



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

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## Committee against Torture

### Follow-up report on decisions relating to communications submitted under article 22 of the Convention\*

#### Introduction

1. The present report is a compilation of information received from States parties and complainants that was processed since the fifty-seventh session of the Committee against Torture (18 April to 13 May 2016), in the framework of its follow-up procedure on decisions relating to communications submitted under article 22 of the Convention.

#### A. Communication No. 336/2008

*Khalsa-Singh et al. v. Switzerland*

Decision adopted on: 26 May 2011

Violation: Article 3

Remedy: The Committee wished to be informed, within 90 days from the date of transmittal of the decision, of the steps taken by the State party in accordance with the Committee's observations.

2. On 22 December 2011, the State party informed the Committee that the Federal Office for Migration had on 28 October 2011 granted the complainants a provisional status, on the strength of which they were no longer at risk of removal to India. On 1 December 2011, the complainants appealed against the decision of 28 October 2011, requesting that they be granted asylum and recognition as refugees, instead of only a provisional status.

3. On 21 January 2013, the complainant informed the Committee that, by its judgment dated 4 January 2013, the Federal Administrative Tribunal had decided that the Federal Office for Migration should review its decision to grant the complainant only a provisional status in Switzerland. The complainant 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, but he failed to do so.

4. On 26 June 2016, the State party enquired as to the status of the case in the Committee's follow-up procedure. On 5 October 2016, the Secretariat requested the complainant to send it an update. On 21 October 2016, the complainant indicated that he had obtained an "F" residency permit and that he currently resided in Switzerland. He

\* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016), on 29 November 2016, as amended.



informed the Committee, however, that the permit offered the least protected type of stay in the country. He submitted that, in its decision dated 16 February 2016, the Federal Administrative Tribunal had denied his asylum application, stating that his criminal record, including the hijacking of an airplane, was not compatible with the status of a refugee. He claims that the Court had not accepted that he had not used any violence and that his behaviour in Switzerland was in complete conformity with the country's laws. The complainant also claimed to be well integrated, adding that the hijacking had taken place more than 35 years ago.

5. Since the complainant has received an "F" residency permit, the Committee decided to close the follow-up procedure. Should the complainants be again subjected to a new decision on their forcible removal from Switzerland, they might resubmit a complaint to the Committee.

## B. Communication No. 477/2011

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*Aarrass v. Morocco*

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Decision adopted on:	19 May 2014
Violation:	Articles 2 (1), 11-13 and 15
Remedy:	The Committee urged the State party to inform it, within 90 days from the date of transmittal of the decision, of the measures that it had taken in accordance with the observations. The measures must include the initiation of an impartial and in-depth investigation into the complainant's allegations. Such an investigation must include the conduct of medical examinations in line with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

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6. On 3 December 2015, the State party submitted that a medical examination had been conducted in November 2014 and presented a copy of the report thereon. On 1 February 2016, the State party submitted annexes to the report.

7. On 17 February 2016, the complainant provided an update regarding the conditions in which he was detained and his deteriorating health condition. He also submitted that his cell mate had admitted to him that he had been given a mobile telephone with a camera in order to spy on the complainant and had been promised a reduction of his conviction in return.

8. The complainant further submitted that he was still detained on the basis of the verdict issued in 2012. He had filed an appeal before the cassation court, but the request had been pending for three years. He also submitted that, in its observations to the Human Rights Committee, Spain had indicated that the Ministry of Justice had provided a decision dated 20 October 2015 of the investigation chamber No 4 stating that the investigating judge had ordered a medical evaluation and had conducted other investigative actions, and that, on the basis of the above, the investigation had been terminated. Since the complainant had not been party to those proceedings, he could not appeal the decision and it became final.

9. Taking into consideration the unreasonable delay in the cassation proceedings, the complainant filed on 15 October 2015 a request to be released before the Rabat Appeals Court, which was rejected.

10. With regard to the State party's observations, the complainant submitted that the medical evaluation conducted had concluded, inter alia, that he did not suffer from post-traumatic stress disorder; that some scars had been found on his body but that it was improbable that they resulted from torture; that the absence of a medical evaluation immediately after the alleged facts did not make it possible to verify the existence of

physical evidence supporting the existence of acute syndromes; and that, at the time of the evaluation, he did not suffer from psychiatric trouble, while the depression with which he had been diagnosed in 2012 was not specific to the acts of torture, in particular since it had been diagnosed two years after his incarceration. The complainant contests the testimonies of personnel from the Salé prison who stated that, when the complainant arrived there, he did not have any traces of beating on his body, indicating that he had filed a complaint against the medical personnel concerned in prison.

