United Nations

Report of the Committee against Torture

Thirty-fifth session
(14-25 November 2005)
Thirty-sixth session
(1-19 May 2006)

General Assembly
Official Records
Sixty-first session
Supplement No. 44 (A/61/44)

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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

CONTENTS

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 19 May 2006, the closing date of the thirty-sixth session of the Committee against Torture, there were 141 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.

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

3. The text of the declarations, reservations or objections made by States parties with respect to the Convention may be found in the United Nations website (www.un.org - Site index - treaties).

B. Sessions of the Committee

4. The Committee against Torture has held two sessions since the adoption of its last annual report. The thirty-fifth session (665th to 694th meetings) was held at the United Nations Office at Geneva from 7 to 25 November 2005, and the thirty-sixth session (695th to 724th meetings) was held from 1 to 19 May 2006. An account of the deliberations of the Committee at these two sessions is contained in the relevant summary records (CAT/C/SR.665-724).

C. Membership and attendance at sessions

5. The membership of the Committee changed during the period covered by the present report, Mr. Julio Prado Vallejo did not attend the thirty-fifth session and on 12 April 2006 he informed the Secretary-General of his decision to resign from the Committee. The 10th Meeting of States parties to the Convention against Torture held elections to replace five members whose term of office expired on 31 December 2005. The list of members with their term of office, appears in annex IV to the present report.

D. Solemn declaration by the newly elected and re-elected members

6. At the 695th meeting on 1 May 2006, Ms. Essadia Belmir, Ms. Nora Sveaass and Mr. Alexander Kovalev, made the solemn declaration upon assuming their duties, in accordance with rule 14 of the rules of procedure.

E. Election of officers

7. At the thirty-sixth session, on 1 May 2006, the Committee elected Mr. Andreas Mavrommatis as Chairperson and Mr. Guibril Camara, Mr. Claudio Grossman and Mr. Alexandre Kovalev as vice-chairpersons and Ms. Felice Gaer as rapporteur.

F. Agendas

8. At its 665th meeting, on 7 November 2005, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/85) as the agenda of its thirty-fifth session.

9. At its 695th meeting, on 1 May 2006, the Committee adopted the items listed in the provisional agenda submitted by the Secretary-General (CAT/C/36/1) as the agenda of its thirty-sixth session.

G. Pre-sessional working group

10. During the period under review, in November 2005 , the Committee decided to modify the working group to enable the full Committee to meet in plenary to consider additional reports to address the growing backlog in the consideration of States parties reports.

H. Participation of Committee members in other meetings

11. During the period under consideration Mr. Fernando Mariño Menendez participated and presided the 17th meeting of chairpersons of the human rights treaty bodies, held at Geneva on 23 and 24 June 2005. Ms. Felice Gaer, Mr. Fernando Mariño Menendez and Mr. Ole Rasmussen participated in the Fourth Inter-Committee Meeting of the human rights treaty bodies, which took place from 20 to 22 June 2005. In December 2005 and again in February 2006, Ms. Felice Gaer participated in the Inter-Committee Technical Working Group on the guidelines on a common core document and treaty-specific documents.

I. General comments

12. At its thirty-sixth session, the Committee began consideration of a methodology to adopt a general comment on article 2 of the Convention.

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

13. The Committee adopted the following joint statement to be issued on 26 June 2006, the International Day in Support of the Victims of Torture:

> "The United Nations Committee against Torture, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment, the Board of Trustees of the

United Nations Voluntary Fund for Victims of Torture and the United Nations High Commissioner for Human Rights make the following statement to commemorate the United Nations International Day in Support of Victims of Torture:

The total ban on torture is firmly entrenched. Justification of its use is anathema. Throughout the world, the consensus relating to the prohibition of torture is being tested and some Member States of the United Nations blatantly contravene this prohibition in violation of international law and international standards. Torture continues to be inflicted at the hands of Governments and their agents, and increasingly on their behalf. We are deeply concerned about the number of reliable reports detailing the practice of torture around the world.

Today, a cornerstone of international human rights law is under unprecedented attack. In many States, including democratic ones, adherence to human rights standards as well as the principles and procedures underpinning the rule of law are being questioned or bypassed on the grounds that established rules do not apply in our current geo-political climate.

Many democratic Governments are engaging in secret activities, effectively curtailing examination and debate, and demonstrating a tendency to avoid judicial scrutiny. Many of the legal and practical safeguards available to prevent torture, including regular and independent monitoring of detention centres, are also being disregarded. Concrete steps should be taken, including mandatory videotaping, to protect against the use of torture in interrogations and to ensure that torture does not taint the criminal justice system. Places of detention should be open to monitoring by independent national human rights institutions, where they exist, and non-governmental organizations.

Governments unquestionably have a duty to protect their citizens from torture. Imminent or clear danger permits limitations on certain human rights. The right to be free from torture and cruel, inhuman or degrading treatment is not one of these. This right must not be subject to any limitation, anywhere, under any condition.

In light of these concerns, we recall that the non-derogable nature of torture is enshrined in the Convention against Torture, and in other international and regional human rights instruments. States are required under customary international and treaty law to take effective legislative, administrative, judicial or other measures to prevent, investigate, prosecute and punish acts of torture committed in any territory under their jurisdiction. We call for the universal ratification of the Convention against Torture and urge States parties to the Convention to make the declaration under article 22 providing for individual communications.

We welcome the entry into force of the Optional Protocol to the Convention of Torture and consider that this Protocol has the potential to become an effective prevention mechanism. We also emphasize the importance of establishing and strengthening independent national preventive mechanisms that are empowered to undertake visits to places of detention as required by the Protocol.

Finally, as we commemorate the twenty-fifth anniversary of the United Nations Voluntary Fund for Victims of Torture, we would like to recall the millions of victims who have suffered as a result of torture, including gender-based violence inflicted on women and violence against children during conflicts. We remind Governments and others of their obligations to ensure that all such victims have access to redress and have an enforceable right to seek and obtain compensation, including the means for comprehensive rehabilitative services. In this regard, we pay tribute to the organizations around the world which provide these essential services to victims and their families. We are also grateful to the donors whose support enables the Fund to provide financial assistance to organizations and torture victims in need. We call on all members of the international community, private entities and individuals to contribute generously to the Fund to ensure the continued availability of assistance to torture victims and their families."

II. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

14. During the period covered by the present report 14 reports from States parties under article 19 of the Convention were submitted to the Secretary-General. Initial reports were submitted by South Africa (CAT/C/52/Add.3), Tajikistan (CAT/C/TJK/1), Burundi (CAT/C/BDI/1), Japan (CAT/C/JPN/1) and Guyana (CAT/C/GUY/1). Second periodic reports were submitted by the United States of America (CAT/C/48/Add.3/Rev.1), Latvia (CAT/C/38/Add. 4), Indonesia (CAT/C/72/Add.1) and Zambia (CAT/C/ZMB/1). Third periodic reports were submitted by Uzbekistan (CAT/C/79/Add.1), Iceland (CAT/C/ISL/3), and Algeria (CAT/C/DZA/3). A fourth periodic report was submitted by China (CAT/C/CHN/4). A fifth periodic report was submitted by Sweden (CAT/C/SWE/5).

15. As of 19 May 2006, the Committee has received a total 194 reports.

16. At the request of the Committee, two members, Mr. Mariño and Mr. Rasmussen, maintained contacts with States parties whose initial reports were overdue by five years or more, in order to encourage the submission of such reports. As of 31 December 2005 Mr. Rasmussen's term came to an end.

17. As at 19 May 2006, there were 192 overdue reports (see annex V).

III. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

18. At its thirty-fifth and thirty-sixth sessions, the Committee considered reports submitted by 14 States parties, under article 19, paragraph 1, of the Convention. The following reports were before the Committee at its thirty-fifth session:

Austria	Third periodic	CAT/C/34/Add.18
Bosnia and Herzegovina	Initial	CAT/C/21/Add.6
Democratic Republic of the Congo	Initial	CAT/C/37/Add.6
Ecuador	Third periodic	CAT/C/39/Add.6
France	Third periodic	CAT/C/34/Add.19
Nepal	Second periodic	CAT/C/33/Add.6
Sri Lanka	Second periodic	CAT/C/48/Add.2

19. The following reports were before the Committee at its thirty-sixth session:

Georgia	Third periodic	CAT/C/73/Add.1
Guatemala	Fourth periodic	CAT/C/74/Add.1
Peru	Fourth periodic	CAT/C/61/Add.1
Qatar	Initial	CAT/C/58/Add.1
Republic of Korea	Second periodic	CAT/C/53/Add.2
Togo	Initial	CAT/C/5/Add.33
United States of America	Second periodic	CAT/C/48/Add.3

20. In accordance with rule 66 of the rules of procedure of the Committee, representatives of each reporting State were invited to attend the meetings of the Committee when their report was examined. All of the States parties whose reports were considered sent representatives to participate in the examination of their respective reports.

21. Country rapporteurs and alternate rapporteurs were designated by the Committee for each of the reports considered. The list appears in annex VI to the present report.

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

(a) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention (CAT/C/4/Rev.2);

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

23. The Committee has adopted a new format for these as a result of consultations held by the Inter-Committee Meeting and the meeting of Chairpersons of the human rights treaty bodies. The text of conclusions and recommendations adopted by the Committee with respect to the above-mentioned States parties' reports is reproduced below:

24. **Austria**

(1) The Committee considered the third periodic report of Austria (CAT/C/34/Add.18) at its 679th and 680th meetings (CAT/C/SR.679 and 680), held on 16 and 17 November 2005, and adopted, at its 691st meeting held on 24 November 2005, the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the third periodic report of Austria, which was prepared in accordance with the Committee's guidelines. It notes, however, that the report was submitted with a three-year delay. The Committee appreciates the constructive dialogue with the high-level delegation and commends the comprehensive written responses provided to the list of issues (CAT/C/35/L/AUT), as well as the oral information provided by the State party's delegation during the consideration of the report.

B. Positive aspects

(3) The Committee welcomes the assurances of the State party regarding the relationship between the observance of human rights standards and the fight against terrorism, that it will adhere strictly to the guidelines adopted in 2002 by the Council of Europe on human rights and the fight against terrorism, and that it will work during its presidency of the European Union (January-June 2006) to further strengthen the commitment towards the absolute nature of the prohibition of torture.

(4) The Committee notes with satisfaction the ongoing efforts made by the State party to revise its legislation and adopt other necessary measures in order to ensure better protection of human rights and give effect to the Convention, including:

(a) The adoption of the Criminal Procedure Reform Act and the amendments to the Code of Criminal Procedure, both of which will come into effect on 1 January 2008. In particular, the Committee welcomes the new provisions regarding:

(i) The prohibition of the use of statements that were obtained by means of torture, coercion, deception or other inadmissible methods of interrogation to the detriment of the defendant;

(ii) The express reference to the right of the defendant to remain silent;

(iii) The right to contact a lawyer prior to the interrogation;

(iv) The right of the defendant to be assisted by an interpreter;

(v) The provisions regarding the separation of remand prisoners from other prisoners;

(b) The issuing of an information sheet for detainees in 26 different languages informing them about their rights;

(c) The new measures taken to improve conditions of detention, including the establishment of "open units" in police detention centres;

(d) The new regulations on deportation procedures banning, inter alia, the use of any means blocking the respiratory system and providing for the medical examination of the alien prior to the flight, as well as for the observance of the proportionality principle in exercising measures of coercion. In particular, the Committee welcomes the involvement of relevant non-governmental organizations during the deportation process;

(e) The new measures adopted to prevent ill-treatment of persons in police custody, including the ongoing revision of the Detention Regulations with a view to introducing alternative means of restraint, as well as the introduction of human rights aspects in training programmes for law enforcement personnel;

(f) The new initiatives taken to address and prevent trafficking in human beings, in particular that victims of trafficking are regularly granted residence permits on humanitarian grounds, as well as the fact that the State party's authorities have not restricted the definition of trafficking only to cases of sexual exploitation but include other forms of exploitation;

(g) The publication in July 2005 of the last report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the State party's responses to it.

(5) The Committee also welcomes:

(a) The signature of the Optional Protocol to the Convention in September 2003, as well as the oral assurances given by the State party's representatives that ratification is envisaged shortly;

(b) The ratification of the Rome Statute of the International Criminal Court in 2001.

C. Subjects of concern and recommendations

Definition of torture

(6) Notwithstanding the State party's assertion that all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable under the Austrian Penal Code, the Committee observes that a definition of torture as provided by article 1 of the Convention is still not included in the Penal Code of the State party.

The Committee reiterates its previous recommendation (A/55/44, para. 50 (a)) that the State party should establish adequate provisions in order to legally define torture in accordance with article 1 of the Convention, and criminalize it in accordance with article 4, paragraph 2, of the Convention.

Non-refoulement

(7) The Committee is concerned about information that the new Asylum Law, which entered into force in May 2004, could increase the risk of refugees being sent to supposedly safe third countries, that asylum-seekers could be deported before a decision on their appeal has been taken, and that the possibility of presenting new evidence during the hearing is limited.

Since the Constitutional Court has declared some of the Act's articles unconstitutional, the State party is requested to provide the Committee with information on the measures it intends to take to rectify this.

(8) The Committee regrets the reported extraditions carried out by the State party after receiving diplomatic assurances from the requesting country.

The State party should provide the Committee with detailed information on cases of extradition or removal subject to the receipt of diplomatic assurances since 1999. Additionally, the State party should provide the Committee with detailed information on cases of denial of extradition, return or expulsion owing to the risk that the person might be subjected to torture, ill-treatment or the death penalty upon return.

(9) The Committee is concerned at the limited guarantees for women asylum-seekers to be interrogated by female officers.

The State party should take the necessary measures to extend the guarantee that women asylum-seekers will be interviewed by women officers to all instances.

Prompt and impartial investigation

(10) The Committee expresses concern about the lack of prompt investigation of certain cases of torture and ill-treatment committed by law enforcement officials, as well as about the penalties imposed on perpetrators, in particular with reference to the death in custody in 2003 of Mr. Cheibani Wague. With regard to this case, the Committee notes with deep concern:

(a) The delay between July 2003, when the pretrial investigation was conducted, and July 2005, when the court hearings started;

(b) The lenient sentence pronounced on 9 November 2005, taking into account that racial motives could not be excluded.

The State party should:

(a) Ensure that criminal complaints regarding torture and ill-treatment lodged against its law enforcement authorities are resolved expeditiously;

(b) Inform the Committee whether an appeal was lodged by the Public Prosecutor and of the result of the appeal.

Review of interrogation rules, instructions, methods and practices

(11) The Committee is concerned about the restrictions on the right of an arrested person to have counsel present during interrogation if "there is some evidence to suggest that the presence of counsel would jeopardize further investigative steps".

The Committee urges the State party to take all necessary legal and administrative guarantees to ensure that this restriction will not be misused, that it is used only in the case of very serious crimes, and that it is always authorized by a judge.

The State party should provide in its next periodic report additional information concerning the standardization of techniques used to interrogate persons in police custody and the implementation of new techniques, particularly the use video-recording of interrogations, which the Committee encourages the State party to continue but not as an alternative to the presence of counsel. Additionally, the Committee requests details on the measures taken to monitor and evaluate the use of the techniques referred to.

(12) The Committee is particularly concerned about the inadequacy of the legal aid system.

The Committee urges the State party to implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to establish a fully fledged and properly funded system of legal aid.

(13) The Committee is concerned at the reported physical presence of police officers during medical examinations of persons in police custody.

The State party should take appropriate measures to ensure that police officers are not present during medical examinations of persons under police custody in order to guarantee the confidentiality of medical information, save under exceptional and justifiable circumstances (i.e. risk of physical aggression).

(14) The Committee is concerned about the conditions of detention of juveniles, particularly that persons under 18 in places of detention are not always separated from adults.

The State party should:

(a) Develop alternative measures of detention for juveniles;

(b) Ensure strict separation of juveniles and adults in places of detention;

(c) Take preventive measures to avoid physical ill-treatment of juvenile detainees, including adequate training of officers dealing with juveniles;

(d) Issue clear instructions from senior officers, both oral and written, that abusive conduct towards juveniles will not be tolerated.

Prevention of acts of cruel, inhuman or degrading treatment

(15) The Committee is concerned about the reported attitudes of racism and intolerance towards foreigners manifested by some law enforcement officials, such as cases of verbal abuse of Roma and people of African descent.

The State party should continue to be vigilant in ensuring that the relevant existing legal and administrative measures are strictly observed and that training curricula and administrative directives constantly communicate to staff the message that verbal and physical ill-treatment will not be tolerated and will be sanctioned accordingly, and that racial motivations will aggravate the offences.

The State party should provide the Committee with data on cases of torture and ill-treatment where the aggravating factors as stated in section 33 of the Austrian Criminal Code, including racism and xenophobia, have been invoked in the assessment of punishment of offences.

(16) The Committee regrets the fact that for numerous areas covered by the Convention, the State party was unable to supply statistics, or appropriately disaggregate those supplied (e.g. by age, gender and/or ethnic group). During the current dialogue, this occurred with respect to, for example, cases of rejection of extradition requests for fear of torture, cases of expulsion of foreigners and asylum-seekers who have been returned. The State party was also unable to provide detailed information on cases of sexual violence and on investigations, prosecutions and punishment of perpetrators of such violations.

The State party should take such measures as may be necessary to ensure that its competent authorities, as well as the Committee, are fully apprised of these details when assessing the State party's compliance with its obligations under the Convention.

(17) The Committee notes with concern the reported delay of Länder authorities in adapting their legislation and administrative framework to implement measures taken at the federal level with the aim of enhancing compliance with the Convention. The Committee is particularly concerned that, owing to perceived constitutional difficulties arising from the division of powers between federal and Länder authorities, comprehensive federal provisions regarding the basic needs of refugees, including health assistance, contained in the amended Federal Care Act (2005) as well as in the Agreement on Basic Support (2004) between the Federal Government and the Länder, have until now been adopted in only two Länder.

The State party should provide the Committee with information about the status of enactment of appropriate legal provisions by the Länder authorities regarding protection of the measures to meet the basic needs of refugees.

Additionally, the State party should take such measures as are appropriate to ensure that what are considered to be the basic needs of asylum-seekers are not diminished as a result of the amended Federal Care Act of 2005.

Request for information

(18) The Committee recommends that the State party submit information on the outcome of the criminal proceedings in the case of the Austrian CIVPOL officer charged with serious ill-treatment of an ethnic Albanian detainee during his service with the United Nations Mission in Kosovo, the disciplinary measures taken during the proceedings and after, as well as the compensation awarded to the alleged victim.

(19) The Committee encourages the State party to continue to contribute to the United Nations Voluntary Fund for the Victims of Torture.

(20) The State party is encouraged to disseminate widely the reports submitted by Austria to the Committee and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(21) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 8, 10 (b), 12, 15 (b) and 17 (a) above.

(22) The State party is invited to submit its next periodic report, which will be considered as the combined fourth and fifth report, by 31 December 2008, the due date of the fifth periodic report.

25. Bosnia and Herzegovina

(1) The Committee considered the initial report of Bosnia and Herzegovina (CAT/C/21/Add.6) at its 667th and 670th meetings (CAT/C/SR.667 and 670), held on 8 and 9 November 2005, and adopted, at its 689th meeting, the following conclusions and recommendations.

A. Introduction

(2) While welcoming the initial report of Bosnia and Herzegovina and the information presented therein, the Committee is concerned that the report is overdue by more than 10 years. The Committee expresses its appreciation for the large and high-level delegation, with representatives from relevant ministries and different entities in the State party, which facilitated a constructive oral exchange during the consideration of the report.

(3) The Committee notes that following the State party's independence in 1992, the State continued to experience armed conflict which lasted until 1995. Furthermore, the complicated and fragmented legal structure of the State, which grants substantial autonomy to the two entities established under the 1995 Dayton Peace Agreement (the Federation of Bosnia and the Republika Srpska) and the Brcko District, has sometimes led to contradictions and difficulties in implementing all laws and policies at all levels of authority. Nevertheless, the Committee wishes to remind the State party that despite its complex structure, Bosnia and Herzegovina is a single State under international law and has the obligation to implement the Convention in full, and that no exceptional circumstances justify the use of torture.

B. Positive aspects

(4) The Committee notes that the State party has rectified the major international treaties protecting the human rights of its citizens, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention relating to the Status of Refugees, and the Rome Statute of the International Criminal Court.

(5) The Committee further notes the accession to or ratification of regional instruments, among them the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the European Convention on the Extradition and Transfer of Proceedings in Criminal Matters.

(6) The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

(a) The Criminal Code and the Criminal Procedure Code, which entered into force in March 2003;

(b) The Law on Protection of Witnesses under Threat or Vulnerable Witnesses, which entered into force in March 2003;

(c) The Law on Movement and Stay of Aliens and Asylum, which entered into force in October 2003;

(d) The State Law on Missing Persons, which entered into force in November 2004.

(7) The Committee further welcomes the establishment of the State Court of Bosnia and Herzegovina, the Special War Crimes Chamber of the State Court and the Special War Crimes Department of the Prosecutor's Office of Bosnia and Herzegovina, which were inaugurated in March 2005 and paved the way for the transfer of cases from the

International Criminal Tribunal for the Former Yugoslavia to the domestic courts. The Committee also welcomes the establishment of the Srebrenica Commission to investigate the events leading to the Srebrenica massacre, to inform families of the fate of their missing relatives, and to make the results of the investigations public through the publication of the report.

(8) The Committee takes note with interest of the statement by the State party's representative that although there was no integral structure in place for the protection of victims of torture and sexual violence during the period of conflict, i.e. 1992-1995, a systematic way of extending such protection, such as an umbrella law at the State level, would be initiated in 2006.

C. Principal subjects of concern and recommendations

(9) The Committee is concerned at the lack of congruity between the definitions of torture in the State and entity laws and that the definitions, particularly in the laws of the Republika Srpska and Brcko District, do not accord fully with the definition contained in article 1 of the Convention.

The State party should incorporate the crime of torture, as defined in the Convention, into the domestic law throughout the State and ensure that the legal definitions in the Republika Srpska and Brcko District are harmonized with the Criminal Code and the Criminal Procedure Code of Bosnia and Herzegovina through any necessary legal amendments.

(10) In connection with the well-documented torture and ill-treatment that occurred during the 1992-1995 conflict in the former Yugoslavia, the Committee is concerned about:

(a) The reported failure by the State party to carry out prompt and impartial investigations, to prosecute the perpetrators and to provide fair and adequate compensation to victims;

(b) Alleged discriminatory treatment in criminal proceedings whereby officials belonging to the ethnic majority often fail to prosecute alleged criminals belonging to the same ethnic group;

(c) Reported harassment, intimidation and threats faced by witnesses and victims testifying in proceedings and the lack of adequate protection by the State party;

(d) The failure to recognize survivors of torture, including sexual violence, as victims of the conflict, a status which would enable them to obtain redress and exercise their right to fair and adequate compensation and rehabilitation; and

(e) The failure to cooperate adequately with the International Criminal Tribunal on the Former Yugoslavia, in particular on the part of the Republika Srpska, by failing to arrest and transfer indicted persons, including Radovan Karadzic and Ratko Mladic, accused of genocide, torture and other international crimes.

