|  |  |  |
| --- | --- | --- |
|  | United Nations | CAT/C/56/2 |
| _unlogo | **Convention against Tortureand Other Cruel, Inhumanor Degrading Treatmentor Punishment** | Distr.: General22 December 2015Original: English |

**Committee against Torture**

 Periodic Report of the Rapporteur for follow-up to decisions on complaints submitted under article 22 of the Convention [[1]](#footnote-2)\*

This report compiles information received from States parties and complainants since the 54rd session of the Committee against Torture, which took place from 20 April to 15 May 2015.

|  |  |
| --- | --- |
| **STATE PARTY** | **Finland** |
| **CASE** | **490/2012, *E.K.W*.** |
| Decision adopted on | 4 May 2015 |
| Violation | Article 3 - removal to the Democratic Republic of the Congo |
| Remedy recommended | The Committee wishes 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 response to the present decision. |

The Committee’s decision was transmitted to State party on 27 May 2015.

On 4 September 2015, the State party submitted that, on 15 July 2015, the complainant and her two minor children were granted asylum by a decision of the Finnish Immigration Service. They were issued fixed term residence permits, valid until 16 July 2019 and renewable under the conditions laid down in the Aliens Act. The complainant was also issued an unrestricted work permit.

In October 2015, the State party’s submission was transmitted to the complainant for comments.

Committee’s decision: To keep the dialogue open in order to give the complainant a possibility to provide comments.

|  |  |
| --- | --- |
| **STATE PARTY** | **Spain** |
| **CASE** | **368/2008, *Sonko***  |
| 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. |

On 28 July 2015, the State party submitted an update, in reply to the Committee’s Chair’s request for information during the 6th periodic report of Spain in May 2015 and in order to update the information provided in its correspondence of 27 April 2012:

The Committee’s decision was sent to the judicial and administrative authorities who intervened in the matter. It was also published in the Official Gazette in May 2012.

* As to the Committee’s recommendation to carry out an investigation:
* In light of the Committee’s recommendation, the Office of the Prosecutor (Fiscalía General del Estado) issued instruction to the Chief Prosecutor of the Area of Ceuta, to adopt adequate measures to allow the victim’s relatives to request an investigation;
* The above Prosecutor requested the First Instance Court No. 1 of Ceuta to void its decision that closed the preliminary inquiry concerning the death of Mr. Sonko. The Prosecutor also requested it to inform the NGO *Comisión Española de Ayuda al Refugiado* (CEAR) about the reopening of the proceedings, so it could facilitate the participation of the relatives in the proceedings;
* On 19 October 2012, the Court revoked its decision that declared the preliminary inquiry closed;
* On 31 October 2012, CEAR provided the Court with the contact details of Mr Sonko’s relatives in Vicar, Almeria;
* On 26 November 2012, the Court notified Mr. Sonko’s relatives of its decision of 19 October 2012. The Judge of Vicar explained to the relatives the judicial actions that they could request or carry out within the new inquiry. However, since none of the relatives submitted an application to the Court No. 1 of Ceuta, on 18 January 2013, it decided to declare the preliminary inquiry concerning the death of Mr. Sonko closed again.
	+ The victim’s relatives could file a request for compensation before a court. However, the State party has no information that indicates that they have requested such compensation through criminal, civil or administrative proceedings.

In October 2015, the State party’s submission was transmitted to the complainant for comments.

Committee’s decision: To keep the follow-up dialogue open.

|  |  |
| --- | --- |
| **STATE PARTY** | **Bulgaria** |
| **CASE** | **257/2004, Keremedchiev** |
| Decision adopted on | 11 November 2008 |
| Violation | Articles 12 and 16, paragraph 1 |
| Remedy recommended | The Committee urged the State party to provide an effective remedy to the complainant, including fair and adequate compensation for the suffering inflicted, in line with the Committee’s General Comment No. 2, as well as medical rehabilitation. |

On 15 January 2015, the State party submits that, on 13 November 2014, the Council of Ministers of the Republic of Bulgaria adopted a decision to pay an individual financial compensation to the complainant in the above communication (amounting to 5000 BGN).

A request for comments was sent to the complainant in January 2015; a reminder was sent in October 2015.

