



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

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## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 759/2016<sup>\*, \*\*</sup>

<i>Communication submitted by:</i>	Ronald James Wooden (represented by the organization Idheas, Litigio Estratégico en Derechos Humanos A.C.)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Mexico
<i>Date of complaint:</i>	7 July 2016 (initial submission)
<i>Date of decision:</i>	23 July 2021
<i>Subject matter:</i>	Arbitrary detention and torture
<i>Procedural issue:</i>	Non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture and cruel, inhuman or degrading treatment or punishment; State party's obligation to ensure that the competent authorities proceed to a prompt and impartial investigation; right to fair and adequate compensation.
<i>Articles of the Convention:</i>	1: 2 (1); 11: 12: 13: 14: and 16

1. The complainant is Mr. Ronald James Wooden, a national of the United States of America, born in 1969. He claims that the State party has violated his rights under article 2 (1), read in conjunction with articles 1, 11 to 14 and 16 of the Convention. The complainant is represented by the non-governmental organization Idheas, Litigio Estratégico en Derechos Humanos.

#### The facts as submitted by the complainant

2.1 The complainant and his wife moved to Taxco de Alarcón (Mexico) in 2008 where they intended to exercise their artistic skills and work with precious metals. In 2012, the couple rented a property in the Arroyo neighbourhood, which they converted into a handicrafts workshop. In the house next door lived M.P.H. and her son-in-law R.F.A.

2.2 On 28 April 2013, at 17.30 hours, the complainant and his wife parked their truck, which was loaded with equipment for their workshop, next to M.P.H.'s house. Once they

\* Adopted by the Committee at its seventy-first session (12 to 30 July 2021).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Erdoğan İşcan, Liu Huawen, Peter Vedel Kessing, Ilvija Pūce, Sébastien Touzé and Bakhtiyar Tuzmukhamedov. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Claude Heller and Diego Rodríguez did not participate in the examination of the communication.



were inside the workshop, M.P.H. shouted at them rudely to move their truck. The complainant began to film what M.P.H. was saying on his cell phone. Responding to his mother-in-law's screams, the son-in-law, R.F.A., came to the scene and threatened Mr. Wooden with a machete, telling him that he was going to kill him and "send him back to the United States in pieces in a sack if he didn't move the truck", and that they belonged to the Guerreros Unidos ("United Warriors") gang and they owned the street. The complainant's wife also filmed the events with her cell phone. R.F.A. continued to threaten the complainant and even struck the back of the truck with the machete, so damaging the vehicle. The complainant's wife called the police, while R.F.A. made several calls.

2.3 Two motorcyclists drew up in a street next to the workshop and spoke with R.F.A. Two patrol cars from the Taxco municipal police patrol unit then also arrived, and R.F.A. ordered the police to take Mr. Wooden away, saying "there he is, take him away" while pointing at the complainant. Six policemen got out of one of the patrol cars and ran towards the complainant making threatening gestures, so he started running and locked himself in his workshop. The policemen beat the door down, pointed their guns at him and threatened him. While proceeding to arrest him, they beat him with their weapons on various parts of his body, especially his head, throwing him to the floor to subdue him and handcuffing him behind his back. They stamped on his handcuffed hands with their boots, hit him on the head with the butts of their rifles, kicked him in the face and jaw with their boots, stamped on his genitals and ribs, and then put him in the luggage compartment of the patrol car to take him to the police headquarters. In the patrol car, they continued hitting him in the face and genitals, called him names, and threatened to kill him and make him disappear as a punishment for "having messed with them".

2.4 On arrival at police headquarters, they took him out of the patrol car and, by bypassing the detainee reception area, managed to avoid having to enter his details in the detainee register before taking him to the cells unit, where they continued to kick him and beat him with their rifle butts on different parts of his body. The beatings continued in the cell, where officers kicked him in the chest, ribs and genitals, beat him relentlessly with a set of keys and threatened him by saying "you're not going to get out of here, we're going to disappear you". As he was being taken to the cell, the police officers kicked his legs so that he stumbled and fell over, causing him further injury.

2.5 After leading him into one of the cells, while he was standing up the officers handcuffed his left hand only, leaving his right hand uncuffed. One officer then grabbed hold of the handcuff on this left hand while another grabbed hold of his right hand and together they pulled his body in both directions while other police officers continued to kick him hard in the abdomen and ribs. When they had finished beating him, they pressed him up against the wall and one of the policemen, whom the complainant identified by the name of J.J.V., pointed his gun at the complainant's temple and threatened to kill him. Meanwhile, another officer, whom the complainant was not able to identify, kept hitting him with a bunch of keys. They left him injured in the cell and withdrew. The complainant claims that he was beaten for around three hours.

2.6 Throughout the period of his detention, the complainant was held incommunicado and, although he requested medical attention, this was denied, as was toilet paper and water. Four hours later, at 22.30 hours., his wife, who had waited in the car park at police headquarters, confronted commander R.H.S., telling him that her husband had been taken away by his police officers for no reason. The wife was forced to pay 200 pesos in cash for her husband's alleged "administrative offence" and the complainant was released.

#### *Context*

2.7 The complainant notes that the events are set in a context of a pattern of torture in police practice that is tolerated by the justice officials responsible for investigating the offence.<sup>1</sup> In Guerrero State, which has at times been deemed the most violent in the whole of Mexico, torture is defined by law as a criminal offence and the legal definition establishes that, in order for an act to be considered as such, it must have been carried out for a specific

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<sup>1</sup> A/HRC/28/68/Add.3, para. 23.

purpose, such as extracting information or a confession for an offence or meting out punishment for an act of which the victim is accused. However, convictions for the offence are rare, amongst other reasons because the judicial authorities try perpetrators of torture for other offences such as, for example, abuse of authority and/or bodily injury.<sup>2</sup>

2.8 In 2012, Taxco ranked thirty-third on the list of least safe municipalities and, in 2014, the Government was in possession of information that, in Taxco, the Guerreros Unidos (“United Warriors”) crime syndicate had infiltrated units of the municipal police and organized crime had infiltrated the public administration and the police force.<sup>3</sup> As a result, the federal police had assumed control of the municipality’s security at the end of 2014 and the Director of Public Security had been arrested for membership of an organized criminal group.