The State party should:

(a) Take effective measures to ensure prompt and impartial investigations into all allegations of torture and other cruel, inhuman or degrading treatment, the prosecution and punishment of the perpetrators, irrespective of their ethnic origin, and the provision of fair and adequate compensation for victims;

(b) Extend full cooperation to the International Criminal Tribunal for the Former Yugoslavia, inter alia by ensuring that all indicted persons are apprehended, arrested and transferred to the custody of the Tribunal, as well as granting the Tribunal full access to requested documents and potential witnesses;

(c) Provide information in connection with criminal proceedings, extending mutual judicial assistance to and cooperating with other relevant countries and the Tribunal, as required by the Convention;

(d) Enforce relevant legislation, including providing protection of witnesses and other participants in proceedings, and ensure that testimonies by victims of torture and ill-treatment are provided with fair treatment at all stages of the proceedings;

(e) Develop legal and other measures, enforceable throughout the State, including an official programme for the rehabilitation of victims of torture including sexual violence, providing them recognition as victims and the capacity to pursue redress and their right to fair and adequate compensation and rehabilitation in accordance with the requirements of the Convention.

(11) While noting the developments towards multi-ethnic structures within the respective authorities, the Committee remains concerned about alleged cases of ethnic bias and politically influenced police and judicial procedures. The Committee is also concerned that the State party has not been able to prevent and investigate violent attacks against members of ethnic and other minorities, in particular returnees.

The State should ensure that judges, prosecutors, lawyers and other personnel are fully aware of the State party's international obligations enshrined in the Convention, that fair treatment prevails in all judicial procedures and that independence of the judiciary is fully guaranteed and safeguarded, in particular in procedures relating to the protection of minorities and returnees.

(12) The Committee is concerned that individuals may not have been able, in all instances, to enjoy full protection under the relevant articles of the Convention in relation to expulsion, return, or extradition to another country.

The State party should:

(a) Ensure that it complies fully with article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by its competent authorities and guaranteed fair treatment at all stages of the proceedings, including an opportunity for effective, independent and impartial review of decisions on expulsion, return or extradition.

(b) Provide the Committee with information regarding cases of extradition where the risk of being subjected to torture has or has not been considered, including information on whether safeguards are in place to prevent extradition in such cases.

(13) While noting the information provided by the State party on the various law enforcement and prison administration procedures, the Committee remains concerned that procedures are implemented differently in different parts of the State party. In addition, the education and information provided to police and prison officers in the different entities and the practical implementation of the knowledge and skills acquired through training vary.

The State party should:

(a) Conduct, on a regular basis, education and training of law enforcement personnel, including those in police and prison establishments, to ensure that all officers are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. All personnel should receive specific training on how to identify signs of torture;

(b) Allow and ensure regular and independent monitoring of the conduct of police and prison officials, inter alia through existing channels such as the Offices of the Ombudsman and non-governmental organizations;

(c) Ensure that the mechanisms of internal oversight of the police and prisons function properly and are independent and effective.

(14) The Committee is concerned at the lack of separate facilities for imprisoned men, women and children, both at the outset of detention and following sentencing.

The State party should ensure that men, women and children are kept in separate facilities through their whole period of detention or confinement, in conformity with international standards in force.

(15) The Committee is concerned that all persons deprived of their liberty are not ensured prompt access to a lawyer, a doctor and a family member.

The State party should ensure that all persons detained are guaranteed a right to contact their families and have immediate access to an independent medical doctor and legal counsel from the very outset of the deprivation of liberty.

(16) The Committee is concerned about reports of interprisoner violence and reported cases of sexual violence in the prisons and places of detention.

The State party should investigate promptly all allegations of violence within detention or prison establishments, including forensic examinations, and take measures to prevent such incidents.

(17) The Committee is concerned about reports that prisoners spend up to 23 hours in their cells without meaningful activities.

The State party should take all necessary steps to improve the regime for prisoners. Activities could include work with a vocational value and regular physical exercise.

(18) The Committee is concerned that insufficient measures have been taken to review investigation and prosecution procedures and address possible shortcomings and problems.

The State party should ensure that the rules for interrogations, instructions, methods and practices concerning persons deprived of their liberty are systematically reviewed. Recommendations emerging from the Offices of the Ombudsman and others conducting regular monitoring should be implemented in a timely manner.

(19) The Committee notes, based on the information provided by the State party, that a framework or procedures allowing prisoners to file complaints is in place, but the Committee remains concerned that the procedures differ from one prison to another and that the prisoners are not aware of their right to complain as ensured by article 13 of the Convention.

The State party should:

(a) Ensure, inter alia, that persons deprived of their liberty are aware of their rights and have the opportunity to complain;

(b) Establish an independent mechanism to investigate alleged torture or ill-treatment; and

(c) Allow for and provide regular and confidential access to persons deprived of their liberty by competent individuals and bodies such as the judges of competent courts, the Office of the Ombudsman and non-governmental organizations.

(20) While noting the adoption of the Law on Missing Persons and the oral information provided by the State party's delegation, the Committee remains concerned about the lack of full implementation of the law and in particular the creation of relevant institutions foreseen in the law.

The State party should intensify its efforts to establish the Institute for Missing Persons and the Fund for Support to the Families of Missing Persons, and the Central Record of Missing Persons. The State party should also ensure that available avenues for compensation are used in a non-discriminatory manner.

(21) While noting the efforts made by the State party to combat trafficking for sexual slavery, the Committee is concerned that only a small number of cases have actually been investigated and prosecuted and that mainly fines and light sentences have been imposed in the cases that have been pursued. The Committee is also concerned about the alleged complicity of the police and border authorities. In addition, the entity-level laws, i.e. the criminal codes and criminal procedure codes, are not fully harmonized with the federal-level legal provisions.

The State party should:

(a) Take the necessary measures to ensure that all law enforcement officials fully and promptly investigate all alleged cases of trafficking in persons and that offenders are prosecuted;

(b) Consider amending the Criminal Code and the Criminal Procedure Code to ensure that persons convicted of trafficking receive punishments that reflect the seriousness of the crime;

(c) Ensure the full implementation of the Law on the Movement and Stay of Aliens and its by-law on protection of victims of trafficking;

(d) Ensure that victims of trafficking obtain redress and have an enforceable right to fair and adequate compensation.

(22) The Committee notes that much information was provided in the State party's report on a number of situations, but that this information was not disaggregated in the way requested by the Committee, thereby hampering the identification of possible patterns of abuse or measures requiring attention.

The State party should provide in the next periodic report detailed statistical data, disaggregated by gender, ethnicity or nationality, age, geographical region, and type and location of place of deprivation of liberty, on complaints related to cases of torture and other ill-treatment, including those rejected by the courts, as well as related investigations, prosecutions, and disciplinary and penal sanctions, and on the compensation and rehabilitation provided to the victims.

(23) The State party is encouraged to disseminate widely the reports submitted by Bosnia and Herzegovina and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations. Furthermore, the Committee encourages the State party to discuss the conclusions and recommendations broadly, including with the Offices of the Ombudsman and non-governmental organizations, in particular those that submitted information to the State party and participated in the preparation of the report.

(24) The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 10, 11, 15, 19 and 21 (a) above.

(25) The State party is invited to submit its next periodic report, which will be considered as the combined second to fifth report, by 5 March 2009, the due date of the fifth periodic report.

26. Democratic Republic of the Congo

(1) The Committee considered the initial report of the Democratic Republic of the Congo (CAT/C/37/Add.6) at its 686th and 687th meetings (CAT/C/SR.686 and 687), held on 21 and 22 November 2005, and adopted, at its 691st meeting, the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the presentation of the initial report of the Democratic Republic of the Congo, which is in conformity with the Committee's guidelines for the preparation of reports, but regrets that it was submitted with an eight-year delay. It commends the report's frankness and the State party's acknowledgement of shortcomings in the implementation of the Convention. It appreciates the constructive dialogue conducted with the high-level delegation sent by the State party and notes with satisfaction the candid and full answers given to the questions raised during the dialogue.

B. Positive aspects

(3) The Committee notes with satisfaction the following positive developments:

(a) The ratification by the State party of most of the core international human rights treaties;

(b) The ratification by the State party, on 30 March 2002, of the Rome Statute of the International Criminal Court;

(c) The State party's stated intention to rectify the delay in submission of its reports to the various treaty bodies, and with that end in view to transmit its reports to the United Nations Secretary-General through the new Inter-Ministerial Standing Committee set up on 13 December 2001;

(d) The existence of a bill amending and expanding the Criminal Code to ensure that the Convention is fully incorporated in the domestic legislation of the Democratic Republic of the Congo;

(e) The establishment of institutions for the promotion and protection of human rights, such as the Observatoire congolais des droits de l'homme and the Ministry of Human Rights, and the emerging cooperation between the public authorities and civil society in the promotion and protection of human rights, especially in countering torture.

C. Factors and difficulties impeding the implementation of the Convention

(4) The Committee notes that the State party is still going through a period of political, economic and social transition exacerbated by an armed conflict that has had and continues to have an impact on the country. The Committee points out, however, that, as stated in article 2, paragraph 2, of the Convention, no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Subjects of concern and recommendations

(5) The Committee notes with concern that the State party has neither incorporated the Convention in its domestic legislation nor adopted legal provisions to ensure its implementation, and notes in particular:

(a) That there is as yet no definition of torture in domestic law that strictly corresponds to the definition contained in article 1 of the Convention;

(b) That the law of the Democratic Republic of the Congo does not confer universal jurisdiction for acts of torture;

(c) That there are no provisions giving effect to other articles of the Convention, particularly articles 6 to 9.

The Committee recommends to the State party that it take all necessary legislative, administrative and judicial measures to prevent acts of torture and ill-treatment in its territory, and in particular that it:

(a) Adopt a definition of torture encompassing all the constituent elements contained in article 1 of the Convention and amend its domestic criminal legislation accordingly;

(b) Ensure that acts of torture constitute offences over which it has jurisdiction, in accordance with article 5 of the Convention;

(c) Provide for implementation of the Convention, especially its articles 6 to 9.

(6) The Committee is also concerned about repeated allegations of widespread torture and ill-treatment by the State party's security forces and services and about the impunity allegedly enjoyed by the perpetrators of such acts.

The State party should:

(a) Take effective measures to prevent any acts of torture or ill-treatment from occurring in any part of the territory under its jurisdiction;

(b) Take vigorous steps to eliminate impunity for alleged perpetrators of acts of torture and ill-treatment, carry out prompt, impartial and exhaustive investigations, try the perpetrators of such acts and, where they are convicted, impose appropriate sentences, and properly compensate the victims.

(7) The Committee takes note of the outlawing of unlawful places of detention that are beyond the control of the Public Prosecutor's Office, such as prison cells run by the security services and the Special Presidential Security Group, where persons have been subjected to torture. Nevertheless, it remains concerned that officials of the State party are still depriving people of their liberty arbitrarily, especially in secret places of detention. It is also concerned about allegations that the military and law enforcement officers commonly subject detained persons to torture and ill-treatment.

The State party should:

(a) Take steps, as a matter of urgency, to bring all places of detention under judicial control, in accordance with the presidential decision of 8 March 2001;

(b) Take effective action without delay to prevent acts of arbitrary detention and torture by its officials. All alleged cases of arbitrary detention and torture should be thoroughly investigated, the perpetrators prosecuted and the victims awarded full reparations, including fair and adequate compensation;

(c) Take steps to ensure that all arrested persons are formally registered and brought before a judge and can exercise their right to have the assistance of a lawyer of their choosing, to be examined by a doctor, and to contact their families or other persons of their choosing.

(8) The Committee is concerned about qualitative and quantitative shortcomings in the judiciary and the Public Prosecutor's Office, the public institutions responsible for overseeing public safety and ensuring that the State functions in a manner that guarantees respect for human rights.

(a) The State party should take effective steps to enhance the independence of the judiciary, the cornerstone of any State based on the rule of law by virtue of its role as custodian of rights and freedoms under the Constitution, especially by improving the working conditions of officials and the facilities they require for the proper performance of their duties. The Committee considers that the State should train judges to ensure more efficient investigations and bring judicial decisions into conformity with applicable international norms. It further recommends the adoption of effective measures to ensure the independence of members of the judiciary and the protection of their physical integrity;

(b) The Committee encourages the State party to seek ways and means of strengthening the judiciary, in particular through international cooperation.

(9) The Committee notes with concern the existence of a system of military justice with jurisdiction to try civilians.

The State party should take the necessary steps to ensure that military courts are used solely for the purpose of trying military personnel for military offences in accordance with the relevant provisions of international law.

(10) The Committee notes with concern the large number of security forces and services with powers of arrest, detention and investigation.

The State party should keep to the strict minimum the number of security forces and services with powers of arrest, detention and investigation, and ensure that the police force remains the primary law enforcement agency.

(11) The Committee is concerned about the conditions of detention currently existing in the Democratic Republic of the Congo. The most common problems are overcrowding, insufficient food, poor hygiene and a shortage of material, human and financial resources. The treatment of prisoners remains a matter of concern for the Committee. Cases of corporal punishment for disciplinary offences have been reported. Solitary confinement and food deprivation are also used as disciplinary measures. In many cases, minors and women are not segregated from adults and men.

The State party should end practices that are contrary to the United Nations Standard Minimum Rules for the Treatment of Prisoners. It should also take immediate steps to reduce overcrowding in prisons and the number of persons in pretrial detention, and ensure that minors and women are segregated from adults and men.

(12) The Committee is deeply concerned about the widespread sexual violence against women, including in places of detention.

The State party should establish and promote an effective mechanism for receiving complaints of sexual violence, including in custodial facilities, and investigate the complaints, providing victims with psychological and medical protection.

(13) The Committee notes with concern allegations of reprisals, serious acts of intimidation and threats against human rights defenders, especially those who report acts of torture and ill-treatment.

The State party should take effective steps to ensure that all persons reporting torture or ill-treatment are protected from intimidation and from any unfavourable consequences they might suffer as a result of making such a report. The Committee encourages the State party to seek closer cooperation with civil society in preventing torture.

(14) The Committee is concerned about the general vulnerability of abandoned children who are at risk of torture and other cruel, inhuman or degrading treatment, especially children used as combatants by the armed groups operating on the territory of the Democratic Republic of the Congo.

The State party should adopt and implement emergency legislative and administrative measures to protect children, especially abandoned children, from sexual violence and to facilitate their rehabilitation and reintegration. The Committee further recommends that the State party take all possible steps to demobilize child soldiers and facilitate their rehabilitation and reintegration into society.

(15) The Committee notes with concern the lack of statistics, especially on cases of torture, complaints and convictions of perpetrators.

The State party should provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, and on the related investigations, prosecutions and criminal and disciplinary sanctions. Information is further requested on any measures taken to compensate and provide rehabilitation services for the victims.

(16) The State party is encouraged to disseminate widely the reports submitted by the Democratic Republic of the Congo to the Committee and the latter's conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(17) The Committee requests the State party to provide, within one year, information on measures taken in response to the Committee's recommendations contained in paragraph 5 (a), (b) and (c) above.

(18) The State party is invited to submit its next periodic report, which will be considered as its consolidated second to fourth reports, by 16 April 2009, the due date of its fourth report.

27. Ecuador

(1) The Committee considered the third periodic report of Ecuador (CAT/C/39/Add.6) at its 673rd and 675th meetings, held on 11 and 14 November 2005 (CAT/C/SR.673 and 675), and adopted the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the third periodic report of Ecuador, although it notes that the report was due in April 1997 and was submitted six years late. The Committee appreciates the constructive dialogue it had with a representative high-level delegation and expresses its appreciation for the frank and direct written replies to its questions.

(3) Although the Committee recognizes that the State party made an effort to comply with the Committee's guidelines on the presentation of reports, it points out that the report is lacking in information on the practicalities of implementing the Convention and hopes that in future the State party will comply fully with its obligations under article 19 of the Convention.

B. Positive aspects

(4) The Committee takes note with satisfaction of the adoption in 1998 of the new Constitution, which generally reinforces the protection of human rights. It particularly welcomes the adoption in 2003 of the Children's and Youth Code and in 2005 of the Criminal Code Reform Act, which defines the sexual exploitation of minors as an offence. The definitive introduction of children's judges in the judiciary is also welcome.

(5) The Committee welcomes the submission to the legislature of various bills, such as the preliminary draft of a bill on the administration of indigenous justice and bills on the enforcement of sentences, the system of public defenders and crimes against humanity.

(6) The Committee welcomes the adoption of the National Human Rights Plan and its associated operational plans for different sectors, and the establishment of provincial subcommissions whose agendas reflect regional and local priorities. It especially welcomes the fact that prison issues are addressed in the Human Rights Operational Plan.

(7) The Committee takes note of the fall in the number of complaints to the Commissioners for Women and the Family.

(8) The Committee welcomes the open invitation extended by the State party to all special mechanisms of the Commission on Human Rights, and particularly welcomes the recent visit by the Special Rapporteur on the independence of judges and lawyers.

(9) The Committee welcomes the establishment of the Human Rights Coordination Commission in 2002, an interdepartmental body in which civil society plays an active role in preparing the periodic reports that the State has to submit in order to comply with the international human rights treaties to which it is a party.

(10) The Committee also welcomes the abolition of the Crime Investigation Office, which leaves the Public Prosecutor's Office responsible for investigating crimes both at the preliminary stage and in the course of criminal investigations.

(11) The Committee welcomes the cooperation between the Standing Committee on the National Human Rights Plan and civil society in the preparation of training manuals for prison officers in detention centres.

(12) The Committee also welcomes the ratification by the State party of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2003, the Rome Statute of the International Criminal Court in 2002 and the Inter-American Convention on Forced Disappearance of Persons in 2002.

C. Factors and difficulties impeding the implementation of the Convention

(13) The Committee takes note of the political and constitutional crisis facing the State party. However, it points out that no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Principal subjects of concern and recommendations

(14) Although cruel, inhuman or degrading punishment is prohibited under the State party's domestic legislation, the Committee expresses concern that the State party has not brought the definition of the offence of torture in the Ecuadorian Criminal Code fully into line with articles 1 to 4 of the Convention.

> **The State party should take the necessary measures to ensure that all the acts of torture referred to in articles 1 to 4 of the Convention are considered offences under domestic criminal law and that appropriate punishments are handed down in each case, bearing in mind the serious nature of such offences. The Committee also recommends that the bill on crimes against humanity, which include torture, should be adopted as part of the process of implementing the Rome Statute.**

(15) While the Committee welcomes the adoption of the National Human Rights Plan and its associated operational plans for different sectors, which were drawn up with considerable input from civil society, it regrets that only one of the five civil-society organizations that originally contributed to the plans is still involved in the process of implementing them (art. 2).

> **The State party should promote the National Human Rights Plan by introducing effective operational mechanisms that permit civil-society organizations to participate in the implementation of the Plan.**

(16) The Committee takes note with concern of the allegations that at least 70 per cent of the prisoners in the Quito social rehabilitation centre for women and men were subjected during their detention to the excessive and unlawful use of force, including psychological and sexual torture, by criminal justice officials and the police (arts. 2 and 7).

The State party should take steps to eliminate impunity for those suspected of torturing and ill-treating these prisoners; conduct prompt, impartial and thorough investigations; try and, where appropriate, punish those responsible for torture and inhuman treatment with appropriate penalties; and properly compensate the victims. It should also introduce training programmes to resolve these problems.

(17) The Committee is concerned about allegations of torture and ill-treatment of members of vulnerable groups, especially indigenous communities, sexual minorities and women, even though these groups are protected by domestic law. These allegations, which also concern the treatment of human rights defenders and domestic violence, have not been adequately investigated (arts. 2 and 12).

The State party should ensure that allegations of torture and ill-treatment of members of these groups are thoroughly investigated and those responsible brought to trial. The State party should also build up and strengthen the system of public defenders to protect these groups.

(18) The Committee notes with concern the slowness and delays in the processing of court cases. In Pichincha alone, the Committee has learned, there are over 390,000 pending cases.

The State party should allocate resources to alleviate and eventually eliminate the veritable "traffic jam" in the country's judicial system, and take steps to prevent such jams in the future.

(19) The Committee notes with concern the practice of *detención en firme*, under which the court must, when issuing a committal order, order the detention of the accused allegedly in order to ensure his or her presence at the trial and avoid suspension of the proceedings (art. 2).

The State party should foster legislative improvements which will help to shorten periods of pretrial detention, including removal of the concept of *detención en firme* from the Code of Criminal Procedure. An appeal on the grounds that this form of detention is unconstitutional is awaiting consideration by the Constitutional Court, which is to be appointed in the future.

(20) The Committee regrets the allegations that in deportation cases the rules of due process are not fully complied with, and that the functioning of the machinery to prevent individuals from being placed at risk through return to their countries of origin is not fully guaranteed. It also regrets the inadequacy of the machinery to enable the migration authorities to check whether an individual runs the risk of torture by returning to his or her country of origin (arts. 3 and 6).

The State party should adopt administrative measures in all the country's police stations so as to guarantee respect for due process during deportation, especially the right to a defence, the presence of a diplomatic agent from the detainee's country and, in the case of refugees, the mandatory presence of UNHCR personnel. The Committee also recommends the organization of training programmes on international refugee law with emphasis on the content and scope of the principle of non-refoulement for migration police officers and administrative officials handling deportation procedures throughout the country.

(21) The Committee notes with concern the allegations that a large number of prisoners have been tortured while being held incommunicado. Some lawyers have claimed that they are prevented from talking with their clients in the offices of the judicial police, and even that visits to prisoners by independent private doctors have been prevented. It is also alleged that victims have been denied access to their own lawyers (arts. 4 and 6).

The State party should guarantee the application of fundamental legal safeguards applicable to persons held by the police, ensuring their right to notify a family member, the possibility of consulting a lawyer and a doctor of their choice, the right to obtain information on their rights and, in the case of minors, the right to the presence of their legal representatives during questioning.

(22) The Committee regrets that the State party has not yet instituted a programme of training for judicial personnel, the Public Prosecutor's Office, police and prison staff, including medical, psychiatric and psychological personnel, in the principles and rules for protection of human rights in the treatment of prisoners, as called for by the Inter-American Court of Human Rights in its judgement of 7 September 2004.

The State party should improve the quality of and enhance the human rights training of State security forces and bodies, and specifically concerning the requirements laid down by the Convention, making use of the resources of civil society (universities, non-governmental organizations, etc.). The State party should approve and rapidly put into effect the national human rights plan for the armed forces. The State party should also, in keeping with the judgement of the Inter-American Court of Human Rights in the *Tibi* case, set up an inter-agency committee to draw up and implement training programmes in human rights and the treatment of prisoners.

(23) The Committee takes note with concern of the allegations that personnel of the security services routinely inflict torture and other inhuman or degrading treatment during criminal investigations in the offices of the judicial police (arts. 11 and 16).

The State party should ensure that the allegations of the excessive use of force during criminal investigations are thoroughly investigated, and that those responsible are brought to trial. The State party should ensure that appropriate premises are available to accommodate those detained during the investigation of an offence, with continuous supervision.

(24) The Committee deeply deplores the situation in detention centres, and especially in social rehabilitation centres where prisoners' human rights are constantly violated. The overcrowding, corruption and poor physical conditions prevailing in prisons, and especially the lack of hygiene, proper food and appropriate medical care, constitute violations of rights which are protected under the Convention (art. 11).