Committee’s decision: To close the dialogue with a note of partially satisfactory resolution.

|  |  |
| --- | --- |
| **STATE PARTY** | **Morocco** |
| **CASE** | **321/2007, *Mopongo et al.,***  |
| Decision adopted on | 7 November 2014 |
| Violation | Article 3  |
| Remedy recommended | The Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the action it has taken pursuant to the above decision. |

On 9 March 2015, the State party submits that it regrets that the Committee did not take into consideration the information submitted by it on 23 October 2014, related to the efforts of the authorities to identify, localise and see the complainants, taking into consideration that the Committee was informed that:

* + The investigations dully undertaken by the competent authorities, namely the police, regarding the sub-Saharan community indicated that the complainants were not among that group.
	+ The State party had provided information on the introduction of a new migration policy in September 2013 that is more humane and in conformity with its international obligations, and that is being currently implemented.
	+ In that framework, an operation on the legalisation of migrants illegally present on the territory of the State party began on 1 January 2014 and was finalised on 31 December 2014. None of complainants, as described in the communication, were among the thousands of foreign individuals, who approached the Bureau for Foreigners, in order to legalize their situation.
	+ Information from the UNHCR office in Morocco and the Office of Refugees and Stateless Persons of the Ministry of Foreign Affairs and Cooperation confirmed that the names of the complainants did not appear in their databases.
	+ Thus, despite the investigations undertaken by the authorities, none of the names of the complainants were found on the lists of asylum seekers, recognized refugees, or the persons regularized with a residence permit, which attests to the good faith of the State party’s authorities.

Finally the State party notes that the counsels for the complainants themselves do not possess any other information or elements on the follow up regarding the above case.

In May 2015, the State party’s submission was transmitted to the complainant’s for comments. A reminder for comments was sent to the complainant in October 2015.

Committee’s decision: To keep the follow-up dialogue open.

|  |  |
| --- | --- |
| **STATE PARTY** | **Morocco** |
| **CASE** | **477/2011, *Aarrass*** |
| Decision adopted on | 19 May 2014 |
| Violation  | Article 2, paragraph 1, and articles 11, 12, 13 and 15 |
| Remedy recommended | The Committee urged the State party to inform it of the measures that it has taken in accordance with the observations set forth above. These 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 Istanbul Protocol. |

On 23 December 2014, the complainant’s counsel submit that on 4 July 2014, prison guards came and told the complainant that he was summoned to appear before the investigating judge (name on file) who had investigated the charges against the complainant. The complainant refused to meet him and informed his sister. The complainant’s lawyers wrote to the Ministry of Justice and to the Prosecutor General, reminding that the complainant opposed firmly being interviewed by the investigating judge in question, indicate that the complainant wanted to be represented by a particular counsel (member of the Paris’ and Brussels’ Bars), with whom he had developed a confidential relationship and request that the above counsel is kept informed of all developments in the investigation. On 8 July 2014, the Prosecutor General’s office responded that the investigation was to be conducted by another investigating judge (name on file); that to be allowed to represent the complainant a counsel had to obtain a special authorisation and to come from a state with which Morocco had concluded a legal aid treaty; and that the treaties between France and Morocco had been suspended since February 2014. The counsel of the complainant responded on 10 July 2014, recalling that under the Istanbul Protocol victims should be kept informed of all stages of the investigation They further requested that exceptionally the French lawyer of the complainant would be allowed to defend his interests and that at least his Moroccan lawyer is informed of the developments. The same letter was sent to the investigating judge. At the same time they filed a request for special authorisation was submitted to the Minister of Justice and to the Moroccan king. On 15 July 2014, the above requests were reiterated, because in the interim the complainant had been informed orally that an interview was scheduled for 17 July 2014, but none of the counsels were informed. The complainant’s request to be represented by the French counsel was ultimately rejected and he was interviewed on two occasions, in July and August 2014 by the investigating judge in the presence of his Moroccan counsel.

In August 2014, the complainant complained of numerous threats that he was facing again in prison. Prison guards who had been removed following his allegations, reappeared in the “quarter”. On one occasion the guard who brought him his evening dose of medication told him to take it, because he would soon need a higher doze; then the guard kept the complainant awake through the night.