#### *Medical reports*

2.9 On 28 April 2013 at 20.55 hours., while the complainant was still deprived of his liberty, a report on his physical state of health was drawn up by a doctor attached to the Municipal Public Security Force which concluded that the complainant was aggressive and overexcited and had no recent injuries visible on the surface of his body. The complainant claims that this report contradicts all other examinations that he underwent.

2.10 Immediately after having been released, the complainant went with his wife to Adolfo Prieto General Hospital, where he was diagnosed with a broken rib.

2.11 On 29 April 2013, the complainant went to Alarcón Judicial District Public Prosecutor’s Office to file a complaint and the forensic medical expert attached to the Office certified that the complainant had suffered various injuries, but that they were not serious. The complainant maintains that this report demonstrates the lack of impartiality in the efforts of the public prosecution service to investigate his case, since all the other medical examinations that he underwent certified that he had a number of serious injuries.

2.12 On 1 May 2013, the complainant filed a complaint with the Guerrero State Human Rights Commission against officers of the Municipal Patrol Police of Taxco de Alarcón. The Commission appointed a forensic medical expert, who, on 1 May, concluded that the complainant had an inflamed haematoma in his skull, behind his right ear, and abrasions on his abdomen, back, neck, wrists, left arm, right forearm and left leg, ankle and knee.

2.13 On 8 July 2015, the complainant went to the General Hospital of Mexico for various medical tests since he was still suffering from pain and associated injuries.

2.14 On 24 September 2015, the Chief of the Hospital’s Rehabilitative Medicine Service concluded that the complainant had several old, dark-coloured scars and a loss of muscle strength in both hands that made tight pincer grips and other specific hand movements difficult for him. Furthermore, as the complainant was affected by penile pain and erectile dysfunction, it was decided that he should undergo penile surgery.

2.15 On 7 April 2016, after assessing the complainant’s case, two psychologists who were members of the Colectivo Contra la Tortura y la Impunidad A.C. issued a report in which they concluded that “there is a high degree of consistency and coherence between all the sources of information mentioned in the study, the account of the events, knowledge of torture practices in Mexico and investigations into the physical and psychological effects of acts of torture and ill-treatment, meaning that torture and ill-treatment is possible”. The report also concludes that the complainant has symptoms of depression, anxiety, post-traumatic stress and various physical sequelae.

<sup>2</sup> Ministry of Foreign Affairs, Mexico, *Informe de México: avances y desafíos en materia de derechos humanos*, second edition, 2011, para. 195; available for consultation at <https://www.upr-info.org/followup/assessments/session17/mexico/Mexico-InfomHR.pdf>.

<sup>3</sup> Marcos Muedano, *Federales desarmen a policías a policías de Taxco, Arcelia y Buena Vista*, El Universal, 19 October 2014; available for consultation at <https://archivo.eluniversal.com.mx/estados/2014/policias-municipales-fuerzas-federales-guerrero-seguridad-1047360.html>.

*Criminal proceedings*

2.16 On 29 April 2013, the complainant went to the Alarcón Judicial District Public Prosecutor's Office to file a complaint against R.F.A. (his neighbour) and J.M.B., J.J.V. and R.V.R. (police officers) and whoever was responsible for the criminal threats, damage to the truck, bodily injury by beating and all other criminal acts intentionally inflicted upon him. In his complaint, the complainant detailed the treatment to which he had been subjected by the municipal police officers, the injuries that he had sustained and the events that had led to his arrest, and preliminary investigation ALA/SC/05/0328/2013 was initiated. The complainant indicates that, while his statement was being taken down, he did not at any time receive legal advice. Instead, he had been constantly threatened by the prosecution service officials in an attempt to force him to reveal who had given him the names of the municipal police officers. The officials refused to give their names.

2.17 As at the date of the communication, the complainant has received no information about the investigation or its outcome. The complainant explains that he and his wife were harassed and received various threats from the municipal police throughout the period that they spent living in Taxco. When the complainant tried to bring this situation to the attention of the Public Prosecutor's Office, he was told not to come back because "if you do, you'll be put away there and then". The complainant and his wife were forced to leave Taxco in June 2013, losing the equipment they had in their workshop and all their personal belongings. They have not been able to return to Taxco to move the proceedings forward because, if they did, their lives would be at risk.

*Proceedings before Guerrero State Human Rights Commission*

2.18 On 1 May 2013, the complainant filed a complaint with Guerrero State Human Rights Commission.<sup>4</sup> In his complaint, he described the treatment to which he had been subjected at the hands of Taxco municipal police officers and the events that had led to his arrest. In his written statement, he made the following requests: (i) that interim measures be ordered for his protection and the protection of his family; and (ii) that preliminary investigation ALA/SC/05/0328/2013 be duly incorporated into the case.

2.19 Case CDHEG-CRZN058/2014-I No. 420/2013 was then opened. As part of the proceedings in this case, the Human Rights Commission specifically ordered that: (i) the parties should be summoned to make statements and present evidence; (ii) the complainant should undergo a medical examination; (iii) the mayor of Taxco should be requested to adopt interim measures to prevent the officers of the Municipal Patrol Police from interfering with the victim's person, property and family.

2.20 On 7 May 2013, J.J.V. and R.V.R. stated that they did not know whether the complainant was in dispute with his neighbours; that they had gone to his house because it had been reported that a person in a state of inebriation was assaulting his neighbours; that they did not at any time strike the complainant; that he had caused his injuries himself; and that he was being held for an administrative offence. Commander R.H.S. denied having been involved in the events, basing his account on the narrative of the police officers J.J.V. and R.V.R.

2.21 On 21 May 2013, Guerrero State Human Rights Commission took statements from two witnesses, who indicated that the complainant had offended Ms. M.P.H. by filming her with his cell phone. The complainant notes that, in their statements and testimonies, the police officers, witnesses and medical examiner contradicted themselves on various points.

