to appraise his or her statements and claims in view of the fact that they have the benefit of direct contact with the asylum seeker concerned. In the light of the above, considerable weight must be attached to the assessment made by the Swedish migration authorities.

4.8 Concerning the assessments of the credibility of the complainant's statements, the State party relies mainly on the reasoning contained in the decision of the Migration Board, dated 5 June 2009, and the judgment of the Migration Court, dated 14 June 2010. It further points out that the complainant initially submitted his asylum request under the identity of J.B.M. and, in support of this, provided documents that proved to be false. Afterwards, before the Migration Court, he held that his true identity was that of D.Y. and submitted a copy of his passport, a copy of his birth certificate, an original driving licence and a military service book. However, he could not produce a reasonable explanation as to how he was able to obtain a passport in 2006, while in prison, especially taking into account, that he had been prohibited from leaving the country. Nor could he explain how he got a second passport in 2003 when he got married, as passports are not issued in connection with marriages in Uzbekistan. All this gives enough grounds to question his general credibility, the veracity of his identity as well as of his claims in other respects of the case.

4.9 According to the medical certificate issued by a medical doctor of the Swedish Red Cross, on 8 November 2010, the complainant's injuries and scars *may* have been caused in accordance with his claims. Therefore, it is not possible to draw any certain conclusions regarding the cause of the complainant's injuries, and its value as evidence must be considered low. Likewise, the medical certificate indicating that he suffers from post-traumatic stress disorder cannot be conclusive as to his claims.

4.10 The complainant has not submitted any document for the purpose of substantiating that he was convicted of violating military law. Nor has he submitted any documents concerning his allegation that he was forbidden to travel and put under supervision. The complainant stated that he used to be in possession of a document substantiating that he was under supervision, but that he submitted this to the local authorities when reporting to the police. However, the State party finds it peculiar that he has not been able to provide a description of the content of that document during the interviews.

4.11 During the asylum proceedings, the complainant gave vague or contradictory information about the events in Andizjan. In the first interview before the Migration Board, he did not mention being involved in these events. Afterwards, he told the authorities that his regiment was garrisoned 500–600 metres from Andizjan, that the protesters gathered near his regiment, and that a prison was located nearby. Later, he withdrew his statement and said that the regiment was about 40 minutes to an hour from the place where the demonstration was held. He did not clearly state that the demonstration took place in the centre of Andizjan until the Migration Court's hearing. Moreover, he was not able to provide names of central places where the demonstration took place, and his statement that demonstrators were attacked from helicopters and military aircraft has not been confirmed

on 5 May 1999, para. 9.7, and to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX.

^d Reference is made to Chapter 4, Sections 1 and 2 of the Aliens Act before 1 January 2010 and to Chapter 4, Sections 1, 2 and 2a of the Aliens Act after 1 January 2010.

by any report. Therefore, owing to his vague and inaccurate description of the circumstances, he has not credibly established that he was present during the events in Andizjan.

4.12 The complainant also modified his statement concerning his trial. During the second interview before the Migration Board, he said he was imprisoned with no lawyer being appointed or a trial being held. During the oral hearing before the Migration Court, he stated that a trial was held, but that the hearing took place behind closed doors.

4.13 Before the Migration Board, the complainant submitted that he was subjected to physical mistreatment by the prison guards in the Kashkadarya prison, whereas at the oral hearing before the Migration Court, he stated that he was tortured and that prison guards used chairs and bottles as weapons. Likewise, in his written submission to the Migration Board, he stated that he was *occasionally* physically mistreated, threatened and humiliated by the police while fulfilling his obligation to report to the police; however, at the Court's oral hearing he held that he was harassed and humiliated by the police on *each occasion* he appeared before the police authorities. Thus, the treatment to which he was allegedly subjected to was described in increasingly strong terms during the course of the proceedings. This fact reduces the credibility of the complainant's claim in this regard.

4.14 In the light of the above and the inconsistencies and contradictions contained in the complainant's statement to the State party's authorities, as well as the vagueness regarding central elements of his asylum story and the fact that he produced false documents regarding his identity, it cannot be concluded that the author would be at risk of treatment contrary to the Convention, if returned to Uzbekistan.

The complainant's comments on the State party's observations

5.1 On 15 February 2012, the complainant submitted his comments on the State party observations.

5.2 He points out that there is a consistent pattern of gross violations of human rights in Uzbekistan. The risk of being tortured in arrest or detention is overwhelming. Security officers and the police routinely beat or mistreat detainees to obtain confessions or incriminating information. According to Human Rights Watch, the Government continues to refuse to investigate the 2005 events in Andizjan or to prosecute those responsible. The authorities persecute anyone that they suspected of having participated in or witnessed the atrocities. On 30 April 2011, Ms. D.A., an Andizjan refugee who returned to Uzbekistan in January 2010, was sentenced to 10 years and 2 months in prison for illegal border crossing and anti-constitutional activity, despite assurances made to her family that she would not be harmed if returned.^e Persons who return to Uzbekistan and are brought to court are held in incommunicado detention, thereby increasing their risk of being tortured or otherwise ill-treated; and are subjected to unfair trial.^f Furthermore, the Uzbek Government uses the so-called "mahalla system", in which local committees are in charge of controlling and identifying for the police persons that appear suspicious, in particular if they are amnestied prisoners or relatives of individuals jailed for alleged extremism.^g

5.3 The complainant contests the State party's assertion that it applied the Convention's test when considering his asylum application. The Migration Board and Court focused most

^e The complaint refers to 2011 Human Rights Watch Report.

^f The complaint refers to 2009 Amnesty International's report, submitted to the Human Rights Committee.

^g The complaint refers to 2008 United States, Department of State, "Human Rights Report – Uzbekistan".

of their examination on the sole fact that he presented false documents of his identity upon arrival to Sweden. He argues that an untrue statement by itself is not a reason for refusal of refugee status and it is the authorities' responsibility to evaluate such statement in the light of all the circumstances of the case.

5.4 The State party's authorities should have taken into account the fact that the first interview before migration authorities was short and he did not have a legal representative. In contrast, in the second interview, held on 17 April 2009, the complainant, who had already a legal representative, answered all questions in detail and gave a clear description of what happened in Andizjan. He told the interviewer that he was tortured during imprisonment. He also pointed out that he was beaten and mistreated. Therefore, the interviewer should have asked more questions regarding these allegations, all the more so as he came from a country where gross human rights violations occur.

5.5 The complainant also noted that he was afraid that the interpreter was a spy for the Uzbek Security Service, since several reports support the fact that this Service is very active in countries where Uzbek asylum seekers are present. This fear also explains why the complainant applied for asylum with a false name. However, the State party's assessment of his credibility relies on the sole fact that he presented false documents on his arrival in Sweden.

5.6 As to his description of the events in Andizjan, he contests the State party's position that he gave unclear and contradictory information. From the protocol of the second interview, dated 17 April 2009, it is clear that there was a misunderstanding in the beginning, that was solved later in the interview, when he told the authorities that the regiment was located 40 minutes to one hour aside Andizjan. The same information was given during the Migration Court's hearings. He also gave a detailed description of the questions asked concerning the incident in Andizjan from what he saw and what was happening around him. He is not from Andizjan town and this explains why he lacked knowledge about streets' names.

5.7 The State party's argument that in the events in Andizjan, shooting from helicopter and military aircraft did not occur is contradicted by an article published on BBC News, on 17 May 2005, according to which, some persons declared that helicopters started shooting at them.

5.8 As to the complainant's contradictory information about the way he was imprisoned and whether he had a trial, he upholds that the difference between his statement in the second interview before the Migration Board, on 17 April 2009 and the information given at the Court's hearing is explained by his lack of legal background and his poor educational level.

5.9 The information given about the incidents in Andizjan and the complainant's situation should have been enough for the Migration Board's authorities to ask further questions if in doubt about his statements.^h

5.10 The medical certificate issued by a doctor of the Swedish Red Cross supports that it is probable that the injuries and scars that the complainant has on his body have been caused in accordance with his claims. He has shown it to be probable that he was present during the incident in Andizjan; that he was sentenced to prison; and that he was tortured while in custody in Uzbekistan. In the light of the reports indicating that anyone can be connected to the incidents in Andizjan has a well-founded fear of persecution or harm if

^h The complaint refers to communication No. 149/1999, *A.S. v. Sweden*, Views adopted on 24 November 2000.

returned to Uzbekistan, the complainant claims that the State party fails to assess adequately the serious personal risk he would face if returned, in violation of article 3 of the Convention.

Further State party's observations and author's comments

6.1 On 5 December 2012, the State party submitted further observations on the admissibility and merits of the complaint.

6.2 The State party reiterates its previous observations and submits that the NGOs' and States' reports on the deterioration of the human rights situation in Uzbekistan, to which the complainant refers, were also considered by the State party. Despite the human rights record of Uzbekistan, these reports do not in themselves suffice to establish that he would run a risk of treatment contrary to article 3 of the Convention if returned.

6.3 After the complainant applied for asylum in 2009, the Migration Board informed him of the importance of substantiating his identity. Nevertheless, in August 2009, that is, several months after his arrival in the State party's territory, he submitted false documents concerning his identity, and only in April 2010, he presented evidence of another identity. The State party further highlights that the complainant has not commented on the authenticity of these documents, and specifically on how he managed to have a new passport issued in 2006 when he allegedly was in prison. Nor has he explained how he managed to provide the immigration authorities with a copy of a passport in April 2010. Moreover, the complainant's identity is still not substantiated.

6.4 The complainant's description of the events that took place in Andizjan and of the time he spent in prison lacks details and is based on information that is accessible to the public through international news reporting. His comments to the Committee do not substantiate the reasons why the Uzbekistan's authorities would show an interest in him due to his alleged involvement in the Andizjan events. Both the Migration Board and the Migration Court met the complainant and held lengthy hearings with him. However, the vagueness of his account led them to the conclusion that his claims were insufficiently substantiated. There is no indication that the immigration authorities' decisions were inadequate or arbitrary.

6.5 The State party does not contest that the complainant was ill-treated, as indicated by the medical reports. Nevertheless, he did not substantiate his claim that he took part in the events in Andizjan and he did not present any other ground as to why the Uzbek authorities would have an interest in him if he was to return to Uzbekistan.

7.1 On 9 January 2013, the complainant submitted further comments to the Committee and asserts that at the hearing at the Migration Court, he told the authorities that he had had two passports. The first one was kept by the authorities when he was called to do his military service. The second one was obtained just after his marriage, through a bribe. He got help to renew this second passport with a bribe in 2006, when he reported that he had lost it. With the help of friends he managed to hide his military booklet at the moment of his arrest. He finally informed the Swedish authorities that both original of his passports were with the Uzbek authorities.

7.2 He argues that he was diagnosed with post-traumatic stress disorder; that victims of torture, who suffer from that disorder, rarely remember all the details and circumstance in their cases; and that this can also explain why he had such great fear of migration authorities and his lack of trust of the interpreters during the interviews.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

8.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the instant case, the State party has recognized that the complainant has exhausted all available domestic remedies.

8.3 The State party submits that the communication is inadmissible as manifestly unfounded. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues, which should be dealt with on the merits. As no obstacles to the admissibility of the communication exist, the Committee declares it admissible.

Consideration of the merits

9.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

9.2 The issue before the Committee is whether the expulsion of the complainant to Uzbekistan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return (refouler) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.3 With regard to the complainant's claims that he risks imprisonment in Uzbekistan and that imprisonment would inevitably be followed by ill-treatment and torture, as he experienced while in prison between 2005 and 2008, the Committee must evaluate whether there are substantial grounds for believing that he would be personally in danger of being subjected to torture upon return to his country of origin. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

9.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22,ⁱ according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being “highly probable”, the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he faces a “foreseeable, real and personal” risk. While under the terms of its general comment the Committee is free to assess the facts on the basis of the full set of circumstances in every case, it recalls that it is not a judicial or appellate body, and that it must give considerable weight to the findings of fact that are made by organs of the State party concerned.

9.5 In the present case, the Committee notes the State party’s observations regarding the human rights situation in Uzbekistan and the migration authorities’ and court’s conclusion that the prevailing circumstances in that country did not in themselves suffice to establish that the complainant’s forced return to Uzbekistan would entail a violation of article 3 of the Convention. The Committee has also expressed concerns for the events that took place in Andizjan in May 2005 and the subsequent behaviour of the authorities.^j The Committee recalls its concerns at numerous and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative officials or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings.

9.6 The Committee notes that the State party has drawn attention to inconsistencies and contradictions in the complainant’s accounts and submissions which call into question his general credibility and the veracity of his claims. In particular, the complainant provided a false identity and documentation in his original asylum application to the Migration Board, and the documentation provided to the Migration Court in order to prove his alleged real identity was also unreliable. As a result, doubts about his real identity still persist. According to the State party, he was not able to provide any written evidence pertinent to his claims, that he was sentenced to three years’ imprisonment, prohibited to travel and subjected to control by the police to whom he had to report daily. His statements concerning the alleged mistreatment varied through the proceedings and at beginning referred to acts other than torture. He was not able to provide enough details about the events that took place in Andizjan in May 2005 and changed his initial statements regarding the location of his regiment.

9.7 The Committee also notes that the complainant contests the State party assessment and argues that he did not provide his real identity until he was before the Migration Court because he feared that Uzbek Security Service might find him and take reprisals; and that he provided enough details concerning the events in Andizjan in May 2005, his participation, his imprisonment and the torture and ill-treatment to which he was subjected. The fact that he had to clarify or modify his original statements was due to his lack of legal background, his fear upon arrival in Sweden, and the lack of more specific questions posed by the migration authorities. He affirms that the medical certificate issued by the Swedish Red Cross, together with all the information provided by him, proves beyond reasonable suspicion that he was subjected to torture while in prison.

ⁱ *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.*

^j *Conclusions and recommendations of the Committee against Torture, Uzbekistan, CAT/C/UZB/CO/3, paras. 6–9. See also concluding observations of the Human Rights Committee-Uzbekistan, CCPR/C/UZB/CO/3, para. 8.*

9.8 The Committee takes note of the observation by the State party that the complainant provided a false identity to the Migration Board and that afterwards the Court could not corroborate the real identity claimed by him; that he modified his original statements on more than one opportunity; that he was not able to provide some basic information as to the events in Andizjan, such as the name of the main square where the demonstration took place; that he did not submit any document as to his conviction by a military court and the prohibition to travel and was not able to provide a description of these documents; and that his allegations of torture were vague and did not provide details about the circumstances in which it was inflicted. While the Swedish Red Cross' medical reports indicate that the complainant has marks in his body that could have been caused by torture, and the risk assessment for asylum seekers from certain groups in Uzbekistan, including those who had any connection with the Andizjan events, were made with great caution by the authorities, the complainant has not provided evidence regarding his allegations of participation in the Andizjan events, his imprisonment, trial and sentence. The Committee observes that, notwithstanding the complainant's allegations, his children – who initially fled with his wife to Kazakhstan – returned to Uzbekistan and lived with his parents, and that he did not report any acts against members of his family other than the police requesting information about the complainant's whereabouts. Accordingly, the Committee considers that the complainant has failed to provide sufficient evidence in support of his claims to the effect that he would be exposed to a real risk of torture if he is removed to Uzbekistan.

9.9 In the light of the foregoing, the Committee finds that the complainant has not established that, in case of his expulsion to the country of origin, he would face a foreseeable, real and personal risk of being tortured within the meaning of article 3 of the Convention, that could prompt the Committee to arrive at the conclusion which would be different from that of the State party's migration authorities and the courts.

10. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Uzbekistan by the State party would not constitute a breach of article 3 of the Convention.

Communication No. 464/2011: K.H. v. Denmark

<i>Submitted by:</i>	K.H. (represented by counsel, Niels-Erik Hansen)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Denmark
<i>Date of complaint:</i>	7 February 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2012,

Having concluded its consideration of complaint No. 464/2011, submitted to the Committee against Torture by Niels-Erik Hansen on behalf of K.H. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is K.H, a national of Afghanistan, born on 26 July 1975. He currently resides in Denmark. He claims that his return to Afghanistan by Denmark would violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel, Niels-Erik Hansen.

1.2 On 15 June 2011 and 8 June 2012, the Rapporteur on new complaints and interim measures decided, on behalf of the Committee, not to issue a request for interim measures pursuant to rule 114 (former rule 108) of its rules of procedure (CAT/C/3/Rev.5).

The facts as presented by the complainant

2.1 The complainant is an ethnic Pashtun and of the Sunni Muslim faith. He used to live in the village of Kala Sheikh in the Chaparhar district of Nangarhar province, Afghanistan. He has been married twice and has five children with his second wife. He is illiterate and has never been involved in any political or religious party, nor did he take part in demonstrations. However, his father and his brother used to work for the Government, until the mujahideen came to power and fought against the Hezb-e-Islami forces. He alleges that one of his brothers was detained when the mujahideen were in power, and that he has not been seen again. His village of origin, Chaparhar, is associated with terrorist activities.

2.2 The complainant and his family were threatened by the Taliban. Around 2006 or 2007, his house was hit by missiles, which caused the death of his father and brother. The Taliban accused his family of being spies for the Government. He was forced to flee his hometown for Jalalabad, the capital of the province. In early 2010 he was working on a road construction project when the Taliban came and detained him and other persons who were with him. He was tied up and beaten with sticks and rifle butts. He gave the Taliban a false name, since his family name was known to them due to his father's and brother's

previous problems with Hezb-e-Islami. He agreed to collaborate in the future with the Taliban since he had no other choice. He was left tied to a tree and with three ribs broken. He did not return to his work because he feared being sought out again by the Taliban.