The State party should adopt effective measures, including approval of the budgetary funds needed to improve physical conditions in detention centres, reduce the current overcrowding and properly meet the fundamental needs of all those deprived of their liberty, in particular through the presence of independent and qualified medical personnel to carry out periodic examinations of prisoners. The Committee also urges the sectoral subcommission on human rights in prisons to implement the operative plan on this subject, whose objectives include action to follow-up training courses and reports of human rights violations in the prison system which have been lodged by individuals.

(25) The Committee reiterates its concern at the existence of military and police courts, whose activities are not limited to trying offences committed in the course of duty. This situation is not in keeping with the international treaties to which Ecuador is a party (arts. 12 and 13).

The State party should ensure that the ordinary courts fully exercise their competence, in keeping with its international obligations and the terms of transitional provision No. 26 of the Constitution, so as to ensure the full independence of the judiciary.

(26) The Committee regrets that the State party's legislation does not provide for specific machinery to provide compensation and/or reparation and rehabilitation for victims of acts of torture (art. 14).

The State party should establish a specific regulatory framework to govern compensation for acts of torture, and should devise and implement programmes of all-round care and support for victims of torture.

(27) The Committee notes with satisfaction that the State party has taken part in amicable international settlement processes, particularly within the inter-American system, with a view to resolving complaints of human rights violations (including torture). However, these processes have generally led only to compensation for the victims, without proper investigation of the complaints or punishment of those responsible (art. 14).

The State party should ensure that in cases of amicable settlement, in addition to compensation, the responsibility of those who may have violated human rights is properly investigated.

(28) The Committee recommends that the State party should extensively disseminate the reports it submits to the Committee, and the conclusions and recommendations adopted by the Committee, through official websites, the mass media and non-governmental organizations.

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

(30) The Committee requests the State party to inform it, within one year of the adoption of the present conclusions, of practical steps taken to follow-up the recommendations contained in paragraphs 17, 22, 24 and 25.

(31) The Committee invites the State party to submit its next periodic report, which will be considered as the combined fourth, fifth and sixth periodic reports, by 28 April 2009 at the latest, the scheduled date for the submission of its sixth periodic report.

28. France

(1) The Committee considered the third periodic report of France (CAT/C/34/Add.19) at its 681st and 684th meetings, held on 17 and 18 November 2005, and adopted the following conclusions and recommendations at its 692nd meeting, on 24 November 2005.

A. Introduction

(2) The Committee welcomes the third periodic report of France, which broadly complies with the guidelines on the form and content of periodic reports, but regrets that it was submitted with a six-year delay. While noting that the same legal regime applies to the whole territory of the State party, the Committee notes that there is no information on the implementation of the Convention in overseas departments and territories. The Committee also notes that there is no information on the implementation of the Convention in territories outside the jurisdiction of the State party where its armed forces are deployed, notably in Côte d'Ivoire.

(3) The Committee welcomes the participatory process aimed at involving the National Advisory Committee on Human Rights, with its many civil-society actors, in the preparation of the report. The Committee also takes note with satisfaction of France's written replies to the list of issues and the additional information provided orally during the consideration of the report. Lastly, the Committee appreciates the constructive dialogue that took place with the high-level delegation sent by the State party and thanks it for its candid and straightforward answers to the questions raised.

B. Positive aspects

(4) The Committee takes note with satisfaction of the following points:

(a) The establishment on 6 June 2000 of the National Commission on Security Ethics (CNDS), which provides comprehensive reports on the behaviour of police officers;

(b) The establishment by the Act of 26 November 2003 of the National Commission for the Monitoring of Holding Centres and Facilities and Waiting Areas to ensure "respect for the rights of foreigners placed or held there" and "respect for the rules governing hygiene, sanitation, amenities and installations in such facilities", a Commission which, as indicated by the State party during the consideration of the report, is due to start work soon;

(c) The involvement of the Ministry of Health, together with the Association for the Victims of Repression in Exile (AVRE), in the publication of a manual to help medical staff identify the sequelae of torture;

(d) The reform introduced by the Act of 10 December 2003, which grants subsidiary protection to "any person" who does not meet the conditions for recognition as a refugee set out in the Convention relating to the Status of Refugees of 28 July 1951 and who "establishes that he or she would be exposed in his or her country to one of the following serious risks: the death penalty, torture or inhuman or degrading treatment or punishment …";

(e) The State party's consistent support since 1982 for the United Nations Voluntary Fund for Victims of Torture and the substantial increase in its contribution to the Fund;

(f) The mechanism that enables victims of terrorism to obtain compensation even in respect of acts that took place outside French territory;

(g) The State party's signing of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 16 September 2005, and the steps being taken to ratify it;

(h) The ratification of the Rome Statute of the International Criminal Court on 9 June 2000, and the measures taken by the State party to incorporate the Statute into domestic law.

C. Subjects of concern and recommendations

Definition

(5) While taking note of the State party's efforts at the legislative level to provide for the prosecution and punishment of those responsible for acts of torture, the Committee remains concerned that the French Criminal Code does not contain a definition of torture that is in conformity with article 1 of the Convention, an omission that can lead to confusion and adversely affect the collection of relevant data, as is apparent from the statistics that accompanied the State party's written replies (art. 1).

> **The Committee reiterates its recommendation (A/53/44, para. 144) that the State party should consider incorporating into its criminal law a definition of torture that is in strict conformity with article 1 of the Convention, so as to draw a distinction between acts of torture committed by or at the instigation of or with the consent or acquiescence of a public official or any other person acting in an official capacity, and acts of violence in the broad sense committed by non-State actors; it also recommends that the State party should make torture an imprescriptible offence.**

Non-refoulement

(6) The Committee is concerned about the asylum procedures in place in the State party, as they do not at present distinguish between asylum applications based on article 3 of the Convention and other applications, thereby increasing the risk that some persons will be returned to a State where they might be tortured. The Committee is also concerned about the summary nature of the so-called priority procedure for consideration of applications filed in administrative holding centres or at borders, which does not enable the risks covered by article 3 of the Convention to be assessed (art. 3).

The Committee recommends that the State party should consider introducing a procedure that distinguishes between asylum applications based on article 3 of the Convention and other applications, with a view to ensuring absolute protection for anyone at risk of being tortured if he or she is returned to a third State. In this regard, the Committee also recommends that the situations covered by article 3 of the Convention should be the subject of a more thorough risk assessment in accordance with the provisions of article 3, including by systematically holding individual interviews to better assess the personal risk to the applicant, and by providing free interpretation services.

(7) While noting that, following the entry into force of the Act of 30 June 2000, a decision on the refoulement of a person (refusal of admission) may be the subject of an interim suspension order or an interim injunction, the Committee is concerned that these procedures are non-suspensive, in that "the decision to refuse entry may be enforced ex officio by the administration" after the appeal has been filed but before the judge has taken a decision on the suspension of the removal order (art. 3).

The Committee reiterates its recommendation (A/53/44, para. 145) that a refoulement decision (refusal of admission) that entails a removal order should be open to a suspensive appeal that takes effect the moment the appeal is filed. The Committee also recommends that the State party should take the necessary measures to ensure that individuals subject to a removal order have access to all existing remedies, including referral of their case to the Committee against Torture under article 22 of the Convention.

(8) The Committee is concerned that, since the entry into force of the Act of 26 November 2003, any person who has been returned (refused admission) is no longer automatically entitled to one clear day before the decision is enforced, but has to expressly request one, failing which he or she can be removed immediately (art. 3).

The Committee recommends that the State party should take the necessary measures to ensure that persons who have been returned (refused admission) are automatically entitled to a clear day and are informed of this right in a language they understand.

(9) The Committee is also concerned about the new provisions in the Act of 10 December 2003 that introduce the concepts of "internal asylum" and "safe country of origin", which do not guarantee a person absolute protection against the risk of being returned to a State where he or she might be tortured. The Committee wonders why the State party, in incorporating into its domestic legislation the Framework Decision of the Council of the European Union on the European arrest warrant and the surrender procedures between member States (No. 2002/584/JHA of 13 June 2002), failed to incorporate the thirteenth preambular paragraph, which stipulates that "[n]o person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment" (art. 3).

The Committee recommends that the State party should take appropriate measures to ensure that applications for asylum by persons from States to which the concepts of "internal asylum" or "safe country of origin" apply are examined with due consideration for the applicant's personal situation and in full conformity with articles 3 and 22 of the Convention. The Committee also recommends that the State party should take the necessary legislative measures to incorporate in the Act of 9 March 2004, on adapting the justice system to developments in the field of crime, a provision stipulating that no person can be returned, expelled or extradited to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

(10) While noting the restraint shown by the police during the wave of unrest in many French cities which necessitated police mobilization to control the riots, the Committee is deeply concerned about the statements by the Minister of the Interior calling on prefects to order the immediate expulsion of persons convicted during the riots, regardless of their administrative status. The Committee fears that action taken in response to this statement could have a discriminatory effect by the very fact that it would target not only foreign nationals without proper papers but also

naturalized French citizens stripped of their nationality by a court decision and foreigners who had hitherto been lawfully resident in France. Moreover, the Committee is concerned that individuals thus convicted of an offence might be returned to States where they would be in danger of being subjected to torture (art. 3).

The Committee recommends that the State party should take all necessary measures to guarantee that no person is expelled who is in danger of being subjected to torture if returned to a third State. The Committee also recommends that the State party ensure that the persons concerned have the right to a fair trial where the measure taken is in conformity with the law. The Committee also emphasizes that expulsion should not be used as a punitive measure.

The Committee further recommends that the State party should provide it with information on allegations it has received concerning the collective arrest of persons with a view to placing them in administrative holding centres pending their return to a third State.

(11) The Committee notes that, following the deaths of Mr. Ricardo Barrientos and Mr. Mariame Geto Hagos during their forcible removal in 2002, new instructions on the removal of foreigners lacking proper papers were issued on 17 June 2003, which ban any form of gagging, compression of the thorax, bending of the trunk and binding together of the limbs, and authorize only the professional techniques that are specified in the instructions and that comply with medical regulations (art. 3).

The Committee recommends that the State party should take the necessary measures to ensure the effective implementation of these instructions by the officers in charge of removal operations. The State party should also authorize the presence of human rights observers or independent doctors during all forcible removals by air. It should also systematically allow medical examinations to be conducted before such removals and after any failed removal attempt.

(12) The Committee notes that, under rule 108 (1) of its rules of procedure, it requested the State party through its Rapporteur on new complaints and interim measures, in a letter dated 19 December 2001, to defer the expulsion of a complainant because there were substantial grounds for believing that he would be in danger of being subjected to torture if returned to his country of origin, and that the State party did not see fit to respond favourably to the Committee's recommendation. The Committee reminds the State party that in making its declaration under article 22, whereby it recognized the competence of the Committee to receive and consider communications from of individuals subject to its jurisdiction who claim to be victims of a violation of the provisions of the Convention by the State party, the latter undertakes to act in good faith on the Committee's recommendations. The State party's failure to comply with the Committee's request for interim measures is a serious breach of its obligations under article 22 of the Convention, since it prevented the Committee from completing its examination of the complaint of a violation of the Convention, defeating the purpose of the Committee's action and rendering the expression of its Views futile. Moreover, the failure to comply with this provision, particularly by taking irreparable action such as expulsion, is an outright denial of protection of the rights enshrined in the Convention[1] (art. 3).

The Committee recommends that the State party should take all necessary measures to ensure that any request for interim measures addressed to it by the Committee under article 108 (1) of its rules of procedure is strictly complied with in the future.

[1] CAT/C/34/D/195/2002.

Universal jurisdiction

(13) The Committee is concerned that the draft bill on adapting French legislation to the Rome Statute of the International Criminal Court limits the scope of universal jurisdiction to nationals of States that are not parties to the Rome Statute, and makes prosecutions the sole preserve of the Public Prosecutor's Office of the State party (art. 5).

The Committee recommends that the State party should remain committed to prosecuting and trying alleged perpetrators of acts of torture who are present in any territory under its jurisdiction, regardless of their nationality. The Committee also recommends that the State party should effectively guarantee the right of victims to an effective remedy, particularly by means of their right to initiate a public prosecution by suing for damages in criminal proceedings and by any other means that would enable the State party to comply more effectively with its obligations under articles 5, 6, 7 and 13 of the Convention.

(14) While welcoming the Nîmes Assize Court's decision of 1 July 2005 to sentence the Mauritanian captain Ely Ould Dah, in absentia, to 10 years' imprisonment for crimes of torture, the Committee remains concerned that although he was arrested in 1999 he was able to leave French territory in 2000, after the indictment division of the Montpellier Court of Appeal decided to release him under court supervision. The Committee regrets that the State party did not take the necessary steps to keep Mr. Ould Dah in its territory and ensure his presence at his trial, in conformity with its obligations under article 6 of the Convention (art. 6).

The Committee recommends that, where the State party has established its jurisdiction over acts of torture in a case in which the alleged perpetrator is present in any territory under its jurisdiction, it should take the necessary steps to have the person concerned taken into custody or to ensure his or her presence, in conformity with its obligations under article 6 of the Convention.

Training of police officers

(15) The Committee takes note of the updating of the ethics manual for the national police and of the information provided by the State party on the steps being taken to extend and improve the training given to police officers on the subject of respect for the physical and mental integrity of arrested, detained or imprisoned persons. However, the Committee remains concerned about the number and seriousness of the allegations it has received regarding the ill-treatment by law enforcement officers of detainees and other persons with whom they come in contact (art. 10).

The Committee recommends that the State party should take the necessary measures to ensure that the current reform aimed at extending and improving the training of police officers is implemented quickly and extended to all law enforcement officers.

Provisions concerning the custody and treatment of arrested, detained and imprisoned persons

(17) The Committee is concerned about the amendments to the Act of 9 March 2004 which, under the special procedure applicable in cases of organized crime and delinquency, delay access to a lawyer until the 72nd hour of police custody. These new provisions are likely to give rise to violations of article 11 of the Convention, since it is during the first few hours after an arrest, particularly when a person is held incommunicado, that the risk of torture is greatest. The Committee is also concerned about the frequent resort to pretrial detention and the duration of such detention (art. 11).

The Committee recommends that the State party should take appropriate legislative measures to guarantee access to a lawyer within the first few hours of police custody, with a view to avoiding any risk of torture, in accordance with article 11 of the Convention. In this connection, the Committee also recommends that the State party should extend to adults the practice of filming minors in police custody. The Committee further recommends that measures should be taken to reduce the length of pretrial detention and its use.

(18) While noting the measures taken by the State party to address the crucial problem of prison overcrowding, including by building new prisons and considering alternatives to detention, the Committee remains concerned about the poor detention conditions in prisons, particularly in the Loos and Toulon short-stay prisons, and in administrative holding centres. The Committee is particularly concerned about the inadequacy of internal inspections, the unsuitability and dilapidation of the buildings, and the unsatisfactory hygiene conditions. It is also concerned about the increase in violence among detainees and in the number of suicides reported to it (arts. 11 and 16).

The Committee recommends that the State party should take the necessary steps to ratify the Optional Protocol to the Convention as soon as possible, and to set up a national mechanism to conduct periodic visits to places of detention in order to prevent torture and any other cruel, inhuman or degrading treatment.

(19) The Committee notes the measures taken by the State party to improve living conditions in holding areas, particularly at Roissy-Charles de Gaulle airport, and to facilitate access to them by non-governmental organizations. However, it remains concerned about information it has received concerning incidents of police violence, including cruel, inhuman and degrading treatment, inside the holding areas, particularly against people of non-Western origin (arts. 11 and 16).

The Committee recommends that the State party should take the necessary measures to enable the National Commission for the Monitoring of Holding Centres and Facilities and Waiting Areas to begin its work soon and to ensure that these recommendations are effectively implemented.

(20) While taking note of the draft decree on solitary confinement mentioned by the State party, the Committee is concerned that the draft does not set any time limit and that no special justification is needed until two years have been spent in solitary confinement. The Committee is worried that detainees can be held under this regime for many years despite its possible harmful effects on their physical and mental state (art. 16).

The Committee recommends that the State party should take the necessary measures to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international standards.

Impartial investigation

(21) The Committee continues to be concerned about the system of discretionary prosecution, which gives State prosecutors the option of not prosecuting the perpetrators of acts of torture and ill-treatment in which police officers are implicated, or even of not ordering an investigation, which is clearly contrary to article 12 of the Convention (art. 12).

The Committee reiterates its recommendation (A/53/44, para. 147) that, in order to comply with article 12 of the Convention in letter and in spirit, the State party should consider abrogating the system of discretionary prosecution so as to remove all doubts regarding the obligation of the competent authorities to launch impartial inquiries systematically and on their own initiative in all cases where there are reasonable grounds for believing that an act of torture has been committed in any territory under its jurisdiction, in the spirit of the recommendation of the Human Rights Committee (CCPR/C/79/Add.80, para. 15), which calls on the State party to "take appropriate measures to fully guarantee that all investigations and prosecutions are undertaken in full compliance with the provisions of articles 2, paragraphs 3, 9 and 14 of the Covenant".

(22) The Committee is concerned that, despite the judgement against the State party by the European Court of Human Rights for a violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms in the case of *Selmouni v. France*,[2] the Paris Court of Appeal imposed a light sentence on the police officers involved in the case (art. 12).

> **The Committee recommends that the State party should take the necessary measures to ensure that every public official, or any other person acting in an official capacity or at the instigation of or with the consent or acquiescence of a public official, who is guilty of acts of torture should be prosecuted and receive a penalty commensurate with the seriousness of the acts committed**.

Right of complaint

(23) While welcoming the establishment of the National Commission on Security Ethics (CNDS), the Committee is concerned that the Commission cannot accept cases referred to it directly by a person who has been subjected to torture or cruel, inhuman or degrading treatment, but only cases referred to it by a member of Parliament, the Prime Minister or the Children's Ombudsman (art. 13).

> **The Committee recommends that the State party should take the necessary measures to allow the CNDS to accept cases referred to it directly by any person who claims to have been subjected to torture or cruel, inhuman or degrading treatment in any territory under its jurisdiction, in accordance with article 13 of the Convention.**

(24) The Committee recommends that the State party should include in its next report information on the implementation of the Convention in its overseas departments and territories, as well as on its implementation in territories that are not under its jurisdiction but where its armed forces are deployed.

(25) The Committee also recommends that the State party should include in its next report data, disaggregated by age, sex and ethnicity, on:

(a) The number of asylum applications registered;

(b) The number of applications accepted;

(c) The number of applicants whose application for asylum was accepted on the grounds that they had been tortured or might be tortured if returned to their country of origin;

(d) The number of cases of refoulement or expulsion;

(e) The number of recorded complaints containing allegations of torture or cruel, inhuman or degrading treatment.

(26) The Committee recommends that the State party should disseminate the Committee's conclusions and recommendations widely throughout its territory in all appropriate languages, through official websites, the press and non-governmental organizations.

(27) The Committee requests the State party to provide, within one year, information on its implementation of the Committee's recommendations contained in paragraphs 10, 15 and 18 above.

[2] Application No. 25803/94, judgement of the European Court of Human Rights, Strasbourg, 28 July 1999.

(28) The State party is invited to submit its next periodic report, which will be considered as its combined fourth, fifth and sixth report, by 25 June 2008, the due date of its sixth periodic report.

29. Nepal

(1) The Committee considered the second periodic report of Nepal (CAT/C/33/Add.6) at its 669th and 672nd meetings (CAT/C/SR.669 and 672), held on 9 and 10 November 2005, and adopted, at its 687th meeting held on 22 November 2005, the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the report and the opportunity it afforded to resume the dialogue with the State party. While appreciating the constructive dialogue established with the delegation of the State party, the Committee notes that the report does not fully conform to the Committee's guidelines for the preparation of periodic reports and lacks information on practical aspects of the implementation of the Convention.

(3) The Committee welcomes the additional information provided to the list of issues (CAT/C/35/NPL) by the State party in writing, by the delegation in its introductory remarks and in the answers to the questions raised.

B. Positive aspects

(4) The Committee welcomes the adoption of the Compensation Relating to Torture Act, 1996 and the Human Rights Commission Act, 1997, aimed at enhancing the implementation of the Convention.

(5) The Committee notes the establishment of a number of human rights coordination and monitoring mechanisms, such as the National Human Rights Commission, the National Commission on Women and the National Dalit Commission, the Human Rights Protection Committee and the National Coordination Committee, and the human rights cells in the Police, the Armed Police Force and the Royal Nepalese Army.

(6) The Committee also welcomes the agreement entered into by the State party with the Office of the High Commissioner for Human Rights (OHCHR) on 11 April 2005, which led to the establishment of an OHCHR Office in Nepal. The Committee welcomes the continued cooperation of the State party with the OHCHR Office in Nepal.

(7) The Committee notes that the State party received visits from the following special procedures of the Commission on Human Rights:

(a) Working Group on Arbitrary Detention, in 1996;

(b) Special Rapporteur on extrajudicial, summary or arbitrary executions, in 2000;

(c) Working Group on Enforced or Involuntary Disappearances, in 2004;

(d) Representative of the Secretary-General on the human rights of internally displaced persons, in 2005; and

(e) Special Rapporteur on the question of torture in 2005.

(8) The Committee commends the generosity of the State party in hosting more than 100,000 Bhutanese and 20,000 Tibetan refugees.

(9) The Committee further welcomes the signature by the State party, on 8 September 2000, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

C. Factors and difficulties impeding the implementation of the Convention

(10) The Committee acknowledges the difficult situation of internal armed conflict faced by the State party, and is alarmed by the high incidence of atrocities committed by the Communist Party of Nepal (CPN) - Maoist. However, it points out that no exceptional circumstances whatsoever may be invoked as a justification of torture.

(11) The Committee regrets the adverse impact of the absence of the Parliament since May 2002 on the capacity of the State party to implement the Convention, and in particular in respect of the enactment or amendment of legislation, as well as the ratification of international conventions.

D. Concerns and recommendations

Definition

(12) The Committee notes with concern that the definition of torture in article 2 (a) of the Compensation Relating to Torture Act of 1996, the lack of a legal provision in current domestic law to make torture a criminal offence and the draft Criminal Code are not in line with the definition of article 1 of the Convention against Torture (articles 1 and 4 of the Convention).

> **The State party should adopt domestic legislation which ensures that acts of torture, including the acts of attempt, complicity and participation, are criminal offences punishable in a manner proportionate to the gravity of the crimes committed, and consider steps to amend the Compensation Relating to Torture Act of 1996 to bring it into compliance with all the elements of the definition of torture provided in the Convention. The State party should provide information to the Committee on domestic jurisprudence referring to the definition of torture as per article 1 of the Convention.**

Widespread use of torture

(13) The Committee is gravely concerned about the exceedingly large number of consistent and reliable reports concerning the widespread use of torture and ill-treatment by law enforcement personnel, and in particular the Royal Nepalese Army, the Armed Police Force and the Police, and the absence of measures to ensure the effective protection of all members of society (arts. 2 and 11).

> **The State party should publicly condemn the practice of torture and take effective measures to prevent acts of torture in any territory under its jurisdiction. The State party should also take all measures, as appropriate, to protect all members of society from acts of torture**.

Detention

(14) The Committee is also concerned about:

(a) The number of detainees in prolonged detention without trial under the Public Security Act and the Terrorist and Disruptive (Control and Punishment) Ordnance (TADO) of 2004;

(b) The extensive resort to pretrial detention lasting up to 15 months and the lack of fundamental guarantees under the Terrorist and Disruptive (Control and Punishment) Ordnance 2005 of the rights of persons deprived of liberty, including the right to challenge arrest, resulting in numerous alleged cases of incommunicado detention.