2.22 On 30 October 2013, the Chair of Guerrero State Human Rights Commission issued proposed resolution 172/2013, which was submitted to the mayor of Taxco but elicited no response. The mayor was again asked to respond on 22 January 2014, but this request also

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<sup>4</sup> The author states that Guerrero State Human Rights Commission is an autonomous, non-judicial public body whose main duties, according to the provisions of article 116 of the Constitution of Guerrero State, are the protection, promotion, defence and dissemination of human rights and which upholds the Mexican legal order by investigating complaints of probable human rights violations and formulating non-binding public recommendations, pronouncements and complaints for submission to the corresponding authorities.

went unanswered. On 7 February 2014, the complainant expressed his displeasure with the mayor's failure to respond.

2.23 On 10 April 2014, the Human Rights Commission issued recommendation 016/2014, which concluded that J.J.V. and R.V.R. had violated the complainant's right to integrity of person by overstepping their authority and causing him various injuries detrimental to his health. It also recommended that proceedings be instituted under the Act on the Responsibilities of State and Municipal Public Servants, that the complainant be granted reparation, and that human rights training courses be organized for officers of the police unit in question.

2.24 On 7 July 2014, the municipal ombudsman and attorney of Taxco City Council accepted the recommendation issued by the Commission, stating that the administrative proceedings against R.V.R. were being dismissed as he was not part of the city's police force.

2.25 However, as at the date of the communication, the complainant maintains that the recommendation has not been duly implemented. Firstly, J.J.V. received only a private warning. Secondly, Taxco City Council quantified the injuries caused to the complainant in the amount of 14,608 pesos, which the complainant considered did not reflect either the nature of the violations of his rights or the seriousness of the injuries he suffered. On 16 May 2016, the complainant stated that he was not accepting the offer but, as at the date of the communication, he had not had any response. With regard to the recommendation that a criminal investigation be ordered, on 18 April 2016 the complainant went to the Office of the Attorney General of Guerrero State to confirm the facts reported on 29 April 2013. The official of the Attorney General's Office recorded his statement as concerning offences of abuse of authority (torture), deprivation of personal liberty, threats and the consequences thereof, but the complainant had no knowledge of the proceedings initiated as at the date of the communication.

*Proceedings before the Office of the Assistant Attorney General for the Investigation of Organized Crime*

2.26 On 14 May 2014, the complainant went to the offices of the Executive Commission for Victim Support and submitted the file on preliminary investigation ALA/SC/05/0328/2013, the Guerrero State Human Rights Commission's recommendation 016/2014 and the notice of acceptance of the recommendation by the receiving authority.<sup>5</sup> The Executive Commission referred the case to the Office of the Assistant Attorney General for the Investigation of Organized Crime and, on 23 October 2014, the complainant went to the Office of the Assistant Attorney General to report the events. As the complainant mentioned the Guerreros Unidos crime syndicate and members of the Taxco de Alarcón municipal police force, the federal prosecution service official erroneously decided to include the complainant and his wife as complainants in the preliminary investigation opened into the disappearance of 43 teachers in Ayotzinapa, despite the fact that these events were unrelated to the events that the complainant was trying to report. No preliminary investigation was opened to investigate the offences reported by the complainant and his wife, meaning that they were also denied the possibility of requesting interim measures.

2.27 On 20 April 2015, the complainant and his wife visited the Office of the Assistant Attorney General for the Investigation of Organized Crime for a second time since no interim measures had been ordered and no criminal proceedings had been initiated. On 14 March 2016, the Office declared itself incompetent to investigate the events because they were offences under local jurisdiction and it was down to the Guerrero State authorities to carry out the corresponding procedures. On 13 April 2016, the complainant filed an application for *amparo* with the Office of the Assistant Attorney General for the Investigation of Organized Crime. On 1 July 2016, the Eleventh District Court for *Amparo* in Criminal Matters ordered the Office of the Assistant Attorney General to investigate the human rights violations committed against the complainant, including investigating the torture and unlawful deprivation of liberty to which he was subjected, assessing the evidence offered to support

<sup>5</sup> The author specifies that the Executive Commission for Victim Support is the operational arm of the National Victim Support System, a decentralized agency of the Federal Public Administration.

his claim using the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and investigating the links between police security forces and the organized criminal gangs operating in the municipality of Taxco.

2.28 The complainant concludes that the circumstances in which the rule of exhaustion of available domestic remedies established in article 22 (5) (b) of the Convention may be considered inapplicable are met: the processing of the domestic remedies has been unreasonably prolonged, in that three years and two months have passed since he made his first complaint, and more than a year has elapsed since he filed his complaint with the Office of the Assistant Attorney General for the Investigation of Organized Crime for a second time, without the judicial authorities having made any progress in the investigation, let alone identified and brought charges against the police officers responsible for the acts of torture and bodily injuries, some of which were serious.

2.29 The complainant also highlights that, under Mexican criminal law, the only domestic remedies that would allow for the investigation of an act of torture or other cruel, inhuman or degrading treatment in his case are the following: either (i) a criminal investigation carried out by the judicial authorities of Guerrero State; or (ii) a criminal investigation carried out by the Office of the Assistant Attorney General for the Investigation of Organized Crime. The complainant filed the corresponding complaints and the competent authorities were made aware of his allegations of torture.<sup>6</sup> The complainant maintains that no criminal investigation into the acts of torture committed against him has been carried out and that the judicial authorities have failed to identify and bring proceedings against the police officers involved in the events. Moreover, according to the complainant, it is reasonable to assume that the possible remedies would not provide effective protection, since inaction on the part of the competent authorities makes it unlikely that any remedy attempted would provide effective relief and that the victim's situation would improve.<sup>7</sup>

### **The complaint**

3.1 The complainant alleges a violation of article 1, read in conjunction with article 2 (1) of the Convention. He claims that the treatment described, to which he was subjected during his arrest, transfer and detention and throughout the period of his deprivation of his liberty, qualifies as torture within the meaning of article 1 in that the State agents intentionally inflicted severe pain and suffering, both physical and mental, that left him with serious physical and psychological injuries. These injuries caused serious and irreversible damage to the complainant's health, to the point that, at the present date, he is unable to exercise his skills as a craftsman to the same standard as before because of the injuries to his wrists and joints and he has also been unable to have sexual relations with his wife because of the blows he received in the genital area. The complainant maintains that the intent of the municipal police officers was clear, being to punish and intimidate him for "having messed with them".