2.3 Subsequently, he worked in Jalalabad as bricklayer. One day, while he was finishing his work, there was an explosion. Afterwards, he and four of his colleagues were detained by the police and he was wrongly accused of having participated in a terrorist bombing attack in Jalalabad. He was detained for two days and questioned three times a day. The four colleagues were released after one day. He was kept because he spoke Pashto and came from a village where many Taliban came from. During his detention, he was again ill-treated, kicked and beaten with pieces of wood and rifle butts. His hands and one leg were injured. With the assistance of his wife's uncle, he was able to bribe the police and escaped from the prison during the night. The policemen told him to leave Afghanistan, otherwise he would be murdered. They were afraid that he would tell someone about the bribe. Afterwards, he drove a minibus to Peshawar in Pakistan. He stayed in Pakistan for two weeks before travelling in vans and trucks through the Islamic Republic of Iran, Turkey, Greece and Italy. He was in possession of a Pakistani passport at his departure, but it was seized in the Islamic Republic of Iran.

2.4 The complainant arrived in Denmark on 25 July 2010, without valid travel documents, and applied for asylum the next day. Since he was illiterate he could not complete the asylum application form by himself. He claimed that he was fleeing from the Taliban and the Afghan authorities. He had been detained by the Taliban and then arrested by the authorities and wrongly accused of a terrorist bombing attack; while in detention he had been ill-treated and tortured in such a way that some of his ribs had been broken. He added that torture was widespread in Afghanistan, and that the authorities were unable to protect the population from the Taliban's violence. He feared for his life since he had been arrested by the authorities in connection with an explosion in Jalalabad, he had been forced by the Taliban to cooperate with them, and he had escaped from prison after paying a bribe. If re-arrested, he would be subjected to torture and killed. He feared the same if the Taliban were to find him, since they still believed that he was a spy for the Government. The complainant was not aware of the whereabouts of his family and could not provide a nationality certificate issued by his country of origin.

2.5 On 28 October 2010, the Danish Immigration Service rejected his application for asylum. It stated that it was for the asylum seeker to provide the necessary information to assess and decide his request. However, his narrative was vague and, in several crucial points, characterized by contradictions, such as the circumstances of his detention by the Afghan authorities and subsequent escape from prison. The complainant appealed this decision to the Refugee Appeals Board.

2.6 On 17 January 2011, the Refugee Appeals Board denied the complainant's request for medical examination, rejected his application for asylum, and ordered his deportation pursuant to section 33, paragraphs 1 and 2, of the Aliens Act. The Board accepted the complainant's allegation as to the incidents with the Taliban. However, it pointed out that he was able to live in Afghanistan for at least one year without any problem with the Taliban, that he gave a false name, and that the blows to which he was subjected that caused a broken rib were not of such nature and scope to be relevant for his request. The Board further held that the complainant had provided contradictory information about his place of origin and that his allegations that he had been detained by the authorities on suspicion of terrorism and severely mistreated were inconsistent with respect to the circumstances of his location, detention and escape. Therefore, his statements were not credible and it was unlikely that the complainant would be at risk of persecution or abuse if returned to Afghanistan. Despite his reiterated requests for a medical examination, the

Board denied his asylum request, without ordering any medical examination that might have shed light on possible sequelae of torture.

2.7 The complainant claims that with the decision of the Refugee Appeals Board all domestic remedies have been exhausted.

The complaint

3.1 The complainant claims that the State party did not assess adequately the risk that he would be subjected to torture if returned to Afghanistan. He claims that he would be at personal risk of being persecuted and tortured by the Afghan authorities or the Taliban, in violation of article 3 of the Convention.

3.2 The complainant submits that although the Refugee Appeals Board accepted his allegation that he was detained by the Taliban and treated in such a way that a rib was broken, it did not concede that this was a relevant fact for the asylum determination. The State party did not even consider whether the Afghan authorities would be able to protect him against the Taliban's violence. In its assessment of the complainant's allegation of violence committed by the authorities, the Board focused mainly on certain inconsistencies in his statements that were not relevant enough to reject his application, and that were produced due to problems with interpretation. Furthermore, despite the medical evidence provided^a and his request for further specialized medical examination, the Board denied his request for asylum without ordering such an examination. Accordingly, the State party's failure to consider the medical information provided by the complainant and its refusal to request further medical examinations constitute a violation of article 3 of the Convention.^b

3.3 The complainant alleges that the State party also failed to consider and assess his claims within the framework of the situation of human rights in Afghanistan, in particular to take into account that torture is widespread in the country, that the legal system has collapsed, and that both the Afghan authorities and the Taliban commit acts of violence against the population.

State party's observations on the admissibility and the merits

4.1 On 15 December 2011, the State party submitted its observations on the admissibility and the merits and requested the Committee to declare the complaint inadmissible as manifestly unfounded pursuant to article 22, paragraph 2, of the Convention, or otherwise to declare that the complaint does not disclose a violation of article 3 of the Convention.

4.2 The State party provided information concerning the asylum proceedings carried out by the Danish Immigration Service and the Refugee Appeals Board. On 23 August 2010, the complainant claimed that he was detained twice, once by the Taliban and once by the Afghan authorities. The authorities accused him of having organized an explosion in Jalalabad. His wife's uncle had bribed the authorities to let him escape. The police was looking for him and if he was re-arrested he would probably be killed by the authorities. As to the Taliban, the complainant and his family had been threatened by the Taliban in

^a The complainant provided two medical reports, or "memoranda" (English translation from the Danish), dated 11 October and 13 December 2010, in which it is noted that he had not been able to sleep for more than a year due to nightmares relating to torture experienced while he was in prison. It is also noted in the reports that the complainant claimed to suffer from pain in the left thorax and requested drugs for it.

^b The complainant refers to the Committee's jurisprudence in communication No. 339/2008, *Amiri v. Denmark*, decision adopted on 15 November 2010.

Chaparhar, which believed that they were spies for the Government. About three or four years ago the complainant's house had been hit by missiles and his father and brother were killed in that connection.

4.3 On 2 September 2010, the Immigration Service conducted an interview with the complainant. He claimed that about six months ago, he was on his way out of the building in which he worked when an explosion occurred near the airport in Jalalabad, so he stayed inside the building for a while before going out. However, the police arrived and detained him and four colleagues. They were all brought to a police district office in Jalalabad and put in the same cell together with other people. He stayed in detention for two days. In this period he was interrogated three times daily and subjected to violence by policemen in the form of blows with rifle butts and kicks. His colleagues were released, but he stayed in detention because he came from Chaparhar, a village from which many terrorists came. He was released after paying a large bribe. However, the authorities told him that he should leave the country. He also told the Immigration Service that previously, while he was helping to build a new road, the Taliban came one night and detained him and seven other people. He was tied to a tree and beaten with pieces of wood and rifle butts. The following morning, when the town's inhabitants arrived at the place he and the others had been left, they were freed. When asked, he stated that he had not been detained at any other time or otherwise had any other problem in Afghanistan. He further pointed out that he participated in demonstrations against the Taliban three or four years ago.

4.4 On 21 October 2010, the complainant was interviewed again by the immigration authorities. He first asserted that he had never been detained or arrested by the authorities in Afghanistan, nor was he wanted by them. Afterwards, he stated that he had been detained by the police in connection with holiday festivities six months before his entry into Denmark. Confronted with his earlier statement, he said that he thought that the question was whether he had had problems while President Najibullah was in power and not while President Karzai was in power. During the interview, he also held that he was working outside a building when the explosion happened in Jalalabad and that he started running in the opposite direction of where policemen were, because they were shooting and he could be hit by gunfire. After the authorities pointed out that this did not coincide with his previous statement, he said that he stayed outside the building. When the authorities asked him why he did not request the police to contact his boss at the building construction site in order to corroborate his statements, he said that he did not have a real boss and that only an engineer occasionally came to supervise the work and paid his wages. When asked whether the police who received the bribe stipulated conditions for his release, he replied in the negative. When confronted with his previous statement, he stated that his wife's uncle was the one who told him to leave, but the police also wanted him to leave Afghanistan. As to his allegations that his family was sought by the Taliban, he noted that given his father's and brother's work positions, the Taliban thought they were Government spies.

4.5 On 17 January 2011, at the Refugee Appeals Board hearing, the complainant claimed that he was on his way home from work and had walked for about 20 minutes, close to the airport, when the explosion occurred. Confronted with his previous statements, he replied that he was on his way out of the building when the explosion occurred, that he ran away from the site, that the police told him to stop, but he ran on because he panicked. He also pointed out that he had been detained because he spoke Pashto and came from Tora Bora. Confronted with his previous statement, he submitted that Chaparhar and Tora Bora were close to each other. Likewise, he was confronted with his previous inconsistent statements concerning the conditions for his release. He told the authorities that the police was afraid that he would tell someone about the bribe. For this reason the chief of police required him to leave the country.

4.6 In the asylum registration report, the complainant stated that his lowest ribs had been bruised two years before and that he was waiting for a medical examination. Otherwise, his health was good. At the interview with the Immigration Service on 21 October 2010, he asserted that in Denmark he was being treated for stomach complaints. In the pleading of 10 January 2011 submitted before the Refugee Appeals Board hearing, his counsel requested a stay of proceedings to allow the complainant to be examined for signs of torture and appended two memoranda dated 11 October and 13 December 2010, prepared by a medical consultant. At the Board hearing in 17 January 2011, the complainant repeated his statements and informed the Board that doctors in Denmark could not perform surgery on his ribs and he therefore took painkillers. He also took medication because he had nightmares.

4.7 Concerning its national legislation, the State party notes that pursuant to section 7, paragraph 1, of the Aliens Act, a residence permit can be granted to an alien if the person falls within the provisions of the Convention relating to the Status of Refugees. For this purpose, article 1.A of that Convention has been incorporated into Danish law. Although this article does not mention torture as one of the grounds justifying asylum, it may be an element of persecution. Accordingly, a residence permit can be granted in cases where it is found that the asylum seeker has been subjected to torture before coming to the State party, and where his substantial fear resulting from the outrages is considered well-founded. This permit is granted even if a possible return is not considered to entail any risk of further persecution. Likewise, pursuant to section 7, paragraph 2, of the Aliens Act, a residence permit can be issued to an alien upon application if the alien risks the death penalty or being subjected to torture, inhuman or degrading treatment or punishment in case of return to his country of origin. In practice, the Refugee Appeals Board considers that these conditions are met if there are specific and individual factors rendering it probable that the person will be exposed to a real risk.

4.8 Decisions of the Refugee Appeals Board are based on an individual and specific assessment of the case. The asylum seeker's statements regarding asylum motive are assessed in the light of all relevant evidence, including general background material on the situation and conditions in the country of origin, in particular, whether systematic gross, flagrant or mass violations of human rights occur. Background material is obtained from various sources, including country reports prepared by other Governments as well as information available from the United Nations High Commissioner for Refugees and prominent non-governmental organizations (NGOs).

4.9 In cases where torture is invoked as part of the basis for asylum, the Refugee Appeals Board may request the asylum seeker to be examined for signs of torture. The decision as to whether it is necessary to undertake a medical examination is made at a Board hearing and depends on the circumstances of the specific case, such as the credibility of the asylum seeker's statement about torture.

4.10 The State party submits that it is the responsibility of the complainant to establish a prima facie case for the purpose of admissibility of the complaint under article 22 of the Convention. In the present complaint, it has not been established that there is substantial ground for believing that the complainant would be in danger of being subjected to torture if returned to Afghanistan. The complaint is manifestly unfounded and, therefore, it should be declared inadmissible.

4.11 The purpose of the complaint is to use the Committee as an appellate body to have the factual circumstances advocated in support of his claim of asylum reassessed by the Committee. The State party recalls the Committee's general comment No. 1 (1997) on the

implementation of article 3 of the Convention,^c and points out that the Committee should give considerable weight to findings of fact made by the State party concerned. In the present case, the complainant had the opportunity to present his views, both in writing and orally, with the assistance of legal counsel. Subsequently, the Refugee Appeals Board conducted a comprehensive and thorough examination of the evidence in the case. Therefore, it submits that the Committee must give considerable weight to the findings of the Board.

4.12 The Refugee Appeals Board rejected the complainant's claim on the grounds that he had not rendered it probable that he would risk new outrages on the part of the Taliban if returned to Afghanistan. He stated during the proceedings that all workers were questioned and searched by the Taliban. Hence, he was not being persecuted personally. In addition, he gave a false name and he lived in Afghanistan without any further problems for at least one year after the incident.

4.13 As to the complainant's claim of being tortured by the Afghan authorities, the State party argues that his statement about being wanted by the Afghan authorities was not credible since he had given such fundamentally diverging statements as to his place of origin, his whereabouts when the explosion occurred in Jalalabad, the circumstances in which he was detained, and the conditions for his release.^d

4.14 As to the complainant's claim that the inconsistencies in his statements were due to the interpretation service, the State party notes that through the interviews with the police and the immigration authorities, the complainant was provided with language interpretation to and from Pashto, as it is his mother tongue. It further submits that after having had the asylum registration of 23 August 2010 read out to him, the complainant confirmed his statement and signed the report without mentioning any language problem in connection with the interview conducted by the police. After the interviews conducted by the Immigration Service, the reports were translated by the interpreter and reviewed with the complainant, who had the opportunity at that stage to make comments, if any. However, he made no comment about language problems. Likewise, during the Refugee Appeals Board hearing, in which the complainant was represented by his counsel, no objections were made to the interpretation of his statements.

4.15 The State party submits that it was unnecessary to initiate an examination of the complainant for signs of torture, as requested by the complainant, since his statements were not credible. The immigration authorities accepted the complainant's allegation about having been subjected to violence resulting in a broken rib in connection with the conflict with the Taliban, but concluded that he was not under the threat of Taliban persecution and therefore he would not risk new outrages by them. In contrast, the Refugee Appeals Board was unable to accept as fact the complainant's allegation of having been detained and subjected to acts of violence by the Afghan authorities.

4.16 The complainant produced various new details before the Committee, including a photocopy allegedly reproducing a newspaper article from an Afghan local newspaper containing a notice declaring that the applicant was wanted for terrorism. The State party notes that this document was not submitted during the asylum proceedings. It further claims that it does not provide significance evidence in the case and that there is no credible explanation as to why this article is only produced at this late stage. According to the translation requested by the Board, the article was published in *The Nangarhar Daily* newspaper on 15 July 2010. It appears from the article that the security police of the

^c *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.*

^d See paragraphs 4.3–4.5 above.

Nangarhar province informed the public that K.H.,^e son of K.R., residing in the Nangarhar province, Chaparhar district, had been arrested with two friends by the security forces on suspicion of having placed roadside bombs. However, the persons succeeded in escaping after one day. The two friends were arrested again. The State party further points out that it is not possible to establish the authenticity of this document or to verify its information. Nevertheless, even if the article is accepted as true, it does not seem to substantiate the credibility of the complainant's statements during the asylum proceedings, due to several discrepancies between the information provided in it and his statements, such as the name of the person, his place of residence, circumstances of the arrest and release of the other arrested persons, and the dates of the alleged detention and the article's publication.

4.17 Should the Committee find the complaint admissible, the State party argues that the complainant has not established that his return to Afghanistan would constitute a violation of article 3 of the Convention. It further states that article 3, paragraph 1, of the Convention requires that the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is to be returned and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, although it does not have to meet the test of being highly probable.^f The existence of a consistent pattern of gross, flagrant or mass violation of human rights in a country does not, as such, constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country.^g

The complainant's comments on the State party's observations

5.1 On 3 February 2012, the complainant submitted his comments on the State party's observations. He asserts that in addition to a violation of article 3, paragraph 1, the State party has also violated article 3, paragraph 2, of the Convention, since by denying the complainant's request for medical examination, it has failed to gather the necessary information in order to assess his claims of torture before making a final decision.

5.2 The complainant agrees with the description of the fact of the case provided by the State party.

5.3 He highlights that he fears that he is at risk of persecution by the Taliban and the Afghan authorities, in particular by the latter due to the fact that he was forced to agree to cooperate with the Taliban when he was detained by them, and this could be known by the Afghan police. If returned to Afghanistan, he would be tortured by the authorities in order to force him to confess his cooperation with the Taliban.

5.4 The Danish authorities based their assessment about the credibility of his claim on the divergent statements he gave at the beginning of the asylum proceedings. However, this problem often occurs in the first interview of asylum seekers, since they fear to tell the truth and feel insecure. Nevertheless, the complainant informed the immigration authorities about the circumstances in which he was tortured and even submitted medical evidence in

^e The name provided does not correspond with the complainant's name.

^f The State party refers to communications Nos. 270/2005 and 271/2005, *E.R.K. and Y.K. v. Sweden*, decision adopted on 30 April 2007, paras. 7.2–7.3; No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006, paras. 7.1–7.2; No. 180/2001, *F.F.Z. v. Denmark*, Views adopted on 30 April 2002, paras. 9–10; and No. 143/1999, *S.C. v. Denmark*, Views adopted on 10 May 2000, paras. 6.4 and 6.6. It also refers to the Committee's general comment No. 1.

^g The State party refers to communications No. 220/2002, *R.D. v. Sweden*, decision adopted on 2 May 2005, para. 8.2; No. 245/2004, *S.S.S. v. Canada*, decision adopted on 16 November 2005, para. 8.3; *E.R.K. and Y.K. v. Sweden*, para. 7.2; and No. 286/2006, *M.R.A. v. Sweden*, decision adopted on 17 November 2006, para. 7.3.

support of his claim. He reiterates that his statements' inconsistencies were caused by inadequate interpretation, which in his case was particularly important since he is illiterate and could not read and confirm whether translations reflected in an accurate manner what he wished to communicate to the authorities. His counsel could not check the accuracy of the translation since he is not a Pashto speaker. Therefore, there was no way to verify whether these translations, noted in the decisions of the Immigration Service and the Refugee Appeals Board, were correct and accurate.