> **The State party should bring the practice of pretrial detention into line with international human rights norms and ensure that the fundamental rights of persons deprived of liberty are guaranteed, including the right to habeas corpus, the right to inform a relative, and the right of access to a lawyer and a doctor of one's choice. The State party should ensure that any measure taken to combat terrorism is in accordance with Security Council resolutions 1373 (2001) and 1566 (2004), which require that**

anti-terrorist measures be carried out with full respect for, inter alia, international human rights law, including the Convention. The State party should provide to the Committee information on the number of people still in pretrial detention.

National Human Rights Commission

(15) While acknowledging the important role of the National Human Rights Commission in the promotion and protection of human rights in Nepal, the Committee is concerned about the frequent failure by the State party to implement the Commission's recommendations.

The State party should take the necessary measures to support the work of the National Human Rights Commission, ensuring its recommendations are fully implemented.

Independence of the judiciary

(16) The Committee expresses concern about the marked weakening of the independence and effectiveness of the judiciary in the State party and the contemptuous non-compliance with court orders by members of security forces, reportedly including rearrests, including on the premises of the Supreme Court.

The State party should make every effort to guarantee the independence of the judiciary, including ensuring that security forces comply with court orders. The State party should provide to the Committee information on the composition, mandate, methods of work and investigations of the Royal Commission for Corruption Control, including whether it exercises jurisdiction over constitutional matters in full conformity with the requirements of the Convention and whether its rulings are subject to judicial review. The State party is requested to provide the same information concerning the Justice Sector Coordination Committees.

Non-refoulement

(17) The Committee regrets the absence of domestic legislation in the State party that stipulates the rights of refugees and asylum-seeking persons, and notes with concern that the State party has not acceded to the 1951 Convention relating to the Status of Refugees and other related international legal instruments. The Committee is also concerned about allegations received concerning cases of refoulement of Tibetan asylum-seekers, given the absolute nature of the prohibition against refoulement under article 3 of the Convention (art. 3).

The Committee recommends that the State party consider acceding to the Convention relating to the Status of Refugees and other related international legal instruments. In addition, the Committee recommends that the State party enact legislation aimed at prohibiting refoulement of persons without an appropriate legal procedure. The State party should provide to the Committee information on the number of cases of extradition, removal, deportation, forced return and expulsion that have occurred since 1994, as well as information on cases in which deportation was not effected for fear of torture.

Universal jurisdiction

(18) The Committee regrets the absence of universal jurisdiction in domestic legislation for acts of torture, as well as the fact that certain provisions of the draft Criminal Code are not in line with articles 5 to 9 of the Convention.

The State party should take the necessary measures to ensure that acts of torture are made subject to universal jurisdiction under the draft Criminal Code, in accordance with article 5 of the Convention. The State party should also make every effort to ensure compliance with articles 6 to 9 of the Convention.

Education on the prohibition against torture

(19) While welcoming the State party's efforts in educating and informing State officials about the prohibition against torture, the Committee regrets the lack of information on the impact of such education and training efforts. The Committee is also concerned about reports that the length of training provided to Royal Nepalese Army officers and new recruits has been shortened (art. 10).

The State party should intensify its education and training efforts relating to the prohibition against torture, and introduce evaluation and monitoring mechanisms to assess their impact.

Interrogation and detention

(20) The Committee is deeply disturbed by the continuing reliable allegations concerning the frequent use of interrogation methods by security forces that are prohibited by the Convention (art. 11).

The State party must ensure that no recourse is made, under any circumstances, by law enforcement personnel to interrogation methods prohibited by the Convention. In addition, the State party should provide to the Committee information, including examples, on measures adopted to review interrogation rules, instructions, methods and practices applicable to law enforcement officials.

(21) The Committee is concerned about:

(a) The number of prisoners on remand in places of detention;

(b) The systematic use of army barracks for detainees awaiting trial or in preventive detention;

(c) The lack of systematic and official records regarding the arrest and detention of persons;

(d) A provision in the Compensation Relating to Torture Act of 1996 empowering the concerned officer at places of detention to medically examine a detainee, at the time of arrest and upon release, in the event a doctor is not available. In particular, the Committee is concerned about reports that medical examinations at the time of arrest and upon release are not performed regularly;

(e) Serious allegations of continued use of incommunicado detention and the lack of information on the exact numbers of detention places and other detention facilities;

(f) Allegations of non-compliance with writs of habeas corpus issued by courts;

(g) The lack of a well-functioning juvenile justice system in the country, with children often being subjected to the same procedures, laws and violations as adults. In particular, the Committee is concerned about allegations of children being held under TADO for prolonged periods.

Therefore, the State party should:

(a) Adopt the necessary measures to reduce pretrial detention wherever possible;

(b) Immediately transfer all detainees to legally designated places of detention that conform to international minimum standards;

(c) Take immediate steps to ensure that all arrests and detentions are systematically documented, in particular of juveniles. The State party should consider creating a central register for persons deprived of liberty, to be made accessible to national and international monitors;

(d) The State party should consider amending the relevant section of the Compensation Relating to Torture Act of 1996, to ensure that all detainees have access to a proper medical examination at the time of arrest and upon release;

(e) Prohibit the use of incommunicado detention. The Committee recommends that persons held incommunicado should be released, or charged and tried under due process. The State party should provide to the Committee information on the exact number and location of detention places and other detention facilities used by the Royal Nepalese Army, the Armed Police Force and the Police, and the number of persons deprived of liberty;

(f) The State party should take measures to ensure compliance by security forces of all orders of the courts, including habeas corpus;

(g) The State party should take the necessary steps to protect juveniles from breaches of the Convention, and ensure proper functioning of a juvenile justice system in compliance with international standards, differentiating treatment according to age.

Systematic review of all places of detention

(22) The Committee is concerned about the lack of an effective systematic review of all places of detention, including regular and unannounced visits to such places by national and international monitors.

The State party should consider setting up a national system to review all places of detention, and react to findings of the systematic review.

(23) The Committee is also concerned that in a number of instances, national and international monitors were not granted either access to places of detention or sufficient cooperation in their fact-finding visits. The Committee is further concerned about the adoption of the new Code of Conduct for Non-Governmental Organizations, which will, inter alia, severely limit the monitoring capacity of NGOs.

The Committee recommends that the State party consider amending the Code of Conduct for Non-Governmental Organizations so that it is in line with international human rights standards on the protection of human rights defenders. The State party should ensure that national and international monitors are granted permission to carry out regular, independent, unannounced and unrestricted visits to all places of detention. The State party should facilitate visits by, for example, the International Committee of the Red Cross, OHCHR, the National Human Rights Commission, and national and international NGOs.

Impunity

(24) The Committee is concerned about the prevailing climate of impunity for acts of torture and ill-treatment and the continued allegations of arrests without warrants, extrajudicial killings, deaths in custody and disappearances (art. 12).

The State party should send a clear and unambiguous message condemning torture and ill-treatment to all persons and groups under its jurisdiction. The State party should take effective legislative, administrative and judicial measures to ensure that all allegations of arrest without warrants, extrajudicial killings, deaths in custody and disappearances are promptly investigated, prosecuted and the perpetrators punished. In connection with prima facie cases of torture, the accused should be subject to suspension or reassignment during the investigation.

(25) While acknowledging the establishment of human rights cells in the security forces, the Committee is concerned about the lack of an independent body able to conduct investigations into acts of torture and ill-treatment committed by law enforcement personnel.

The State party should establish an independent body to investigate acts of torture and ill-treatment committed by law enforcement personnel. The State party should provide to the Committee information on the mandate, role, composition and jurisprudence of the special police courts.

Marginalized and disadvantaged groups or castes

(26) Despite the State party's acknowledgment that caste discrimination exists in the country and the creation of the National Dalit Commission, the Committee is gravely concerned about the continued deeply rooted discriminatory practices committed on a large scale against marginalized and disadvantaged groups or castes such as the Dalits. The Committee is also concerned that the long-standing pattern of caste discrimination is being further entrenched by the current conflict in the country.

The Committee reaffirms that it is the duty of the State party to protect all members of society, in particular citizens belonging to marginalized and disadvantaged groups or castes, such as the Dalits. The State party should take specific steps to safeguard their physical integrity, ensure that accountability mechanisms are in place guaranteeing that caste is not used as a basis for abuses, unlawful detention and torture, and take steps to ensure more diverse caste and ethnic representation in its police and security forces. The State party should include information on caste discrimination in its next periodic report.

Gender-based violence

(27) The Committee is concerned about continued allegations of gender-based violence and abuse against women and children in custody, including acts of sexual violence by law enforcement personnel.

The State party should ensure that procedures are in place to monitor the behaviour of law enforcement officials, and should promptly and impartially investigate all allegations of torture and ill-treatment, including sexual violence, with a view to prosecuting those responsible. The State party should provide to the Committee a list of cases of gender-based violence and abuse against women and children in custody that have been investigated and prosecuted, and the perpetrators punished.

Right to complaint

(28) The Committee is concerned about:

(a) The fact that the burden of proof is on the victims of acts of torture, under rules provided for in the Compensation Relating to Torture Act of 1996, and that the statute of limitation for complaining about acts of torture and instituting proceedings for compensation under TADO is 35 days;

(b) Alleged reprisals against and intimidation of persons reporting acts of torture, in the forms of rearrests and threats, and the lack of witness protection legislation and mechanisms (art. 13).

Therefore, the State party should:

(a) Make available to victims of torture the conclusions of any independent inquiry in order to assist them in pursuing compensation claims. The State party should amend its current and planned legislation so that there is no statute of limitation for registering complaints against acts of torture and that actions for compensation can be brought within two years from the date that the conclusions of inquiries become available;

(b) Consider adopting legislative and administrative measures for witness protection, ensuring that all persons who report acts of torture or ill-treatment are adequately protected.

Compensation to torture victims

(29) While acknowledging that the judiciary has issued a number of decisions to award compensation, the Committee regrets that to date in only one case has compensation been paid. In addition, the Committee is concerned about undue delays in the awarding of compensation ordered by the courts or the National Human Rights Commission (art. 14).

The State party should ensure that compensation awarded by the courts or decided upon by the National Human Rights Commission is paid in a timely manner. The State party should provide to the Committee information on the total amount paid in compensations to victims of torture.

Use of statements made as a result of torture

(30) The Committee is concerned about allegations of statements obtained as a result of torture being used as evidence in legal proceedings (art. 15).

The State party should provide to the Committee information on both legislation and jurisprudence that exclude statements obtained as a result of torture being admitted as evidence.

Ill-treatment

(31) The Committee is concerned about allegations of poor conditions of detention, in particular overcrowding, poor sanitation, staffing shortages and lack of medical attention for detainees (art. 16).

The Committee recommends that the State party take all necessary measures to improve conditions of detention.

Trafficking

(32) The Committee is concerned about persistent reports of trafficking in women and children and the alleged involvement of officials in acts of trafficking.

The State party should reinforce international cooperation mechanisms to fight trafficking in persons, prosecute perpetrators, and provide protection and redress to all victims.

Child soldiers

(33) The Committee is concerned about allegations of children being used by security forces as spies and messengers. The Committee is also concerned about reports of recruitment and abduction of children by CPN-Maoist (art. 16).

The State party should take effective measures to prevent security forces using children as spies and messengers. The State party should also take the necessary steps, as a matter of urgency and in a comprehensive manner, to prevent the abduction of children by CPN-Maoist and to facilitate the reintegration of former child soldiers into society. The State party should also consider ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

(34) The Committee further recommends that the State party:

(a) Consider making the declaration under articles 21 and 22 of the Convention;

(b) Consider becoming party to the Optional Protocol to the Convention;

(c) Consider becoming party to the Rome Statute of the International Criminal Court;

(d) Consider becoming party to Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

(35) The State party should provide to the Committee information on the composition, mandate and methods of work of and the investigations and results obtained by the Human Rights Protection Committee, the National Coordination Committee for the Protection and Promotion of Human Rights, as well as the human rights cells established within the Police, the Royal Nepalese Army and the Armed Police Force.

(36) The Committee requests the State party to provide in its next periodic report detailed statistical data regarding cases of torture and other forms of cruel, inhuman or degrading treatment or punishment reported to administrative authorities and the related investigations, prosecutions and penal and disciplinary sentences, including details of courts martial, disaggregated by, inter alia, gender, ethnic group, caste, geographical region, and type and location of place of deprivation of liberty, where it occurred, paying particular attention to juveniles in detention. In addition, information is also requested on any compensation and rehabilitation provided to victims.

(37) The State party is encouraged to disseminate widely its second periodic report and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(38) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 14, 15, 22 (b), 22 (c), 22 (e), 26, 28 and 30 above.

(39) The State party is invited to submit its next periodic report, which will be considered as the combined third, fourth and fifth report, by 12 June 2008, the due date of the fifth periodic report.

30. Sri Lanka

(1) The Committee considered the second periodic report of Sri Lanka (CAT/C/48/Add.2) at its 671st and 674th meetings (CAT/C/SR.671 and 674), held on 10 and 11 November 2005, and adopted, at its 683rd meeting, the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the second periodic report of Sri Lanka, which focused on the Committee's conclusions and recommendations (A/53/44, paras. 243-257) as well as the recommendations from the article 20 inquiry visit in 2000, and is in accordance with the Committee's guidelines, but notes the delay of five years in the submission of the report. The Committee expresses its appreciation for the dialogue with the State party's delegation and welcomes the extensive responses to the list of issues in written form, which facilitated discussion between the delegation and Committee members. In addition, the Committee appreciates the delegation's oral responses to questions raised and concerns expressed during the consideration of the report.

B. Positive aspects

(3) The Committee notes with satisfaction the following positive developments:

(a) The signing of the Ceasefire Agreement between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam in February 2002, which has led to a considerable decrease in reported cases of torture in connection with the conflict, mainly by the armed forces. The Committee encourages the parties to resume further talks, leading to a resolution of the problem;

(b) The strengthening of the Human Rights Commission of Sri Lanka, which enables it to deal more effectively with violations of human rights in general and cases of torture in particular;

(c) The creation of the National Police Commission by the seventeenth amendment to the Constitution in 2001, which has proved successful in promoting human rights;

(d) Institutional and other measures taken by the State party to implement the Committee's conclusions and recommendations and the recommendations of the inquiry under article 20 of the Convention, including the establishment of the Permanent Inter-Ministerial Standing Committee and Working Group on Human Rights Issues, the Criminal Investigation Department, the Special Investigation Unit of the police and the Central Registry of persons in police custody;

(e) The establishment of human rights directorates in the army, navy and air forces and in the police forces, as well as human rights cells in the three branches of the armed forces, with the power to investigate human rights violations;

(f) The ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 21 August 2000 and the accession to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 15 October 2002;

(g) The recent abolition of corporal punishment by Act No. 23 of 2005.

C. Factors and difficulties impeding the implementation of the Convention

(4) The Committee acknowledges the difficult situation arising from the internal armed conflict in Sri Lanka. However, it points out that no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Principal subjects of concern and recommendations

Definition

(5) The Committee is concerned about the lack of a comprehensive definition of torture as set out in article 1 of the Convention in the domestic law.

The State party should adopt a definition of torture that covers all the elements contained in article 1 of the Convention.

Human Rights Commission of Sri Lanka

(6) Acknowledging the important role of the Human Rights Commission of Sri Lanka in the promotion and protection of human rights in Sri Lanka and its adoption of a zero-tolerance policy against torture, the Committee is concerned about the frequent lack of implementation by the State party of the Commission's recommendations.

The State party should strengthen the Human Rights Commission of Sri Lanka so as to allow it to function effectively and ensure that its recommendations are fully implemented. The Commission should be provided with adequate resources, notification of arrests, and full cooperation in implementing its 24-hour torture hotline and improving the system of inspection visits. Furthermore, the State party should ensure that new commissioners are appointed promptly when the three-year term of office of the present commissioners ends in March 2006.

National Police Commission

(7) While noting the significant role of the National Police Commission in disciplinary investigations of the police force, the Committee notes that the terms of office of its current commissioners will expire at the end of November 2005 and is concerned that no new commissioners have yet been appointed.

The State party should proceed urgently with the appointment of the commissioners of the National Police Commission. Furthermore, the State party should ensure that the public complaints procedure provided for in article 155G (2) of the Constitution is implemented and that the Commission is given adequate resources and full cooperation by the Sri Lanka police in its work.

Fundamental safeguards

(8) The Committee is concerned about allegations that fundamental legal safeguards for persons detained by the police, including habeas corpus rights, are not being observed.

The State party should take effective measures to ensure that the fundamental legal safeguards for persons detained by the police are respected, including the right to habeas corpus, the right to inform a relative, access to a lawyer and a doctor of their own choice, and the right to receive information about their rights.

Non-refoulement

(9) The Committee notes with concern that the State party has not given effect to the principle of non-refoulement contained in article 3 of the Convention.

The State party should adopt domestic legislation to implement the principle of non-refoulement contained in article 3 of the Convention.

Universal jurisdiction

(10) The Committee is concerned about the absence in Sri Lankan law of provisions establishing universal jurisdiction for acts of torture.

The State party should ensure that Sri Lankan law permits the establishment of jurisdiction for acts of torture in accordance with article 5 of the Convention, including provisions to bring criminal proceedings under article 7 against non-Sri Lankan citizens who have committed torture outside Sri Lanka, who are present in the territory of Sri Lanka and who have not been extradited.

Systematic review of all places of detention

(11) The Committee is concerned about the lack of an effective systematic review of all places of detention, including regular and unannounced visits to such places (art. 11), by the Human Rights Commission of Sri Lanka and other monitoring mechanisms.

The State party should allow independent human rights monitors, including the Human Rights Commission of Sri Lanka, full access to all places of detention, including police barracks, without prior notice, and set up a national system to review and react to findings of the systematic review.

Prompt and impartial investigations

(12) The Committee expresses its deep concern about continued well-documented allegations of widespread torture and ill-treatment as well as disappearances, mainly committed by the State's police forces. It is also concerned that such violations by law enforcement officials are not investigated promptly and impartially by the State party's competent authorities (art. 12).

The State party should:

(a) Ensure prompt, impartial and exhaustive investigations into all allegations of torture and ill-treatment and disappearances committed by law enforcement officials. In particular, such violations should not be undertaken by or under the authority of the police, but by an independent body. In connection with prima facie cases of torture, the accused should be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation;

(b) Try the perpetrators and impose appropriate sentences on those convicted, thus eliminating any idea that might be entertained by perpetrators of torture that there is impunity for this crime.

Sexual violence and abuse

(13) The Committee expresses its concern about continued allegations of sexual violence and abuse of women and children in custody, including by law enforcement officials, as well as the lack of prompt and impartial investigations of these allegations (art. 12).

The State party should ensure that procedures are in place to monitor the behaviour of law enforcement officials and promptly and impartially investigate all allegations of torture and ill-treatment, including sexual violence, with a view to prosecuting those responsible. Furthermore, the State party should take all necessary measures to prevent such acts, including by ensuring full implementation of the directive concerning the treatment of women in custody, and should consider setting up women and children's desks at police stations in conflict areas.

Delay of trials

(14) The Committee is concerned about the undue delay of trials, especially trials of people accused of torture.

The State party should take the necessary measures to ensure that justice is not delayed.

Intimidation and threats

(15) The Committee is concerned about alleged reprisals, intimidation and threats against persons reporting acts of torture and ill-treatment as well as the lack of effective witness and victim protection mechanisms (art. 13).

In accordance with article 13, the State party should take effective steps to ensure that all persons reporting acts of torture or ill-treatment are protected from intimidation and reprisals for making such reports. The State party should inquire into all reported cases of intimidation of witnesses and set up programmes for witness and victim protection.

Rehabilitation

(16) The Committee notes with concern the absence of a reparation programme, including rehabilitation, for the many victims of torture committed in the course of the armed conflict (art. 14).

The State party should establish a reparation programme, including treatment of trauma and other forms of rehabilitation, and provide adequate resources to ensure its effective functioning.

Child soldiers

(17) The Committee expresses its serious concern about allegations of continued abduction and military recruitment of child soldiers by the Liberation Tigers of Tamil Eelam (art. 16).

The State party should take the necessary steps, in a comprehensive manner and to the extent possible in the circumstances, to prevent the abduction and military recruitment of children by the Liberation Tigers of Tamil Eelam and to facilitate the reintegration of former child soldiers into society.

(18) The Committee further recommends that the State party:

(a) Consider making the declaration under articles 21 and 22 of the Convention;

(b) Consider becoming party to the Optional Protocol to the Convention;

(c) Consider becoming party to the Rome Statute of the International Criminal Court.

(19) The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions. Information is further requested on any compensation and rehabilitation provided to the victims. The Committee recommends that the State party welcome participation from non-governmental organizations in the preparation of its next periodic report.

(20) The State party is encouraged to disseminate widely the reports submitted by Sri Lanka to the Committee and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(21) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 6, 7, 8, 11, 12 and 15 above.

(22) The State party is invited to submit its next periodic report, which will be considered as the combined third and fourth report, by 1 February 2007, the due date of the fourth periodic report.

31. Georgia

(1) The Committee considered the third periodic report of Georgia (CAT/C/73/Add.1) at its 699th and 702nd meetings (see CAT/C/SR. 699 and CAT/C/SR.702), held on 3 and 4 May 2006, and adopted, at its 716th meeting (CAT/C/SR.716), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the timely third periodic report of Georgia and the information presented therein. The Committee expresses its appreciation for the large high-level delegation, which facilitated a constructive oral exchange during the consideration of the report. The Committee also appreciates the comprehensive written and oral replies provided to questions posed during the dialogue.

(3) The Committee notes that following the State party's independence in 1991, internal conflict has continued in part of its territory. In particular, the situation in the self-proclaimed autonomous republics of Abkhazia and South Ossetia, the latter having produced more than 215,000 internally displaced persons, is a matter of serious concern. Taking the above into consideration, the Committee wishes to remind the State party that no exceptional circumstances may be invoked in respect of the absolute prohibition of torture.

B. Positive aspects

(4) The Committee welcomes the State party's accession to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 9 August 2005, as well as the declarations made under articles 21 and 22 of the Convention, and encourages the State party to inform practitioners and the general public of the availability of these measures.

(5) The Committee also notes that in the period since the consideration of the last report, the State party has ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Rome Statute of the International Criminal Court.

(6) The Committee further notes the State party's accession to or ratification of regional instruments, among them the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Convention on Extradition and the European Convention on the Transfer of Proceedings in Criminal Matters.

(7) The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

(a) The revision of the Code of Criminal Procedure, in particular article 144 which brings Georgian legislation in line with international norms with regard to the definition of torture;

(b) The elaboration of the Plan of Action against Torture in Georgia, the Plan of Measures to Reform and Develop the Penal Correction System as well as the National Anti-Trafficking Plan and the efforts made to strengthen State institutions, including the creation of the Department of Investigation in the Ministry of Justice in 2005;

(c) The adoption of new laws, such as the law on domestic violence in April 2006 and the drafting of a new law on trafficking, as well as the new draft Penitentiary Code for the consideration of Parliament in 2006;

(d) The allocation by the State party of additional resources to improve standards in places of detention, in particular with respect to access to health, activities, training and living conditions;

(e) The 2004 Memorandum of Understanding between the Ministry of Internal Affairs and the Ombudsman's office that enables the Ombudsman's office to authorize monitoring groups, which include representatives of non-governmental organizations, to undertake unannounced visits to any detention facility under the responsibility of the Ministry of Internal Affairs.