3.2 The complainant submits that the State failed in its obligation to prevent torture by allowing him to be detained without having been caught in flagrante delicto, without an arrest warrant having been issued, without his details having been recorded in the detainee register, without any judicial oversight of his detention and without his being permitted a medical examination and medical treatment. The State party allowed him to be detained without a medical examination and medical treatment and to be held incommunicado, without access to a lawyer and without being examined by independent doctors. He highlights that the first medical examination took place when he was deprived of liberty and was carried out by a doctor from the Municipal Public Security Force, who overlooked his serious injuries, rather than by an independent doctor.

3.3 The complainant alleges a violation of article 16, read in conjunction with article 2 (1) of the Convention, owing to the acts committed by the Taxco police officers when he was arrested, during his transfer and while he was being held at the police headquarters. Should

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<sup>6</sup> *Evloev v. Kazakhstan* (CAT/C/51/D/441/2010), para. 8.5.

<sup>7</sup> *Ali Ben Salem v. Tunisia* (CAT/C/39/D/269/2005), para. 8.5; *Slyusar v. Ukraine* (CAT/C/47/D/353/2008) para. 8.2; and *Déogratias Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 7.2.

the Committee take the view that these acts do not constitute acts of torture within the meaning of article 1 of the Convention, the complainant considers that they do constitute acts which qualify as cruel, inhuman and degrading treatment. His treatment was also not respectful of his dignity, as he was denied medical care, water and toilet paper.

3.4 The complainant claims that the State party violated article 11 of the Convention, since, while he was being detained at the police headquarters, the authorities applied neither the Istanbul Protocol nor any other manual that conforms to international standards for the prevention, identification and documentation of torture and, as at the date of the communication, none of the public prosecution service officials who took receipt of the various complaints filed by the complainant have ordered their application either. This omission allowed the torture and ill-treatment to take place and made it easy for the police officers responsible to cover up their acts.

3.5 The complainant claims that the State party violated articles 12 and 13 of the Convention by failing to ensure that the competent authorities initiated a prompt, thorough and impartial investigation of the alleged acts and failing to allow him to have his complaint promptly and impartially examined by the competent authorities. Furthermore, three years and two months after the events, there is no official account of the nature and the circumstances of the acts committed by the police officers, none of the police officers involved in the acts of torture have been linked to the criminal investigation and, consequently, none of them have been brought to trial or punished with penalties commensurate with the seriousness of the acts.

3.6 The complainant emphasizes that, although he reported the torture to which he had been subjected first to the State Prosecutor's Office and then to the Office of the Assistant Attorney General for the Investigation of Organized Crime, providing a detailed description of the acts of torture and the circumstances in which they took place, a prompt and impartial investigation was never initiated and an independent medical examination was not ordered, all in violation of article 12 of the Convention. In addition, the Office of the Assistant Attorney General for the Investigation of Organized Crime, besides confusing the events reported by the complainant with events related to another investigation, initially merely drew up a report and later declared that it was not competent to deal with the case. Although the complainant was able to submit an application for *amparo* in order to have an investigation of the acts of torture initiated, which was admitted by the court, as at the date of the communication he has received no information about the action being taken by the State Prosecutor's Office to comply with that decision.

3.7 The complainant alleges a violation of article 14 of the Convention in that he was deprived of a prompt, effective and impartial judicial remedy that might establish the facts, allow for the prosecution and punishment of those responsible for the acts of torture and enable him to obtain due compensation and rehabilitation. Despite a recommendation that the amount due by way of reparation should be quantified and paid, in the end, two years later, Taxco City Council has merely offered, by way of compensation, an amount of 14,608 pesos, which does not reflect the multiple dimensions of the injuries suffered by the complainant.

3.8 By way of reparation, the complainant requests that the State party guarantees a prompt, impartial and thorough investigation of the events; prosecutes and punishes those responsible with sentences commensurate with the seriousness of the acts. He also requests that he receive fair and adequate reparation that guarantees adequate compensation and rehabilitation, including medical and psychological care.

#### **State party's observations on admissibility**

4.1 On 24 January 2017, the State party submitted its observations on the admissibility of the communication and requested that the Committee consider the admissibility separately from the merits of the communication, in keeping with rule 115 (3) of the Committee's rules of procedure.

4.2 The State party maintains that the present communication is inadmissible owing to a failure to exhaust available domestic remedies, pursuant to article 22 (5) (b) of the Convention and rule 113 (e) of the Committee's rules of procedure. The State party refers to

the Committee's jurisprudence, arguing that "mere doubts about the effectiveness of a remedy do not absolve the complainant from seeking to exhaust such a remedy".<sup>8</sup>

4.3 The State party also notes that the complainant has not at any time taken part in the proceedings intended to resolve the allegations contained in his communication. After the first complaint was filed on 29 April 2013, the State Prosecutor's Office opened preliminary investigation ALA/SC/05/0328/2013, concerning offences of bodily injury and damage, against various police officers.

4.4 The State party notes that, on 27 October 2016, after various items of evidence had been secured and without the complainant's cooperation, criminal proceedings were instituted against the police officers identified by the complainant. These criminal proceedings are ongoing, and are proving effective, being focused on clarifying the facts and punishing those responsible for the violations reported by the complainant.

4.5 The State party recalls that the complainant has a number of appropriate remedies available to him at the domestic level to challenge the issues that he believes are not in line with his claims. It also notes that the Committee found communication *E.Y. v. Canada*<sup>9</sup> inadmissible on the grounds that the complainant had not exhausted the appropriate domestic remedies.

4.6 The State party notes that the complainant has not participated in the criminal proceedings and has not availed himself of any of the remedies available to him. The complainant could have appealed against the refusal to issue an arrest warrant against the officers assumed to be responsible for the acts, as the State Prosecutor's Office responsible for the preliminary investigation subsequently did, which appeal is now being considered. In line with the Committee's jurisprudence, the State party claims that the complainant has not availed himself of opportunities to exhaust all domestic remedies, and that he can no longer do so because the limitation period established for such remedies in domestic law has expired.<sup>10</sup>

4.7 The State party maintains that the fact that the complainant has not taken part in the criminal proceedings does not absolve him from the obligation to exhaust available domestic remedies and that, in accordance with the Committee's jurisprudence, the complaint should be declared inadmissible if the complainant has not filed an appeal with the competent authority and has not explained why he did not do so.<sup>11</sup>

4.8 The State party maintains that the proceedings were not unreasonably prolonged, since the prosecution authorities conducted a series of procedures in response to the complaint, which also took account of the opinions issued by Guerrero State Human Rights Commission.