5.5 He could not submit a proper medical report on any physical evidence of torture, because he could not afford it. However, he provided the authorities with the two medical "memoranda" prepared by a physician. Although they did not relate to signs of torture, these documents provided enough information to justify his request for further medical examination. Moreover, at the Refugee Appeals Board hearing he explained that he had three broken ribs and also showed other sequelae of the violence inflicted by the authorities on his hands and one leg. The complainant further argues that in the light of the clear evidence showing a consistent pattern of gross, flagrant and mass violation of human rights in Afghanistan, if the Danish authorities doubted the credibility of his statements, they should have ordered a specialized medical examination, as he requested. He further argues that he met his counsel on 10 January 2011 and that the same day the counsel submitted a request for a stay of proceedings and for a medical examination. On 17 January 2011, at the beginning of the Board hearing, this request was reiterated orally. Nevertheless, no decision was taken during the hearing, and afterwards the Board decided to reject the complainant's request for asylum, without ordering a medical examination.

5.6 Notwithstanding the State party's acceptance of the complainant's claim concerning the acts of violence inflicted by the Taliban, it has not explained why this was not relevant under asylum law in order to determine the real personal risk that he would face if returned to Afghanistan, and limited itself to denying such a possibility. Moreover, as the authorities accepted that the complainant suffered some form of violence inflicted by the Taliban, they failed to assess whether the Government would be able to protect the complainant against possible reprisals from the Taliban. The complainant recalls that the risk does not have to meet the test of being highly probable.^h Likewise, the complainant argues that the State party does not provide enough details about the contradictory statements that would render his claim of torture by the Afghan authorities not credible.ⁱ

5.7 As to the asylum proceedings, the complainant notes that the Refugee Appeals Board decision cannot be appealed to a higher court and that one of the three members of the Board is an employee of the Danish Ministry of Justice, which puts in question the impartiality and independence of the Board. The complainant further claims that with respect to considering asylum requests, the immigration authorities' assessment does not necessarily comply with the standards enshrined in article 3 of the Convention.

5.8 At the Refugee Appeals Board hearing, many of the questions posed by the immigration service officers and the members of the Board attempted to show the inconsistencies of the complainant's statements and his lack of credibility. The manner in which the questions were posed by the Board members gave the complainant the feeling of being challenged by the same persons who had to decide on his request by the end of the hearing.

5.9 Although the Committee is not an appellate body, as stated in its general comment No. 1, it is not bound by the findings of State party's agencies and has the power of free

^h The complainant refers to the Committee's general comment No. 1, para. 6.

ⁱ The complainant refers to communication No. 120/1998, *Elmi v. Australia*, decision adopted on 14 May 2009.

assessment of the facts based upon the full set of circumstances in every case, as provided by article 22, paragraph 4, of the Convention.

5.10 The complainant points out that the State party accepted that he was subjected to serious violence by the Taliban. Nevertheless, the State party's authorities did not assess the gravity of the violence inflicted in order to see whether this amounted to torture. Moreover, a medical examination would have also given more details about his allegation of torture by the Afghan authorities, but he was prevented from producing this evidence. He further asserts that the human rights situation in Afghanistan with regard to the violations committed by the Taliban currently persists and that the governmental authorities are unable to provide protection against the Taliban's violence.

5.11 As to the authorities' assessment of his claim regarding the detention and torture inflicted by the Afghan authorities, the complainant argues that the reasons why the authorities concluded that his statements were contradictory are not relevant, since they focused mainly on the fact that he contradicted himself regarding the circumstances in which he was detained after the explosion in Jalalabad. Furthermore, the State party failed to include in its assessment the fact that prominent NGOs had reported the practice of torture by the Afghan police.

5.12 The complainant states that he is from Tora Bora, a region from which many Taliban come, and he speaks Pashto. If returned, these two facts will be enough for the authorities to interrogate him. This, together with the fact that he was forced to promise the Taliban that he would assist them and that the police in Kabul may be aware about his escape from prison, will put him at risk of torture.

5.13 As to the copy of the newspaper article provided along with his complaint, the complainant notes that the Committee is free to assess all facts based upon the full set of circumstances in the case and that it is not prevented from considering evidence that was not produced within the State party's proceedings. He further explained that he could not provide this document to the authorities because he did not receive it before May 2011. He also emphasizes that the article proves the Afghan authorities' knowledge about his previous detention and escape from prison, which indicates that he will be at real and personal risk if returned to Afghanistan.

State party's further submission

6.1 On 11 April 2012, the State party submitted further information concerning the complainant's comments on its observations on the admissibility and the merits.

6.2 The State party points out that the Refugee Appeals Board fully considered the complainant's claim about conflict with the Taliban and that, as stated in its decision, the complainant himself asserted that he had given a false name, that all workers had been questioned and searched in general, and that he had been able to live in Afghanistan for a year without further problems.

6.3 The Refugee Appeals Board is under an obligation to bring out the facts and make objectively correct decisions. Depending on the circumstances, the Board is supposed to ask the asylum seeker questions at the oral hearing to bring out the facts adequately. This however does not compromise its impartiality and professionalism. The State party further notes that neither the complainant nor his counsel had claimed that a member of the Board had questioned the complainant in an unpleasant manner. After the close of the hearing the complainant was asked whether he had any further comments to make, but he had none.

6.4 The fact that the Refugee Appeals Board did not expressly refer to the Convention cannot be considered to reflect a failure to include its obligations in its decisions.

6.5 In reviewing an asylum application, the Refugee Appeals Board takes into account all factual and background information available at the time of its decision.

6.6 The State party argues that the number of broken ribs caused by the Taliban's violence would not affect the specific assessment of the assault allegedly suffered by the applicant in terms of asylum law.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a complaint, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the instant case, the State party has recognized that the complainant has exhausted all available domestic remedies.

7.3 The State party submits that the complaint is inadmissible as manifestly unfounded. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues, which should be dealt with on the merits. Accordingly, the Committee finds no obstacles to the admissibility and declares the communication admissible. Since both the State party and the complainant have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of the merits.

Consideration of the merits

8.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present complaint in the light of all information made available to it by the parties concerned.

8.2 The issue before the Committee is whether the expulsion of the complainant to Afghanistan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return (refouler) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 With regard to the complainant's claims that most likely he would be imprisoned upon return and subjected to torture, the Committee must evaluate whether there are substantial grounds for believing that he would be personally in danger of being subjected to torture upon return to his country of origin. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of

flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

8.4 The Committee recalls its general comment No. 1 on the implementation of article 3 of the Convention, in which it states that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being highly probable, the Committee recalls that the burden of proof normally falls upon the complainant, who must present an arguable case establishing that he runs a “foreseeable, real and personal” risk. The Committee also recalls that, as set forth in its general comment No. 1, while it gives considerable weight to the findings of fact of the State party’s bodies, it is entitled freely to assess the facts of each case, taking into account the specific circumstances.

8.5 In the present case, the Committee notes that the State party has accepted that the complainant was detained by the Taliban while he was working on a road construction project, and that the Taliban subjected him to serious violence, causing him at least one broken rib. The Committee also notes that the State party considered that the complainant would not risk outrages by the Taliban upon his return since he was not individually persecuted, he had given them a false identity, and he was able to live in Afghanistan without further problems. The Committee notes that the State party argues that the complainant’s claim as to the alleged torture inflicted by the Afghan authorities was not credible due to diverging statements about his place of origin, and the circumstances of his detention and escape from prison. The Committee also notes the State party’s argument that the Immigration Service interviews and the Danish Refugee Appeals Board hearing were held with the assistance of an interpreter working to and from Pashto and that the complainant made no comments about language problems. The Committee further notes that despite the complainant’s request, the Board considered that a specialized medical examination was unnecessary since his statements were contradictory.

8.6 The Committee notes that the complainant contests the State party’s assessment as to the risk he would face if returned to Afghanistan. He claims that he would be at risk of persecution by the Taliban and the Afghan authorities. The Committee notes that the complainant claims that the State party has not explained why the uncontested claim concerning the violence he was subjected to by the Taliban is not relevant under asylum law, and that the authorities failed to assess whether the Afghan authorities would be able to protect him against possible reprisals from the Taliban. As to his claim about the violence inflicted by the Afghan authorities, the Committee also notes that the complainant claims that the State party based its assessment about the credibility of his claim on the divergent statements he gave within the asylum proceedings, that his statement’s inconsistency stemmed from inadequate language interpretation, and that he was unable to check it since he is illiterate. He further argues that although he requested the Refugee Appeals Board for a specialized medical examination in order to verify whether he has signs of torture, and showed the Board alleged signs of torture on his hands and one leg or foot, the Board rejected his request for asylum without ordering this examination.

8.7 The Committee observes that it is not disputed that the complainant was detained by the Taliban and subjected to violence, causing him at least one broken rib. The Committee also observes however that the complainant’s allegation of persecution by Taliban is mainly related to his father’s and brother’s activities, that they were killed around 2006 or 2007, that there is no claim that this persecution continues against any other member of the family, including the complainant, and that his detention and ill-treatment was not related to a personal persecution. The Committee further observes that after this incident the complainant was able to live in Afghanistan for at least one year without any further problem or need of special protection. Accordingly, the Committee considers that the complainant has failed to provide sufficient evidence in support of his claims to the effect

that he would be exposed to a real and personal risk of torture by the Taliban if returned to Afghanistan.

8.8 The Committee observes that in the interviews before the Danish Immigration Service and the Refugee Appeals Board, the complainant, who is illiterate, provided inconsistent statements as to his place of origin, the circumstances in which he was detained by the Afghan police, and his escape from prison; that the interviews were held with the assistance of an interpreter to and from Pashto; and that the complainant tried to clarify his statements following questions during the Board hearing. The Committee also notes that on 10 January 2011 and during the Board hearing of 17 January 2011, the complainant requested a specialized medical examination and argued that he lacked financial means to pay for an examination himself. The Committee further observes that the complainant's allegation that he showed to the Board sequelae of the violence inflicted by the Afghan authorities on his hands and one leg or foot was not contested by the State party. The Committee considers that although it is for the complainant to establish a prima facie case to request for asylum, it does not exempt the State party from making substantial efforts to determine whether there are grounds for believing that the complainant would be in danger of being subjected to torture if returned. In the circumstances, the Committee considers that the complainant provided the State party's authorities with sufficient material supporting his claims of having been subjected to torture, including two medical memoranda, to seek further investigation on the claims through, inter alia, a specialized medical examination. Therefore, the Committee concludes that by rejecting the complainant's asylum request without seeking further investigation on his claims or ordering a medical examination, the State party has failed to determine whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned. Accordingly, the Committee concludes that, in the circumstances, the deportation of the complainant to his country of origin would constitute a violation of article 3 of the Convention.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Afghanistan by the State party would constitute a breach of article 3 of the Convention.

10. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.

Communication No. 467/2011: *Y.B.F. et al. v. Switzerland*

<i>Submitted by:</i>	Y.B.F., S.A.Q. and Y.Y. (represented by counsel, Tarig Hassan)
<i>Alleged victim:</i>	The complainants
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	24 June 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 31 May 2013,

Having concluded its consideration of complaint No. 467/2011, submitted to the Committee against Torture by Y.B.F., S.A.Q. and Y.Y. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants, their counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainants are Y.B.F. (born on 17 April 1970), his wife, S.A.Q. (born on 26 October 1983), and their son, Y.Y. (born on 30 August 2007), all nationals of Yemen. The first two complainants are asylum seekers, whose applications for asylum were rejected and, at the time of submission of the complaint, they were awaiting expulsion to Yemen. They claim that their expulsion to Yemen would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainants are represented by counsel Tarig Hassan.

1.2 On 29 June 2011, under rule 114, paragraph 1 (former rule 108, paragraph 1), of its rules of procedure (CAT/C/3/Rev.5), the Committee requested the State party to refrain from expelling the complainants to Yemen while their complaint was under consideration by the Committee. On 12 July 2011, the State party informed the Committee that the Federal Office for Migration of Switzerland had requested competent authorities to stay the execution of the expulsion order in relation to the complainants until further notice.

The facts as presented by the complainants

2.1 The complainants lived in the city of Aden, in the southern part of Yemen. Y.B.F. (the first complainant) worked as a technician in a petroleum refinery.

2.2 On 21 May 2009, the first complainant participated in a demonstration organized by supporters of the Southern Movement, which calls for the independence of South Arabia (South Yemen) from Yemen. The protest rally in question was against the unequal pay between employees of the petroleum refineries in the north and the south of Yemen, as well as against other forms of discrimination towards southerners. When police officers started to disperse the demonstrators, he received a truncheon blow to the nose and was arrested. He was held at al-Mansoura prison in Aden, accused of being a supporter of the al-Herak movement, questioned and intimidated. While in detention, delegates of the non-

governmental organization al-Mauna visited the prison and took the first complainant's personal data. He was released on 30 June 2009 but remained under surveillance.

2.3 On 6 July 2009, the first complainant was arrested at his home and beaten. He was then brought to al-Brika Police Centre, where individuals detained for political reasons were usually kept, until the evening of the next day when another demonstration of the Southern Movement was expected to take place. After his release, the first complainant was informed by one of his friends working for the intelligence service that the former was registered as an activist of the Southern Movement by the Political Security Organization and might be apprehended again at any moment. As a consequence, the first complainant decided to begin organizing the departure of his family.

2.4 On 12 January 2010, security service officers visited the first complainant's home in Aden. As he was not present, they left a summons issued by the Ministry of Interior, al-Brika Directorate. The summons referred to article 64 of the Criminal Code. The first complainant complied with the order and went to the al-Brika Police Centre, where he was threatened verbally and detained for 24 hours.

2.5 On 19 January 2010, the complainants left Yemen by plane with a Schengen visa issued by the Italian Embassy and travelled to Milan, transiting through Cairo. On 21 January 2010, they arrived in Switzerland and applied for asylum.^a

2.6 The first complainant is an active member of the Southern Movement in Switzerland, which is referred to by the complainants interchangeably as the Southern Democratic Assembly and the Southern Mobility Movement. He is responsible for the Movement's public relations in the canton of Fribourg. He regularly attends meetings and demonstrations. Reacting to the upheavals in Yemen, the first complainant has become more and more active within the organization in Switzerland. Several high-ranking members of the Southern Democratic Assembly have provided attestations and letters in support of the first complainant's asylum application.

2.7 On 27 January 2010 and 10 February 2010, the Federal Office for Migration held asylum interviews with the complainants. On 5 May 2010, the Office rejected the complainants' asylum requests and ordered their expulsion, stating that the complainants' accounts could not be deemed credible. In the light of the fact that the complainants left Yemen lawfully by plane from the international airport in Sana'a, the Federal Office for Migration questioned, in particular, the first complainant's claim that he had been registered by the security service in Yemen as an activist of the Southern Movement. Furthermore, the complainants' claim that their passports were destroyed by a smuggler upon their arrival to Switzerland was interpreted by the Federal Office for Migration as an attempt to conceal the real date and circumstances of their departure from Yemen. In addition, the first complainant failed to provide the Federal Office for Migration with an attestation from the non-governmental organization that had visited him in the al-Mansoura prison, despite his initial claim that he could undoubtedly obtain such an attestation.

2.8 On 7 June 2010, the complainants appealed the decision of the Federal Office for Migration to the Federal Administrative Court, which upheld their expulsion order on 4 January 2011. Referring to the description of the first complainant's arrest and detention after 21 May 2009, the Federal Administrative Court stated that he had not provided enough details. In particular, he had not been able to provide the name of the non-governmental organization that had allegedly visited al-Mansoura prison while he had been detained there, and he had contacted this organization with the request to provide an

^a The asylum application of S.A.Q. is based in its entirety on the alleged persecution of her husband by the Yemeni authorities.

attestation only after the first negative asylum decision by the Federal Office for Migration. The attestation that was issued by al-Mauna on 11 May 2010 and provided by the first complainant to the Federal Administrative Court did not fully correspond to his statements, since he had never claimed before the asylum authorities to have been a human rights activist before his arrest. Moreover, two diverging, non-official translations of this attestation from the Arabic original were submitted. Furthermore, the first complainant had not been able to mention any other public demonstrations having taken place after his release. The Federal Administrative Court stated that the first complainant's efforts to obtain travel visas and organize the departure of his family from Yemen were incompatible with his alleged surveillance. He had left Yemen with his own passport and legally obtained visa, which would not have been possible had he had actually been wanted by the Political Security Organization or been under surveillance. The Federal Administrative Court also questioned authenticity of the summons issued by the Ministry of Interior, al-Brika Directorate, which the first complainant submitted together with his asylum application. Moreover, no war, civil war or situation of generalized violence prevailed in Yemen that would put at risk any person originating from this country irrespective of his or her individual circumstances. Finally, the Federal Administrative Court concluded that the first complainant had not engaged in any concrete political activity since his arrival in Switzerland.

2.9 On 28 January 2011, the complainants asked for a revision of the judgement rendered by the Federal Administrative Court and provided new evidence in support of their claims, namely, an attestation issued on 22 January 2011 by the Secretary of Information of the Southern Democratic Assembly based in the United Kingdom, and another attestation issued on 23 January 2011 by the office of the former President of the Democratic Republic of Yemen, Ali Salim al-Beidh. On 15 February 2011, the complainants submitted a scanned copy of the attestation issued on 19 January 2011 by the al-Mansoura prison authorities and confirming the detention of the first complainant from 21 May 2009 to 30 June 2009. In addition, the complainants provided a number of documents concerning activities of the first complainant in Switzerland, such as articles from the Internet and photographs of demonstrations that were attended by him throughout the year 2010 and in March 2011.

2.10 On 27 May 2011, the Federal Administrative Court rejected the complainants' request for revision. With respect to the new evidence submitted by the first complainant (see paragraph 2.9 above), the Federal Administrative Court held that, even on the assumption that these documents were authentic and not written by complaisance, it was insufficient to prove his alleged persecution. In particular, the attestation issued by al-Mansoura prison authorities did not specify the reasons for detaining the first complainant but just referred to "criminal proceedings". The fact that the first day of his detention coincided with the demonstration organized by the Southern Movement in Aden was insufficient, in the opinion of the Federal Administrative Court, to establish a causal link between the two events.