On 9 September 2014, the Brussels Court of Appeals ordered the Belgium state to request from the Moroccan authorities biweekly visits of the complainant from the Belgian consular service. On 22 September 2014, the Belgium consular service requested permission to visit the complainant in prison. At the time of submission there was no answer to that request. On 26 September 2014, the sister of the complainant informed the counsel that he reported that acts of intimidation had intensified against him, that he had been systematically deprived of sleep and was in a state of exhaustion. On 4 November 2014, the counsels for the complainant requested the investigating judge to allow the presence of an independent expert during the forensic medical expertise that had been scheduled.

On 6 November 2014, a medical doctor (name on file) visited the complainant and asked if the medical examination could take place. The complainant postponed the examination, which began on 10 November 2014. On 11 November 2015, the Moroccan counsel of the complainant reiterated the request for participation of an independent medical expert. The request was rejected on 13 November 2014 on the ground that it had been submitted belatedly.

On 8 January 2015, the submission was transmitted for observations to the State party.

On 22 January 2015, the complainant’s counsel submitted that the complainant had been visited the day before by members of "special services" (men dressed in green); 5 of the men ransacked his cell, broke the water tap and the stool of the complainant. In addition, they conducted a full body search of the complainant and the whole scene was filmed.
During this episode, two of the people who particularly mistreated the complainant since his incarceration in the Salé prison (names on file) were watching. In the evening the complainant’s stove was confiscated. The pressures, harassment and humiliation inflicted on the complainant were such that he decided to start a hunger strike.

In January 2015, the complainant’s submission was transmitted to the State party for observations.

On 30 March 2015, the State party submits that the counsel of the complainant is trying to amalgamate different procedures in order to absolve his client, through legally inappropriate means, even though the utilized instruments lack conviction in view of the evidence against him. Rather than adhering to the follow up procedure, the counsel for the complainant skids in incoherence and raises issues related to the unfinished cassation proceedings and to the consular protection procedure initiated with the justice system in Belgium. The State party’s authorities recall that during the meeting that took place on 21 November 2014 with the Rapporteur on follow-up, information was provided on the development of the investigation into the complainant’s torture allegations, conducted by an investigating judge of the Rabat Court of Appeals. In the framework of that investigation, the investigating judge had ordered a forensic medical expertise on the complainant, to be conducted by a medical commission, including a psychiatrist. According to the complainant himself the interview lasted for three minutes only, since he refused to be examined, under the pretext that the specialist did not present himself to the complainant and did not provide a visit card. The authorities consider that behavior as obstructing the work of the investigating judge and bad faith on the site of the complainant. The State party’s authorities remain at the disposal of the Committee and will continue to inform it of the development of the investigation.

On 21 April 2015, the counsel for the complainant submitted that the complainant did not receive adequate health care in the prison.

On 16 June 2015, the counsel for the complainant submits that the State party had announced a medical expertise, which apparently had been conducted, but the results had not been communicated to the complainant or his counsel. She further submits that the State party does not appear to take any action to, for example, identify the potential perpetrators of the alleged torture against the complainant; lastly the appeal submitted against the verdict has not been processed for more than two years. The counsel points out that the complainant is detained in very difficult conditions, that he cannot see his family, notably his father, who is terminally ill and his daughter who is now 10 years old and has not seen her father in years.

In October 2015 the above submissions were transmitted to the State party for observations.

Committee’s decision: To keep the follow-up dialogue open.

|  |  |
| --- | --- |
| **STATE PARTY** | **Kazakhstan** |
| **CASE** | **497/2012, *Bayramov***  |
| Decision adopted on | 14 May 2014 |
| Violation | Article 1 in conjunction with article 2, paragraph 1; and of articles 12; 13; 14; and 15, |
| Remedy recommended | The Committee urged the State party to conduct a proper, impartial and independent investigation in order to bring to justice those responsible for the complainant’s treatment, to provide the complainant with full and adequate reparation, including compensation and rehabilitation, and to prevent similar violations in the future.  |

On 18 August 2015, the counsel for the complainant reiterates that the Republic of Kazakhstan has partially fulfilled the decision of the Committee. On 12 December 2014, the Kostanai City Court partially satisfied the claim of the complainant against the Department of Internal Affairs of Kostanai Province for moral damages due to the torture. The complainant filed a lawsuit asking compensation in the amount of 100 million tenge (about $ 550,000). The court made a decision to grant compensation for moral damages in the amount of 100 000 tenge (about $ 550). The Police appealed before the Supreme Court. On 28 May 2015, the Supreme Court refused to initiate a supervisory review. In June 2015, the complainant received compensation for moral damages in the amount of 100 000 tenge.