4.9 The State party highlights that, although, as the complainant indicates, his failure to take part was due to the threats he was receiving from officers of the municipal police, the complainant never informed the authorities that he was being threatened. The fact that he failed to report these events to any other authority, whether at the state level or within the prosecution service, prevented the authorities from being able to take measures to protect him and thus enable him to take part in the investigations and avail himself of the available remedies. The complainant could also have reported these facts to Guerrero State Human Rights Commission, which could have activated protection mechanisms under its jurisdiction. The complainant also failed to provide any evidence to explain why he did not inform the authorities of the threats received, and this failing prevented the Mexican authorities from taking the measures necessary to protect the complainant and allow him to continue with the proceedings and pursue the remedies he deemed necessary.

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<sup>8</sup> *Jensen v. Denmark* (CAT/C/32/D/202/2002), para. 6.3.

<sup>9</sup> CAT/C/43/D/307/2006/Rev.1.

<sup>10</sup> *H.E.-M. v. Canada* (CAT/C/46/D/395/2009), para. 6.4.

<sup>11</sup> *P.A.C. v. Australia* (CAT/C/34/D/211/2002), para. 6.2.

### Complainant's comments on the State party's observations on admissibility

5.1 On 28 March 2017, the complainant submitted his comments on the State party's observations. With regard to the exhaustion of domestic remedies, the complainant reiterates his reference to article 22 (5) (b) of the Convention and to the Committee's jurisprudence whereby the requirement to have exhausted domestic remedies does not apply if the processing of such remedies has been unreasonably prolonged or is unlikely to bring effective relief.<sup>12</sup> The complainant notes that, contrary to the State party's account, he did attempt to exhaust domestic remedies, but these have been unreasonably prolonged and have proved ineffective for the purpose of having the acts of torture of which he was a victim investigated.

5.2 At the time of submission of the communication, almost four years after the complainant filed his complaint with Alarcón Judicial District Public Prosecutor's Office, the acts of torture had not been investigated at either the local or the national level. The complainant points out that the proceedings initiated both within the State Prosecutor's Office and within the Office of the Attorney General of the Republic concerned the offence of bodily injury and not the offence of torture. The State Prosecutor's Office refused to initiate an investigation in respect of the former offence for almost two years.

5.3 With reference to the State party's comments on preliminary investigation ALA/SC/05/0328/2013, the complainant notes that, although he filed a complaint of torture, the preliminary investigation initiated concerned offences of bodily injury, damage to a vehicle and making threats, despite the fact that, in his written statement, he describes acts that, pursuant to article 1 (1) of the Convention, are considered to constitute torture.

5.4 The complainant brought an indirect *amparo* action against the Office of the Attorney General of the Republic following its refusal to investigate the acts of torture and the Eleventh District Court for *Amparo* in Criminal Matters ruled that the offence of torture had not been investigated (see paragraph 2.7 above), in that "the offence of bodily injury attributed to the municipal police officers has no link whatsoever with the separate offence of torture, these being criminal offences of a different nature".<sup>13</sup> The fact that the official of the Alarcón Public Prosecutor's Office did not investigate the torture suffered by the complainant also prevented the application of the Istanbul Protocol.

5.5 According to the complainant, when the State party states that the complainant should have appealed the decision of the first-instance court of the criminal division of Alarcón Judicial District to refuse to issue arrest warrants, it is disregarding the fact that the Alarcón Public Prosecutor's Office did not investigate the offence of torture and that, accordingly, no criminal proceedings have been brought for this offence, and that the arrest warrants issued against the three police officers were not for the offence of torture. Moreover, the State party ignores the fact that, according to the Code of Criminal Procedure for Guerrero State, victims are not parties to criminal proceedings and therefore cannot act autonomously but only as coadjutors of the Public Prosecutor's Office, and that article 132 of this Code establishes that decisions refusing the issue of an arrest warrant can be appealed only by the Public Prosecutor's Office.

5.6 The complainant adds that the indirect *amparo* application to which the State party refers would also not have been effective in his case, since, in order for protection to be provided, the offence needs to have been investigated,<sup>14</sup> and in this case there was no investigation for the offence of torture.

5.7 The complainant recalls that, under the Mexican Constitution and the Code of Criminal Procedure for Guerrero State, the investigation of offences and the instigation of criminal proceedings before the courts fall under the exclusive competence of the Public Prosecutor's Office and not the victim of the offence.<sup>15</sup> The Committee has stated in this regard that article 13 of the Convention does not require either the formal lodging of a

<sup>12</sup> *Ramírez Martínez et al. v. Mexico* (CAT/C/55/D/500/2012), para. 16.4.

<sup>13</sup> Judgment of 30 June 2016, page 3, annex 4, of the Eleventh District Court for *Amparo* in Criminal Matters. Case file No. 298/2016.

<sup>14</sup> *Amparo* Act, art. 107 (VII).

<sup>15</sup> Mexican Constitution, arts. 21 and 102; Code of Criminal Procedure for Guerrero State, art. 1.

complaint of torture and that it is enough for the victim simply to bring the facts to the attention of a State authority for the latter to have an obligation to consider it.<sup>16</sup>

5.8 The complainant also wishes to clarify that when the State party refers to the offence of damage, the damage in question is damage to his wife's vehicle, and not damage to herself or to the complainant. The complainant therefore contends that the State party's assertion that "the authorities have achieved substantial progress" is not accurate, as none of the actions taken were for the offence of torture and the only person arrested was arrested for the offence of damaging a vehicle. Thus, even when the complainant tried to exhaust available remedies, the decision of the Public Prosecutor's Office in Taxco not to investigate the offence of torture against the complainant made the attempt an ineffective remedy.