2.11 The Federal Administrative Court did not assess most of the evidence relating to the first complainant's political activities in Switzerland for procedural reasons due to the delay in presenting it to the asylum authorities.^b It stated, however, that there was no reason to assume that the first complainant would be at risk of being subjected to treatment contrary to the Convention upon return to Yemen due to his political activities in exile. Thus, he appeared to be a mere participant in some of the numerous demonstrations organized by the

^b The complainants did not establish, inter alia, that it was impossible for them to provide this information in the course of the ordinary asylum proceedings and before the decision of the Federal Administrative Court of Switzerland on their appeal of 7 June 2010.

Southern Democratic Assembly in Switzerland and it would be practically impossible for the Yemeni authorities to identify each of the participants thereof, except for some well-known opposition leaders. Furthermore, the complainants did not establish that, following recent changes in the social and political situation in Yemen, the activities of the first complainant in Switzerland had led to a significant change of circumstances for them after the completion of the ordinary asylum proceedings. The Federal Administrative Court concluded, therefore, that the execution of the expulsion order in relation to the complainants was lawful, reasonable and possible.

2.12 The complainants submit that they have exhausted all available domestic remedies to obtain redress before the State party's asylum authorities. They are obliged by law to leave Switzerland; in case of non-compliance, they would be forcibly deported to Yemen.

The complaint

3.1 The first complainant submits that he is at a real and imminent risk of being subjected to torture or other inhuman and degrading treatment if he were forcibly returned to Yemen. He adds that, considering the extremely violent and unstable situation in Yemen, his wife and their son would be at an imminent risk of suffering serious harm as well. He argues that, by expelling him and his family to Yemen, Switzerland would violate its obligations under article 3 of the Convention.

3.2 The complainants submit that their accounts provided in the framework of the asylum proceedings were detailed, substantiated and credible. Furthermore, these accounts were confirmed by a number of independent reports.^c They add that the first complainant never claimed to have been a high-ranking member of the Southern Movement. Nevertheless, he was perceived as a critic of the Government by the Yemeni authorities and put under intense pressure. His departure from Yemen in January 2010 was only possible with the help of a friend, significant financial investments and due to his low profile.

3.3 As to the reasoning of the Federal Administrative Court that the summons and the attestation issued by al-Mansoura prison authorities did not specify the reason for the first complainant's detention (see paragraph 2.9 above), he refers to the reports by the Amnesty International^d and the United States Department of State,^e documenting widespread police brutality and torture of suspected supporters of the Southern Movement, as well as of the ordinary criminal detainees in Yemen, and submits that he would have been subjected to serious ill-treatment even if he had not been wanted for political reasons.

3.4 The complainants submit that the risk of their persecution in Yemen is aggravated by the first complainant's political activities in Switzerland. He is a member of the Southern Democratic Assembly in Switzerland and his name and photographs have been linked to the Assembly and published on the Internet. Furthermore, he holds an important position in the canton of Fribourg. The Swiss authorities acknowledge in the judgement of the Federal Administrative Court of 27 May 2011 that the Southern Democratic Assembly is or has been closely monitored by the Yemeni authorities. They state that persons identified as leaders of this movement may be at risk of persecution in case of return. The Federal Administrative Court considered, however, that the first complainant's activities

^c See Amnesty International, *Yemen: Cracking Down Under Pressure*, London, 2010, p. 67, and BBC, "Civil war fears as Yemen celebrates unity", 21 May 2009, available at http://news.bbc.co.uk/2/hi/middle_east/country_profiles/8062225.stm.

^d See Amnesty International, "Yemen – Amnesty International Report 2010", available at www.amnesty.org/en/region/yemen/report-2010#.

^e See the United States Department of State, "2009 Human Rights Report: Yemen", 11 March 2010, available at www.state.gov/j/drl/rls/hrrpt/2009/nea/136083.htm.

and position were not of sufficient prominence to trigger a well-founded fear of persecution. The first complainant argues that there are reasons to believe that he will be apprehended upon his return, due to his past experiences in Yemen and because he comes from a politically active family. It should be assumed, therefore, that his family name alone is sufficient to trigger the suspicion of the Yemeni authorities.

3.5 The complainants argue that the current political situation in Yemen is extremely unstable and is characterized by high insecurity and violence.^f Since President Ali Abdullah Saleh's injury and subsequent departure, protests have continued. Whether he will return or whether there will be a regime change remains unclear. They add that the Southern Mobility Movement has played a crucial role in the organization and perpetuation of protests.^g They submit that it should be assumed that if the current regime remains in place, members of the Southern Movement would be at a real and imminent risk of being exposed to reprisals.

State party's observations on the merits

4.1 On 25 January 2012, the State party submitted its observations on the merits. It recalled the facts of the complaint and notes the first complainant's arguments before the Committee that he would run a personal, real and serious risk of being subjected to torture if returned to his country of origin. He did not present any new elements that would call into question the decisions of the State party's asylum authorities but rather disputed their assessment of the plausibility of his allegations.

4.2 According to article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds for believing that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.^h The existence of gross, flagrant or mass violations of human rights is not in itself a sufficient basis for concluding that an individual might be subjected to torture upon his or her return to his or her country, and additional grounds must exist for the risk of torture to qualify under the meaning of article 3 as "foreseeable, real and personal".

4.3 The State party submits that it is aware that the general situation in Yemen is characterized by instability since the beginning of the riots in January of 2011, and that until now the human rights situation has been characterized, inter alia, by arbitrary arrests by the police, especially by the secret service, and by the frequent occurrence of torture and ill-treatment in detention.ⁱ However, these facts do not constitute a situation of generalized

^f See Human Rights Watch, "Days of bloodshed in Aden", 9 March 2011, available at www.hrw.org/reports/2011/03/09/days-bloodshed-aden-0.

^g See the Jamestown Foundation, "Filling the void: the Southern Mobility Movement in South Yemen", 25 April 2011, available at www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=37845.

^h The State party refers to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 (*Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44)*, annex IX), paras. 6 and 8; and to the Committee's jurisprudence in communication No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, para. 10.2, and communication No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998, paras. 6.3 and 6.5.

ⁱ See Amnesty International, "Yemen – Amnesty International Report 2008", available at www.amnesty.org/en/region/yemen/report-2008, and United States Department of State, "2007 Country Reports on Human Rights Practices – Yemen", 11 March 2008, available at

violence. There can be no question of systematic, serious, flagrant or mass violations of human rights under the Convention. The resignation of President Ali Abdullah Saleh on 23 November 2011 did not change in principle the general situation in Yemen. His resignation has not resulted in either a worsening or a noticeable improvement of the situation. The State party adds that, according to the Committee's jurisprudence, the situation in Yemen is not in itself a sufficient basis for concluding that the complainant might be subjected to torture upon his return to that country. It argues that the complainant has not demonstrated that he would face a foreseeable, real and personal risk of being subjected to torture if returned.

4.4 With reference to the Committee's General Comment No. 1 (para. 8 (b)), the State party submits that torture or ill-treatment allegedly suffered by the complainant in the past is one of the elements that should be taken into account in assessing the risk of him or her being subjected to torture or ill-treatment if returned to the country of origin. In this regard, the State party recalls the complainant's claims that he was arrested and detained in 2009 after participating in a demonstration organized by the Southern Democratic Assembly, that he received a truncheon blow to the nose during the arrest, that he was questioned once during his detention and was threatened verbally, that he was released on 30 June 2009 after having spent 40 days in detention, that he was again detained overnight on 6 July 2009 on the eve of another demonstration, that he was searched for by the security service officers at his home on 12 January 2010 and summoned to report himself to the al-Brika Police Centre, where he was detained for 24 hours and threatened.

4.5 As to the attestation issued on 22 January 2011 by the Southern Democratic Assembly (see paragraph 2.9 above), the State party submits that it is not decisive, since the attestation does not contain any indication as to how the information about the first complainant's detention was obtained and verified. Therefore, it cannot be excluded that this attestation was written solely on the basis of the first complainant's statements.

4.6 The State party further notes that, in order to prove his arrest and detention, the first complainant also provided another attestation issued on 23 January 2011 by the office of the former President of the Democratic Republic of Yemen (see paragraph 2.9 above). According to this attestation, the first complainant is an active personality in the Southern Movement and he was one of those who were "expelled from their work and who have suffered from prejudices and police pursuits, as well as from detention by the organs of the regime". In this regard, the State party submits that, similar to the attestation issued by the Southern Democratic Assembly, this document is also written in general terms and it does not indicate the source of the information. Therefore, the attestation cannot be considered as evidence of such a probative value that it would overturn the conclusion that has been reached by the State party's asylum authorities on the basis of the first complainant's own statements.

4.7 As to the attestation issued on 19 January 2011 by al-Mansoura prison authorities (see paragraph 2.9 above), the State party submits that, independently of the question of the authenticity of this document, it demonstrates that the first complainant has indeed been detained but does not necessarily support the alleged reasons for his detention put forward by the first complainant. According to the translation provided, he was detained because of criminal proceedings. The State party argues that this attestation is not decisive. The fact that, according to the attestation, the first day of the detention coincided with a time when, according to various sources, a demonstration took place at Aden is insufficient to prove the veracity of the first complainant's assertions about the reasons for his alleged detention.

www.state.gov/j/drl/rls/hrrpt/2007/100610.htm.

4.8 The State party concludes that the evidence submitted by the first complainant is not decisive, because it does not have sufficient probative value to outweigh the elements of improbability identified in the context of the domestic proceedings. For the same reasons, the first complainant is unable to demonstrate that he would be personally at concrete and serious risk of being subject to acts prohibited under the Convention if returned to his country of origin.

4.9 The State party further argues, with reference to the Committee's General Comment No. 1 (para. 8 (e)), that another element to be taken into account when assessing the first complainant's risk of being subjected to torture if returned to his country of origin is whether he has engaged in political activities in Yemen. The State party notes in this regard that during his asylum interviews the first complainant stated that he had been a member of the Yemeni Socialist Party before the unification of Yemen in 1990. The first complainant clearly stated that he became a member in order to benefit from certain privileges that a membership in the Yemeni Socialist Party entailed. In addition, the situation before the unification was not, according to the first complainant, the source of his asylum application. As to the situation after unification, the first complainant admitted that he was neither a member of any political party nor politically active. The State party adds that his only political activity seems to have been his participation in the demonstration on 21 May 2009, which is confirmed by the fact that he could not mention any other demonstrations that took place between his release and his departure from the country.

4.10 The State party adds that during the proceedings before the Federal Office for Migration, the first complainant has provided an attestation issued on 19 April 2010 by the Southern Democratic Assembly in the United Kingdom. The author of this attestation, A.N., states that the first complainant is a national of South Yemen who is involved in the activities of the Southern Movement and who was subjected to persecution, detention and torture. A.N. also describes the political situation in Yemen over the past two years. The State party's authorities have considered this attestation as a "complaisance" document without any probative value, given that it contained only general information and did not correspond to the first complainant's own statements as to his involvement in the activities of the Southern Movement.

4.11 According to the attestation issued on 22 January 2011 and provided by the first complainant to the Federal Administrative Court, A.N. states that his own sources in Yemen have confirmed that the first complainant was actively involved in the Southern Movement and that he was arrested and detained from 21 May 2009 to 30 June 2009 due to his participation in a demonstration in Aden. In view of the arguments advanced by the State party's asylum authorities with regard to the attestation issued by the Southern Democratic Assembly on 19 April 2010, which led them to conclude that the facts alleged by the first complainant were implausible, the State party submits that the new attestation should also be considered as written by complaisance, because it reiterates the earlier allegation that the first complainant was involved in the activities of the Southern Movement. The first complainant has stated, however, that he had not actively participated in the movements against the oppression of the South before his alleged arrest on 21 May 2009.

4.12 The State party also notes the second complainant's own assertion that she had left Yemen for the sole purpose of following and accompanying her husband. As for herself, she has not experienced any problems with the Yemeni authorities, but was frightened when officers visited their home searching for her husband. In addition, she has never been politically active.

4.13 As to the first complainant's political activities in Switzerland, the State party notes that he claims in his complaint to the Committee to have actively supported the cause of the South Yemeni community since his arrival in Switzerland. He claims to be a member of the

Southern Democratic Assembly and to be responsible for the organization's public relations in the canton of Fribourg. As part of his political activities, he participated in several meetings of this organization as well as demonstrations organized by it. In this regard, the first complainant provided an attestation of affiliation issued on 22 January 2011 by the Southern Democratic Assembly in the United Kingdom, and an attestation issued on 23 January 2011 by the office of the former President of the Democratic Republic of Yemen, as well as photographs and articles about demonstrations attended by him.

4.14 The State party's asylum authorities have found that the evidence submitted by the first complainant was insufficient to render credible his alleged future risk of being subjected to ill-treatment. It adds that both attestations issued by the Southern Democratic Assembly in the United Kingdom should be considered as written by complaisance. Although the second attestation mentions that the first complainant is indeed active in this organization, it fails to specify either his activities or his role. It states simply that the return of the first complainant to Yemen constitutes a high risk, without providing any substantiation in support of this statement.

4.15 According to the evidence submitted, the activities of the first complainant are mainly limited to his participation in five demonstrations organized by the Southern Democratic Assembly or other exiles originating from South Yemen. With reference to the judgement of the Federal Administrative Court of 27 May 2011, the State party submits that there is concrete evidence that the activities of the Southern Democratic Assembly have been closely observed by the Yemeni authorities in the past and that some particularly active persons or members of the governing structures of the organization could have been exposed to harm if returned to their country of origin. However, the first complainant has not established that he played in this organization a role likely to attract the attention of the authorities. He appears to be a mere participant of demonstrations organized by the Swiss branch of the Southern Democratic Assembly. However, such demonstrations being numerous not only in Switzerland but also in other countries, it is virtually impossible for the Yemeni authorities to focus not only on persons deemed to be opinion leaders, but also on each of the demonstrators appearing in such a context. The State party's asylum authorities established that his political activities in Switzerland were not of such significance that he could be identified by the Yemeni authorities as a well-known opponent of the existing regime. Even the first complainant's position as head of public relations of the Southern Democratic Assembly in the canton of Fribourg is not of such significance that it would make him particularly vulnerable.

4.16 Furthermore, the State party adds that the photographs of demonstrations that are accessible on the Internet do not allow the conclusion that the Yemeni authorities have taken note of the first complainant's activities in Switzerland. The sole fact that he is identifiable on the photographs is not enough to demonstrate a risk of ill-treatment in case of return. It is also difficult, for obvious practical reasons, to identify individual participants in a large demonstration if they are not previously known to the Yemeni authorities, which does not appear to be the case in the present complaint.

4.17 The State party also points to a number of factual inconsistencies in the first complainant's account, and therefore questions his credibility. It notes, in particular, that he left Yemen lawfully by plane from the international airport in the capital, which would not have been possible had he actually been wanted by the Political Security Organization or been under surveillance. Moreover, in light of his training and profession, the first complainant would not have recklessly taken the risk of being questioned during the passenger checks on the internal and international flights and would have instead left Yemen by ground transport.

4.18 The State party also submits that the first complainant could provide only limited information about the circumstances of his arrest on 21 May 2009, his detention for 40 days

at al-Mansoura prison and the questioning to which he was subjected, as well as about two subsequent 24-hour detentions. Furthermore, the summons issued by the Ministry of Interior, al-Brika Directorate, did not specify the reasons for summoning the first complainant. Even assuming that this document is authentic, it is insufficient to establish an eventual risk of persecution, since the first complainant could have been summoned for any other reason and then released after a short detention.

4.19 The State party also recalls that the first complainant provided little information about the visit of a member of the organization whose pressure led to his release and that he had not been able to name this organization during the asylum interviews. Moreover, the first complainant had contacted this organization with the request to provide an attestation only after the first negative asylum decision by the Federal Office for Migration, although the Office had given him a time limit for submitting this document. Furthermore, two diverging, non-official translations of this attestation from the Arabic original had been submitted, with the second translation “correcting” the first translation on the basis of the observations made by the Federal Office for Migration. The State party’s asylum authorities noted that this attestation did not mention either the name of the first complainant or the manner in which the information had been obtained. In addition, its contents did not fully correspond to the first complainant’s statements, since he had never claimed to be a human rights activist or a member of any political organization.

4.20 The State party argues that, in these circumstances, the asylum authorities cannot be reproached for having determined that the first complainant’s claims were implausible and that his allegations on the key points were contrary to logic and general experience and, therefore, lacked credibility.

4.21 The State party submits that, in light of the foregoing, there are no substantial grounds for fearing that the first complainant would be concretely and personally exposed to torture if returned to Yemen. His allegations and the evidence he provided do not allow the conclusion that his return would expose him to a foreseeable, real and personal risk of torture. The State party, therefore, invites the Committee to find that the return of the first complainant and his family to Yemen would not constitute a violation of the international obligations of Switzerland under article 3 of the Convention.

The complainants’ comments on the State party’s observations

5.1 On 2 April 2012, the complainants commented on the State party’s observations. As to the State party’s arguments that there is no situation of generalized violence and that there is no practice of systematic human rights violations in Yemen, the complainants recall their initial submission of 24 June 2011, which referred to various sources that suggested the opposite. In addition, they refer to a number of recent reports^j indicating that torture and other ill-treatment are widespread practices in Yemen and that they are committed, generally with impunity, against detainees held in connection with politically motivated acts, peaceful demonstrations or ordinary criminal offences.