11. The complainant recalled that he had claimed that he had been tortured since his extradition to Morocco, that he had filed numerous complaints and that the State party had failed to conduct an immediate investigation. He also maintained that after the decision of the Committee he and his lawyers were no longer given access to the materials of the ensuing investigation or any opportunity to challenge testimonies or examine evidence. He maintained that his allegations had not been subject to an independent, impartial and in-depth investigation and that the authority who had conducted that investigation had not been competent to do so. He reiterated that the State party systematically resorts to torture in terrorism-related cases and that the ill-treatment continued after his transfer to Salé prison. He also maintained that the experts who had conducted the evaluation should have been given full access to his medical records — and that their report was incomplete without that information — and should not have concluded that the torture was unlikely. He also maintained that the medical examinations conducted were inadequate, that the experts had not been familiar with the Istanbul Protocol and that the evaluation in total was not conducted in accordance with the Istanbul Protocol.

12. The complainant also submitted that his lawyers had requested experts from the International Rehabilitation Council for Torture Victims to examine the medical report presented by the State party. The complainant submitted to the Committee a copy of the report of the Council dated 10 February 2016, in which the Council had concluded that the medical expertise had failed to meet the international standards in several key areas, namely, with regard to assessing the physical scars of the complainant, the failure to discover and report upon any material findings that the medical experts conducting the expertise had considered relevant and failure to consider the complainant's psychological state during his initial arrest or his mental state in the immediate and short to medium term following his alleged torture and ill-treatment. The complainant maintained that the investigation as a whole had failed to follow the requirements laid out in the Istanbul protocol. He concluded that the State party had failed to implement the Committee's decision for more than 18 months after it had been adopted. He requested the Committee to ask the State party to free him from jail, on the strength of the violations of the Convention that had been committed against him, and given that freedom from incarceration would constitute the only adequate measure to remedy those serious violations.

13. The submission was transmitted to the State party for comments, but the State party failed to provide comments within the required deadline.

14. On 18 April 2016, the complainant submitted further information regarding the way he had been treated by the prison administration since his latest submission. He also submitted that, having received a copy of the decision of the investigating judge to terminate the proceeding, issued on 28 October 2015, he would like to provide his comments. He maintained that the investigating judge had not been impartial in conducting the investigation, as evidenced by the facts that: the complainant had not been declared a party to the proceedings, which had resulted in him not having access to the file; the complainant had not been given a copy of the decision to close the investigation and therefore had not had a chance to appeal it; the investigating judge had stated that the complainant had "refused to be interrogated with the excuse that he does not speak Arabic", thus showing his bias towards the complainant; the investigating judge had used a methodology that had shown his lack of impartiality, namely, his first action had been to interview the individual who had accused the complainant of participating in a terrorist organization; the investigating judge had taken at face value the testimonies of personnel from the Salé prison, who had stated that, when the complainant had arrived there, he had not had any traces of beating on his body — an assertion contested by the complainant, who had filed a complaint against the prison medical personnel; and the investigative judge had

appeared to believe that his task had been to prove the complainant's involvement in terrorism rather than to investigate the torture allegations.

15. The complainant reiterated his request to the Committee to ask the State party to release him, taking into consideration the Committee's findings and the fact that his appeal before the Cassation Court was still pending.

16. On 21 October 2016, the complainant informed the Committee about his ill-treatment, including as a consequence of his transfer from the Salé II prison to the Tiflet II prison, where he is being held in solitary confinement. He claimed to be suffering from inadequate sanitary conditions and a lack of food, recreational activities and medical assistance, amounting to ill-treatment due to intimidation and reprisals. As the complainant had been detained since 2008, he requested an immediate release, a ruling on his cassation application and protection, including the adequate medical assistance to meet his health concerns.

17. The complainant's submission of 21 October 2016 was transmitted to the State party for observations within 2 weeks (no later than 16 November 2016).

18. The Committee decided to keep the follow-up dialogue open, and to send a reminder for observations to the State party.