5.9 For these reasons, the complainant filed a complaint with the Office of the Attorney General of the Republic. However, the official of the Federal Prosecution Service decided not to open a preliminary investigation (see paragraph 2.26 above), which meant that he considered no crime to have been committed against the complainant. Although the complainant made several written submissions requesting that a preliminary investigation be initiated, the Federal Prosecution Service official responded that this was not necessary since preliminary investigation ALA/SC/05/0328/2013 was still under way in Taxco. In other words, the Federal Prosecution Service official considered that the investigation should focus on bodily injury and not the offence of torture.

5.10 Against this decision, the complainant filed an application for indirect *amparo*, which was admitted by the Eleventh District Court for *Amparo* in Criminal Matters (see paragraph 2.27 above). However, to date, no action has been taken to investigate the officers of the Taxco municipal police for the torture allegations made by the complainant nor has the Istanbul Protocol been applied. The complainant has been summoned twice by the Federal Prosecution Service official, the first time seven months after the court decision, in order to apply the Istanbul Protocol, but on that occasion the procedures could not be carried out because of failings on the part of the prosecutor which meant that the experts were not informed that the complainant would be appearing, and the second time two months later, but on that occasion the expert psychologist did not turn up, making a third hearing necessary. The complainant maintains that, to date, there have been no further attempts to establish the facts of the acts of torture or the involvement of the police officers.

5.11 The complainant considers that, for these reasons, the two grounds for non-application of the rule of exhaustion of domestic remedies established in the Convention and highlighted by the Committee are met, namely, that the proceedings are unreasonably prolonged and that they are unlikely to bring effective relief.

5.12 The complainant expresses his considerable surprise that the State party has erroneously indicated that he failed to report the fact that he had been threatened by municipal police officers to any authority. The complainant made complaints and filed formal grievances about the death threats he has received with the following authorities: (i) Guerrero State Human Rights Commission, on 1 May 2013, 6 February 2014 and 14 May 2015; (ii) the mayor of Taxco, on 6 May 2013; (iii) the municipal ombudsman of Taxco, on 6 May 2013; (iv) the Federal Prosecution Service official within the Office of the Attorney General of the Republic, on 23 October 2014 and 20 April 2015; and (v) the Chair of the Executive Commission for Victim Support, on 15 March 2015. The complainant therefore reiterates that, since 1 May 2013, the State has been fully aware of the death threats he had been receiving.

5.13 With regard to the proceedings before Guerrero State Human rights Commission, the complainant wishes to point out that the Commission is not a judicial body and that its recommendations are not binding, in accordance with the jurisprudence of the Committee, which has stated that investigations carried out by the Commission would not, due to the very nature of its recommendations, constitute an effective and enforceable remedy in terms of the exhaustion of domestic remedies.<sup>17</sup>

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<sup>16</sup> *Ltaief v. Tunisia* (CAT/C/31/D/189/2001), para. 10.6.

<sup>17</sup> *Ramírez Martínez et al. v. Mexico* (CAT/C/55/D/500/2012), para. 16.5.

5.14 For all these reasons, the complainant requests that the communication be declared admissible and that it be examined on the merits, as it meets the requirements of article 22 (5) (a) and (b) of the Convention in a reasonable and adequate manner.<sup>18</sup>

**Committee’s decision on the State party’s request for separate consideration of the admissibility of the communication**

6. In May 2017, the Committee informed the parties of its decision, taken through its Special Rapporteur on new communications and interim measures, to jointly examine the admissibility and the merits of the communication.

**State party’s additional observations on admissibility and the merits**

7.1 On 24 May 2017, the State party submitted its observations on admissibility and the merits, and reiterated its arguments on inadmissibility, considering that the complainant had failed to exhaust available domestic remedies. The State party adds that the Committee, as a subsidiary body, should declare the communication inadmissible, as the State is in the process of resolving the matter at the domestic level.

7.2 The State party notes that the Committee has been clear in its jurisprudence in considering whether the State party acted in conformity with the standards of the Convention before deciding on admissibility.<sup>19</sup> Accordingly, the Committee should find the communication inadmissible, because it has been demonstrated that proceedings are under way at the domestic level, and that all effective domestic remedies have not therefore been exhausted.

7.3 As to the merits of the case, the State party affirms that the investigations have been carried out in accordance with the standards and obligations established under the Convention. In the present case, in response to the events reported by the complainant the State party used all means at its disposal to initiate an investigation without delay, in accordance with the obligation of due diligence and the standards set out in the Convention.<sup>20</sup> It also wishes to emphasize that as a result of these proceedings four alleged perpetrators are under investigation and in this connection the State party wishes to highlight that the duty to investigate is an obligation of means and not of results.<sup>21</sup>

7.4 The State party reiterates that standards have been respected in the present case, since various proceedings have been carried out under different lines of investigation, all of them have been conducted without the complainant needing to be present, and the time elapsed since the start of the criminal proceedings is in line with the normal time frame established by law for criminal proceedings of this nature. Furthermore, the investigations have produced results in that the assumed perpetrators, who are officers of the police force who were at the scene on the day the events occurred, have already been identified. In addition, the investigation began immediately that the State became aware of the facts, since one of the assumed perpetrators was arrested and an arrest warrant was issued against the remaining three, a situation that demonstrates that the State has acted in accordance with its obligations and the Convention, and that, moreover, the proceedings are ongoing.

7.5 In accordance with the foregoing, the Committee should find that the State party has fulfilled its obligation to investigate the events from the moment it became aware of them, and is currently dealing with the matter at the domestic level.

**Complainant’s additional comments on the State party’s observations**

8.1 On 8 October 2016, the complainant submitted comments on the State party’s observations on admissibility and the merits of the communication. The complainant notes that the State party repeats the arguments already set out in its submission of 24 January 2017,

<sup>18</sup> *Evloev v. Kazakhstan* (CAT/C/51/D/441/2010), para. 8.6.

<sup>19</sup> *Gahungu v. Burundi* (CAT/C/55/D/522/2012).