On 30 July 2014, the Prosecutor's office of Kostanai province initiated a criminal case under subparagraph A of part 2 of Article 347-1 of the Criminal Code (“Torture”). On 10 December 2014, the Prosecutor's office issued an order to dismiss the criminal case for lack of evidence. On 3 March 2015, the Prosecutor General cancelled this decision and a Special prosecutor was put in charge of the investigation. The investigation was reopened, however, the prosecutor hardly took any actions to complete it and bring the perpetrators to justice. On 18 November 2014, one of the alleged victims (name on file), who were subjected to torture along with the complainant, filed a complaint to the Prosecutor’s office regarding the fact of torture. For an extended period of time the Prosecutor's office investigated two episodes of torture. Following a request from the lawyer, the cases were joined on 3 April 2015, and now there are two alleged victims.

However, to date the Prosecutor has not ruled on the qualification of the alleged acts, one of the alleged perpetrators (name on file) was not charged as a suspect in the case, even though he had been identified by the victims. Consequently, no confrontation with the above person was carried out. At the same time, some of the alleged perpetrators continue to perform their professional duties as police officers, despite the fact that they are suspects in a torture investigation. Motions of the lawyer to have these individuals arrested were dismissed by the Prosecutor’s office, due to the fact that a ruling on the qualification of the acts has not yet been made. Under article 203 of the Criminal Procedure Code of the Republic of Kazakhstan “If there is sufficient evidence against a person confirming a suspicion of committing a crime, the prosecutor, the person performing the pre-trial investigation, makes a reasoned decision on the qualification of the acts of the suspect[…]within a reasonable time.” The investigation had been resumed by the Prosecutor's office over a year ago, and the counsel maintains that this state of affairs points to an intentional delaying of the investigation. Such an investigation does not meet the criteria for a prompt and effective investigation, and therefore the State party is not complying with its obligations under article 12 of the Convention.

Committee’s decision: To keep the follow-up dialogue open.

|  |  |
| --- | --- |
| **STATE PARTY** | **Canada** |
| **CASE** | **015/1994, *Khan***  |
| Decision adopted on | 15 November 1994 |
| Violation  | Article 3 (Deportation to Pakistan) |
| Remedy recommended | The State party has an obligation to refrain from forcibly returning Tahir Hussain Khan to Pakistan. |

On 27 March 2015, the State party submits that in its response to the Committee’s views dated 3 March 1995, it had re-iterated its position that the complainant has not established that he would face a substantial risk of torture if removed to Pakistan. Further, the State party expressed that it had grave concerns with the views of the Committee, and formally requested that the Committee reconsider them. On 27 November 2008, and in previous requests, the Rapporteur on Follow-up requested information on the measures taken to give effect to the views of the Committee in Mr. Khan’s communication. Notwithstanding its ongoing concerns with the Committee’s views, the State party wishes to provide information regarding the complainant and his immigration status. In addition, it requests that the communication be removed from the Committee’s follow-up procedure for communications.

Since the release of the Committee’s views, the removal order issued against the complainant on 23 September 1992 has been subject to a stay, granted pursuant to the *Immigration and Refugee Protection Act* (“IRPA”). On 24 April 2014, the complainant was granted a three year temporary resident permit (“TRP”) under section 24(1) of the IRPA, allowing him to remain in the country until 22 April 2017. A TRP may be issued to a person subject to a removal order, among others, where there are compelling reasons to allow the person to enter or remain in Canada. The following factors were considered in issuing the TRP: his long term residence in Canada, since 1990; his criminal record suspension and the lack of other criminal convictions since 1994; that he is no longer criminally inadmissible to Canada; and that since his arrival in Canada in 1990, he has received social assistance and has been issued 16 work permits, allowing him to work temporarily in Canada. As a TRP holder, the complainant’s removal order will not be enforced during the three year period of validity of his permit, unless he fails to comply with the provisions of IRPA or its regulations. He has been informed about the procedure for applying for permanent residence, which he will be able to apply for provided he does not become inadmissible on any grounds other than those for which the original permit was issued, and he resides continuously in Canada during the period of validity of his TRP. The State party notes that should his application for permanent residence be approved, he would undergo the requisite background checks (*i.e.*, criminal, security, medical, passport, and arrangements for care and support) before permanent resident status could be formally conferred. His removal would continue to be stayed pending the finalization of these verifications. If he is granted permanent resident status, the complainant will not be subject to removal from Canada unless he violates any of the conditions of his status (such as the commission of a serious crime). After the requisite period of residency, he will be eligible to apply for Canadian citizenship.