5.2 With regard to the State party’s arguments that the first complainant has not been able to prove that he would face a foreseeable, personal and real risk of being subjected to torture if returned to Yemen, and that the attestations provided by him to the asylum authorities have been written by complaisance, the first complainant recalls that he handed in several official documents in support of his allegations and that these allegations find

^j See UN News Centre, “New outbreak of violence displaces thousands more in Yemen – UN refugee agency”, 9 March 2012, available at www.un.org/apps/news/story.asp?NewsID=41500; and Amnesty International, *Yemen: Submission to the UN Human Rights Committee, 104th Session of the Human Rights Committee, 12–30 March 2012*, London, 2012.

confirmation in independent reports. The State party, however, has not substantiated its claim that these documents may be inauthentic. In particular, there are no specific indications of falsification. As to the State party's criticism that the attestations do not indicate the source of the information that they contain, the complainants argue that since it is impossible for them to prove the authenticity of these documents, they must be accepted as evidence until proven inauthentic.

5.3 In relation to the State party's assertion that the first complainant did not take part in significant political activity before his departure from Yemen, except for the demonstration that led to his arrest, the first complainant recalls that he was a member of the Yemeni Socialist Party before the unification of Yemen. He adds that, while his statement that he was a member in order to obtain certain privileges clearly implies that he did not agree with the views of the Yemeni Socialist Party, he also stated during the asylum interviews that he always had a certain "internal anger", meaning that he was unhappy with the political situation and wanted things to change. The first complainant submits that the demonstration in the course of which he had been beaten and arrested together with his earlier membership in the Yemeni Socialist Party were apparently enough to make him a target of the Yemeni authorities. Moreover, irrespective of his previous political motivation, it does not take much to trigger the suspicion of the Yemeni authorities and to consequently face torture or other ill-treatment.

5.4 The first complainant further submits that the attestation issued on 22 January 2011 by the Southern Democratic Assembly in the United Kingdom states, inter alia, that his previous political activities and his membership in the Southern Democratic Assembly has made him a target of the Yemeni security service.

5.5 As to the State party's arguments summarized in paragraphs 4.15 and 4.16 above, the first complainant submits that he holds an important position in the Southern Democratic Assembly in the canton of Fribourg and adds that there are reasons to believe that he will be apprehended upon his return to Yemen due to his past experiences in that country. Moreover, a simple search on the Internet could reveal his political activities in exile. The first complainant recalls his initial claims that he comes from a politically active family and that his family name alone is sufficient to trigger the suspicion of the Yemeni authorities (see paragraph 3.4 above). Furthermore, due to his detention in Yemen after the demonstration of 21 May 2009, it is very likely that he is known to the Yemeni authorities and will therefore be identified by them upon arrival.

5.6 Concerning the credibility of the explanations given by the first complainant as to how he left Yemen, he submits that the friend who helped him organize the departure put himself at a risk. The first complainant adds that there is no reason why this should not be compatible with the reality in Yemen, as claimed by the State party. Furthermore, his accounts were detailed, substantiated and credible. The first complainant recalls that he never claimed to have been a high-ranking member of the Southern Movement. Nevertheless, he was perceived as a critic of the Government by the Yemeni authorities and put under intense pressure. His departure from Yemen in January 2010 was only possible with the help of the friend and significant financial investments, and due to his low profile.

5.7 The first complainant argues that there is a real and imminent risk that he would be subjected to torture or other inhuman and degrading treatment if he were forcibly returned to Yemen. He adds that by expelling him and his family to that country, Switzerland would violate its obligations under article 3 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5(a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5(b), of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party has recognized that the complainants have exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 The issue before the Committee is whether the removal of the first complainant and his family to Yemen would violate the State party's obligation under article 3 of the Convention not to expel or to return (refouler) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the first complainant would be personally in danger of being subjected to torture upon return to Yemen. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such a determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

7.3 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable" (para. 6), the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a "foreseeable, real and personal" risk.^k The Committee further recalls that in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned,^l while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, to freely assess the facts based upon the full set of circumstances in every case.

7.4 The Committee notes that the State party has drawn its attention to perceived factual inconsistencies in the first complainant's account. The Committee also takes note of the

^k See, inter alia, communication No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003; and communication No. 258/2004, *Mostafa Dadar v. Canada*, decision adopted on 23 November 2005.

^l See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, paragraph 7.3.

information furnished by the first complainant on the points raised by the State party. It considers, however, that these inconsistencies in the first complainant's account do not constitute an obstacle for the Committee's assessment of the risk of torture in case of his expulsion to Yemen.

7.5 In assessing the risk of torture in the present case, the Committee notes the first complainant's claims that between May 2009 and January 2010 he had been arrested and detained by the Yemeni authorities on three separate occasions and that in the course of these detentions he had been subjected to beatings and threats. It further notes the State party's argument that these allegations were not substantiated by the first complainant before the State party's asylum authorities during the ordinary asylum proceedings and that the evidence provided by him did not specify the reasons for any of these detentions. The Committee also notes that the State party questions the authenticity of the attestations issued by the al-Mansoura prison authorities, al-Mauna, the Southern Democratic Assembly based in the United Kingdom and the office of the former President of the Democratic Republic of Yemen, because, inter alia, they did not indicate the source of the information that they contained and did not fully correspond to the first complainant's own accounts. The Committee also takes note of the information furnished by him on these points. It observes in this regard that the first complainant has not submitted any evidence supporting his claims of having been subjected to ill-treatment by the Yemeni authorities prior to his arrival in Switzerland, including medical reports attesting that he was injured as a result of receiving a truncheon blow to his nose, or suggesting that the Political Security Organization or other authorities in Yemen have been looking for him since.

7.6 The Committee further notes the first complainant's allegations about his involvement in the activities of the Southern Democratic Assembly. It notes, in particular, that he claims to hold an important position in the Southern Democratic Assembly in the canton of Fribourg, with his name and photographs being linked to this organization and published on the Internet. The Committee further notes the first complainant's claim that he comes from a politically active family and that his family name alone is sufficient to trigger the suspicion of the Yemeni authorities, but observes that he has not elaborated on this claim or presented any evidence to support it. In the Committee's view, the first complainant has failed to adduce sufficient evidence about the conduct of any political activity in Switzerland of such significance that would attract the interest of the Yemeni authorities, nor has he submitted any other evidence to demonstrate that the authorities in his home country are looking for him or that he would face a personal risk of being tortured if returned to Yemen.

7.7 The Committee concludes accordingly that the information submitted by the first complainant, including the unclear nature of his political activities in Yemen prior to his departure from that country and the low-level nature of his political activities in Switzerland, is insufficient to show that he would personally be exposed to a risk of being subjected to torture if returned to Yemen. The Committee is concerned at the many reports of human rights violations, including the use of torture, in Yemen,^m but recalls that for the purposes of article 3 of the Convention the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

7.8 As the cases the first complainant's wife and their son are dependent upon his case, the Committee does not find it necessary to consider these cases separately.

^m The Committee notes that Yemen is also a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and recalls its 2010 concluding observations (CAT/C/YEM/CO/2/Rev.1), paras. 8, 12 and 13.

8. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to expel the complainants to Yemen would not constitute a violation of article 3 of the Convention.

B. Decisions on admissibility

Communication No. 346/2008: *S.A.C. v. Monaco*

<i>Submitted by:</i>	S.A.C. (represented by counsel, Mr. Frank Michel)
<i>Alleged victim:</i>	S.A.C.
<i>State party:</i>	Monaco
<i>Date of complaint:</i>	8 July 2008 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 13 November 2012,

Having concluded its consideration of communication No. 346/2008, submitted by S.A.C. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, the complainant's counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant, S.A.C., born 7 January 1944 in Tradate, Italy, has Brazilian and Italian nationality. He contends that his extradition to Brazil would constitute a violation of article 3 of the Convention against Torture. The complainant is represented by counsel, Mr. Frank Michel.^a

1.2 On 11 July 2008, the Rapporteur for new complaints and interim measures decided not to request interim measures from the State party to suspend the complainant's extradition to Brazil.

The facts as submitted by the complainant

2.1 The complainant used to reside in Brazil, where he worked as a banker. On 31 March 2005, he was sentenced by a single judge of the Court of Justice of the State of Rio de Janeiro to 13 years' imprisonment for embezzlement of funds and fraudulent practices in the management of the Central Bank of Brazil. The complainant was released on a provisional basis. He then left Brazil and went to Italy, where he established a residence. The decision to release him was subsequently rescinded by the President of the Supreme Court of Brazil but by that time the complainant was already in Italy.

2.2 On 15 September 2007, the complainant was taken in for questioning by the Monegasque authorities and was placed under provisional arrest at the request of the Brazilian authorities following the issuance of an arrest warrant by a judge in Rio de

^a The State party made the declaration under article 22 of the Convention on 6 December 1991.

Janeiro on 19 July 2000.^b Based on that arrest warrant and the judgement of the Court of Justice of Rio de Janeiro of 31 March 2005, the Monegasque Court of Appeal, sitting in chambers, authorized the extradition of the complainant by its decision of 15 April 2008. It ruled against a second request for extradition by the same authorities based on an arrest warrant dated 21 September 2007, which dealt with other acts that were not punishable in Monaco.

2.3 The Court of Appeal authorized the extradition of the complainant on the following grounds: that the validity of the international arrest warrant based on the Brazilian court's judgement of 31 May 2005 could not be challenged; that the conviction of the complainant in Brazil was not contrary to Monegasque law merely because it was issued by a single judge, since the use of a collegiate system cannot be considered a necessary condition for a fair trial; that the single judge's decision did not appear to have departed from the fundamental principles of a fair trial inasmuch as the judge had not been involved in the investigation and the principle of adversarial proceedings appeared to have been respected in accordance with article 6 of the European Convention on Human Rights; and that the issuance of an international arrest warrant due to the flight of a person convicted in first instance does not preclude the possibility of the person concerned filing an appeal, and the arrest and extradition of the complainant by the State party was thus not contrary to international law.

2.4 On 19 June 2008, the complainant's appeal against this decision was rejected by the Court of Review of the Principality of Monaco. On 2 July 2008, the Prince of Monaco authorized the extradition of the complainant. At the time of submission of the communication to the Committee, the transfer of the complainant to Brazil was imminent.

2.5 On 24 June 2008, the complainant filed a complaint with the European Court of Human Rights, which was rejected.

The complaint

3.1 The complainant contends that if he were deported to Brazil, he would have to serve the prison term to which he had been sentenced. He would therefore be subjected to inhuman and degrading treatment, given prison conditions in Brazil and the specifics of his case.

3.2 The complainant had been sentenced to 13 years' imprisonment in Brazil for a financial offence, which he considered to be a disproportionate penalty even if he were guilty, which he maintains he was not. He has produced extracts of reports by organizations such as Human Rights Watch and Amnesty International, press articles and videos showing the poor conditions existing in Brazilian prisons, which included overcrowding (at the time the complaint was submitted, the prison population in Brazil was four times greater than the system's capacity),^c deplorable hygiene conditions, and physical and psychological violence, including the torture of prisoners by the police in order to extract confessions or for the purposes of intimidation or extortion.^d

^b According to the ruling of the Court of Appeal dated 15 April 2008, the international arrest warrant had been issued by the Brazilian judicial authorities on 19 July 2000 and renewed on 26 June 2006 as a result of the flight of the person concerned to Italy.

^c The complainant refers to information published on the website www.leduecittà.it (Review of the Italian prison administration).

^d The complainant refers to numerous documents issued by Human Rights Watch, in particular "Brazil: Investigate Killings of Brazilian Prisoners", dated 20 February 2001, and the report entitled "Behind Bars in Brazil" (and specifically chapter VII of that report, entitled "Prisoner-on-Prisoner Abuses") of December 1998.

3.3 The complainant refers to an article published on the website Prisoners of Silence, which focuses on the situation of Italian nationals detained in foreign countries who are at risk of becoming the victims of human rights violations. According to this article, following a request from an Italian national detained in Brazil for the Italian Ministry of Foreign Affairs to intervene on his behalf, a bilateral agreement was signed by Italy and Brazil under which Italian nationals who are convicted by Brazilian courts have the option to serve their sentences in a prison in their country of origin, i.e., Italy. The complainant argues that this agreement could apply to his case in the event of a definitive conviction by the Brazilian courts, on condition that the case was tried in accordance with the fundamental legal safeguards recognized in Italy.

3.4 Although the prison situation in Brazil was brought to the attention of the Monegasque Court of Appeal, sitting in chambers, by means of a petition signed by Brazilian detainees denouncing the prison conditions in Brazil and a letter addressed by a former lawyer held in custody in Brazil to the Sovereign Prince of Monaco, the Court of Appeal did not consider it necessary to include a provision in its judgement that would require guarantees regarding respect for article 3 of the Convention from the Brazilian authorities in the event of extradition. The complainant adds that he is elderly and in poor health, as he suffers from hypertension, which is an aggravating factor.

3.5 For the last 10 years, the complainant has been portrayed by the Brazilian press and authorities as a public enemy. He is therefore afraid that he would be exposed to retaliatory measures owing to his unpopularity as a result of the media campaign. He has, in fact, written a book about his situation, which he has attached to this complaint. The case is highly political because the complainant was prosecuted, along with other managers of the Central Bank of Brazil, on suspicion of insider trading at the highest levels of the Brazilian Government, and the complainant himself had made accusations in that regard. In his book, the complainant denounces corruption among members of the judiciary, including the judge who issued the arrest warrant for him in 2007 and who was later himself charged with corruption.

3.6 The complainant considers that his fundamental rights were not respected during the judicial proceedings in Brazil, inasmuch as the decision to grant him provisional release was simply rescinded without giving him the opportunity to challenge that measure. The harassment to which he was subjected was so serious that his daughter committed suicide. In addition, at the time of the submission of his complaint to the Committee, Brazil was in the midst of national elections, and the Brazilian authorities and the press could have considered the complainant to be in possession of information that would incriminate top-ranking Brazilian authorities of that time.

State party's observations on admissibility

4.1 On 9 September 2008, the State party challenged the admissibility of the communication under article 22, paragraphs 5 (a) and (b), of the Convention.

4.2 The State party notes that, according to information submitted by the complainant himself, the case has also been submitted to the European Court of Human Rights, with the complainant citing article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment. That being so, the same question has been brought before another international body. Moreover, in a decision dated 24 June 2008 regarding a request for interim measures under Rule 39 of the Court that would suspend the extradition of the complainant, the President of Section V of the European Court of Human Rights decided not to indicate the requested interim measure to the State party.

4.3 Moreover, the State party contends that, prior to submitting a complaint to the Committee, the complainant should have ensured that all domestic remedies had been exhausted. In the event, the complainant did not avail himself of the opportunity to file an appeal, under article 90 of the Constitution, with the Supreme Court to overrule the State's decision to extradite him.^e Furthermore, articles 39 and 44 of the law of 16 April 1963 on the organization and procedures of the Supreme Court provide for urgent measures with respect to the suspension of the execution of an order and interim relief. Article 40 offers the opportunity for the complainant to request the suspension of the execution of a decision until the Supreme Court rules on the merits. No such appeal has been filed by the complainant, however, and domestic remedies have therefore not been exhausted.

4.4 The State party is of the opinion that the prospect of extradition did not render such an appeal ineffective. Although extradition is recognized in international law as a sovereign act, the Supreme Court has ruled that an extradition may come within its purview if the nature of the case is such that it appears to "depart from the requirements of normal extradition practice",^f which is what the complainant continued to claim by arguing that proper procedures were not followed in the course of his judicial appeals. Moreover, even though the law does not expressly refer to a suspensive effect, decisions on extradition may not be put into effect until the Director of Judicial Services is able to provide a full report on all aspects of the case to the Prince in line with the procedures set out in the Extradition Act of 28 December 1999 and, in particular, those relating to ongoing proceedings as provided for under article 17 of the Act. The State party notes that, in any case, the Prince did not authorize the extradition of the complainant until 2 July 2008, that is, after the European Court of Human Rights and the Committee had refused to grant interim measures.

State party's observations on the merits

5.1 On 5 January 2009, the State party submitted its observations on the merits. With regard to the human rights situation in Brazil, the State party acknowledged the criticisms reported in the press regarding overcrowding in prisons in Brazil, as noted by the Committee itself in its concluding observations on Brazil dated 16 May 2001. However, the State party also notes that, in its observations, the Committee also acknowledged a number of positive developments, such as the legislative reform of April 1997, which made it possible to punish acts of torture as criminal offences. The Brazilian authorities' concern about the need to improve prison conditions led to the ratification on 12 January 2007 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002. Regardless of whether or not the Committee's recommendations were implemented by Brazil, the complainant was entitled to avail himself of a domestic remedy under the aforementioned law of April 1997.

5.2 In addition, in its official request for the complainant's extradition dated 20 September 2007, the Brazilian Ministry of Justice stated that the Brazilian Constitution prohibits capital punishment, life imprisonment, sentences of forced labour and any other form of cruel punishment; thus, any punishment that constitutes an affront to human dignity is constitutionally unlawful and therefore cannot be imposed in Brazil. The State party further notes that, to this day, no complaint has been lodged with the Committee against Brazil, even though the country has recognized the competence of the Committee to consider individual complaints.

^e Article 90 of the Constitution, which defines the jurisdiction of the Supreme Court, states that, in administrative matters, the Supreme Court may issue final rulings on: "(2) appeals in cassation against decisions of administrative courts of final instance".

^f See the Supreme Court judgement in the Van Troyes case of 28 June 1986.

5.3 The State party adds that, in line with the jurisprudence of the Committee, the existence of violations, even if they were confirmed to have taken place, does not in itself constitute a sufficient reason to conclude that a person runs the risk of being tortured, since the risk must be personal. It is therefore up to the complainant to show evidence of a risk and to prove that this risk extends beyond mere suppositions or suspicions. The complainant has not, however, provided any such evidence to the Committee, nor did he submit any to the Monegasque judicial authorities during the domestic court case. The only pieces of evidence submitted to the Monegasque courts were two letters from Brazilian prisoners containing general complaints regarding prison conditions in Brazil and a petition signed by several prisoners. None of these documents referred specifically to a prison in which the complainant might eventually be held, and the State party therefore has legitimate doubts as to the actual value of these documents.