<sup>20</sup> *Ibid.*

<sup>21</sup> The State party refers, inter alia, to the judgment of the Inter-American Court of Human Rights in *Tristán Donoso v. Panama*, 27 January 2009 (preliminary exception, merits, reparations and costs), Series C, No. 193. para. 146.

and, for this reason, the complainant reiterates the comments he made in his submission of 28 March 2017 concerning the admissibility of the communication.

8.2 As to the declaration of inadmissibility requested by the State party because domestic proceedings are under way, the complainant wishes to recall that these proceedings concern offences of injury to the complainant and damage to his wife's vehicle. Therefore, there are no domestic proceedings under way in which the offences of torture reported by the complainant are being investigated, and, accordingly, domestic remedies have proved ineffective.

8.3 The complainant also notes that in preliminary investigation FED/SEIDO/UEIDMS-GRO/00005467206, initiated in the Specialized Unit for the Investigation of Crimes related to Kidnapping of the Office of the Attorney General of the Republic on 12 September 2016, in response to the order issued by the Eleventh District Court for *Amparo* in Criminal Matters (see paragraph 2.27 above), the Federal Prosecution Service official decided not to investigate the acts of torture and declined jurisdiction in favour of the Attorney General's Office of Guerrero State, which has also failed to investigate the acts of torture. Accordingly, the complainant reiterates that in its submission the State party has not disputed the violations of article 1 of the Convention, read in conjunction with article 2 (1), and of article 11.

8.4 With regard to article 16, read in conjunction with article 2 (1) of the Convention, the complainant wishes to add that the State party did not take the steps necessary to ensure that the conditions of his detention conformed to the Standard Minimum Rules for the Treatment of Prisoners,<sup>22</sup> as the complainant did not enjoy such conditions, as detailed in his initial submission.

8.5 With regard to articles 12 and 13 of the Convention, the complainant wishes to reiterate that no investigation was initiated or is being conducted for the offence of torture; that the police officers that are the subject of the current investigation are being investigated for the offence of bodily injury; and that the only person who has been arrested was arrested from having damaged his wife's vehicle. Notwithstanding the State party's comments, the official of the Taxco Public Prosecutor's Office took down a statement of injury on the same day that the complainant filed his complaint detailing acts of torture, yet despite this the Office did not open an investigation for torture.

8.6 Therefore, in accordance with the Committee's jurisprudence, the State party is alleged to have violated article 12 and, as a corollary, article 13 of the Convention.<sup>23</sup>

8.7 With regard to article 14 of the Convention, the complainant wishes to add that the compensation offered by Taxco City Council does not meet the requirements of that article in that it does not provide adequate, effective and comprehensive reparation for the injuries he suffered as a result of the acts reported.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

9.1 Before considering any complaint submitted in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention.

9.2 The Committee has ascertained, as it is required to do under article 22 (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.

9.3 The Committee notes the State party's allegations that domestic remedies have not been exhausted and that criminal proceedings have been initiated against the police officers but the complainant has not taken part and could have filed an appeal against them. The Committee also takes note of the State party's argument that various procedures have been carried out in the Office of the Attorney General of the Republic, within Taxco City Council

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<sup>22</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly of the United Nations in resolution 43/173.

<sup>23</sup> *Jaïdane v. Tunisia* (CAT/C/61/D/654/2015) para. 7.11.

and within Guerrero State Human Rights Commission, some of which are still under way. The Committee notes, however, that the complainant has indicated that these procedures are ineffective because they are unreasonably prolonged, and are deficient in that, in the case of the Human Rights Commission, its recommendations are not binding; and that, in any case, only the offences of injury to the complainant and damage to a vehicle have been investigated and no investigation into offences of torture has ever been initiated.

9.4 The Committee recalls that the rule of exhaustion of domestic remedies does not apply if the processing of such remedies has been or could be unreasonably prolonged or is unlikely to bring effective relief.<sup>24</sup> In the present case, the Committee notes that more than three years have elapsed since the first complaint in which the complainant requested that the acts of torture be investigated by the Office of the Attorney General of the Republic. The Committee notes that the acts of torture have not been investigated by either Taxco City Council or the Office of the Attorney General of the Republic, despite the decision taken on 1 July 2016 by the Eleventh District Court for *Amparo* in Criminal Matters ordering the Office of the Assistant Attorney General for the Investigation of Organized Crime, attached to the Attorney General's Office, to investigate. Although a criminal investigation was opened by the Attorney General's Office on 27 October 2016, with an arrest warrant being issued for three officers of the municipal police, the Committee notes that the offences being investigated related to bodily injury to the complainant and damage to a vehicle. The Committee also notes that, despite the investigations and criminal proceedings that it has initiated, the State party has not undertaken an investigation into acts of torture reported by the complainant, and has offered no explanation or reasonable arguments concerning the reasons that led it to investigate only the acts of bodily injury and damage and not the acts of torture, particularly in the light of the limited and questionable procedures undertaken and the very rare convictions for torture in the State party.<sup>25</sup> The Committee also recalls that the investigations conducted by Guerrero State Human Rights Commission, which is a state-level human rights commission, would not, due to the very nature of its recommendations, constitute an effective and enforceable remedy in terms of the exhaustion of domestic remedies.<sup>26</sup>

9.5 Under these circumstances, the Committee considers that domestic remedies have been unreasonably prolonged and would be ineffective. Accordingly, the requirements of article 22 (5) (b) of the Convention do not preclude the Committee from examining the communication on the merits.

9.6 Accordingly, the Committee finds that the complainant's allegations under article 2 (1), in conjunction with articles 1 and 16, and under articles 11 to 14 of the Convention are admissible.

#### *Consideration of the merits*

10.1 The Committee has examined the complaint in the light of all the information submitted to it by the parties, in accordance with article 22 (4) of the Convention.

10.2 Before proceeding to examine the complainant's allegations as they relate to the articles of the Convention which he has invoked, the Committee must determine whether the acts to which the complainant was subjected constitute acts of torture within the meaning of article 1 of the Convention.