(8) The Committee takes note with satisfaction the existence of the 24-hour hotline for torture-related complaints, and encourages the State party to further disseminate information on its availability.

C. Subjects of concern and recommendations

(9) The Committee remains concerned that despite extensive legislative reforms, impunity and intimidation still persist in the State party, in particular in relation to the use of excessive force, including torture and other forms of ill-treatment by law-enforcement officials, especially prior to and during arrest, during prison riots and in the fight against organized crime (art. 2).

The State party should give higher priority to efforts to promote a culture of human rights by ensuring that a policy of zero tolerance is developed and implemented at all levels of the police-force hierarchy as well as for all staff in penitentiary establishments. Such a policy should identify and address the problems, and should elaborate a code of conduct for all officials, including those involved in the fight against organized crime, as well as introduce regular monitoring by an independent oversight body.

(10) The Committee notes that there is currently an apparent contradiction between articles 17 and 18 (4) of the Constitution, whereby the former stipulates that the right to protection from torture is non-derogable, whereas article 18 (4) allows for the derogation of certain rights (art. 2).

The State party should bring article 18 (4) of its Constitution in line with the Convention. The Committee further recommends that any exceptional measures adopted during emergencies are in line with the provisions of the Convention.

(11) The Committee is concerned about compliance by the State party with article 3 of the Convention, in particular the use of diplomatic assurances in adjudicating requests for refoulement, extradition and expulsion of persons accused of criminal activities (art. 3).

The State party should consider each case on its individual merit and should resort to the practice of requesting diplomatic assurances with great caution. The State party should provide the Committee with details on how many cases of refoulement, extradition and expulsion subject to receipt of diplomatic assurances or guarantee have occurred since 2002, what the State party's minimum contents are for such assurances or guarantees, and what measures of subsequent monitoring it has undertaken in such cases.

(12) The Committee is also concerned about the relatively low number of convictions and disciplinary measures imposed on law-enforcement officials in the light of numerous allegations of torture and other acts of cruel and inhuman or degrading treatment, as well as the lack of public information about such cases (art. 4).

The State party should strengthen its investigative capacity, including that of the Prosecutor-General's office, in order to promptly and thoroughly examine all allegations of torture and ill-treatment and to ensure that statistics on convictions and disciplinary measures be regularly published and made available to the public.

(13) The Committee is also concerned by information received from non-governmental organizations asserting that in some instances detainees are not duly informed of their right to counsel or their right to be examined by a medical doctor of their own choice (art. 6).

The State party should take all necessary steps to ensure that all detained persons are duly informed of their rights immediately upon arrest and that they are provided with prompt access to a lawyer and to a doctor of their own choice. The State party should inform the Committee on the specific measures taken in this respect.

(14) The Committee is concerned about information regarding the existence of agreements which provide that citizens from certain States who are on Georgian territory cannot be transferred to the International Criminal Court in order to be tried for war crimes or crimes against humanity (arts. 6 and 8).

In accordance with articles 6 and 8 of the Convention, the State party should take all the necessary measures to review the relevant terms of those agreements which prohibit the transfer of citizens from certain States who are on Georgian territory to the International Criminal Court.

(15) The Committee is concerned that there is no specific information available on the impact of the training conducted for law-enforcement officials, and how effective the training programmes have been in reducing incidents of violence, ill-treatment and torture in penitentiary establishments (art. 10).

The State party should continue its cooperation with the Organization for Security and Cooperation in Europe, the United Nations and other international and national organizations in elaborating educational programmes for law-enforcement and penitentiary-establishment officials, and should develop and implement a methodology to assess the effectiveness and impact of such programmes on the reduction of cases of violence, ill-treatment and torture.

(16) The Committee is concerned at the high number of complaints received from inmates as well as about reports that law-enforcement officers wear masks during raids and carry no identification badges, which makes it impossible to identify them should a complaint of torture or ill-treatment be made by an inmate (arts. 2 and 11).

The State party should ensure that all penitentiary personnel, as well as special forces, be equipped with visible identification badges at all times to ensure the protection of inmates from acts in violation of the Convention.

(17) The Committee is particularly concerned about the high number of sudden deaths of persons in custody and the absence of detailed information on the causes of death in each case. The Committee is also concerned about the high number of deaths reported from tuberculosis (arts. 6 and 12).

The State party should provide detailed information on the causes and circumstances of all sudden deaths that have occurred in places of detention, as well as information in respect of independent investigations in this connection. The Committee further encourages the State party to continue its cooperation with the International Committee of the Red Cross and non-governmental organizations with regard to the implementation of programmes related to the treatment of tuberculosis and distribution and monitoring of the medicines taken in penitentiary facilities throughout its territory.

(18) The Committee is concerned at the poor conditions of detention in many penitentiary facilities, particularly in the regions, as well as about the overcrowding that exists in many temporary detention centres, in particular pretrial detention centres (art. 11).

The State party should consider: (a) further reducing the period of pretrial detention; (b) expediting the filling of vacancies in the court system; and (c) using alternative measures in cases where the accused does not pose a threat to society.

(19) The Committee is also concerned that adequate protection may not be afforded to women in places of detention and that no information is available with regard to violence against women in detention or the existing procedures for lodging a complaint (art. 11).

The State party should ensure the protection of women in places of detention, and that clear procedures for complaints are established.

(20) The Committee notes that while the Constitution and the Code of Criminal Procedure contain provisions regarding the right to compensation for victims, there is no explicit law that provides for reparations. The Committee is also concerned that there is no information available regarding the number of victims who may have received some form of assistance or rehabilitation (art. 14).

The State party should consider adopting specific legislation in respect of compensation, reparation and restitution, and in the meantime, should take practical measures to provide redress and fair and adequate compensation, including the means for as full rehabilitation as possible.

(21) The State party should provide in its next periodic report detailed statistical data, disaggregated by crimes, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law-enforcement officials and on the related investigations, prosecutions and penal and disciplinary measures. Information is further requested on any compensation and rehabilitation provided to the victims.

(22) The State party is encouraged to disseminate widely the reports submitted by Georgia and the conclusions and recommendations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations. Furthermore, the Committee encourages the State party to discuss the conclusions and recommendations broadly, including with the Offices of the Ombudsman and non-governmental organizations, in particular those that submitted information to the State party and participated in the preparation of the report.

(23) The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 9, 13, 16, 17 and 19, above.

(24) The State party is invited to submit its next periodic report, which will be considered as its fifth report, by 24 November 2011.

32. Guatemala

(1) The Committee considered the fourth periodic report of Guatemala (CAT/C/74/Add.1) at its 701st and 704th meetings, held on 4 and 5 May 2006 (CAT/C/SR.701 and CAT/C/SR.704), and adopted at its 719th meeting, held on 7 May 2006 (CAT/C/SR.719), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the submission of the fourth periodic report of Guatemala, as well as the oral information provided by the State party representatives during the consideration of the report. The Committee thanks the representatives of the State party for a frank and constructive dialogue.

(3) The Committee also welcomes the information provided in writing by the Office of the Human Rights Procurator on the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Guatemala.

B. Positive aspects

(4) The Committee is pleased to note the efforts made to reform the State party's judicial system, and particularly welcomes the work carried out by the judiciary's Modernization Unit in this respect.

(5) The Committee welcomes the declaration adopted by the State party on 25 September 2003 under article 22 of the Convention, whereby it recognizes the competence of the Committee to receive complaints of torture from individuals.

(6) The Committee is pleased to note that the State party in April 2006 submitted a proposal to the Office of the Secretary-General to establish a Commission for the Investigation of Illegal Groups and Clandestine Security Organizations.

(7) The Committee welcomes the establishment in September 2005 of an office of the United Nations High Commissioner for Human Rights in Guatemala, with a combined technical cooperation and monitoring mandate.

(8) The Committee welcomes the ratification by Guatemala on 14 March 2003 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(9) The Committee welcomes the improvement of the human rights situation in the State party, including the fact that the practice of enforced disappearance as a State policy has ceased and that no further reports have been received of the existence of secret detention centres.

C. Subjects of concern and recommendations

(10) The Committee reiterates its concern, as already expressed in its consideration of preceding reports, that the State party has still not brought the definition of the offence of torture contained in the Criminal Code fully into line with the Convention (arts. 1 and 4).

The State party should amend, as a matter of priority, the relevant provisions of the Criminal Code, particularly articles 201 bis and 425, in order to legally define torture in accordance with article 1 of the Convention, and criminalize it in accordance with article 4, paragraph 2, of the Convention.

(11) The Committee also reiterates its concern about the existence of laws and practices which allow the army to be involved in matters that fall within the competence of the police, such as the prevention and repression of ordinary crime. Moreover, it takes note that the State party has assigned 3,000 military personnel to support the fight against ordinary crime, instead of strengthening the police force (art. 2).

The State party should adopt effective measures to strengthen the National Civil Police and should repeal all laws which allow the army to be involved in activities of law enforcement or the prevention of ordinary crime, which should be carried out exclusively by the National Civil Police.

(12) The Committee is concerned about reports of an increase in acts of harassment and persecution, including threats, killings and other human rights violations, experienced by human rights defenders, and about the fact that such acts remain unpunished (art. 2).

The State party should adopt effective measures to strengthen and guarantee the independence of the unit for the protection of human rights defenders within the Presidential Human Rights Commission, as well as to prevent and protect human rights defenders from any further violence. Furthermore, the State party should ensure the prompt, thorough and effective investigation and appropriate punishment of such acts.

(13) The Committee is concerned that the requirement regarding article 2, paragraph 3, of the Convention is expressed ambiguously in the State party's legislation (art. 2).

The State party should amend its legislation in order to explicitly provide that an order from a superior officer or a public authority may not be invoked as a justification of torture.

(14) The Committee is concerned about the bill on military jurisdiction presented to Congress in 2005, which provides that military courts would have jurisdiction to try military personnel accused of ordinary crimes (arts. 2 and 12).

The State party should amend the above-mentioned bill in order to restrict the jurisdiction of military courts to the trial of military personnel accused of crimes of an exclusively military nature.

(15) The Committee is concerned with the impunity that persists regarding most of the human rights violations committed during the internal armed conflict, with over 600 massacres documented by the Historical Clarification Commission still to be investigated. The Committee notes with concern that in practice the 1996 National Reconciliation Act has become an obstacle to the effective investigation of the 1982 case of the Dos Erres massacre, which is making no headway due to procedural delays without any legal justification (arts. 11, 12 and 14).

The State party should strictly apply the National Reconciliation Act, which explicitly excludes any amnesty for the perpetrators of acts of torture and other grave human rights violations, ensures the initiation of prompt, effective, independent and thorough investigations of all acts of torture and other grave human right violations committed during the internal armed conflict, and grants adequate compensation to the victims.

(16) The Committee is seriously concerned about the numerous allegations concerning:

(a) The "social cleansing" and killings of children living in the street and in marginalized areas, which often involve acts of torture and ill-treatment, and the fact that such cases are not thoroughly investigated;

(b) The increase in violent killings of women, which often involve sexual violence, mutilations and torture. The fact that these acts are not investigated exacerbates the suffering of relatives seeking justice, who, in addition, complain of gender discrimination by the authorities in the course of investigatory and judicial proceedings; and

(c) The lynchings of individuals, which casts doubt on whether the rule of law is applied in the State party (arts. 2, 12, 13, 16).

With regard to these practices, the State party should:

(a) Take urgent measures to ensure that no persons within its jurisdiction are subjected to torture, or to inhuman or degrading treatment, and fully comply with its duty to prevent and punish such acts when carried out by private individuals;

(b) Ensure prompt, impartial and thorough investigations, free of any discrimination on gender, race, social origin or any other grounds, and bring alleged perpetrators to justice;

(c) Ensure the full implementation of the Law for the Integral Protection of Children and Adolescents, inter alia by providing sufficient funds to guarantee the security, well-being and development of all children;

(d) Carry out campaigns and training activities for police officers and members of the judiciary to make them duly aware of the existing social violence, in order to enable them to receive complaints and investigate them properly.

(17) The Committee is concerned about reports of sexual violence against women in police stations (arts. 6 and 11).

The State party should take steps to ensure that all arrested women are brought immediately before a judge and then transferred to a detention centre for women, if so ordered by the judge.

(18) The Committee is concerned that the functioning of the State party's prison system continues to lack a regulatory framework (art. 11).

The State party should adopt legislation on the prison system in conformity with international human rights norms such as the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

(19) The Committee expresses its concern about a provision in the Criminal Code currently being considered by the Constitutional Court, which exempts a rapist from any penalty if he marries the victim (arts. 4 and 13).

In the light of the grave nature of this crime, the State party should repeal this provision and ensure the prosecution and punishment, as appropriate, of all perpetrators.

(20) The Committee is concerned about the large percentage of persons held in pretrial detention who, according to the State party, account for 50 per cent of all detainees (arts. 6 and 11).

The State party should step up its efforts to adopt effective measures, including legislative measures, to reduce the number of persons held in pretrial detention.

(21) The Committee is concerned about reports of the use of excessive force by police officers during evictions in rural areas, which often result in the destruction of homes and other personal belongings, and sometimes even in violent deaths (arts. 6, 10, 12 and 13).

The State party should adopt effective measures to prevent the use of excessive force during evictions, provide specific training on evictions for police officers, and ensure that complaints concerning forced evictions are thoroughly investigated and that those responsible are brought to trial.

(22) The Committee expresses concern with the extension of the death penalty to new types of crimes. According to information provided by the State party itself, 12 persons have been sentenced to death, even though under regional and international instruments freely ratified by the State party it was legally bound to refrain from extending the death penalty to new crimes. The failure to revoke these sentences constitutes a form of cruel and inhuman treatment or punishment (art. 16).

The State party should bring its legislation on the death penalty fully in line with its obligations under international law.

(23) The Committee requests that the State party in its next periodic report provide detailed statistical data, disaggregated by crimes, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions and criminal and disciplinary sanctions imposed in each case. Information is further requested on any compensation and redress granted to the victims.

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

(25) In light of the assurances provided by the representatives of the State party that the necessary steps are being taken to ratify the Rome Statute of the International Criminal Court, the Committee encourages the State party to proceed with ratification of the Statute without delay.

(26) The State party should widely disseminate its reports and the conclusions and recommendations of the Committee through official websites, the media and non-governmental organizations.

(27) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 12, 15, 16 and 17.

(28) The State party is invited to submit its next periodic report, which will be considered as the sixth report, by 3 February 2011 at the latest, the due date for the presentation of the sixth periodic report.

33. Peru

(1) The Committee considered the fourth periodic report of Peru (CAT/C/61/Add.2) at its 697th and 699th meetings, held on 2 and 3 May 2006 (CAT/C/SR.697 and 699), and at its 718th meeting, held on 16 May 2006 (CAT/C/SR.718) and adopted the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the fourth periodic report of Peru. The Committee appreciates the constructive dialogue it had with a representative high-level delegation and expresses its appreciation for the frank and direct written and oral replies to the Committee's questions.

B. Positive aspects

(3) The Committee commends the State party on the significant progress achieved during the past five years. In particular, it warmly welcomes the work of the Truth and Reconciliation Commission and the report submitted to the President of the Republic in August 2003, containing a series of recommendations to promote the principles of justice, truth and reparation by means of institutional reforms and measures to recognize and compensate victims. The Committee particularly wishes to commend the Comprehensive Plan for Reparation and underlines the importance of the fact that adequate resources are being allocated to the implementation of those recommendations.

(4) The Committee takes note of the increasing number of investigations into complaints of torture.

(5) The Committee congratulates the Office of the Ombudsman on its work in following up complaints of torture.

(6) The Committee notes with satisfaction the references made by the Constitutional Court and the Supreme Court to international and regional human rights standards in their opinions on the competence and jurisdiction of the military criminal justice system.

(7) The Committee notes with satisfaction the Constitutional Court's recognition of the right to the truth as a fundamental right in cases of forced disappearance.

(8) The Committee notes with satisfaction the creation of a special subsystem of criminal justice to deal with torture, with its own prosecutors' offices and other specialist bodies.

(9) The Committee takes note of the adoption of the Refugee Protection Act in December 2002, incorporating the right to non-refoulement as provided for in the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, which reinforces the fulfilment of obligations under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(10) The Committee notes with satisfaction the declaration made by the State party in 2002 under articles 21 and 22 of the Convention.

(11) The Committee also welcomes the State party's ratification of the Rome Statute of the International Criminal Court on 10 November 2001, the Inter-American Convention on Forced Disappearance of Persons on 8 February 2002 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 14 September 2005.

C. Subjects of concern and recommendations

Persistence of complaints of torture and cruel treatment

(12) The Committee takes note of the decline in the number of complaints of police torture submitted to the Office of the Ombudsman during the period 1999 to 2004. Nevertheless, the Committee is concerned that complaints continue to be received against officials of the national police, the Armed Forces and the prison system. It is also concerned that complaints of torture and cruel treatment continue to be received in respect of recruits on military service.

> **The State party should take effective steps to prevent torture in any territory under its jurisdiction. The Committee reminds the State party of its obligation to investigate promptly, impartially and thoroughly all complaints submitted and to ensure that appropriate penalties are imposed on those convicted and that reparation is made to victims.**

Office of the Ombudsman

(13) The Committee acknowledges the important role played by the Office of the Ombudsman in the promotion and protection of human rights in Peru, and draws particular attention to its role in the inspection of places of detention. The Committee expresses concern at the frequency with which the authorities fail to comply with their obligation to cooperate with the Office of the Ombudsman and at the State party's failure to implement its recommendations.

> **The State party should take the necessary steps to support the work of the Office of the Ombudsman, including by widely disseminating information on its terms of reference and by implementing its recommendations.**

National registry on complaints of torture and other inhuman treatment

(14) The Committee takes note of the delegation's statement concerning the Office of the Ombudsman's registry; it considers, however, that the State party should supplement this with a registry at the Public Prosecutor's Office.

> **The State party should establish a national registry for all complaints received from alleged victims of torture or cruel, inhuman and degrading treatment, as stated in the Committee's concluding observations in 1999 (A/55/44, paras. 56-63).**

States of emergency

(15) The Committee is concerned at the frequency with which states of emergency are proclaimed and at reports of abuses on the part of the police and the Armed Forces occurring during such exceptional circumstances.

> **The State party should confine the proclamation of states of emergency to situations where it is absolutely necessary and scrupulously comply with its human rights obligations during such periods, in accordance with article 2, paragraph 2, of the Convention.**

Prompt and impartial investigation (arts. 4, 13)

(16) The Committee recognizes the State party's progress in repealing amnesty laws and bringing criminal proceedings against army and police officers for acts of torture. The Committee remains concerned, however, at the excessive length of such proceedings and regrets that the jurisdiction of the military criminal courts is not exercised in accordance with the international human rights obligations entered into by Peru in accordance with the Convention.

The State party should:

(a) Guarantee the prompt, impartial and thorough investigation of all reports of acts of torture and ill-treatment and forced disappearances perpetrated by agents of the State. Such investigations should not be carried out by the military criminal justice system. If charges of torture are brought, the accused should be suspended or transferred for the duration of the investigation to avoid any risk of interference with the inquiry. The Committee recalls that the Armed Forces and police are obliged to cooperate in investigations by the ordinary courts;

(b) Bring the perpetrators to trial and impose suitable penalties on those convicted, in order to ensure that no act of this kind is left unpunished;

(c) Ensure that the Public Prosecutor's Office and the forensic medical institute have sufficient resources of their own and that their staff are provided with appropriate training to enable them to carry out their duties.

Training of officials (art. 10)

(17) The Committee recognizes the State party's efforts to improve the training of justice administration officials. It is nevertheless concerned that justice officials and medical staff are still not sufficiently trained to detect cases of torture and cruel, inhuman and degrading treatment, particularly in the context of pretrial detention.

The State party should extend training programmes dealing with the obligations imposed by the Convention for police, army and prison officials and for prosecutors, particularly as regards the correct classification of cases of torture. It is also recommended that it should develop training programmes for medical personnel assigned to the detection of cases of torture and also for persons involved in the treatment and rehabilitation of torture victims.

Conditions in detention centres and prisons (arts. 1, 11, 12, 16)

(18) The Committee is concerned at the continuing reports of torture and ill-treatment occurring in places of pretrial detention and prisons. It is also concerned at over-population and overcrowding within the prison system and at the lack of medical personnel and of court-appointed counsel to conduct public defence proceedings.

The State party should take urgent steps to reduce overcrowding in prisons and give priority to improving access to medical staff and court-appointed counsel.

(19) The Committee takes note of the information provided on the closure of Challapalca prison, but regrets that Yanamayo prison has not been closed despite the Committee's explicit recommendation following its article 20 inquiry in 1998. The Committee is also concerned that the maximum-security prison administered by the Navy at El Callao naval base is still being used for ordinary prisoners.

The State party should close Yanamayo prison. It should also ensure that responsibility for all civilian prison facilities lies with civil and not military authorities. Lastly, the State party should implement its National Plan for the Treatment of Prisoners.

Intimidation and threats

(20) The Committee expresses concern over the allegations it has received of reprisals, intimidation and threats against those who report acts of torture and ill-treatment, and at the lack of effective mechanisms to protect witnesses and victims. The Committee regrets that human rights defenders who have cooperated with the Truth and Reconciliation Commission have been subjected to threats.

In accordance with article 13 of the Convention, the State party should adopt effective measures to ensure that those who report acts of torture or ill-treatment are protected from intimidation and possible reprisals for making such reports. The State party should investigate all reports of intimidation of witnesses and should set up an appropriate mechanism to protect witnesses and victims.

Reparations

(21) The Committee recognizes the advances made in respect of protecting the right to reparation for victims of torture or cruel, inhuman and degrading treatment, including all those resulting from the work of the Truth and Reconciliation Commission, whose reports are gradually being dealt with by the courts. Despite the significant progress made in the area of reparations, however, the Committee regrets that the recommendations of the Truth and Reconciliation Commission have not been properly implemented, notably in respect of vulnerable groups.

The State party should implement the recommendations of the Truth and Reconciliation Commission in order to halt the consequences of violence and break with the impunity of the past. With respect to reparations, the State party should pay due attention to gender aspects and to the most vulnerable groups, especially indigenous peoples, who have borne the brunt of the violations.

(22) The Committee emphasizes the obligation to provide compensation to victims in all convictions for acts of torture handed down by domestic courts. The Committee is concerned at the fact that reparation awards are frequently derisory. It is also concerned at the State party's delay in complying with reparation awards made in a number of judgements of the Inter-American Court of Human Rights and in decisions of the United Nations Human Rights Committee concerning offences of torture and other cruel, inhuman and degrading treatment.

The State party should ensure that, in all cases where it has been found liable for acts of torture and other cruel, inhuman and degrading treatment, it fulfils its obligation to provide adequate compensation to the victims.

Cruel, inhuman or degrading treatment

(23) The Committee is concerned at reports of women undergoing involuntary sterilization. It has also been informed that medical personnel employed by the State denies the medical treatment required to ensure that pregnant women do not resort to illegal abortions that put their lives at risk. Current legislation severely restricts access to voluntary abortion, even in cases of rape, leading to grave consequences, including the unnecessary deaths of women. According to reports received, the State party has failed to take steps to prevent acts that put women's physical and mental health at grave risk and that constitute cruel and inhuman treatment.