5.4 The State party notes that the complainant did not claim that he would be at risk of torture when his case was before the Court of Appeal, sitting in chambers, even though he had applied to that court to rescind the extradition order. The complainant had simply made mention of the documents referred to above (see paragraph 5.3) but did not cite them as grounds for his request for the extradition order to be set aside, even though the risk of ill-treatment or torture does constitute a legal ground for a refusal to extradite under article 6 of Extradition Act No. 1.222 of 28 December 1999. The complainant therefore did not give the courts the opportunity to rule on this point. Yet, in a previous case concerning the extradition of a person from the State party to the Russian Federation, the Court of Appeal had requested guarantees from the Russian authorities by appending a number of requirements to its ruling, such as the authorization of family and consular visits, since the person concerned had produced evidence that he had previously been subjected to ill-treatment in the Russian Federation.⁸ This portion of the case law of the Court of Appeal was known to the complainant's counsel, since he had also served as counsel for the person concerned in the case dealing with extradition to the Russian Federation, which had taken place prior to the case at hand. The State party therefore wonders why the same counsel did not put forward this plea in the complainant's case. The State party suggests that the omission of this argument shows that counsel was unable to establish that the complainant would run any risk of torture or ill-treatment if he were returned to Brazil.

5.5 Moreover, the pleadings submitted by the complainant's counsel to the Court of Appeal of Monaco made only general points and referred to the possibility of violations of the right to a defence. They did not provide any real evidence of incidents of ill-treatment constituting a consistent pattern of gross, flagrant or mass violations of human rights. Counsel instead focuses on his assertions that the complainant was unjustly convicted, that he was convicted by a single judge in a highly political climate and that he was given a disproportionately severe sentence.

5.6 The State party also recalls that on 26 February 2008, the Monegasque Court of Appeal, sitting in chambers, requested that it be provided with full information on the complainant's earlier appeals against his conviction in Brazil and requested assurances from the Brazilian Government that the appeal would be considered in adversarial proceedings should the complainant be extradited on the basis of the arrest warrant. In response, the Brazilian authorities, in a note verbale dated 20 February 2008, confirmed that all appeals submitted to the Brazilian judiciary were examined in adversarial proceedings and that Brazil undertook to examine any appeals filed by the complainant, including appeals against his conviction.

⁸ The State party cites the decision of the Court of Appeal, sitting in chambers, in the case of E. Bourmaga dated 30 November 2004 (copy provided).

5.7 The State party considers that the Committee's refusal and, prior to that, the refusal by the European Court of Human Rights to grant interim measures in this case also demonstrate the unfounded nature of the complainant's argument regarding the risk of torture or ill-treatment. It recalls the Committee's jurisprudence, according to which the complainant must prove that he would be at risk of being subjected to torture, that there are serious reasons for believing that this risk exists, and that the complainant is personally and currently at risk.^h With regard to the complainant's claim that he runs a personal risk for political reasons because, more than 10 years after the events in question, he is still considered to be public enemy No. 1 and that he would be in danger because he has incriminating information in his possession, the State party considers these assertions to be no more than theories, suspicions and suppositions, since no evidence has been submitted by the complainant in support of his argument.

5.8 Moreover, the fact that the complainant was filmed in handcuffs during his transfer from prison to the court in Brazil, although humiliating, is not serious enough to qualify as ill-treatment. Yet these are the only instances of humiliation of which the complainant makes mention. The State party adds that, with regard to the age of the complainant and his state of health, which he describes as poor, the complainant has not shown that he cannot receive adequate medical treatment in the prison where he is being held in Brazil. Nor has the complainant demonstrated that he does not receive adequate protection from the Brazilian authorities. The State party notes that, since he was extradited to Brazil in mid-July 2008, the complainant has not reported any acts of torture or serious ill-treatment.

5.9 The complainant has therefore failed to advance any arguments or evidence which demonstrate that the legal extradition procedures carried out by the State party in accordance with the principles of international law placed him at a personal, real and foreseeable risk of torture or ill-treatment in Brazil.

Complainant's comments on the State party's submission

6.1 In comments dated 30 June 2009, the complainant does not mention the State party's observations on the admissibility of the communication but comments only on its merits.

6.2 The complainant challenges the argument made by the State party at the time, according to which he would not be at risk as defined under article 3 of the Convention if he were extradited to Brazil. He claims that he provided sufficient evidence of that risk in his initial submission and in the course of his appeals before domestic courts. The complainant recalls what he describes as the undeniably political nature of the case, since it was seen as an affair of State in Brazil involving a financial scandal in which some of the authorities holding office at the time could be implicated.

6.3 The complainant also rejects the State party's argument that his counsel had not claimed that he ran a risk of torture even though he had done so in a previous extradition case involving the Russian Federation. On the contrary, his counsel had argued before the Court of Appeal that the complaint did in fact run such a risk. This fact had also been raised in the complaint submitted to the European Court of Human Rights.

^h The State party refers, in particular, to the Committee's decision regarding communication No. 245/2004, *S.S.S. v. Canada*, adopted on 16 November 2005, paras. 8.3 and 8.5.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint contained in a communication, the Committee against Torture must decide whether it is admissible under article 22 of the Convention. The Committee notes that on 25 June 2008, the complainant filed a complaint (registration number 30114/08) with the European Court of Human Rights and that this complaint was based on the same grounds (extradition to Brazil contrary to the principle of non-refoulement). However, the complaint had been rejected without an examination of the merits. The Committee is of the opinion that, under these circumstances, the case cannot be deemed to have been examined under another procedure of international investigation or settlement within the meaning of article 22, paragraph 5 (a), of the Convention. The Committee is consequently not precluded from considering the complaint on that basis.

7.2 The Committee notes that the State party has contested the admissibility of the complaint on the ground of failure to exhaust all domestic remedies, since the complainant did not file an application before the Supreme Court under article 90 of the Constitution for the revocation of the State's decision to request extradition. The Committee observes that the complainant has not refuted or contested that argument. The Committee also notes that during its consideration of the fourth and fifth periodic reports submitted by Monaco under article 19 of the Convention, the State party cited the applicable procedure in this respect, stating that it is possible to appeal to the Supreme Court against return (refoulement) and expulsion orders, which are administrative decisions adopted by the Minister of State. In the absence of an opposing argument by the complainant, the Committee concludes that this remedy applies *mutatis mutandis* to extradition decisions and that it constitutes an effective remedy so long as it has suspensive effect in practice, as mentioned by the State party in its observations on admissibility in paragraph 4.4 of this decision.ⁱ

7.3 The Committee concludes that the complainant has not exhausted domestic remedies and that the current complaint is therefore inadmissible under article 22, paragraph 5 (b), of the Convention.

7.4 As a result, the Committee against Torture decides:

- (a) That the communication is inadmissible;
- (b) That this decision shall be transmitted to the State party and to the complainant.

ⁱ See the combined fourth and fifth periodic reports of Monaco to the Committee against Torture, (CAT/C/MCO/4-5), para. 13 ff.

Communication No. 425/2010: I.A.F.B. v. Sweden

<i>Submitted by:</i>	I.A.F.B. (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	22 June 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 13 November 2012,

Having concluded its consideration of complaint No. 425/2010, submitted to the Committee against Torture by I.A.F.B. on his own behalf under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant of the communication, dated 22 June 2010, is I.A.F.B., born on 26 October 1966 and of Algerian nationality. He claims he would be a victim of a violation of article 3 of the Convention if he were returned from Sweden to Algeria. The complainant is not represented by counsel.

1.2 Under rule 114 (former rule 108) of its rules of procedure (CAT/C/3/Rev.5), the Rapporteur on new complaints and interim measures, acting on behalf of the Committee, requested the State party, on 12 July 2010, to refrain from expelling the complainant to Algeria while his communication is under consideration by the Committee. This request was made on the basis of the information contained in the complainant's submission and the State party was advised that it may be reviewed in the light of information and documents received from the parties.

1.3 On 13 April 2011, upon request by the State party, the Rapporteur on new complaints and interim measures, acting on behalf of the Committee, decided to lift the interim measures.

The facts as presented by the complainant

2.1 In 1998, after having doubts about the circumstances of his father's death, which had occurred in 1986, the complainant wrote a letter to the Secretary-General of the Ministry of Defence of Algeria requesting that the context of his father's death be investigated. His father was a commander in the secret services and deputy director of the Department of Intelligence and Security, as well as a former military attaché at the embassy in Damascus. During a New Year's celebration with his former colleagues from military school (the complainant had left before completing his studies), he learned that his father had been assassinated. According to the information from one of his friends, who is in the army, his father died at the military psychiatric hospital after a dispute with the military doctor,

during which the complainant's father reportedly revealed military secrets. The military doctor, on instruction by the Ministry of Defence, gave him a strong tranquilizer which led to heart failure. In letters to the President sent on 11 February and 5 May 2005, the complainant requested that the President open an investigation into his father's death. After the complainant's second letter, two individuals, whom a friend from the army identified as military security agents, came to his house during his absence. In December 2005, the complainant wrote a third letter to the President, in which he strongly criticized the authorities and the army, denouncing the army and holding it responsible for two massacres of the civilian population, questioning the way former President Boudiaf had been assassinated and revealing the names of the persons responsible for the attack on a commuter train (RER) in Paris. On 15 December 2005, the complainant was arrested and his passport was confiscated. Over the course of five days, he was beaten and threatened with death, and officials urinated on him. The complainant was held for 20 days; before his liberation on 4 January 2006, he was forced, under the threat of death, to sign a document in which he acknowledged that he had been part of an Islamist group acting in Algiers. Nevertheless, he was never charged with any crime and could travel freely, except that he had to report on a weekly basis to the police station. After he was freed, the complainant's wife took pictures of his bruises, which were shown to the Swedish immigration authorities.

2.2 After his old passport had been confiscated on 15 December 2005, the complainant obtained a new one from an official who had been bribed for that purpose. In 2007, the complainant visited his mother in Egypt. On 20 March 2008, the police station at which the complainant needed to report on a weekly basis following his release requested that he go to the station with his passport. Suspecting that the secret services were continuing to look for him, the complainant decided to make his escape. Accordingly, on 27 March 2008, the complainant arrived in Sweden, where he made a request for asylum. Four days later, his wife's passport was confiscated in Algeria, and for one year after his departure she received regular visits from individuals in plain clothes said to be searching for the complainant and threatening her.

2.3 On 17 December 2009, the immigration services rejected the complainant's request for asylum, on the ground that the documents he had submitted did not sufficiently prove that he had been a victim of torture in the past. The complainant notes that he had been warned by the secret services not to speak to anybody about his detention and not to get any medical certificate. The immigration services recognized that he had written several letters to the President, but they considered that this would not constitute a real risk of torture on his return. The Swedish authorities also noted that the complainant decided to act only after delays of 12 and 19 years following the death of his father. The complainant notes that he was only 20 when his father died and was serving in the army at that time. He explains that he decided to inquire into his father's death when he quit the military and after having received information from his friends in 2005. The Swedish immigration services considered that the events leading to his father's death and the allegation that the complainant would be searched for, in reprisal for the letters he had written to the President, were not credible. They also noted that, in 2007, the complainant had already travelled to Sweden, without however making a request for asylum, which also cast doubt on his alleged fear of persecution. The complainant notes that, at that moment, he did not feel that he was in danger, as he had not received the convocation by the police. The Swedish Migration Board further found that the allegation that the complainant's wife received regular visits by officials in plain clothes after his departure was not credible, as he had been separated from his wife since 2007 and he indicated a different address on his visa applications to the Swedish authorities. In this regard, the complainant explains that at the time of his visa applications, he had some disputes with his wife and that they divorced according to Muslim rites, without making it official. Before leaving Algeria, they reconciled and therefore annulled the divorce and the family book attests to the fact that he

is married. However, to protect his wife from harassment, he claimed before the Algerian authorities that they were still separated. The Migration Board further concluded that the complainant's claim that his passport had been confiscated was not likely; the greater likelihood is that his old passport needed renewal, as there were no pages left. The response of the complainant on this issue had been that it would be illogical to renew a passport in which he had an Egyptian residence permit valid until 23 August 2008. He also explains that the fact that he waited for 14 months before travelling attests to his fear of being arrested. On 16 March 2010, the Administrative Court of Gothenburg rejected his appeal and, on 3 June 2010, the Appeal Court also rejected his appeal. On 7 June 2010, he was notified that he needed to leave the territory of Sweden within one month, otherwise he would face expulsion.

The complaint

3.1 The complainant claims that his expulsion to Algeria would violate article 3 of the Convention. He claims that the Swedish authorities did not take into consideration that human rights are not respected in Algeria, which has been in a state of emergency for the past 18 years. He also claims that torture is a systematic practice by the secret services and that its agents act with impunity. He submits that he would be exposed to a real danger of torture if he was returned to Algeria. He also submits that Algerian citizens who return after having failed to obtain asylum in a third country are generally suspected to be Islamic terrorists, which makes them vulnerable to reprisals.

3.2 The complainant further claims that the migration authorities were influenced by a letter from the Swedish embassy in Algiers, in which a staff member informed the responsible immigration officer that she had refused the complainant a visa in 2007 and regretted that it had been granted by another colleague in 2008.

State party's observations on admissibility and the merits

4.1 On 24 March 2011, the State party submitted its observations on admissibility and the merits and requested that the interim measures be lifted.

4.2 The State party notes that some of the translations provided by the complainant do not reflect accurately the proceedings before the domestic authorities and proceeds to clarify the facts. On 27 March 2008, the complainant applied for asylum at the Migration Board, providing a passport, issued on 5 June 2006, valid until 4 June 2011, with a Schengen visa valid up to 30 March 2008. In the first interview, the complainant stated that he was being threatened by the military security services because of the letters he had sent enquiring into the causes of his father's death. He claimed that he had been arrested and tortured as a consequence. In his submissions to the Migration Board, the complainant claimed that he would risk at least 20 years' imprisonment, during which he would be tortured. He further claimed that the reason for the threats and persecution were the letters he sent to the Minister of Defence in 1998 and to the President on 11 February, 5 May and 4 December 2005 and 22 March 2008 asking for clarification of the cause of death of his father. On 15 December 2005, the complainant was reportedly arrested and subjected to physical ill-treatment. The complainant claimed that before his release on 4 January 2006 he was forced to sign a confession that he belonged to an Islamist group, and he had to undertake to report on a weekly basis to the police. The complainant noted that he had not been convicted of any crime but that he was under police surveillance. On 20 March 2008, the complainant was allegedly summoned to the police with a request to bring his passport. Since his passport was with the Egyptian embassy, he promised to bring it on 27 March 2008. Instead, he left the country. He stated that four days after he had left the country, his wife's passport was confiscated.

4.3 On 17 December 2009, the Migration Board rejected the complainant's application for asylum, holding that the police summons was of poor quality and the text was illegible. They further found that it was odd that the police would send a summons to a person who was allegedly reporting to them once a week. From the photos the complainant submitted as proof of his past torture, it was impossible to draw any conclusion about the nature of the injuries and about the time when they arose, the more so because no medical evidence was provided. The Migration Board acknowledged that the complainant had written the letters to the President. However, it took the view that this evidence by itself did not support a risk of persecution. It further found that it was not probable that the complainant's passport had been confiscated, as the copy of the old passport showed that it didn't have any pages left and a renewal had become necessary. It further stated that it was remarkable that the author sought to clarify the matter of his father's death 12 and 19 years after the event. The claim that his father had been killed by the military or the regime was considered to be far-fetched and improbable. The Migration Board further noted that the visit of two policemen in plain clothes during his absence in May 2005 was not credible. Neither was his story that the authorities were looking for him at his wife's residence. It further stated that the fact that the complainant had spent time in the Schengen area without applying for asylum indicated that he did not feel that he was in need of protection. He also spent two years in Algeria after the alleged torture. Furthermore, the Migration Board held that the complainant did not appear to risk any disproportionately severe punishment for the letters he had sent.

4.4 On 16 March 2010, the Migration Court dismissed the complainant's appeal, holding that the complainant had not plausibly shown that he had been summoned to the police because of the contents of his letters to the authorities, and that the complainant would not risk being given a disproportionately severe sentence if convicted at all of a crime relating to his allegations. It further took into account that, during the period from 2006 to 2008, the complainant was able to travel to Egypt several times without any obstacles and that in 2007 he stayed in the Schengen area without seeking international protection. The facts of his case made it improbable that he was of any interest to the authorities in Algeria. With regard to his alleged grievance that he was at risk for having applied for asylum abroad on the ground that he is supposedly suspected of having a connection to Islamic terrorists, the Court found that it was not probable that the complainant risked reprisals, as he had allegedly been forced to sign a confession stating that he had voluntarily given himself up to the police. This implied that the complainant no longer has any connection to such groups. On 3 June 2010, the Migration Court of Appeal refused leave to appeal. On 23 June 2010, the Migration Board decided not to grant a residence permit or an order for a re-examination of the case. On 8 July 2010, the Migration Court of Appeal found that the letter from the First Secretary of the Embassy of Sweden in Algiers had not had any effect on the asylum process and rejected the complainant's request for a new hearing.

4.5 On admissibility, the State party acknowledges that all domestic remedies have been exhausted and that it is not aware that the same matter has been or is being examined under another procedure of international investigation or settlement. It submits that the complainant's assertion that he is at risk of becoming a victim of a violation of article 3 if returned to Algeria is insufficiently substantiated for purposes of admissibility and the communication is manifestly ill-founded, and should therefore be declared inadmissible under article 22, paragraph 2, of the Convention.^a

4.6 On the merits, the State party submits that it does not wish to underestimate the concerns that may legitimately be expressed with respect to the current human rights

^a See communication No. 216/2002, *H.I.A. v. Sweden*, decision adopted on 2 May 2003, para. 6.2.

situation in Algeria, considering President Bouteflika's re-election in 2009, the absence of fair trials for persons suspected of terrorism, the absence of investigations into allegations of torture and ill-treatment, the practice of admitting confessions obtained under duress, and the break-up of protests despite the lifting of the state of emergency in February 2011.^b However, these are not of themselves sufficient to establish that the complainant's deportation to Algeria would entail a violation of article 3 of the Convention. The complainant needs to show that he would be personally at risk of being subjected to treatment contrary to article 1 of the Convention. On the complainant's personal risk of being subjected to torture in Algeria, the State party submits that the Migration Board made its decision after having held two interviews with him and that the Migration Court held an oral hearing before delivering its decision. It also notes that the domestic legislation contains the same principles as the Convention and that therefore its migration authorities apply the same test as the Committee to establish the foreseeable, real and personal risk of the complainant. It therefore underlines that great weight must be given to the appreciation of the facts on the ground by the State party's migration authorities.