10.3 The Committee notes the complainant's allegations that during his arrest, detention and imprisonment, he was repeatedly beaten with weapons, fists and boots, stamped upon in the genital area and ribs, had guns pointed at him and was threatened with death and disappearance by police officers. The Committee also notes that the complainant has provided a number of medical reports that confirm the existence of bodily injuries including a broken rib, erectile dysfunction, symptoms of post-traumatic stress and a loss of muscle

<sup>24</sup> See, inter alia, the Committee's decisions on admissibility in communications *A.E. v. Switzerland* (CAT/C/14/D/24/1995) para. 4; *Evloev v. Kazakhstan*, para. 8.6; and *Ramírez Martínez et al. v. Mexico*, para. 16.4.

<sup>25</sup> *Ramírez Martínez et al. v. Mexico*, para. 16.5.

<sup>26</sup> *Ibid.*

strength in both hands. Some of these injuries were still present at least two years after the incident. The Committee also notes that the State party has provided a different version of the context of his detention, qualifying the offence as damage and injury, and notes the lack of more detailed information from the State party. The Committee considers that the complainant's allegations concerning the beatings he received during his arrest and transfer and the set of circumstances in which he was held in detention, without medical attention or water, constitute acts conducive to finding a violation of article 1 of the Convention, and for this reason does not consider it necessary to consider separately whether a violation of article 16 also exists.

10.4 The complainant alleges a violation of article 2 of the Convention, in connection with article 1, because the State party failed to comply with its obligation to prevent torture by allowing him to be arrested without a prior court order, without his details having been recorded in the detainee register and without judicial oversight of his detention. The Committee notes that the complainant was arrested without a warrant and without any possibility of communicating with his wife or with an independent lawyer. The Committee recalls its conclusions and recommendations, in which it has urged the State party to take effective measures to ensure that detainees enjoy the benefits of all fundamental safeguards in practice from the outset of their deprivation of liberty, in line with international standards, including, in particular, the right to receive legal assistance without delay, to be informed of the reasons for their arrest and to have their detention registered.<sup>27</sup> In the light of the above circumstances and the lack of information from the State party about these events, the Committee considers that the State party has failed to fulfil its obligation to take effective measures to prevent acts of torture as set out in article 2 (1) of the Convention.

10.5 The Committee also notes the complainant's argument that article 11 of the Convention was violated because, during his deprivation of liberty, the State party applied neither the Istanbul Protocol nor any other manual compliant with international standards for the prevention, identification and documentation of torture. The Committee also recalls its concluding observations on the seventh periodic report of Mexico, in which it urged the State party to ensure the systematic review of interrogation and arrest procedures, in accordance with article 11.<sup>28</sup> In the absence of information from the State party that demonstrates that provision was made for oversight of the conditions of the complainant's detention, the Committee concludes that there has been a violation of article 11 of the Convention by the State party.

10.6 With regard to articles 12 and 13 of the Convention, the Committee notes the complainant's allegations that no prompt, immediate and thorough investigation of the acts of torture was carried out by the competent authorities.

10.7 The Committee recalls that article 12 of the Convention requires State parties to ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.<sup>29</sup> In this regard, the Committee notes that, even though, as recorded in the medical certificates, the complainant had visible injuries on 29 April 2013, a prompt investigation into the alleged facts was not initiated. The State party has argued that an investigation into the offence of injury to the complainant and damage to a vehicle was initiated against various police officers after the case was opened on 29 April 2013, and that, on 27 October 2016, a criminal suit was brought against the police officers named by the complainant, in which the complainant did not take part. The State party also argued that the duty to investigate is an obligation of means and not of result.

10.8 The Committee further recalls that an investigation is not sufficient in itself to demonstrate the State party's conformity with its obligations under article 12 of the Convention: it also requires that the investigation should be prompt and impartial.<sup>30</sup> It recalls that promptness is essential both to ensure that the victim does not continue to be subjected

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<sup>27</sup> CAT/C/MEX/CO/7, para. 15.

<sup>28</sup> *Ibid.*, para. 17.

<sup>29</sup> *Ramírez Martínez et al. v. Mexico*, para. 17.7.

<sup>30</sup> See, inter alia, the Committee's decision in *Evloev v. Kazakhstan*, paras. 9.4 and 9.5.

to torture and also because, in general, the physical traces of torture soon disappear.<sup>31</sup> In this regard, the Committee notes that, following his complaint of 29 April 2013, the complainant appeared before Guerrero State Prosecutor's Office for the first time on 18 April 2016. Likewise, despite the decision issued by the Eleventh District Court for *Amparo* in Criminal Matters on 1 July 2016, the Federal Prosecution Service official decided not to investigate the acts of torture. The investigations of the Office of the Attorney General of the Republic started three years after the events, without any explanation being given for the excessive delay in the investigations or any timely information on the progress of the investigation being provided to the complainant.<sup>32</sup>

10.9 In the light of the above, the Committee concludes that the State party has failed to fulfil its obligations under articles 12 and 13 of the Convention.

10.10 The Committee notes that the complainant alleges a violation of article 14 of the Convention and also claims that the compensation offered by Taxco City Council does not meet the requirements of article 14. The Committee recalls its general comment No. 3 of 2012, in which it emphasizes that "the obligation of States parties to provide the 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".<sup>33</sup> In view of the lack of prompt and impartial investigation of the complaints submitted by the complainant, and all the issues highlighted in the previous paragraphs, the Committee concludes that the State party failed to comply with its obligations under article 14 of the Convention.

11. The Committee, acting under article 22 (7) of the Convention, rules that the facts before it reveal a violation by the State party of articles 1; 2 (1); 11; 12; 13 and 14 of the Convention.

12. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to: (a) initiate an impartial, thorough, effective and independent investigation into the acts of torture; (b) prosecute, try and punish appropriately the persons found guilty of the violations; (c) grant full reparation, including fair and adequate compensation, to the complainant and his family, and provide the complainant with as full a rehabilitation as possible; and (d) take the steps necessary to provide guarantees of non-repetition in connection with the facts of the present complaint. The Committee hereby requests the State party to inform it, within 90 days of the date of transmittal of the present decision, of the steps it has taken to respond to the above observations.

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<sup>31</sup> Ibid., para. 9.5.

<sup>32</sup> *Dimitrijevic v. Serbia and Montenegro* (CAT/C/33/D/207/2002), para. 5.4.

<sup>33</sup> General comment No. 3, para. 11.