### C. Communication No. 500/2012

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*Ramirez et al. v. Mexico*

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Decision adopted on: 4 August 2015

Violation: Articles 1, 2, 12-16 and 22

Remedy: The Committee urged the State party: (a) to launch a thorough and effective investigation into the acts of torture; (b) to prosecute, sentence and punish appropriately the persons found guilty of the violations; (c) to order the immediate release of the complainants; and (d) to award fair and adequate compensation to the complainants and their families and provide rehabilitation. The Committee also reiterated the need to repeal the provision of preventive custody from its legislation and to ensure that military forces were not responsible for law and order.

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19. On 3 August 2016, the State party submitted that its obligation to release the complainant immediately had been already fulfilled on 25 November 2015 with the final judgment acquitting the complainants, in the context of the criminal proceedings No. 27/2015-III, issued by the Second District Judge for Federal Criminal Proceedings of the State of Nayarit, in which it was acknowledged that evidence to prosecute them had been obtained through acts of torture. Nevertheless, the State party emphasized that such did not prevent national courts and authorities from initiating and continuing criminal proceedings against the complainants for other unlawful acts, different to those judged in the above-mentioned proceedings.

20. Concerning the obligation to investigate the acts of torture, the State party submitted that a series of measures had been undertaken. The State party described preliminary investigation proceedings, that had been initiated by several authorities since 2009, namely, those initiated on 16 June and 7 July 2014, under the competence of the Office of the Specialized Assistant Attorney-General for the Investigation of Federal Crimes, which had been merged on 27 October 2015 with the aim of avoiding contradictory findings and unnecessary delays. The State party submitted that 64 testimonies had been gathered, including 9 testimonies of the alleged victims, testimonies and interviews with witnesses, and 20 expert reports, police reports and other officials.

21. Regarding the recommendation to prosecute and punish those responsible for the acts of torture, the State party submitted that the Directorate General for Crimes Committed

by Public Servants had initiated, on 11 July 2016, a preliminary investigation to determine the accountability of agents belonging to the Military Attorney General's Office with regard to the acts of torture committed against the complainants. The State party affirmed that, at the time of submission, the Directorate General was investigating the facts. Furthermore, concerning the specific public officials identified by the Committee in its decision, the State party submitted that a hearing had been held with the General Investigative Office of the Office of the Mexican Attorney General, requesting it to investigate the acts of torture and to determine responsibilities. The State party highlighted that investigations had been intensified and that it was willing to prosecute and punish those who are responsible.

22. With regard to the rehabilitation of the authors, the State party indicated that the Executive Commission for Victim Assistance had provided medical assistance to the complainants between 19 June 2013 and 15 October 2015, namely, through medical evaluation and treatment. In addition, the State party emphasized that, in the near future, medical staff of the delegation of the Executive Commission in Tijuana would carry out medical evaluations of the complainants and would follow up on the medical needs that were detected. Finally, the State party asserted that the Executive Commission would develop the mechanisms necessary to take into consideration a more specific approach towards the rehabilitation of victims of torture.

23. On 19 September 2016, the complainants submitted that, subsequent to the Committee's decision in their case, they had suffered new acts of intimidation and harassment by the State party's authorities. They reiterated that the State party had tolerated, for several months, a media campaign accusing the complainants and their representatives of being part of a criminal organization. As to individual complainants, Mr. Ramiro Ramírez Martínez and Orlando Santaolaya Villarreal remained detained in prison (the Central Facility for Social Rehabilitation) without a judicial decision, and with only limited communication with their relatives, while being denied medical services and psychological care. Since his release, Mr. Rodrigo Ramírez Martínez had been harassed by the police, who had repeatedly searched without a warrant the workshop that he runs with his older brother Ramiro Israel. The complainants requested the State party: (a) to inform the Committee about the actions taken to implement the decision it had adopted in their case; and (b) to adopt the measures necessary to protect their physical and psychological integrity and avoid reprisals occurring against them, their families and legal representatives. They also requested the Committee's rapporteur on reprisals to urge the State party to adopt the measures necessary to investigate the above-mentioned security incidents that took place after the Committee's decision, and to prevent their recurrence. They further requested the Committee to appoint one of its members to carry out a confidential follow-up country visit, pursuant to article 20 of the Convention, and subsequent to the country visit it carried out in 2001, in order to assess whether torture was systematically practised.

24. In September 2016, the complainants' submission was transmitted to the State party for observations.

25. The Committee decided to keep the follow-up dialogue open and to send a reminder for observations to the State party.