The State party should take whatever legal and other measures are necessary to effectively prevent acts that put women's health at grave risk, by providing the required medical treatment, by strengthening family planning programmes and by offering better access to information and reproductive health services, including for adolescents.

(24) The Committee requests the State party in its next periodic report to provide information in accordance with the guidelines on the presentation of periodic reports, including data on complaints of torture or cruel, inhuman or degrading treatment submitted to any authority, in order to avoid conflicting information and to facilitate the work of the Committee, enabling it to gain a clearer view of the situation regarding protection against torture.

Such information should include:

(a) The sex and the ethnic and geographical origin of victims of acts covered by the Convention;

(b) The positions occupied by the accused and the units they belong to, as well as details of their suspension from duty during the investigation;

(c) The jurisdiction under which investigations were conducted and any penalties or acquittals decided;

(d) Reparation made to victims, including compensation and rehabilitation.

(25) The Committee recommends that the State party should extensively disseminate, including in the indigenous languages, the reports it submits to the Committee, as well as the Committee's conclusions and recommendations, through the mass media, official websites and non-governmental organizations.

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

(27) The Committee requests the State party to inform it within one year of practical steps taken to follow up the recommendations contained in paragraphs 14, 15, 16, 20 and 22.

(28) The State party is invited to submit its next periodic report, which will be considered as the sixth periodic report, by 5 August 2009 at the latest, the scheduled date for the presentation of the sixth periodic report.

34. Qatar

(1) The Committee considered the initial report of Qatar (CAT/C/58/Add.1) at its 707th and 710th meetings, held on 9 and 10 May 2006 (CAT/C/SR.707 and CAT/C/SR.710), and adopted, at its 722nd meeting on 18 May 2006 (CAT/C/SR.722), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the initial report of Qatar, as well as the opportunity to initiate a constructive dialogue with the representatives of the State party. It regrets, however, that the report, due on 10 February 2000, was submitted over four years late. It also notes that the report does not fully conform to the Committee's guidelines for preparation of initial reports and lacks both a core document and information on how the Convention's provisions are applied in practice in the State party. The initial report limits itself mainly to statutory provisions rather than analysis of implementation supported by examples and statistics.

B. Positive aspects

(3) The Committee acknowledges the extensive and ongoing efforts of the State party to reform its legal and institutional system, and welcomes the delegation's affirmation that there is "political will in the State at its highest levels" to promote and protect human rights, particularly those guaranteed in the Convention.

(4) The Committee also welcomes the adoption of a new Constitution, which entered into force on 9 June 2005 and includes guarantees of human rights, notably including, in article 36, that no one may be subjected to torture or degrading treatment and that torture is an offence punishable by law.

(5) The Committee notes with interest the establishment by Decree No. 38 of 2002 of the National Human Rights Committee, which aims to promote and ensure respect for human rights, to investigate possible violations of human rights and fundamental freedoms in order to redress them, and to interact with international and regional organizations concerned with human rights.

(6) Additionally, the Committee welcomes actions taken by the State party to combat trafficking, including in particular Law No. 22 of 2005, which bans trafficking of children related to camel racing, and notes the measures begun by the State party to provide rehabilitation and compensation to persons trafficked in this regard.

(7) Further, the Committee notes the creation of the Qatari Institution for the Protection of Women and Children in 2003 as well as the establishment of a set of telephone hotlines to aid persons complaining of abuse.

(8) The Committee welcomes the State party's cooperation with the Office of the High Commissioner for Human Rights, as well as the establishment of the United Nations Human Rights Training and Documentation Centre for South-West Asia and the Arab Region.

C. Subjects of concern and recommendations

(9) The Committee is concerned about the following matters: the broad and imprecise nature of the State party's reservation to the Convention, which consists of a general reference to national law without specifying its contents and does not clearly define the extent to which the reserving State has accepted the Convention, thus raising questions as to the State party's overall implementation of its treaty obligations.

While appreciating the statement made by the representative of the State party that the reservation to the Convention will not impede the full enjoyment of all the rights guaranteed in it, the Committee recommends that the State party consider re-examining its reservation with a view to withdrawing it.

(10) There is a lack of comprehensive definition of torture in domestic law necessary to meet the requirements of article 1 of the Convention. References to torture in the Constitution and to cruelty and harm in other domestic law, including the Penal Code and Code of Criminal Procedures, are imprecise and incomplete.

The State party should adopt a definition of torture in domestic penal law consistent with article 1 of the Convention, including the differing purposes set forth therein, and should ensure that all acts of torture are offences under criminal law, and that appropriate penalties are established for those responsible for such acts.

(11) The Committee is also concerned at the threats to the independence, in practice, of judges, a large proportion of whom are foreign nationals. Since residency permits for foreign judges are granted by civil authorities, a sense of uncertainty as to the security of their tenure and an undue dependency on the discretion of such authorities may be created, thus bringing pressure on judges. As well, under the Constitution, all persons are equal before the law, but a variety of protections are afforded only to citizens. Further, the State party did not clarify the number of women in the judiciary and the nature of their jurisdiction.

The State party should adopt effective measures to fully ensure the independence of the judiciary, in accordance with the Basic Principles on the Independence of the Judiciary. The State party should also adopt measures to ensure that female judges may serve and address the same jurisdictions as male judges.

(12) Certain provisions of the Criminal Code allow punishments such as flogging and stoning to be imposed as criminal sanctions by judicial and administrative authorities. These practices constitute a breach of the obligations imposed by the Convention. The Committee notes with interest that authorities are presently considering amendments to the Prison Act that would abolish flogging.

The State party should review those legal provisions of the Criminal Code which authorize the use of such prohibited practices as criminal sanctions by judicial and administrative officers, with a view to abolishing them immediately.

(13) The absence of legal provisions that explicitly prohibit the expulsion, refoulement or extradition of a person to another State where there are substantial grounds for believing that that person would be in danger of being subjected to torture. Further, there is no provision in domestic law that grants asylum or refugee status, offering protection to such persons.

The State party should ensure respect in law and practice for the obligations set forth in article 3 of the Convention in all circumstances, and fully incorporate provisions into domestic law that regulate asylum and refugee status.

(14) There are different regimes applicable, in law and in practice, to nationals and foreigners in relation to their legal right to be free from conduct that violates the provisions of the Convention, including their human right to complain of such conduct.

The State party should ensure that the Convention and its protections are applicable to all acts that are in violation of the Convention and that occur within its jurisdiction, from which it follows that all persons are entitled, in equal measure and without discrimination, to the rights contained therein.

(15) The apparent absence of training with regard to education and information about the prohibition of torture, and insufficient awareness by public officials on the provisions of the Convention.

The State party should ensure that trainings and programmes are organized for law-enforcement, civil, military and medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual deprived of his/her liberty, in order to allow them to identify the physical consequences of torture, to respect the absolute prohibition of torture, and to take measures to ensure prompt and effective investigations into complaints of any such acts. The Committee further encourages the State party to take into account gender issues and to ensure that training programmes are provided to medical personnel engaged in rehabilitation.

(16) Some detainees are subject to limitations on the right to have access to a lawyer, an independent doctor, and/or to notify one's family. For example, despite the provisions in the Criminal Procedure Code requiring persons to be charged or released within 48 hours, detentions for periods of up to six months, and in certain cases, up to two years, may be imposed for persons detained under the Protection of Society Law, which does not provide the right to have access to an attorney or one's relatives during this extended period. In addition, reported unequal treatment of non-citizens in the arrest and detention process raises concern in this regard.

The State party should ensure in law and practice that all persons detained or in custody have prompt access to a lawyer and to an independent doctor, as well as the means to notify a relative when detained, all important safeguards against torture and ill-treatment.

(17) The National Human Rights Committee has begun to visit places of detention, which can be an important step in advancing protection of the obligations under the Convention in the State party. However, the Committee is concerned about the adequacy and frequency of such visits, whether complaints are investigated promptly and thoroughly, whether its members have access to all persons detained, and if it reports publicly on its findings. Further, inasmuch as a majority of the members of the National Human Rights Committee are high-level government officials, there are concerns that the National Human Rights Committee may not be fully independent.

Efforts should be made to ensure that the activities of the National Human Rights Committee are brought into full compliance with principles governing national human rights institutions (the Paris Principles), including with regard to its independence.

(18) There are reports that no compensation is provided, in practice, to victims of acts of torture.

The State party should ensure that all persons who have been victims of acts of torture are provided with fair and adequate compensation, including the means for a full rehabilitation.

(19) There is an absence in the State party report of data on individual complaints of torture or ill-treatment, and on the results of investigations or prosecutions related to the provisions of the Convention.

The State party should provide in its next periodic report detailed statistical data, disaggregated by crimes, nationality, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law-enforcement officials or others, and on the related investigations, prosecutions and penal and disciplinary sanctions, as well as information on the compensation and rehabilitation provided to victims.

(20) The Committee is concerned at violence against migrant workers and a lack of measures that protect such employees at risk, in particular, female domestic workers who allege that they have been subjected to sexual violence, and are confined and/or prevented from lodging complaints regarding the measures in the Convention.

The State party should take measures to prevent violence directed against migrant workers in the State party, most particularly the sexual violence affecting female domestic workers, by affording migrant workers the opportunity to lodge complaints against those responsible, and by ensuring that such cases are reviewed and adjudicated in a prompt and impartial manner.

(21) There are reports of invasive and humiliating body searches, in contravention of the Convention, of individuals detained or deprived of their liberty.

The State party should take immediate measures to guarantee respect for the human rights of all persons during any body searches, and ensure that such searches are conducted in full compliance with international standards, including the Convention.

(22) There is no specific law that protects women from domestic violence and, despite numerous cases reported in 2005, there were no public arrests or prosecutions in this regard.

Noting the 2003 National Action Plan to prevent domestic violence, the State party should introduce measures to prevent and punish violence against women, including fair standards of proof.

(23) The Committee notes that many of its questions remained unanswered and reminds the State party of the Committee's request to receive further information in writing as quickly as possible.

(24) The Committee requests that the State party provide in its next periodic report detailed statistical data, disaggregated by crime, age, gender, and nationality, on complaints relating to torture and ill-treatment and on any related investigations, prosecutions, penal and disciplinary sanctions. Additionally, information should be provided to the Committee on the results of any measures to monitor sexual violence in detention facilities as well as any efforts to facilitate the ability of persons to lodge complaints confidentially. The State party is further encouraged to provide the Committee with data regarding training, programmes and evaluations.

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

(26) The State party should widely disseminate its report, the conclusions and recommendations of the Committee, and its summary records, through official websites, the media and non-governmental organizations.

(27) The Committee also requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 12, 15, 16, 20 and 21 above.

(28) The State party is invited to submit its next periodic report by 10 February 2008, the due date of the second periodic report.

35. Republic of Korea

(1) The Committee considered the second periodic report of the Republic of Korea (CAT/C/53/Add.2) at its 711th and 714th meetings, held on 11 and 12 May 2006 (CAT/C/SR.711 and CAT/C/SR.714), and adopted, at its 722nd meeting on 18 May 2006 (CAT/C/SR.722), the following conclusions and recommendations.

A. Introduction

(2) The Committee welcomes the second periodic report of the Republic of Korea, which was prepared in accordance with the Committee's guidelines, but was submitted with a four-year delay. The Committee commends the comprehensive written responses provided to the list of issues (CAT/C/KOR/Q/2), as well as the oral and audio-visual information provided during the consideration of the report. It also expresses its appreciation at the open and constructive dialogue with the high-level delegation.

B. Positive aspects

(3) The Committee welcomes the significant progress made to ensure better protection of human rights in the period since the consideration of the first report. It also notes the State party's ongoing efforts to revise its legislation and undertake other necessary measures in order to give effect to the Committee's recommendations, and to enhance implementation of the Convention, including:

(a) The more stringent application of the National Security Law, and measures to release and pardon individuals previously convicted under the law;

(b) Measures to investigate and provide remedies for past violations of human rights, such as the enactment in 2000 of the Special Act to Find the Truth on Suspicious Deaths and the subsequent establishment of the Presidential Truth Commission on Suspicious Deaths, as well as the enactment of the Act on the Restoration of Honour and Compensation of Persons Engaged in the Democratization Movement in 2000;

(c) The establishment in 2001, of the National Human Rights Commission with a mandate to investigate and remedy human rights violations and, in certain circumstances, to conduct inspections of detention and correctional facilities;

(d) Measures to ensure that the fundamental legal safeguards for persons detained by the police are respected, including the revision of the Criminal Procedure Act in 1997 to enable judges (upon request) to examine individuals before arrest; the enactment of the Directive for Human Rights Protection during Investigation Procedures in 2002; and the General Measures to Reinforce Human Rights Protection during Investigation Procedures in 2005;

(e) The establishment of human rights units or departments within the Ministries of Justice and National Defense, and in district public prosecutors' offices; and

(f) The establishment of civilian monitoring bodies for detention and correctional facilities, such as the sexual violence monitoring board and the correctional administration advisory committee.

C. Subjects of concern and recommendations

(4) While welcoming the oral assurances given by the delegation that it will make recommendations for changes in domestic law regarding torture, the Committee remains concerned that the State party has not incorporated a specific definition of the crime of torture in its penal legislation as set out in article 1 of the Convention.

Recalling the Committee's previous recommendation (A/52/44, para. 62), the State party should incorporate a definition of the crime of torture into its Criminal Code in accordance with article 1 of the Convention.

(5) The Committee notes with concern that article 125 of the Criminal Code relating to violence and cruel acts is only applicable to specific individuals in investigation and trial processes, while other acts constituting torture that fall outside the scope of this article are dealt with under different provisions of the Criminal Code and are subject to lesser penalties.

The State party should review and, if necessary, amend its Criminal Code to ensure that all acts of torture are criminalized and punished in accordance with article 4, paragraph 2, of the Convention.

(6) While acknowledging recent measures to limit the application of the National Security Law and to extend leniency to persons convicted, the Committee remains concerned that specific provisions of the law remain vague and that rules and regulations regarding arrest and detention continue to be applied in an arbitrary way.

Recalling the Committee's previous recommendation (A/52/44, para. 59), the State party should continue to review the National Security Law to ensure that it is in full conformity with the Convention, and that arrests and detentions under the law do not increase the potential for human rights violations. The State party should also include information, in its next periodic report, on the progress and outcomes of discussions within the National Assembly to repeal or amend the law.

(7) Despite the existence of legislative and administrative measures to prevent and prohibit torture and other forms of ill-treatment, the Committee remains concerned at continuing allegations of torture and intimidation committed by law-enforcement officials, in particular in relation to the use of excessive force and other forms of ill-treatment, during arrest and investigation, and in detention and correctional facilities.

The State party should give higher priority to efforts to promote a culture of human rights by ensuring that a policy of zero tolerance is developed and implemented for all law-enforcement personnel, as well as for all staff in detention and correctional facilities. The State party should also intensify its efforts to reinforce human rights education, awareness-raising and training activities in general, and with regard to the prohibition of torture in particular.

(8) In view of the number of reported allegations of torture and/or other acts of cruel and inhuman or degrading treatment, and of complaints of human rights violations in general, the Committee is concerned about the relatively low rate of indictments, convictions and disciplinary measures imposed on law-enforcement officials. In this regard, the Committee is also concerned that the application of a statute of limitations on torture offences, in both criminal and civil law, may result in the lack of investigation, prosecution, and punishment of acts of torture, as well as in the lack of compensation and other remedies provided to victims of torture. Further, the Committee is concerned that there are no specific programmes for the treatment or rehabilitation of victims of torture.

The State party should:

(a) Ensure in its legal system that all allegations of torture and ill-treatment are promptly and thoroughly examined, and that all victims obtain redress and have an enforceable right to fair and adequate compensation;

(b) In this regard, the Committee urges the adoption of the bill to exclude or suspend the application of a statute of limitations to crimes against humanity (including torture crimes), which is currently pending before the National Assembly;

(c) The Committee also urges the State party to establish comprehensive programmes for the treatment and rehabilitation (both physical and mental) of victims of torture and ill-treatment, including the right to fair and adequate compensation.

(9) The Committee notes with concern that the right to have legal counsel present during interrogations and investigations is not presently guaranteed by the Criminal Procedure Act and is only permitted under guidelines of the public prosecutors' office.

The State party should take effective measures to ensure that fundamental legal safeguards for persons detained by the police are respected. In this regard, the Committee recommends the adoption of the relevant amendments to the Criminal Procedure Act, currently pending before the National Assembly, guaranteeing the right to have legal counsel present during interrogations and investigations.

(10) While taking note of the information provided by the State party concerning the independence of the judiciary, the Committee remains concerned at the lack of sufficient guarantees of this independence, in particular that the evaluation process of judges may impact the security of their tenure.

The State party should take measures to ensure security of tenure of judges and to prevent interference in their judicial functions.

(11) The Committee is concerned about reports that the urgent arrest procedure, by which individuals can be detained without an arrest warrant for a maximum period of 48 hours, is excessively resorted to, amounting to an abuse of the process.

The State party should continue to take all necessary legal and administrative measures to strictly regulate the use of the urgent arrest procedure and to prevent its misuse, and to guarantee the rights of persons detained in this manner. In particular, the Committee urges the prompt adoption of the relevant amendments to the Criminal Procedure Act, currently pending before the National Assembly.

(12) The Committee is concerned at the absence of adequate legal protection of individuals, particularly of asylum-seekers, against deportation or removal to locations where they might be subjected to torture.

The Committee welcomes the delegation's oral assurances that it will study the matter of persons removed or returned to locations where they face a real personal risk of torture. The State party should ensure that the requirements of article 3 of the Convention apply when deciding on the expulsion, return or extradition of each case of non-citizens or persons of Korean nationality who may be returned to areas outside the jurisdiction of the Republic of Korea.

(13) The Committee is concerned about the number of persons held in "substitute cells" (detention cells in police stations), which are reported to be overcrowded and in poor condition.

The State party should limit the use of "substitute cells", clarify their function, ensure that they provide humane conditions for those detained, and complete the proposed construction of new detention facilities. The Committee also urges the State party to ensure that all detention facilities conform to international minimum standards.

(14) The Committee is concerned about the high number of suicides and other sudden deaths in detention facilities. It notes that detailed investigations have not been conducted into the link between the number of deaths and the prevalence of violence, torture and other forms of ill-treatment in detention facilities.

The State party should take all necessary steps to prevent and reduce the number of deaths in detention facilities. Adequate provision of and access to medical care should be provided, and suicide prevention programmes should be established in such facilities. The Committee also recommends that the State party conduct a comprehensive analysis of the link, if any, between the number of such deaths and prevalence of torture and other forms of ill-treatment in detention.

(15) The Committee expresses its concern at the number of suicides in the military and at the lack of precise information on the number of suicides caused by ill-treatment and abuse, including hazing, at the hands of military personnel.

The State party should prevent ill-treatment and abusive measures in the military. It is encouraged to conduct systematic research into the causes of suicides in the military and to evaluate the effectiveness of current measures and programmes, such as the ombudsman system, to prevent such deaths. Comprehensive programmes for the prevention of suicides in the military may include, inter alia, awareness-raising, training and education activities for all military personnel.

(16) The Committee is concerned at reports that criminal trials regularly invoke and place great reliance on investigation records, often encouraging investigators to obtain confessions from suspects. The Committee also notes with concern that the number of convictions based on confessions under the National Security Law has not been provided.

The State party should ensure that statements made as a result of torture cannot be invoked as evidence in any proceedings. In this regard, the Committee recommends the adoption of the relevant amendments to the Criminal Procedure Act, currently pending before the National Assembly, which would place stricter conditions on the admissibility of written evidence in legal proceedings. The Committee also recommends that the State party include, in its next report, information on any specific jurisprudence excluding statements obtained as a result of torture, as well as precise data on the number of convictions under the National Security Law based on confessions, and information as to whether any investigations are conducted into whether such confessions are coerced, and/or anyone has been found guilty of torture in this connection.

(17) The Committee is concerned at the prevalence of domestic violence and other forms of gender-based violence, including marital rape, and notes the low rate of indictments, resulting in part from settlements and agreements made in the investigation process. The Committee also notes that marital rape is not a criminal offence under the law.

The State party should ensure that victims of marital rape and gender-based violence have access to immediate means of redress and protection, that measures aimed at seeking settlement and agreements in investigation processes are not detrimental to women who are victims of abuse, and that perpetrators are prosecuted and punished. The Committee urges the State party to continue to undertake awareness-raising and training activities on the issue for the public at large and particularly for legislators, the judiciary, law-enforcement personnel and health-service providers. The Committee also urges the State party to take all necessary measures to ensure that marital rape constitutes a criminal offence.

(18) The Committee regrets the absence of data, disaggregated by age and sex, on complaints relating to torture and ill-treatment allegedly committed by law-enforcement officials and on the related investigations, prosecutions and penal and disciplinary sentences, as well as statistical data on the number of women and children trafficked for purposes of prostitution. Information is also requested on any compensation and rehabilitation provided to victims. Information is further requested on the results of the studies recommended in paragraphs 14 and 15 above.

(19) The State party should widely disseminate its report, as well as its reply to the list of issues, and the conclusions and recommendations of the Committee, in all appropriate languages through official websites, the media and non-governmental organizations.

(20) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 9, 13, 14 and 15.

(21) The State party is invited to submit its next periodic report, which will be considered as the third, fourth and fifth report, by 7 February 2012, the due date of the fifth periodic report.

(22) The Committee notes that the State party is considering ratification of the Optional Protocol to the Convention. It also notes that the State party is considering making the declarations under articles 21 and 22 of the Convention, and that the Ministry of Justice has already issued an opinion to that effect. It encourages the State party to expedite its efforts in this regard.

36. Togo

(1) The Committee considered the initial report of Togo (CAT/C/5/Add.33) at its 709th and 712th meetings (CAT/C/SR.709 and 712), held on 10 and 11 May 2006, and adopted the following conclusions and recommendations at its 716th meeting (CAT/C/SR.716), held on 15 May 2006.

A. Introduction

(2) While the Committee welcomes the initial report of Togo, which complies in part with the general guidelines on the form and content of initial reports, it is concerned that the report is 16 years overdue. The Committee also regrets that the first part of the report reproduces extensively information contained in the core document forming the initial part of State party reports, submitted by Togo in 2004 (HRI/CORE/1/Add.38/Rev.2). The Committee also notes that the report provides very few specific examples of how the Convention is implemented by the State party in practice. The Committee welcomes the constructive dialogue established with the high-level delegation sent by the State party and notes with satisfaction the replies given to questions raised during the dialogue.

B. Positive aspects

(3) The Committee welcomes the State party's willingness to modernize its justice system through the national programme to overhaul the justice system and the establishment of the national commission to update its legislation. The Committee also welcomes the statement made by the delegation concerning its draft revised criminal code.

(4) The Committee welcomes the establishment on 10 August 2005 of a general inspectorate of security services entrusted with monitoring the conditions and length of detention.

(5) The Committee also takes note of the Government's plan to recruit new prison staff who have received training in the human rights of prisoners and the prohibition against and prevention of torture.

(6) The Committee welcomes the signature on 14 March 2006 of an agreement with the International Committee of the Red Cross (ICRC) giving it access to detention facilities.