The State party maintains its concerns with the Committee’s views, its position that the complainant’s rights under Article 3 of the *Convention* are not at risk of violation, and that no remedy in respect of his situation is therefore required. This notwithstanding, the State party considers that the stay of his removal, the issuance of a temporary resident permit to him, and his eligibility to apply for permanent residence fully address the concerns set out in the Committee’s views. The State party does not consider that any additional measures are required to respond to the Committee’s views in this case. Given the divergence between Canada’s position and the Committee’s views, and in light of the developments concerning the complainant’s immigration status, the State party will be closing its file relating to this communication and requests that the communication be removed from the Committee’s follow-up procedure for communications.

In October 2015, the State party’s submission was transmitted to the complainant for comments.

Committee’s decision: To keep the dialogue open

|  |  |
| --- | --- |
| **STATE PARTY** | **Burundi** |
| **CASE** | **503/2012, *Ntikarahera*** |
| Decision adopted on | 12 May 2014 |
| Violation  | Articles 2 (para. 1), 11, 12, 13 and 14, read in conjunction with articles 1 and 16 |
| Remedy recommended | The Committee urged the State party to conduct an impartial investigation into the events in question for the purpose of prosecuting those allegedly responsible for the victim’s treatment, and provide adequate and fair compensation encompassing the means for as full rehabilitation as possible. |

On 18 May 2015, the counsel for the complainant submits that in September 2014, the complainant was summoned to appear before an investigating judge in relation to his torture allegations. The complainant was accompanied by counsel during the interview on 3 September 2014, during which the complainant described the torture he endured in the hands of the State agents in 2010. The investigating judge was surprised by the heavy physical consequences of which the victim is still suffering and requested a medical expertise to join it to the case file. On 22 September 2014, the results of the requested expertise were transmitted in a closed letter to the authorities by the lawyer of the complainant. Subsequently the investigating judge informed the lawyer that he had interviewed two persons, mentioned in the complainant’s statement; he also indicated that he was unable to interview another of the implicated officials, the former police commissioner in Bujumbura, who at the time was on mission to Mali. On 2 March 2015, two of the former colleagues of the complainant were also interviewed, as witnesses, upon a proposal of the investigating judge. In mid-April 2015, the investigating judge indicated that he will contact the lawyer of the complainant in May 2015 to inform him of the developments. The counsel thus submits that on the basis of the information they have, the investigation was for the time being, conducted in an impartial and satisfactory manner. He notes, however, that some of the perpetrators indicated had not been interviewed and no confrontation between the victim and the alleged perpetrators had taken place as of yet. The counsel provides information regarding the state of health of the complainant and the situation of some of the alleged perpetrators.

In October 2015 the complainant’s comments were transmitted to the State party for observations and a reminder was issued to the State party to provide information regarding the implementation of the decision.

Committee’s decision: To keep the follow-up dialogue open.

|  |  |
| --- | --- |
| **STATE PARTY** | **Switzerland** |
| **CASE** | **544/2013, A.K.** |
| Decision adopted on | 8 May 2015 |
| Violation  | Article 3- removal to Turkey |
| Remedy recommended | The Committee wishes to be informed, within 90 days, of whatever steps the State party has taken in the light of the present observations. |

On 2 July 2015, the State party submits that, on 1 July 2015, the Secretary of State on Migration granted refugee status to the complainant, his wife and children. Accordingly they are no longer at risk of deportation to Turkey.

In October 2015, the submission was transmitted to the complainants for comments.

Committee’s decision: To keep the dialogue open.

1. \* Adopted by the Committee at its fifty-sixth session (9 November-9 December 2015). [↑](#footnote-ref-2)