#### **D. Communication No. 551/2013**

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*Elaïba v. Tunisia*

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Decision adopted on:	6 May 2016
Violation:	Articles 1, 2, 11-16 and 22
Remedy:	The Committee urged the State party to: (a) conduct an impartial investigation into the events in question with a view to the prosecution, trial and punishment of anyone found to be responsible for acts of torture. This investigation should include medical examinations of the complainant in accordance with the Istanbul Protocol; (b) provide the

*Elaïba v. Tunisia*

complainant with redress and the means of rehabilitation for the acts of torture committed; and (c) take steps to ensure that, in the case in question, it fulfilled its obligations under article 15 of the Convention. The State party was, moreover, under an obligation to prevent the recurrence of any such violations in the future. The Committee urged the State party to inform it, within 90 days of the date of transmittal of this decision, of the measures it had taken in response to the views expressed, notably the provision of adequate and fair compensation, including the means for as full rehabilitation as possible.

26. On 19 September 2016, the State party submitted, with regard to the criminal proceedings against the complainant, that, on 10 May 2012, the Appeals Court in Tunisia had handed down its decision against the complainant, sentencing him to 9 years and 6 months of imprisonment. The complainant had been released on 3 August 2016. On 1 May 2013, the complainant had submitted a request to review the Appeals Court decision as he claimed that his confession had been coerced by torture. He had also submitted a complaint to the General Prosecutor's Office against alleged perpetrators of torture. On 14 June 2013, the Consultative Committee at the Ministry of Justice had rejected the complainant's request to review the Appeals Court decision, as the torture complaint before the General Prosecutor's Office was still pending.

27. Regarding the health situation of the complainant, the State party submitted that he had been admitted to prison with pre-existing health issues, including high blood pressure. The complainant had undergone medical checks as an outpatient at the cardiac clinic of the Charles Nicole Hospital in Tunisia on 16 April and 25 June 2010; at that time it was concluded that he had not suffered a cardiac arrest and the results of his tests had been normal. He had been subjected to regular medical check-ups and provided with the prescribed medication.

28. Regarding his torture complaint, the State party submitted that the complainant had been represented by a lawyer and that an investigative judge had heard the complainant and other witnesses on 11 May 2012. At the time of the State party's submission, the case was still pending and the last investigative action had taken place on 5 August 2016, when the investigative judge had taken official testimonies.

29. With regard to compensation, the State party submitted that, once the complainant was declared by the investigating judge to be an aggrieved party, he would be in a position to file a claim for the damages that had resulted from the crime, before the competent authorities, in accordance with article 7 of the Criminal Procedure Code. A compensation claim could be attached to the criminal proceedings or submitted separately in a civil court; however, it could only be processed once the criminal proceedings were finalized.

30. In October 2016, the State party's observations were transmitted to the complainant for comments.

31. The Committee decided to keep the follow-up dialogue open.

## **E. Communication No. 558/2013**

*R.D. et al. v. Switzerland*

Decision adopted on: 13 May 2016

Violation: Articles 3 and 22

Remedy: The Committee was of the view that the State party had an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainants to Belarus, the Russian Federation or any other country where they ran a real risk of being expelled or returned to the Russian

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*R.D. et al. v. Switzerland*

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32. On 1 July 2016, the State party submitted that, on the same date, the complainants had been granted residence permits and that they were no longer at risk of deportation.

33. In August 2016, the State party's submission had been transmitted to the complainants for comments.

34. Since the deadline for comments given to the complainants had expired, and they had not objected to the State party's submission that they were not at risk of deportation, the Committee decided to close the follow-up dialogue with a note of satisfactory resolution.

## **F. Communication No. 628/2014**

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*J. N. v. Denmark*

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Decision adopted on: 13 May 2016

Violation: Articles 3 and 22

Remedy: The Committee was of the view that the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Sri Lanka or to any other country where there was a real risk of him being expelled or returned to Sri Lanka.

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35. On 14 September 2016, the State party submitted that, on 29 June 2016, the Danish Refugee Appeals Board had decided to reopen the complainant's asylum case with a view to making a new assessment of the asylum application of the author in the light of the decision of the Committee against Torture of 13 May 2016 and that it would inform the Committee once the Board had reached a decision in the reopened case.

36. In September 2016, the submission was transmitted to the complainant for comments.

37. The Committee decided to keep the follow-up dialogue open and to send a reminder for comments to the complainant.

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