(7) The Committee applauds the adoption in 1998 of the law prohibiting female genital mutilation.

(8) The Committee notes with satisfaction Togo's signature, on 19 September 2005, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(9) The Committee also notes with satisfaction the State party's positive approach towards refugees, which affords them greater protection.

C. Subjects of concern and recommendations

(10) While noting that article 21 of the Togolese Constitution of 14 October 1992 prohibits torture, and welcoming the draft revised criminal code, the Committee is nonetheless concerned by the absence of provisions in the criminal code that explicitly define and criminalize torture, in accordance with articles 1 and 4 of the Convention. The Committee is also concerned by the fact that no sentences have been handed down relating to acts of torture, owing to the lack of a suitable definition of torture in Togolese legislation (arts. 1 and 4).

The State party should adopt urgent measures to incorporate in the Criminal Code a definition of torture in line with article 1 of the Convention, as well as provisions criminalizing acts of torture and establishing appropriate penalties for them.

(11) While welcoming the extensive project to overhaul the justice system mentioned by the State party's delegation, the Committee notes with concern that the existing provisions of the Code of Criminal Procedure relating to police custody do not provide for the notification of rights or the presence of a lawyer, and that the medical examination of persons held is merely an option available only at their own request or that of a member of their family, subject to the agreement of the prosecution authorities. Moreover, the 48-hour time limit for police custody is allegedly rarely observed in practice, and some people, including children, are held without charge or awaiting trial for several years (arts. 2 and 11).

The State party should revise the provisions of the Code of Criminal Procedure relating to police custody so as to ensure that persons held in police custody are effectively protected from physical and mental harm, including by guaranteeing their rights to habeas corpus, to contact a friend or relative and to consult a lawyer and doctor of their choosing or an independent doctor.

The State party should also bring the practice of pretrial detention into line with international standards of due process and ensure the prompt administration of justice.

(12) The Committee is concerned by allegations received, in particular following the April 2005 elections, of the widespread practice of torture, enforced disappearances, arbitrary arrests and secret detentions, as well as of the frequent rape of women by military personnel, often in the presence of members of their families, and the apparent impunity enjoyed by the perpetrators of such acts (arts. 2, 12 and 14).

The State party should take the necessary legislative, administrative and judicial steps to prevent all acts of torture and ill-treatment in any territory under its jurisdiction.

The State party should also ensure that military personnel are under no circumstances involved in the arrest and detention of civilians.

The State party should take steps, as a matter of urgency, to bring all detention facilities under judicial control, and to prevent its officials from carrying out arbitrary detentions and practising torture.

The State party should take vigorous steps to eliminate impunity for alleged perpetrators of acts of torture and ill-treatment, carry out prompt, impartial and exhaustive investigations, try the perpetrators of such acts and, when they are found guilty, impose sentences commensurate with the gravity of the offences, and properly compensate the victims, if necessary through a compensation fund for the victims of torture. The State party should also take effective steps to guarantee the independence of the judiciary, in conformity with the relevant international laws.

The State party should also take steps, as a matter of urgency, to ensure the peaceful return of Togolese refugees from neighbouring countries and of internally displaced persons, and to guarantee full respect for their physical and mental integrity.

(13) The Committee is concerned by the absence of provisions in Togolese legislation prohibiting the expulsion, return (refoulement) or extradition of a person to another State where he or she might be tortured (art. 3).

The State party should adopt legislative measures and any other necessary measure prohibiting the expulsion, return or extradition of a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture, in accordance with article 3 of the Convention.

(14) The Committee is also concerned by the existence of subregional agreements signed by Togo and neighbouring States on 10 December 1984, which allow for a person who has been convicted of an offence to be returned to one of the signatory States, in complete disregard of any judicial procedure, since under the agreements the return of such persons is the sole responsibility of the police officers of the States concerned (art. 3).

The State party should adopt the necessary measures to revise the subregional agreements signed by Togo and neighbouring States so as to guarantee that the return of a person who has been convicted of an offence to one of the signatory States is carried out under a judicial procedure, in accordance and in strict compliance with article 3 of the Convention.

(15) The Committee regrets the way in which extraterritorial jurisdiction is dealt with in the State party's legislation, particularly where allegations of torture are concerned. The Committee is also concerned by the fact that under Togolese legislation torture does not constitute an extraditable offence, since it has not been defined in the Criminal Code (arts. 3, 5, 6 and 7).

The State party should take the necessary steps to ensure that acts of torture come under its extraterritorial jurisdiction, in conformity with article 5 of the Convention. The State party should also adopt appropriate legislative measures to ensure that torture constitutes an extraditable offence, while respecting the provisions of article 3 of the Convention.

(16) The Committee is concerned by information received concerning agreements whereby the nationals of some States who are on Togolese territory cannot be brought before the International Criminal Court to be tried for war crimes or crimes against humanity (arts. 6 and 8).

The State party, in conformity with articles 6 and 8 of the Convention, should take the necessary steps to revise the agreements which prevent the nationals of certain States who are on Togolese territory from being brought before the International Criminal Court.

(17) The Committee is concerned by the presence on the territory of the State party of the former president of the Central African Republic, Mr. Ange-Félix Patassé, in view of the fact that, on 13 April 2006, the Central African Court of Cassation referred his case to the International Criminal Court for crimes against humanity (arts. 6 and 8).

The State party should take the necessary steps to bring Mr. Patassé before the International Criminal Court, in keeping with articles 6 and 8 of the Convention.

(18) The Committee is concerned by the inadequate training of law enforcement personnel, which does not focus on the eradication of torture. The numerous reports containing allegations of acts of torture and cruel, inhuman or degrading treatment submitted to the Committee further demonstrate the limited scope of that training (art. 10).

The State party should:

(a) Conduct regular training courses for law enforcement personnel, including members of the police force and prison staff, so as to ensure that all have a thorough knowledge of the provisions of the Convention and are well aware that breaches will not be tolerated, will be investigated and that the persons responsible are liable for prosecution. All such personnel should receive specific training on how to detect signs of torture;

(b) Draft a handbook describing interrogation techniques in keeping with the Standard Minimum Rules for the Treatment of Prisoners and prohibiting those that run counter to them;

(c) Raise awareness among law enforcement personnel of the application of legislation prohibiting sexual violence, particularly against women; and

(d) Encourage the participation of non-governmental and human rights organizations in the training of law enforcement personnel.

(19) The Committee has noted the worrying detention conditions prevailing in Togo, in particular in Lomé and Kara prisons. The most widespread problems are overcrowding and a shortage of food, poor hygiene and a lack of material, human and financial resources. The treatment of prisoners remains a matter of concern to the Committee. Cases of corporal punishment for disciplinary offences have been reported. Often women and children are not held separately from men and adults, and persons awaiting trial are not separated from those serving sentence (art. 11).

The State party should put an end to practices that run counter to the Standard Minimum Rules for the Treatment of Prisoners. It should also take immediate steps to reduce overcrowding in prisons and the number of people held in pretrial detention, and to ensure that women and children are held separately from men and adults and that persons awaiting trial are separated from those serving sentence.

(20) The Committee is very concerned by the widespread sexual violence against women, including in detention facilities. The Committee is also worried by the fact that women held in detention are guarded by male prison warders (art. 11).

The State party should set up and promote an effective mechanism for dealing with complaints of sexual violence, including within the prison system, and should provide victims with protection and psychological and medical assistance. The State party should ensure that women prisoners are guarded by female prison warders only.

(21) The Committee takes note of the State party's statement to the effect that three non-governmental organizations are allowed to visit detention facilities. The Committee is, however, concerned by the absence of effective and systematic monitoring of all detention facilities, namely regular but unannounced visits of the facilities by national inspectors (art. 11).

The State party should consider establishing a national system to monitor detention facilities and follow up the results of such systematic monitoring. It should also ensure the presence during those visits of forensic specialists who are trained to detect the after-effects of torture. The State party should also strengthen the role of non-governmental organizations in this process by facilitating their access to detention facilities.

(22) While it takes note of the report of the national independent commission of inquiry, the Committee is concerned by the lack of impartial inquiries to establish the individual responsibility of the perpetrators of acts of torture and cruel, inhuman or degrading treatment, in particular following the April 2005 elections, which contributes to the climate of impunity prevailing in Togo (art. 12).

The State party should inform clearly and unequivocally all persons under its jurisdiction that it condemns torture and ill-treatment. It should adopt effective legislative and administrative and judicial measures so as to ensure that all allegations of torture and cruel, inhuman or degrading treatment are swiftly followed up by inquiries, prosecution and penalties. As far as allegations of torture are concerned, the suspects should be suspended from their duties, when appropriate.

(23) While the Committee welcomes the establishment of the National Human Rights Commission (CNDH), it is concerned by the Commission's lack of independence, which might hinder its effectiveness, and also by the limited scope of its recommendations (art. 13).

The State party should adopt appropriate measures to guarantee the independence and impartiality of the National Human Rights Commission, to increase the Commission's human and financial resources and to ensure its ability to deal with complaints, to investigate violations of the Convention and to refer such cases to the judiciary.

(24) The Committee is concerned by the absence in the Code of Criminal Procedure of provisions requiring the invalidation of statements obtained under torture. The Committee is worried by the State party's statement to the effect that the declaration of invalidity of such statements is only effective if it is not established that the act of which the defendant is accused took place,which is tantamount to allowing a statement obtained under torture to be used as evidence (art. 15).

The State party should take the necessary steps to incorporate in its Code of Criminal Procedure provisions requiring the invalidation of statements obtained under torture, irrespective of whether the acts of which the defendant is accused took place.

(25) The Committee has taken note with concern of the reprisals, serious acts of intimidation and threats to which human rights defenders are subjected, especially those who report acts of torture and ill-treatment (art. 16).

The State party should adopt effective measures to ensure that all persons who report cases of torture or ill-treatment are protected against any act of intimidation and harmful effect that might result from such reports. The Committee encourages the State party to strengthen its cooperation with civil society in campaigning for the eradication and prevention of torture.

(26) While noting the adoption in Togo in 2005 of legislation relating to trafficking in children, the Committee is concerned by information received that the problem persists, in particular in the north and centre of the country, and that it also affects women (art. 16).

The State party should take the necessary steps to combat trafficking in women and children effectively and to punish those responsible for such acts.

(27) While it takes note of legislation prohibiting female genital mutilation, the Committee remains concerned by the persistence of this practice in certain regions of Togo (art. 16).

The State party should take the necessary steps to eradicate the practice of female genital mutilation, including through nationwide awareness-raising campaigns, and to punish the perpetrators of such acts.

(28) The Committee encourages the State party to request the Office of the United Nations High Commissioner for Human Rights to provide technical cooperation assistance.

(29) The Committee would like information on questions raised during the dialogue with the State party that the delegation was unable to answer, including on the current situation of a woman who has allegedly been detained since 1998, but who, according to the delegation, has been released.[3]

(30) The State party should provide the Committee with information on the system of military justice, its jurisdiction and whether it is empowered to try civilians.

(31) The State party should provide in its next periodic report detailed statistical data, disaggregated by offence, ethnic origin and gender on complaints of cases of torture and ill-treatment as well as related investigations, prosecutions, and disciplinary and penal sanctions, and on the compensation and rehabilitation provided to the victims.

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

(33) The State party is encouraged to disseminate widely the reports submitted by Togo and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

(34) The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 21, 25, 29 and 30 above.

(35) The State party is invited to submit its second periodic report, by 17 December 2008, the due date of its sixth periodic report.

37. United States of America

(1) The Committee against Torture considered the second report of the United States of America (CAT/C/48/Add.3/Rev.1) at its 702nd and 705th meetings (CAT/C/SR.702 and 705), held on 5 and 8 May 2006, and adopted, at its 720th and 721st meetings, on 17 and 18 May 2006 (CAT/C/SR.720 and 721), the following conclusions and recommendations.

A. Introduction

(2) The second periodic report of the United States of America was due on 19 November 2001, as requested by the Committee at its twenty-fourth session in May 2000 (A/55/44, para. 180 (f)) and was received on 6 May 2005. The Committee notes that the report includes a point-by-point reply to the Committee's previous recommendations.

(3) The Committee commends the State party for its exhaustive written responses to the Committee's list of issues, as well as the detailed responses provided both in writing and orally to the questions posed by the members during the examination of the report. The Committee expresses its appreciation for the large and high-level delegation, comprising representatives from relevant departments of the State party, which facilitated a constructive oral exchange during the consideration of the report.

(4) The Committee notes that the State party has a federal structure, but recalls that the United States of America is a single State under international law and has the obligation to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention") in full at the domestic level.

[3] The fact-finding mission to investigate allegations of violence and human rights violations in Togo, before, during and after the presidential elections of 24 April 2005 established by the High Commissioner for Human Rights questioned this woman in Lomé prison, in June 2005, and quotes her in its report of 29 August 2005 (para. 4.1.4.1).

(5) Recalling its statement adopted on 22 November 2001 condemning utterly the terrorist attacks of 11 September 2001, the terrible threat to international peace and security posed by acts of international terrorism and the need to combat by all means, in accordance with the Charter of the United Nations, the threats caused by terrorist acts, the Committee recognizes that these attacks caused profound suffering to many residents of the State party. The Committee acknowledges that the State party is engaged in protecting its security and the security and freedom of its citizens in a complex legal and political context.

B. Positive aspects

(6) The Committee welcomes the State party's statement that all United States officials, from all government agencies, including its contractors, are prohibited from engaging in torture at all times and in all places, and that all United States officials from all government agencies, including its contractors, wherever they may be, are prohibited from engaging in cruel, inhuman or degrading treatment or punishment, in accordance with the obligations under the Convention.

(7) The Committee notes with satisfaction the State party's statement that the United States does not transfer persons to countries where it believes it is "more likely than not" that they will be tortured, and that this also applies, as a matter of policy, to the transfer of any individual, in the State party's custody, or control, regardless of where they are detained.

(8) The Committee welcomes the State party's clarification that the statement of the United States President on signing the Detainee Treatment Act on 30 December 2005 is not to be interpreted as a derogation by the President from the absolute prohibition of torture.

(9) The Committee also notes with satisfaction the enactment of:

(a) The Prison Rape Elimination Act of 2003, which addresses sexual assault of persons in the custody of correctional agencies, with the purpose, inter alia, of establishing a "zero-tolerance standard" for rape in detention facilities in the State party; and

(b) That part of the Detainee Treatment Act of 2005 which prohibits cruel, inhuman, or degrading treatment and punishment of any person, regardless of nationality or physical location, in the custody or under the physical control of the State party.

(10) The Committee welcomes the adoption of National Detention Standards in 2000, which set minimum standards for detention facilities holding Department of Homeland Security detainees, including asylum-seekers.

(11) The Committee also notes with satisfaction the sustained and substantial contributions of the State party to the United Nations Voluntary Fund for the Victims of Torture.

(12) The Committee notes the State party's intention to adopt a new Army Field Manual for intelligence interrogation, applicable to all its personnel, which, according to the State party, will ensure that interrogation techniques fully comply with the Convention.

C. Subjects of concern and recommendations

(13) Notwithstanding the statement by the State party that "every act of torture within the meaning of the Convention is illegal under existing federal and/or state law", the Committee reiterates the concern expressed in its previous conclusions and recommendations with regard to the absence of a federal crime of torture, consistent with article 1 of the Convention, given that sections 2340 and 2340 A of the United States Code limit federal criminal jurisdiction over acts of torture to extraterritorial cases. The Committee also regrets that, despite the occurrence of cases of extraterritorial torture of detainees, no prosecutions have been initiated under the extraterritorial criminal torture statute (arts. 1, 2, 4 and 5).

The Committee reiterates its previous recommendation that the State party should enact a federal crime of torture consistent with article 1 of the Convention, which should include appropriate penalties, in order to fulfil its obligations under the Convention to prevent and eliminate acts of torture causing severe pain or suffering, whether physical or mental, in all its forms.

The State party should ensure that acts of psychological torture, prohibited by the Convention, are not limited to "prolonged mental harm" as set out in the State party's understandings lodged at the time of ratification of the Convention, but constitute a wider category of acts, which cause severe mental suffering, irrespective of their prolongation or its duration.

The State party should investigate, prosecute and punish perpetrators under the federal extraterritorial criminal torture statute.

(14) The Committee regrets the State party's opinion that the Convention is not applicable in times and in the context of armed conflict, on the basis of the argument that the "law of armed conflict" is the exclusive *lex specialis* applicable, and that the Convention's application "would result in an overlap of the different treaties which would undermine the objective of eradicating torture" (arts. 1 and 16).

The State party should recognize and ensure that the Convention applies at all times, whether in peace, war or armed conflict, in any territory under its jurisdiction and that the application of the Convention's provisions are without prejudice to the provisions of any other international instrument, pursuant to paragraph 2 of its articles 1 and 16.

(15) The Committee notes that a number of the Convention's provisions are expressed as applying to "territory under [the State party's] jurisdiction" (arts. 2, 5, 13, 16). The Committee reiterates its previously expressed view that this includes all areas under the de facto effective control of the State party, by whichever military or civil authorities such control is exercised. The Committee considers that the State party's view that those provisions are geographically limited to its own de jure territory to be regrettable.

The State party should recognize and ensure that the provisions of the Convention expressed as applicable to "territory under the State party's jurisdiction" apply to, and are fully enjoyed, by all persons under the effective control of its authorities, of whichever type, wherever located in the world.

(16) The Committee notes with concern that the State party does not always register persons detained in territories under its jurisdiction outside the United States, depriving them of an effective safeguard against acts of torture (art. 2).

The State party should register all persons it detains in any territory under its jurisdiction, as one measure to prevent acts of torture. Registration should contain the identity of the detainee, the date, time and place of the detention, the identity of the authority that detained the person, the ground for the detention, the date and time of admission to the detention facility and the state of health of the detainee upon admission and any changes thereto, the time and place of interrogations, with the names of all interrogators present, as well as the date and time of release or transfer to another detention facility.

(17) The Committee is concerned by allegations that the State party has established secret detention facilities, which are not accessible to the International Committee of the Red Cross. Detainees are allegedly deprived of fundamental legal safeguards, including an oversight mechanism in regard to their treatment and review procedures with respect to their detention. The Committee is also concerned by allegations that those detained in such facilities could be held for

prolonged periods and face torture or cruel, inhuman or degrading treatment. The Committee considers the "no comment" policy of the State party regarding the existence of such secret detention facilities, as well as on its intelligence activities, to be regrettable (arts. 2 and 16).

The State party should ensure that no one is detained in any secret detention facility under its de facto effective control. Detaining persons in such conditions constitutes, per se, a violation of the Convention. The State party should investigate and disclose the existence of any such facilities and the authority under which they have been established and the manner in which detainees are treated. The State party should publicly condemn any policy of secret detention.

The Committee recalls that intelligence activities, notwithstanding their author, nature or location, are acts of the State party, fully engaging its international responsibility.

(18) The Committee is concerned by reports of the involvement of the State party in enforced disappearances. The Committee considers the State party's view that such acts do not constitute a form of torture to be regrettable (arts. 2 and 16).

The State party should adopt all necessary measures to prohibit and prevent enforced disappearance in any territory under its jurisdiction, and prosecute and punish perpetrators, as this practice constitutes, per se, a violation of the Convention.

(19) Notwithstanding the State party's statement that "[u]nder U.S. law, there is no derogation from the express statutory prohibition of torture" and that "[n]o circumstances whatsoever … may be invoked as a justification or defense to committing torture", the Committee remains concerned at the absence of clear legal provisions ensuring that the Convention's prohibition against torture is not derogated from under any circumstances, in particular since 11 September 2001 (arts. 2, 11 and 12).

The State party should adopt clear legal provisions to implement the principle of absolute prohibition of torture in its domestic law without any possible derogation. Derogation from this principle is incompatible with paragraph 2 of article 2 of the Convention, and cannot limit criminal responsibility. The State party should also ensure that perpetrators of acts of torture are prosecuted and punished appropriately.

The State party should also ensure that any interrogation rules, instructions or methods do not derogate from the principle of absolute prohibition of torture and that no doctrine under domestic law impedes the full criminal responsibility of perpetrators of acts of torture.

The State party should promptly, thoroughly, and impartially investigate any responsibility of senior military and civilian officials authorizing, acquiescing or consenting, in any way, to acts of torture committed by their subordinates.

(20) The Committee is concerned that the State party considers that the non-refoulement obligation, under article 3 of the Convention, does not extend to a person detained outside its territory. The Committee is also concerned by the State party's rendition of suspects, without any judicial procedure, to States where they face a real risk of torture (art. 3).

The State party should apply the non-refoulement guarantee to all detainees in its custody, cease the rendition of suspects, in particular by its intelligence agencies, to States where they face a real risk of torture, in order to comply with its obligations under article 3 of the Convention. The State party should always ensure that suspects have the possibility to challenge decisions of refoulement.

(21) The Committee is concerned by the State party's use of "diplomatic assurances", or other kinds of guarantees, assuring that a person will not be tortured if expelled, returned, transferred or extradited to another State. The Committee is also concerned by the secrecy of such procedures including the absence of judicial scrutiny and the lack of monitoring mechanisms put in place to assess if the assurances have been honoured (art. 3).

When determining the applicability of its non-refoulement obligations under article 3 of the Convention, the State party should only rely on "diplomatic assurances" in regard to States which do not systematically violate the Convention's provisions, and after a thorough examination of the merits of each individual case. The State party should establish and implement clear procedures for obtaining such assurances, with adequate judicial mechanisms for review, and effective post-return monitoring arrangements. The State party should also provide detailed information to the Committee on all cases since 11 September 2001 where assurances have been provided.

(22) The Committee, noting that detaining persons indefinitely without charge constitutes per se a violation of the Convention, is concerned that detainees are held for protracted periods at Guantánamo Bay, without sufficient legal safeguards and without judicial assessment of the justification for their detention (arts. 2, 3 and 16).

The State party should cease to detain any person at Guantánamo Bay and close this detention facility, permit access by the detainees to judicial process or release them as soon as possible, ensuring that they are not returned to any State where they could face a real risk of being tortured, in order to comply with its obligations under the Convention.

(23) The Committee is concerned that information, education and training provided to the State party's law-enforcement or military personnel are not adequate and do not focus on all provisions of the Convention, in particular on the non-derogable nature of the prohibition of torture and the prevention of cruel, inhuman and degrading treatment or punishment (arts. 10 and 11).

The State party should ensure that education and training of all law-enforcement or military personnel, are conducted on a regular basis, in particular for personnel involved in the interrogation of suspects. This should include training on interrogation rules, instructions and methods, and specific training on how to identify signs of torture and cruel, inhuman or degrading treatment. Such personnel should also be instructed to report such incidents.

The State party should also regularly evaluate the training and education provided to its law-enforcement and military personnel as well as ensure regular and independent monitoring of their conduct.

(24) The Committee is concerned that in 2002 the State party authorized the use of certain interrogation techniques that have resulted in the death of some detainees during interrogation. The Committee also regrets that "confusing interrogation rules" and techniques defined in vague and general terms, such as "stress positions", have led to serious abuses of detainees (arts. 11, 1, 2 and 16).

The State party should rescind any interrogation technique, including methods involving sexual humiliation, "waterboarding", "short shackling" and using dogs to induce fear, that constitutes torture or cruel, inhuman or degrading treatment or punishment, in all places of detention under its de facto effective control, in order to comply with its obligations under the Convention.