4.7 The State party submits that the complainant's claim before the Committee rests on the same grounds and evidence as the one before the State party's authorities. However, in addition thereto, the complainant has submitted additional explanations for the inconsistencies in his accounts. The State party submits that there are several reasons to question the veracity of the complainant's claims. It notes that his allegation that he pretended to be separated from his wife to save her from harassment had not been presented previously and is in contradiction with his previous claim that in February 2008 he and his wife had marital problems, which were resolved after the complainant's visa application to Sweden. It further underlines that the complainant's argument that it would be illogical to have a passport replaced in which there was a valid Egyptian residence permit runs counter to his previous statement that the residence permit was no longer valid as he had been outside of Egypt for more than six months. This undermines the complainant's credibility with respect to the claim that his passport was confiscated by the police. The State party further notes that stamps in the complainant's passport show that he was able to leave and re-enter Algeria without problems. It notes that the complainant has not explained how he was able to leave and re-enter Algeria before he allegedly paid a bribe to leave the country on 27 March 2008. Furthermore, the complainant admitted that he was not charged with any crime. In the event of his passport having been confiscated to prevent him from leaving the country, it seems unlikely that he could have done so without this coming to the attention of the security services or the police. A number of other factors do not make sense, such as that the complainant still remained in Algeria after allegedly having been tortured in 2005; he had several opportunities to leave the country, either to Egypt, the place of residence of his mother and where he had a residence permit, or to the Schengen area, but he did not do so. The State party therefore finds that the explanation as to why the complainant waited until March 2008 to seek protection and did not do so during one of his earlier trips outside Algeria, when he was allegedly tortured in 2005, is not credible. The State party therefore submits that the complainant has not been able to show that it is probable that he has been subjected to torture in the past, nor that he would suddenly have become of such interest to the authorities before leaving Algeria that he would run such risks at the time of his departure or on return.

^b See for example Amnesty International's annual report on Algeria for 2010; Human Rights Watch, *World Report 2010* and *World Report 2011*; United States Department of State, "Country reports on human rights practices – Algeria" (11 March 2010); United Kingdom of Great Britain and Northern Ireland, Home Office, *Algeria: Country of Origin Information Report* (14 March 2011); the report on human rights in Algeria for 2007, published by the Swedish Ministry of Foreign Affairs; and the United Kingdom, Home Office, "Operational guidance note: Algeria" (22 May 2006).

4.8 The State party further notes that even if the complainant could be considered to have sent the alleged letters to the President and Minister of Defence, and despite international human rights reports attesting to imprisonment for up to six months for slander in 2008 and 2009, the complainant's letters of 2005 have not led to any prosecution and it would therefore not be probable that his letter of 22 March 2008 would constitute a plausible ground for such a risk. The letter does not contain any acknowledgment of receipt and there has not been any information that it led to prosecution.

4.9 The State party acknowledges that it is a punishable offence to leave Algeria illegally using forged documents or to exit the country other than via official border stations. However, the facts indicate that the complainant has exited Algeria at an ordinary border station using a genuine passport; therefore, there is no reason to assume that he would be at risk of any punishment under this law.

4.10 According to information available at the time of submission, the rejection of a request for asylum is not per se supposed to have an impact on a return to Algeria. Although information in some reports suggests that there is a risk that individuals returning after having an asylum application rejected may be suspected by the Algerian authorities of having been involved in terrorist acts, it relates to persons who have been denied asylum on the grounds of national security.^c This is not relevant in the complainant's case. There is no evidence to suggest that individuals who have been absent from Algeria for any period of time or who are returning after a application for asylum has been denied are at risk of torture. Furthermore, there is nothing to indicate that the Algerian authorities would know that the complainant has applied and been denied asylum, and on previous re-entries from Europe and other countries the complainant has not encountered any problems, despite his claim to have signed a confession that he had belonged to an Islamist group.

4.11 Finally, the State party submits that the alleged torture took place more than five years ago, if at all; when the complainant left Algeria he had been able to live in Algeria for more than two years after he was allegedly tortured and had also been able to leave and return to Algeria without problems. It notes that there is little to suggest that the complainant would still be of interest to the authorities in Algeria. Therefore, the State party submits that the evidence and circumstances invoked by the complainant do not show that the alleged risk of torture in his case fulfils the requirements that it is foreseeable, real and personal. It submits that the allegation of a violation of article 3 is manifestly ill-founded.

The complainants' comments on the State party's observations

5.1 On 3 May 2011, the complainant submitted his comments on the State party's observations, and notes that the State party has not addressed the issue of the letter by the First Secretary of the Swedish Embassy in Algiers, which should give him the right of re-evaluation of his case in domestic courts, in particular as the principles of independence and impartiality were not respected. He notes that the intervention of the First Secretary is a repercussion for his insistence on receiving his original documents back after his first request for a Swedish visa was rejected on 18 June 2007. He notes that the First Secretary's comments about his character, the insulting manner in which it was written and the prejudices it contained influenced the Migration Board in its decision. The complainant also notes that the State party has failed to explain why the official of the Migration Board who interviewed him was not the person who took the decision.

^c The Country of Return Information Project, "Country sheet: Algeria" (May 2009), pp. 12–13; see also Amnesty International, "United Kingdom: deportations to Algeria at all costs" (26 February 2007).

5.2 The complainant reiterates that the situation in Algeria is not stable, in particular given the events following the uprisings in other Arab countries. The complainant reiterates that he had to sign a confession that he was part of an Islamic group, and that in his letters to the President he exposed the implication of the army in massacres of civilians, as well as the assassination of President Boudiaf by the Department of Intelligence and Security and the Department's implication in the attacks on the Paris commuter train.

5.3 The complainant further notes that the photos are proof of his ill-treatment and that he was not able to obtain a medical certificate due to the threats he received, in particular as the medical certificate would have had to be issued by a forensic doctor working at a public hospital. That would have entailed that the police, which has a station in each public hospital, would have been informed of his visit.

5.4 With regard to the confiscation of his passport, the complainant notes that the last stamp in his old passport was dated November 2005, one month before it was confiscated, and that had it been renewed this would have been done within the regular period of one month. However, his new passport was obtained on 5 June 2006, six months after the confiscation. He further notes that he waited for a considerable period before leaving the country on 24 August 2007 because he feared that the authorities would discover his new passport and that he would be arrested.

5.5 With regard to his freedom of movement, the complainant notes that the Department of Intelligence and Security could not lay any charges against him and that it thought that with the confiscation of his passport he would be blocked from leaving Algeria. Given that the authorities did not have any knowledge of his new passport, that he was not wanted and that he made his trips discreetly, he was able to travel freely without raising suspicion. He further reiterates that during his first trip to the Schengen zone, he did not feel he was in danger, as he had not yet received the police convocation of 20 March 2008.

6. On 10 May 2011, the complainant informed the Committee that the procedure for his expulsion to Algeria had started. On 20 July 2011, the complainant informed the Committee that, on 13 July 2011, fearing deportation to Algeria, he voluntarily left Sweden for Egypt.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the instant case, the State party has recognized that the complainant has exhausted all available domestic remedies.

7.3 The Committee takes note of the State party's argument that the communication should be declared inadmissible as manifestly ill-founded. The Committee notes that on 13 July 2011, the complainant voluntarily left the State party for Egypt and concludes therefore that with his departure to Egypt the communication before the Committee no longer serves any purpose and has by that fact turned out to be incompatible with the provisions of the Convention in accordance with article 22, paragraph 2, as he is no longer at any risk of being sent back to Algeria by the State party.

8. The Committee therefore decides:
 - (a) That the communication is inadmissible under article 22, paragraph 2, of the Convention;
 - (b) That this decision shall be communicated to the complainant and to the State party.

Communication No. 437/2010: B.M.S. v. Sweden

<i>Submitted by:</i>	B.M.S. (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	10 August 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 November 2012,

Having concluded its consideration of complaint No. 437/2010, submitted to the Committee against Torture by B.M.S. on his own behalf under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant of the communication is B.M.S., an Algerian national born on 3 September 1978. He claims he would become a victim of a violation of article 3 of the Convention if he is returned from Sweden to Algeria. The complainant is not represented by counsel.

1.2 Under rule 114 (former rule 108) of its rules of procedure (CAT/C/3/Rev.5), the Rapporteur on new complaints and interim measures, acting on behalf of the Committee, requested the State party, on 19 November 2010, to refrain from expelling the complainant to Algeria while his communication is under consideration by the Committee.

The facts as presented by the complainant

2.1 Between 2004 and 2005, the complainant was approached by members of a terrorist group who threatened to kill him and requested that he help them gather information about his employer's money transport routes. The complainant knew that the terrorist group was planning an attack. However, he refused to help them and contacted the police asking for protection. The police refused to help him and told him that if anything happened to the money transport, he would be accused of having provided information to the terrorists. About a month later, a vehicle that was transporting money to the city of Bodvo was attacked and two terrorists and a police officer were killed. Even though the complainant was not in the vicinity of the armed robbery, the terrorists claimed that the complainant had sold their plan to the police and they started looking for him.

2.2 The complainant contacted the army to inform it about his situation, however the police officer to whom he was telling his story started beating him and accusing him of being a terrorist. He was detained for one night before he managed to escape.

2.3 After this incident, the complainant was wanted by both sides: the authorities and the terrorists. The complainant received eight summonses to present himself to the police, four concerning him and the others concerning his father and brother. On 7 April 2005, 28

April 2005, 15 May 2005 and 26 June 2005, the complainant's father went to the police station to report that, respectively, five, six and three members of a terrorist group came to his house during the night looking for the complainant. On 12 January 2008, the complainant was sentenced in absentia for belonging to a terrorist group and participation in an armed robbery which led to the death of a law enforcement official. He was sentenced to 10 years' imprisonment with forced labour.

2.4 On 1 December 2005, the complainant arrived in Sweden, and on the same day he requested asylum. On 18 September 2007, the Migration Board rejected his request for asylum, while recognizing that terrorist violence is on the decline but still persists, in particular in the east of Algiers. The same could be said of the brutality by law enforcement officials. It noted that the complainant's narration of the facts was not coherent, that one police officer could not represent the whole State and that the complainant did not approach other law enforcement officials with his claims. The Migration Board also noted that the summonses the complainant presented do not contain any mention that he was suspected of a crime but are simple convocations to a police station. On 25 June 2008, his appeal was rejected by the immigration tribunal, which held that the authenticity of the judgement sentencing the complainant was questionable, and on 21 October 2008, the appeal court in Stockholm refused to grant leave to appeal. On 26 November 2009, he was informed that he needed to leave Sweden. On 24 February 2010, the complainant was detained in immigration detention. On 18 October 2010, the complainant refused to board a plane without travel documents and the authorities tried unsuccessfully to force him to board the plane.

The complaint

3. The complainant claims that his expulsion to Algeria would violate article 3 of the Convention. He claims that he would be exposed to a real and personal risk of being imprisoned, where he would certainly be tortured, as he had been sentenced for killing a police officer. Moreover, he claims to be at risk of extrajudicial killing by the terrorists who are on the lookout for him. The terrorists, who would want to seek revenge, as the complainant allegedly revealed their plan of the armed robbery which led to the death of two of their colleagues, would be able to find him in prison or could be held at the same prison. He also claims that the human rights violations in Algeria are systematic.

State party's observations on admissibility and merits

4.1 On 18 May 2011, the State party informed the Committee that the enforcement of the expulsion order against the complainant had been stayed on 19 November 2010.

4.2 On 31 August 2011, the State party submitted its observations on admissibility and merits. The State party questions the complainant's translations of the Swedish court decisions, stating that the translations are of inadequate quality and do not give an accurate picture of the examination made by the Migration Board and the migration courts. It notes that the decision to expel the complainant entered into force on 24 October 2010.

4.3 On the issue of admissibility, the State party notes that it is not aware that the matter has been or is being subject to another procedure of international investigation or settlement. The State party acknowledges that, strictly speaking, all available domestic remedies have been exhausted. However, as according to chapter 12, section 22, paragraph 1, of the 2005 Aliens Act the decision to expel the complainant will become statute-barred on 24 October 2012, the complainant will have the possibility of submitting a new application for asylum and a residence permit, which would entail a full examination of the grounds invoked and be subject to appeal. Therefore, after 24 October 2012, in the light of the alternative remedy still available, it may be said that not all domestic remedies would have been exhausted. In addition to that, the State party submits, in accordance with article

22, paragraph 2, of the Convention, the complainant's claims that he is at risk of being treated in a manner that would amount to a breach of the Convention is not sufficiently substantiated. The State party concludes, therefore, that the communication is manifestly ill-founded.

4.4 On the merits, the State party notes that despite legitimate concerns that may be expressed with regard to the human rights situation in Algeria,^a the circumstances do not suffice to establish that the expulsion of the complainant would entail a violation of article 3 of the Convention. The complainant needs to show that he would be personally at risk of being subjected to treatment contrary to article 1 of the Convention. On the complainant's personal risk of being subjected to torture in Algeria, the State party submits that: (a) the Migration Board made its decision after having held two interviews with him; and (b) the Migration Court held an oral hearing before delivering its decision. It also notes that the domestic legislation contains the same principles as the Convention and that therefore its migration authorities apply the same test as the Committee to establish whether the complainant would be at a foreseeable, real and personal risk of torture if he was expelled to Algeria. It therefore underlines that great weight must be given to the assessment on the ground made by the State party's migration authorities.

4.5 In support of the complainant's claim that the Algerian authorities consider him to be a terrorist and that he has been sentenced to 10 years' imprisonment with forced labour, the complainant submitted summonses and a judgment of 12 January 2008; in support of his claim that he risks being killed by terrorists, the complainant submitted statements made to the police by his father after the terrorists searched for the complainant at his father's house. The Migration Board and Migration Court both questioned the authenticity of the supporting documentation. They noted that the summonses and statements to the police are copies of simple documents and the certified copy of the judgement had different coloured pixels in all stamps, and came to the conclusion that they are neither original nor of probative weight. In addition, the State party requested an assessment of the certified copy of the judgement by its embassy in Algeria, which commissioned an experienced lawyer to assess the authenticity. The assessment showed that the judgement was forged, as many expressions were missing, the usual phraseology in criminal matters was absent, the name of the accused did not appear in the list of the members of the court and no reference was made to the application of the Attorney General, the article of the Penal Code was incomplete, the expression in absentia did not appear, and forced labour is never specified in a sentence. The State party therefore maintains that there has been no judgement as such pronounced against the complainant at all.

4.6 With regard to the complainant's credibility and the veracity of his claims, the State party notes that before the Migration Board, the complainant initially claimed that his passport and driving license were in Algeria. However, during the proceedings, it emerged that the complainant had a valid visa to France. It is worth noting that the complainant never submitted his passport. Nor did he submit the passport he allegedly bought to travel to Sweden, claiming that he was afraid to use his passport with the French visa. To explain this omission, the complainant claimed that the police had asked his brother to submit the complainant's passport. The Migration Board concluded that the complainant has not explained his departure from Algeria and that the possibility of having travelled on a valid visa could not be ruled out. The State party further observes that the complainant had stated

^a See for example Amnesty International's annual report on Algeria for 2011; Human Rights Watch, *World Report 2011*; United States Department of State, "Country reports on human rights practices – Algeria" (8 April 2011), the United Kingdom of Great Britain and Northern Ireland, Home Office, *Algeria: Country of Origin Information Report* (14 March 2011); and the report on human rights in Algeria for 2010, published by the Swedish Ministry of Foreign Affairs in July 2011.

that the police did not take his passport when they first searched his home, which is odd considering the crime for which he had been convicted. It further holds that the explanation that he became a suspect when he wanted to provide a tip-off to the police about terrorist activity is not plausible and that the explanation of the way the terrorists made contact with him was not borne out by the facts.

4.7 The State party further notes that the complainant claimed that he applied for asylum on 1 December 2005. However, the facts show that he waited for one and a half months after his arrival before making such a request, which casts doubt over his need for protection. It further notes that before the domestic authorities, the complainant claimed that he had been released after one night of detention, while before the Committee he claimed that he was able to escape. The State party also observes that the complainant was not able to name the terrorist group that allegedly threatened him.

4.8 The State party took the view that the complainant has been unable to show that he is suspected of involvement with terrorists, so there is no reason to believe that he would be imprisoned on his return to Algeria. Therefore, even if the Committee accepted that the complainant was under a real threat of torture by terrorists, which the State party denies, nothing would prevent him from turning to the Algerian authorities to seek protection, especially when it has been shown that he was not suspected or sentenced for involvement with terrorists. It further observes that the complainant has not substantiated his account of his involvement with the police after he had been allegedly approached by terrorists. In any case, it amounts to nothing more than the poor conduct of one single police officer. Moreover, the State party recalls the provisions of article 1 of the Convention, submitting that the complainant's claim that he risks being killed by terrorists falls outside the scope of article 3. Additionally, the State party notes that the complainant left Algeria six years ago and that the latest statement to the police dates from June 2005. Given that lapse of time there is little to suggest that the complainant would still be of interest to the terrorists when he returns to Algeria. In conclusion, the State party submits that the evidence and circumstances invoked by the complainant are not sufficient to show that the alleged risk of torture is foreseeable, real and personal.

The complainant's comments on the State party's observations

5.1 On 22 November 2011, the complainant submitted his comments on the State party's observations. He notes that this is the first time he has been able to explain his case as well as can be. His qualm is that, during the domestic proceedings, he either did not have a professional interpreter, or that the interpreter was changed during the meeting or that interpretation was done via telephone conference, sometimes with bad reception. In addition, he claims that his account suffered the vagaries of translations from Arabic to French to English in the course of a meeting that was held 500 km away from his place of residence.

5.2 With regard to the general human rights situation in Algeria, the complainant notes the reports mentioned by the State party and maintains that the actual situation is worse, in particular in places of detention, where torture and ill-treatment are rampant.

5.3 He reiterates his allegation that he fears that he would be subjected to torture and killed either by the Algerian authorities or the terrorists inside the prison. The motive of the Algerian authorities is that he was sentenced for being a member of a terrorist organization and responsible for the death of a police officer; and the motive of the terrorists is that they consider him to be a traitor and responsible for the death of two terrorists.

5.4 The complainant maintains that the summonses, as well as the statements made by his father to the police, are true. With regard to the judgement, the complainant argues that the State party breached confidentiality when it asked the Swedish Embassy in Algeria to

verify the judgement through an Algerian lawyer. He notes that Algerian citizens working at the Embassy are under surveillance by security services and some of them are working for the security services. Therefore, the complainant is now on the list of the security services. He argues that the State party does not have any right to send a document of the file of an asylum seeker to his country of origin and he does not understand why further investigation was not done in 2008 when he provided the document, but rather on 25 July 2010. The complainant questions the veracity of the document and claims that the date of 25 July 2010 must be a mistake, that it is not an official document as the lawyer's or Embassy's stamp are missing and that without his power of attorney, a lawyer does not have access to a confidential judgement.

5.5 With regard to the delay in applying for asylum, the complainant notes that he felt safe once he arrived in Sweden and that he did not have the necessary information about asylum procedures. In conclusion, the complainant notes that the evidence and circumstances invoked by the State party are not sufficient to show that his communication is inadmissible or without merit. He reiterates that he faces a real risk of torture and degrading treatment.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication unless it has been ascertained that all available domestic remedies have been exhausted; this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief. The Committee takes note of the information provided by the State party that the decision regarding the complainant's expulsion became statute-barred on 24 October 2012, therefore it is no longer enforceable and the complainant is no longer under a threat of being expelled to Algeria. Moreover, he now has the possibility of submitting new asylum applications which will be re-examined in full by the Migration Board, with a possibility of an appeal to the Migration Court and further to the Migration Court of Appeal, if necessary. The Committee is of the view that there is nothing to indicate that this new procedure would be ineffective, in the case of the complainant, should the facts and circumstances so warrant.^b

6.3 In the light of the foregoing, the Committee concludes that the present communication is inadmissible under article 22, paragraph 5 (b), of the Convention for failure to exhaust domestic remedies in the sense that there still exists an effective alternative remedy locally.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 22, paragraph 5 (b), of the Convention;

^b See communication No. 365/2008, *S.K and R.K. v. Sweden*, decision adopted on 21 November 2011, para. 11.3.

(b) That this decision may be reviewed under rule 116, paragraph 2, of the Committee's rules of procedure upon receipt of a request by or on behalf of the complainant containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the complainant and to the State party.

Communication No. 479/2011: E.E. v. Russian Federation

<i>Submitted by:</i>	E.E. (represented by his mother L.E.)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Russian Federation
<i>Date of complaint:</i>	26 August 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 24 May 2013,

Having concluded its consideration of complaint No. 479/2011, submitted to the Committee against Torture on behalf of E.E. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is E.E., a citizen of the Russian Federation born in 1966. He claims to be a victim of a violation by the State party of his rights under article 1, paragraph 1; article 2, paragraph 3; article 4, paragraph 1 and article 15 of the Convention. The complainant is represented by his mother L.E.

1.2 By note verbale of 23 December 2011, the State party challenged the admissibility of the communication on ground of non-exhaustion of domestic remedies and given that the same matter was already examined by the European Court of Human Rights. On 16 May 2012, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to accede to the State party's request to have the issue of admissibility of the communication examined first, separately from the issue of the merits.

The facts as submitted by the complainant

2.1 On 16 April 2002, the complainant, then a bus driver on the route Chekhov-Moscow-Chekhov, received a phone call from a police officer informing him that the police needed to question him. Later the same day, two police officers from the Chekhov District Police Station, without providing any further explanation, apprehended the complainant near his house.

2.2 The complainant was brought to the Chekhov District Police Station, where police officers started to threaten him and beat him on the head. They asked him to confess the killing of one Ms. I.B., who had disappeared on 15 April 2002, while on her way from Moscow to Chekhov by bus.

2.3 The complainant claims that initially he was not informed of his right to be represented by a lawyer, he was not officially charged with any crime, and his arrest was not registered at the police station.

2.4 On 18 April 2002, a forensic-medical examination was performed on the complainant. No injuries were found on his body.

2.5 On the night from 19 to 20 April 2002, four police officers brought the complainant to a remote forest area. He submits that he was handcuffed and his head was covered with a hood. He was offered a "last chance" to confess guilt, otherwise he would be killed. The officers started beating him, and he was pushed on his knees very close to a bonfire. One of his knees was burnt by the fire. He was also beaten in the kidneys liver and area, on back and his ribs and was again threatened with murder. The officers also threatened to kill his wife and daughter. Thereafter, the complainant was taken back to the temporary confinement ward at the Chekhov District Police Station.

2.6 On 20 April 2002, the complainant's counsel visited him and he informed her that he was frightened, as he was under constant threats. He told her about the events of the night from 19 to 20 April 2002. On the same day, counsel complained to the Moscow Region Prosecutor's Office about the complainant's ill-treatment and threatening.

2.7 During the night from 21 to 22 April 2002, three unknown men entered the complainant's cell. One explained that he was the Head of the Criminal Police of Chekhov city. After having threatened the complainant and his family, the men left. The following night, several other officers came into his cell, along with the relatives of the missing Ms. I.B. The complainant was again threatened to be killed if he did not confess guilt.

2.8 On 22 April 2002, the Senior Inspector of the Moscow Region Prosecutor's Office of Chekhov city ordered a forensic-medical expert's examination of the complainant, which was carried out on 7 May 2002. During the examination, the complainant explained to the forensic expert that he had acute pain in the chest and that he felt dizzy. He claims that in reply, the expert, orally, told him that his ribs were broken. However, according to the record of the forensic examination, only a small, already healing wound was found on the complainant's left knee. According to the record, the wound in question could have been caused as a result of high or low temperature, by a curved object or by chemical substances. As a result, on 28 June 2002, the Senior Inspector of the Moscow Region Prosecutor's Office of Chekhov city refused to initiate criminal proceedings with respect to the complainant's ill-treatment claims.

2.9 The complainant submits that he finally confessed having committed the crime he was charged with as a result of the torture, threats and ill-treatment suffered. On an unspecified date in November 2002, he was transferred to the Serpukhov city prison, where torture and ill-treatment allegedly continued.

2.10 On 11 March 2003, the Moscow Regional Court found the complainant guilty, *inter alia*, under article 131, paragraph 3 (rape) and article 105, paragraph 2 (murder in a group of persons) of the Criminal Code and sentenced him to 21 years of imprisonment. On appeal, on 13 May 2003, the Supreme Court upheld the judgment of 11 March 2003. The complainant submits that, during the court trial, his counsel requested the Moscow Regional Court to take into account the issue of torture and the injury as established by the forensic-medical expert on 7 May 2002, but the court rejected this request.

2.11 In June 2003 and May 2004, the complainant's counsel complained to the Supreme Court under the supervisory review proceedings, requesting a re-examination of the criminal case, *inter alia*, given that the complainant was subjected to torture and ill-treatment during the pretrial detention and had confessed guilt thereunder. The Court rejected both requests.

2.12 In March 2004, the complainant's mother, acting on his behalf, applied to the European Court of Human Rights complaining about her son's alleged ill-treatment and forced confessions. In March 2006, the Court found the application inadmissible under

articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

2.13 On 24 November 2006, the complainant lodged a complaint with the Prosecutor-General of the Russian Federation, claiming torture, ill-treatment and the resulting unlawful conviction. The complaint was dismissed on 15 February 2007. Between 15 February 2007 and 3 August 2009, the complainant lodged similar complaints before a number of national authorities, vainly.

The complaint

3.1 The complainant claims that he was subjected to torture and ill-treatment at the initial stages of his detention, as well as while in pretrial detention, and that subsequent failure to investigate his complaints amounted to a violation, by the State party, of his rights under article 1, paragraph 1; article 2, paragraph 3; article 3; and article 4, paragraph 1, of the Convention.

3.2 He also claims that his ill-treatment at the police station and in prison amounted to torture aimed at obtaining a confession, in violation of the article 15 of the Convention.

The State party's observations on admissibility

4.1 By note verbale of 23 December 2011, the State party submitted its observations on the admissibility of the communication. It recalled the facts of the case: on 11 March 2003, the complainant was found guilty of rape and murder of Ms. I.B. in a particularly cruel manner, with use of violence, committed with the aim to conceal another crime, acting as part of an organized group. He was sentenced to 21 years of imprisonment.

4.2 During the pretrial investigation, the complainant's counsel appealed to the Prosecutor's Office alleging that the complainant had been subjected to ill-treatment. In this connection, an inquiry had been carried out, but the facts of ill-treatment were not confirmed. Consequently, on 29 June 2002, the Prosecutor's Office refused to initiate criminal proceedings in this respect. The State party points out that no appeal was lodged against this decision.

4.3 Notwithstanding, on 25 November 2011, the First Deputy Prosecutor of the Moscow Region annulled the decision of 29 June 2002 and the respective case file materials were forwarded to the Moscow Region Head Investigation Department of the Investigation Committee of the Russian Federation, for additional examination.

4.4 In light of the above, the State party maintains that the complainant has not exhausted all available domestic remedies, and the communication should be declared inadmissible pursuant to article 22, paragraph 5 (b) of the Convention.

4.5 In addition, the State party notes that, according to the case file materials, in March 2004 the complainant's mother applied with a similar complaint, on the complainant's behalf, to the European Court of Human Rights. Her application was subsequently declared inadmissible pursuant articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The State party maintains that the present communication should also be declared inadmissible pursuant article 22, paragraph 5 (a) of the Convention, as the Committee does not consider any communication which has been or is being examined under another procedure of international investigation or settlement.

The complainant's comments on the State party's observations

5.1 On 5 April 2012, the complainant reiterated that he was found guilty based on his confession obtained under duress. His counsel requested the Moscow Regional Court to take into account that, even if the forensic medical examination of 18 April 2002

established no injuries on him, an injury was established on him by the forensic medical examination of 7 May 2002, but the court dismissed this request. He also points out that the forensic medical examination of 7 May 2002 was performed on him 18 days after the date when he was subjected to ill-treatment, and when his injuries had already started to heal. In his opinion, by delaying his medical examination in 2002, the authorities had tried to hinder the investigation of his complaint of ill-treatment.

5.2 The complainant further extensively challenges the manner the courts interpreted the facts and evidence in the criminal case and enumerates alleged procedural shortcoming that took place during the trial.

5.3 Finally, he contends that his application to the European Court of Human Rights was dismissed because of non-compliance with the six months' time limit (article 35 of the European Convention).

The State party's further observations

6.1 By its note verbale of 22 May 2012, the State party added that, on 16 April 2002, Mr. B. had informed the police that his daughter had gone missing. On the same date, the complainant was summoned to the Chekhov District Police Station. He explained that at the end of his last bus ride the previous day, all passengers had gotten off at the last bus stop and that, on his way to the bus park, his bus broke. After he repaired it, he drove to the bus park, where a man was waiting for him to inquire about his daughter's whereabouts.

6.2 The State party further explained in detail the procedure prescribed by the national legislation in force at the material time regarding decisions to arrest and detain a person.

6.3 It adds that on 17 April 2002, the complainant was arrested as a murder suspect. According to the criminal case file materials, he was explained his right not to testify against himself. On 18 April 2002, he was interrogated, and during the interrogation, he did not complain about ill-treatment whatsoever. On the same date, a forensic-medical examination was performed on him, and no injuries were established on the complainant. On 19 April 2002, during the search of the complainant's house, no complaints about the ill-treatment were received either from the complainant's mother or from the complainant himself. On 20 April 2002, the complainant's counsel requested to perform another forensic-medical examination on the complainant. The request was satisfied on 22 April 2002. On the same date, during another interrogation, the complainant did not confess guilt and stated that it was one Mr. Ya. who had raped and murdered Ms. I.B. During the said interrogation, he again did not complain about having been subjected to any ill-treatment.

6.4 On 24 April 2002, Mr. Ya. testified how exactly the complainant committed crimes against Ms. I.B. Consequently, on 26 April 2002, the complainant was charged with murder and rape (article 105, paragraph 2 (k) and article 131, paragraph 1, of the Criminal Code).

6.5 During an interrogation on 26 April 2002, the complainant again reiterated his statements of 22 April 2002 claiming that the crimes were committed by Mr. Ya.; he did not complain of ill-treatment.

6.6 According to the forensic-medical expert's examination of 7 May 2002, a wound was revealed on the complainant's left knee, but it was impossible to establish its exact causes, as it could have been inflicted by a rounded or sharp object, by high or low temperature or by chemical substances. In this connection, the State party observes that neither the complainant, nor his counsel challenged the conclusions of this forensic report.

6.7 On 8 May 2002, the complainant's mother and his counsel complained to the Moscow Region Prosecutor's Office about the alleged ill-treatment.

6.8 During an interrogation of 20 May 2002, Mr. Ya. again incriminated the complainant, whereas on 21 and 28 May 2002, the complainant reiterated that the crimes were, in fact, committed by Mr. Ya. The complainant did not complain that he had been subjected to any ill-treatment on these last two occasions.

6.9 On 28 June 2002, the Prosecutor's Office adopted a decision not to initiate criminal proceedings concerning the complainant's allegations of ill-treatment, as they were not confirmed.

6.10 On 10 September 2002, the complainant was interrogated, but in the course of interrogation, he did not complain about having been subjected to ill-treatment. On 14 September 2002, Mr. Ya. reiterated his statements that the crimes were committed by the complainant, while on 17 September 2002, the complainant claimed that he did not commit the crimes he had been charged with and pointed to Mr. Ya. as the culprit. He reiterated the same also on 17 October 2002. The complainant did not complain about any ill-treatment, neither on 17 September 2002, nor on 17 October 2002.

6.11 During the trial, the complainant's counsel requested the Moscow Regional Court to take into account the results established by the forensic medical examinations of 18 April 2002 and of 7 May 2002; the court dismissed the request.

6.12 The State party notes that neither in the framework of the cassation proceedings nor within the supervisory review proceedings did the complainant ever mention that he had been subjected to ill-treatment during the pretrial investigation with the aim to force him to confess guilt concerning Ms. I.B.'s disappearance.

6.13 Finally, the State party notes that neither during the pretrial investigation nor during the proceedings before the courts did the complainant confess guilt in the crimes he had been charged with.

The complainant's further comments

7.1 On 22 June 2012, the complainant reiterated extensively his previous submissions, in particular regarding alleged procedural shortcomings and during the court trial.

7.2 He reiterates that as a result of his ill-treatment in the Chekhov District Police Station, he confessed that Ms. I.B. was on his bus on 15 April 2002. He also maintains that he was ill-treated in the Serpukhov city prison.

7.3 On 23 July 2012, the complainant added that he has exhausted all the available domestic remedies. In particular, within the cassation proceedings and the supervisory proceedings, the complainant indicated that he had been subjected to ill-treatment in order to force him to confess guilt.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention.

8.2 The Committee has taken note of the State party's objection regarding the admissibility of the communication. It notes, first that in March 2004, the complainant's mother had applied to the European Court of Human Rights with a similar complaint regarding the complainant's ill-treatment during the pretrial investigation and his subsequent conviction based on his forced confessions. This application was declared inadmissible on 28 March 2006. In this regard, the Committee notes that contrary to the complainant's submission that the application before the European Court of Human Rights

was dismissed due to the failure to comply with the six-months' time limit (see paragraph 5.3 above), the material on file demonstrates that the European Court, acting through a Committee of three judges, declared the claims inadmissible on the ground that the information before the Court does not reveal any violation of the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms.

8.3 The Committee recalls^a that it shall not consider any communication from an individual under article 22, paragraph 5 (a), of the Convention, unless it has ascertained that the *same matter has not been, and is not being, examined* under another procedure of international investigation or settlement. The Committee considers that examination by the European Court of Human Rights in the present case constituted an examination.

8.4 The Committee considers that a communication “has been”, and “is being examined” by another procedure of international investigation or settlement if the examination by the procedure relates/related to the “same matter” within the meaning of article 22, paragraph 5 (a), that must be understood as relating to the same parties, the same facts, and the same substantive rights. It concludes from the information on the case file that Application No. 14986/04 submitted to the European Court in 2004 on behalf of the complainant concerned the same person, was based on the same facts, and related to the same substantive rights as those invoked in the present communication.^b

8.5 In view of the above, the Committee considers that the requirements of article 22, paragraph 5 (a), have not been met in the present case. In light of this conclusion, the Committee will not examine other grounds of inadmissibility invoked by the State party, namely, those concerning the issues of non-exhaustion of domestic remedies.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under article 22, paragraph 5 (a), of the Convention;
- (b) That this decision shall be communicated to the complainant and to the State party.

^a See, for example, communication No. 305/2006, *A.R.A. v. Sweden*, inadmissibility decision adopted on 30 April 2007, para. 6.1.

^b See, for example, communication No. 247/2004, *A.A. v. Azerbaijan*, inadmissibility decision adopted on 25 November 2005, paras. 6.6–6.9.