(25) The Committee is concerned at allegations of impunity of some of the State party's law-enforcement personnel in respect of acts of torture or cruel, inhuman or degrading treatment or punishment. The Committee notes the limited investigation and lack of prosecution in respect of the allegations of torture perpetrated in areas 2 and 3 of the Chicago Police Department (art. 12).

The State party should promptly, thoroughly and impartially investigate all allegations of acts of torture or cruel, inhuman or degrading treatment or punishment by law-enforcement personnel and bring perpetrators to justice, in order to fulfil its obligations under article 12 of the Convention. The State party should also provide the Committee with information on the ongoing investigations and prosecution relating to the above-mentioned case.

(26) The Committee is concerned by reliable reports of acts of torture or cruel, inhuman and degrading treatment or punishment committed by certain members of the State party's military or civilian personnel in Afghanistan and Iraq. It is also concerned that the investigation and prosecution of many of these cases, including some resulting in the death of detainees, have led to lenient sentences, including of an administrative nature or less than one year's imprisonment (art. 12).

The State party should take immediate measures to eradicate all forms of torture and ill-treatment of detainees by its military or civilian personnel, in any territory under its jurisdiction, and should promptly and thoroughly investigate such acts, prosecute all those responsible for such acts, and ensure they are appropriately punished, in accordance with the seriousness of the crime.

(27) The Committee is concerned that the Detainee Treatment Act of 2005 aims to withdraw the jurisdiction of the State party's federal courts with respect to habeas corpus petitions, or other claims by or on behalf of Guantánamo Bay detainees, except under limited circumstances. The Committee is also concerned that detainees in Afghanistan and Iraq, under the control of the Department of Defense, have their status determined and reviewed by an administrative process of that department (art. 13).

The State party should ensure that independent, prompt and thorough procedures to review the circumstances of detention and the status of detainees are available to all detainees, as required by article 13 of the Convention.

(28) The Committee is concerned at the difficulties certain victims of abuses have faced in obtaining redress and adequate compensation, and that only a limited number of detainees have filed claims for compensation for alleged abuse and maltreatment, in particular under the Foreign Claims Act (art. 14).

The State party should ensure, in accordance with the Convention, that mechanisms to obtain full redress, compensation and rehabilitation are accessible to all victims of acts of torture or abuse, including sexual violence, perpetrated by its officials.

(29) The Committee is concerned at section 1997 e (e) of the 1995 Prison Litigation Reform Act which provides "that no federal civil action may be brought by a prisoner for mental or emotional injury suffered while in custody without a prior showing of physical injury" (art. 14).

The State party should not limit the right of victims to bring civil actions and amend the Prison Litigation Reform Act accordingly.

(30) The Committee, while taking note of the State party's instruction number 10 of 24 March 2006, which provides that military commissions shall not admit statements established to be made as a result of torture in evidence, is concerned about the implementation of the instruction in the context of such commissions and the limitations on detainees' effective right to complain. The Committee is also concerned about the Combatant Status Review Tribunals and the Administrative Review Boards (arts. 13 and 15).

The State party should ensure that its obligations under articles 13 and 15 are fulfilled in all circumstances, including in the context of military commissions and should consider establishing an independent mechanism to guarantee the rights of all detainees in its custody.

(31) The Committee is concerned at the fact that substantiated information indicates that executions in the State party can be accompanied by severe pain and suffering (arts. 16, 1 and 2).

The State party should carefully review its execution methods, in particular lethal injection, in order to prevent severe pain and suffering.

(32) The Committee is concerned at reliable reports of sexual assault of sentenced detainees, as well as persons in pretrial or immigration detention, in places of detention in the State party. The Committee is concerned that there are numerous reports of sexual violence perpetrated by detainees on one another, and that persons of differing sexual orientation are particularly vulnerable. The Committee is also concerned by the lack of prompt and independent investigation of such acts and that appropriate measures to combat these abuses have not been implemented by the State party (arts. 16, 12, 13 and 14).

The State party should design and implement appropriate measures to prevent all sexual violence in all its detention centres. The State party should ensure that all allegations of violence in detention centres are investigated promptly and independently, perpetrators are prosecuted and appropriately sentenced and victims can seek redress, including appropriate compensation.

(33) The Committee is concerned at the treatment of detained women in the State party, including gender-based humiliation and incidents of shackling of women detainees during childbirth (art. 16).

The State party should adopt all appropriate measures to ensure that women in detention are treated in conformity with international standards.

(34) The Committee reiterates the concern expressed in its previous recommendations about the conditions of the detention of children, in particular the fact that they may not be completely segregated from adults during pretrial detention and after sentencing. The Committee is also concerned at the large number of children sentenced to life imprisonment in the State party (art. 16).

The State party should ensure that detained children are kept in facilities separate from those for adults in conformity with international standards. The State party should address the question of sentences of life imprisonment of children, as these could constitute cruel, inhuman or degrading treatment or punishment.

(35) The Committee remains concerned about the extensive use by the State party's law-enforcement personnel of electroshock devices, which have caused several deaths. The Committee is concerned that this practice raises serious issues of compatibility with article 16 of the Convention.

The State party should carefully review the use of electroshock devices, strictly regulate their use, restricting it to substitution for lethal weapons, and eliminate the use of these devices to restrain persons in custody, as this leads to breaches of article 16 of the Convention.

(36) The Committee remains concerned about the extremely harsh regime imposed on detainees in "supermaximum prisons". The Committee is concerned about the prolonged isolation periods detainees are subjected to, the effect such treatment has on their mental health, and that its purpose may be retribution, in which case it would constitute cruel, inhuman or degrading treatment or punishment (art. 16).

The State party should review the regime imposed on detainees in "supermaximum prisons", in particular the practice of prolonged isolation.

(37) The Committee is concerned about reports of brutality and use of excessive force by the State party's law-enforcement personnel, and the numerous allegations of their ill-treatment of vulnerable groups, in particular racial minorities, migrants and persons of different sexual orientation which have not been adequately investigated (art. 16 and 12).

The State party should ensure that reports of brutality and ill-treatment of members of vulnerable groups by its law-enforcement personnel are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.

(38) The Committee strongly encourages the State party to invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in full conformity with the terms of reference for fact-finding missions by special procedures of the United Nations, to visit Guantánamo Bay and any other detention facility under its de facto control.

(39) The Committee invites the State party to reconsider its express intention not to become party to the Rome Statute of the International Criminal Court.

(40) The Committee reiterates its recommendation that the State party should consider withdrawing its reservations, declarations and understandings lodged at the time of ratification of the Convention.

(41) The Committee encourages the State party to consider making the declaration under article 22, thereby recognizing the competence of the Committee to receive and consider individual communications, as well as ratifying the Optional Protocol to the Convention.

(42) The Committee requests the State party to provide detailed statistical data, disaggregated by sex, ethnicity and conduct, on complaints related to torture and ill-treatment allegedly committed by law-enforcement officials, investigations, prosecutions, penalties and disciplinary action relating to such complaints. It requests the State party to provide similar statistical data and information on the enforcement of the Civil Rights of Institutionalized Persons Act by the Department of Justice, in particular in respect to the prevention, investigation and prosecution of acts of torture, or cruel, inhuman or degrading treatment or punishment in detention facilities and the measures taken to implement the Prison Rape Elimination Act and their impact. The Committee requests the State party to provide information on any compensation and rehabilitation provided to victims. The Committee encourages the State party to create a federal database to facilitate the collection of such statistics and information which assist in the assessment of the implementation of the provisions of the Convention and the practical enjoyment of the rights it provides. The Committee also requests the State party to provide information on investigations into the alleged ill-treatment perpetrated by law-enforcement personnel in the aftermath of Hurricane Katrina.

(43) The Committee requests the State party to provide, within one year, information on its response to its recommendations in paragraphs 16, 20, 21, 22, 24, 33, 34 and 42 above.

(44) The Committee requests the State party to disseminate its report, with its addenda and the written answers to the Committee's list of issues and oral questions and the conclusions and recommendations of the Committee widely, in all appropriate languages, through official websites, the media and non-governmental organizations.

(45) The State party is invited to submit its next periodic report, which will be considered as its fifth periodic report, by 19 November 2011, the due date of the fifth periodic report.

IV. FOLLOW-UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS

38. In Chapter IV of its annual report for 2004-2005 (A/60/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2005. This chapter updates the Committee's experience to 19 May 2006, the end of its thirty-sixth session.

39. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2006 on the results of the procedure.

40. The Rapporteur has emphasized that the follow-up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment," as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

41. Since its thirtieth session in May 2003, the Committee began the practice of identifying a limited number of these recommendations that warrant a request for additional information following the review and discussion with the State party concerning its periodic report. Such "follow-up" recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its "follow-up recommendations" which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' report under article 19.

42. Since the procedure was established at the thirtieth session in May 2003 through the end of the thirty-sixth session in May 2006, the Committee has reviewed 39 States for which it has identified follow-up recommendations. Of the 19 States parties that were due to have submitted their follow-up reports to the Committee by 1 May 2006, 12 had completed this requirement (Argentina, Azerbaijan, Czech Republic, Colombia, Germany, Greece, Latvia, Lithuania, Morocco, New Zealand, United Kingdom, and Yemen). As of May, seven States had failed to supply follow-up information that had fallen due (Bulgaria, Cambodia, Cameroon, Chile, Croatia, Moldova, Monaco), and each was sent a reminder of the items still outstanding and requesting them to submit information to the Committee.

43. With this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture …" (art. 2, para. 1) and the undertaking "to prevent … other acts of cruel, inhuman and degrading treatment or punishment …" (art. 16).

44. The Rapporteur has expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all of the items designated by the Committee for follow-up (normally between three to six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Where further information is needed, she writes to the State party concerned with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she writes to solicit the outstanding information.

45. Each letter responds specifically and in detail to the information presented by the State party, which is given a formal United Nations document symbol number.

46. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues not addressed but which are deemed essential in the Committee's ongoing work in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

47. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies. The following list of items is illustrative, not comprehensive:

(a) The need for greater precision on the means by which police and other personnel instruct about and guarantee detainees their right to obtain prompt access to an independent doctor, lawyer, and family member;

(b) The importance of specific case examples regarding such access, and implementation of other follow-up recommendations;

(c) The need for separate, independent and impartial bodies to examine complaints of abuses of the Convention because the Committee has repeatedly noted that victims of torture and ill-treatment are unlikely to turn to the very authorities of the system allegedly responsible for the acts;

(d) The value of providing precise information such as lists of prisoners which are good examples of transparency, but which often reveal a need for more rigorous fact-finding and monitoring of the treatment of persons facing possible infringement of the Convention;

(e) Numerous ongoing challenges in gathering, aggregating, and analysing police and administration of justice-sector statistics in ways that ensure adequate information as to personnel, agencies, or specific facilities responsible for alleged abuses;

(f) The protective value of prompt and impartial investigations into allegations of abuse, and in particular information about effective parliamentary or national human rights commissions or ombudspersons as investigators, especially for instances of unannounced inspections, as well as the utility of permitting non-governmental organizations to conduct prison visits;

(g) The need for information about specific professional police training programmes, with clear-cut instruction as to the prohibition against torture and practice in identifying the sequellae of torture;

(h) The lacunae in statistics and other information regarding offences, charges and convictions, including any specific disciplinary sanctions against officers and other relevant personnel, particularly on newly examined issues under the Convention, such as the intersection of race and/or ethnicity with ill-treatment and torture, the use of "diplomatic assurances" for persons being returned to another country to face criminal charges, incidents of sexual violence, complaints about abuses within the military, etc.

48. The chart below details, as of 19 May 2006, the end of the Committee's thirty-sixth session, the state of the replies with respect to follow-up.

A. Follow-up reply due before 1 May 2006

State party	Date due	Date reply received	Document symbol number	Further action taken/required
Azerbaijan	May 2004	7 July 2004	CAT/C/CR/30/RESP/1	Request further clarification
Argentina	November 2005	2 February 2006	CAT/C/ARG/CO/4/Add.1	
Bulgaria	May 2005	-		Reminder to State party
Cambodia	August 2003	-		Reminder to State party
Cameroon	November 2004	-		Reminder to State party
Chile	May 2005	-		Reminder to State party
Croatia	May 2005	-		Reminder to State party
Czech Republic	May 2005	25 April 2005	CAT/C/CR/32/2/RESP/1	Request further clarification
Colombia	November 2004	24 March 2006	CAT/C/COL/CO/3/Add.1	
Germany	May 2005	4 August 2005	CAT/C/CR/32/7/RESP/1	
Greece	November 2005	14 March 2006	CAT/C/GRC/CO/4/Add.1	

State party	Date due	Date reply received	Document symbol number	Further action taken/required
Latvia	November 2004	3 November 2004	CAT/C/CR/31/RESP/1	Request further clarification
Lithuania	November 2004	7 December 2004	CAT/C/CR/31/5/RESP.1	Request further clarification
Moldova	August 2003	-		Reminder to State party
Monaco	May 2005	-		Reminder to State party
Morocco	November 2004	22 November 2004	CAT/C/CR/31/2/Add.1	Request further clarification
New Zealand	May 2005	9 June 2005	CAT/C/CR/32/4/RESP.1	
United Kingdom	November 2005	20 April 2006	CAT/C/GBR/CO/4/Add.1	
Yemen	November 2004	22 October 2004	CAT/C/CR/31/4/Add.1	Request further clarification

B. Follow-up due May 2006 and November 2006

State party	Date due	Date reply received	Action taken/required
Albania	May 2006		
Austria	November 2006		
Bahrain	May 2006		
Bosnia and Herzegovina	November 2006		
Canada	May 2006		
Democratic Republic of Congo	November 2006		
Ecuador	November 2006		
Finland	May 2006		
France	November 2006		
Nepal	November 2006		
Sri Lanka	November 2006		
Switzerland	May 2006		
Uganda	May 2006		

C. Follow-up due May 2007

State party	Date due	Date reply received	Action taken/required
Georgia	May 2007		
Guatemala	May 2007		
Peru	May 2007		
Qatar	May 2007		
Republic of Korea	May 2007		
Togo	May 2007		
United States of America	May 2007		

V. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION

49. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned.

50. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

51. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

52. The Committee's work under article 20 of the Convention continued during the period under review. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed. However, in accordance with article 20, paragraph 5, of the Convention, the Committee may, after consultations with the State party concerned, decide to include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly.

53. In the framework of its follow-up activities, the Rapporteur on article 20, continued to carry out activities aiming at encouraging States parties on which enquiries had been conducted and the results of such enquiries had been published, to take measures to implement the Committee's recommendations.

54. During the thirty-sixth session, the Committee had before it the fourth periodic report from Peru, under article 19. The Committee examined the status its recommendations under article 20 (A/56/44, paras. 144-193).

VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

A. Introduction

55. Under article 22 of the Convention, individuals who claim to be victims of a violation by a State party of the provisions of the Convention may submit a complaint to the Committee against Torture for consideration, subject to the conditions laid down in that article. Fifty-eight out of 141 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider complaints under article 22 of the Convention. The list of those States is contained in annex III. No complaint may be considered by the Committee if it concerns a State party to the Convention that has not recognized the Committee's competence under article 22.

56. Consideration of complaints under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents pertaining to the work of the Committee under article 22, i.e. submissions from the parties and other working documents of the Committee, are confidential. Rules 107 and 109 of the Committee's Rules of Procedure set out the complaints procedure in detail.

57. The Committee decides on a complaint in the light of all information made available to it by the complainant and the State party. The findings of the Committee are communicated to the parties (article 22, paragraph 7, of the Convention and rule 112 of the rules of procedure) and are made available to the general public. The text of the Committee's decisions declaring complaints inadmissible under article 22 of the Convention is also made public without disclosing the identity of the complainant, but identifying the State party concerned.

58. Pursuant to rule 115, paragraph 1, of its rules of procedure, the Committee may decide to include in its annual report a summary of the communications examined. The Committee shall also include in its annual report the text of its decisions under article 22, paragraph 7, of the Convention.

B. Interim measures of protection

59. Complainants frequently request preventive protection, particularly in cases concerning imminent expulsion or extradition, and invoke in this connection article 3 of the Convention. Pursuant to rule 108, paragraph 1, at any time after the receipt of a complaint, the Committee, its working group, or the Rapporteur for new complaints and interim measures may transmit to the State party concerned a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violations. The State party shall be informed that such a request does not imply a determination of the admissibility or the merits of the complaint. The Rapporteur for new complaints and interim measures regularly monitors compliance with the Committee's requests for interim measures.

60. The Rapporteur for new complaints and interim measures has developed the working methods regarding the withdrawal of requests for interim measures. Where the circumstances suggest that a request for interim measures may be reviewed before the consideration of the merits, a standard sentence is added to the request, stating that the request is made on the basis of the information contained in the complainant's submission and may be reviewed, at the initiative

of the State party, in the light of information and comments received from the State party and any further comments, if any, from the complainant. Some States parties have adopted the practice of systematically requesting the Rapporteur to withdraw his request for interim measures of protection. The Rapporteur has taken the position that such requests need only be addressed if based on new information which was not available to him when he took his initial decision on interim measures.

61. The Committee has conceptualized the formal and substantive criteria applied by the Rapporteur for new complaints and interim measures in granting or rejecting requests for interim measures of protection. Apart from timely submission of a complainant's request for interim measures of protection under rule 108, paragraph 1, of the Committee's rules of procedure, the basic admissibility criteria set out in article 22, paragraphs 1 to 5, of the Convention, must be met by the complainant for the Rapporteur to act on his or her request. The requirement of exhaustion of domestic remedies can be dispensed with, if the only remedies available to the complainant are without suspensive effect, i.e. remedies that do not automatically stay the execution of an expulsion order, or if there is a risk of immediate deportation of the complainant after the final rejection of his or her asylum application. In such cases, the Rapporteur may request the State party to refrain from deporting a complainant, while his or her complaint is under consideration by the Committee, even before domestic remedies have been exhausted. As for substantive criteria to be applied by the Rapporteur, a complaint must have a substantial likelihood of success on the merits for it to be concluded that the alleged victim would suffer irreparable harm in the event of his or her deportation.

62. The Committee is aware that a number of States parties have expressed concern that interim measures of protection have been requested in too large a number of cases, especially where the complainant's deportation is alleged to be imminent, and that there are insufficient factual elements to warrant a request for interim measures. The Committee takes such expressions of concern seriously and is prepared to discuss them with the States parties concerned. In this regard it wishes to point out, that in many cases, requests for interim measures are lifted by the Special Rapporteur, on the basis of pertinent State party information.

C. Progress of work

63. At the time of adoption of the present report the Committee had registered since 1989, 292 complaints with respect to 24 countries. Of them, 80 complaints had been discontinued and 52 had been declared inadmissible. The Committee had adopted final decisions on the merits with respect to 123 complaints and found violations of the Convention in 36 of them. Thirty-four complaints remained pending for consideration and 3 were suspended.

64. At its thirty-fifth session, the Committee declared inadmissible complaints Nos. 242/2003 (*R.T. v. Switzerland*), 247/2004 (*A.H. v. Azerbaijan*) and 250/2004 (*A.H. v. Sweden*). Complaints Nos. 242/2003 and 250/2004 concerned claims under article 3 of the Convention. The Committee decided to declare them inadmissible for lack of substantiation and non-exhaustion of domestic remedies respectively.

65. Complaint No. 247/2004 concerned claims of violation of articles 1, 2, 12 and 13 of the Convention. The Committee noted that the complainant had filed an application with the European Court of Human Rights which was declared inadmissible on 29 April 2005. It recalled

that, under article 22, paragraph 5 (a) of the Convention, the Committee shall not consider any communications from an individual unless it has ascertained that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee considered that a communication has been, and is being examined by another procedure of international investigation or settlement, if such examination relates/related to the "same matter", that must be understood as relating to the same parties, the same facts and the same substantive rights. In the present case, the application before the European Court was submitted by the same complainant, was based on the same facts and related, at least in part, to the same substantive rights as those invoked before the Committee. Accordingly, the Committee concluded that the communication was inadmissible.

66. Also at its thirty-fifth session, the Committee adopted decisions on the merits in respect of complaints Nos. 172/2000 (*Dimitrijevic v. Serbia and Montenegro*), 174/2000 (*Nikolic v. Serbia and Montenegro*), 231/2003 (*S.N.A.W. v. Switzerland*), 235/2003 (*M.S.H. v. Sweden*), 237/2003 (*M.C.M.V.F. v. Sweden*), 238/2003 (*Z.T. v. Norway*), 245/2004 (*S.S. v. Canada*), 254/2004 (*S.S.H. v. Switzerland*) and 258/2004 (*Mostafa Dadar v. Canada*). The text of these decisions is reproduced in annex VIII, section A, to the present report.

67. Complaint No. 172/2000 (*Dimitrijevic v. Serbia and Montenegro*), concerned a Serbian citizen of Roma origin claiming violation of several articles of the Convention as a result of the treatment he was subjected to while in police custody. The Committee noted the complainant's description of the treatment he was subjected to while in detention, which could be characterized as severe pain or suffering intentionally inflicted by public officials for such purposes as obtaining from him information or a confession or punishing him for an act he has committed, or intimidating or coercing him for any reason based on discrimination of any kind in the context of the investigation of a crime. It also noted the observations of the investigating judge with respect to his injuries, and photographs of his injuries provided by the complainant. It observed that the State party had not contested the facts as presented by the complainant and observed that the medical report prepared after the examination of the complainant had not been integrated into the complaint file and could not be consulted by the complainant or his counsel. In the circumstances, the Committee concluded that due weight had to be given to the complainant's allegations and that the facts, as submitted, constituted torture within the meaning of article 1 of the Convention. The Committee further noted that the public prosecutor never informed the complainant whether an investigation was being or had been conducted after the criminal complaint was filed and that, as a result, the complainant was prevented from pursuing a "private prosecution" of his case. In these circumstances, the Committee considered that the State party had failed to comply with its obligation, under article 12 of the Convention, to carry out a prompt and impartial investigation. The State party also failed to comply with its obligation, under article 13, to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities. Finally, the Committee noted the complainant's allegations that the absence of criminal proceedings deprived him of the possibility of filing a civil suit for compensation. In view of the fact that the State party did not contest this allegation, and given the passage of time since the complainant initiated legal proceedings at the domestic level, the Committee concluded that the State party had also violated its obligations under article 14 of the Convention.

68. In complaint No. 174/2000 (*Nikolic v. Serbia and Montenegro*) the complainants claimed that the State party's failure to proceed to a prompt and impartial investigation of the circumstances of their son's death while being arrested by the police, constituted a violation of articles 12, 13 and 14 of the Convention. The Committee considered that a number of elements cast doubts on the sequence of events leading to the death of the complainants' son, as established by the State party's authorities. On the basis of such elements, it considered that there were reasonable grounds for the State party to investigate the complainants' allegations that their son was tortured prior to his death. The question therefore arose whether the investigative measures taken by the authorities were commensurate to the requirement of article 12 of the Convention. After examining such measures the Committee concluded that the investigation had not been impartial and, therefore, there had been a violation of article 12. The Committee also observed that the courts based their finding that there had been no physical contact between the police and the complainants' son exclusively on evidence that had been challenged by the complainants and which, according to them, was flawed by numerous inconsistencies. The courts dismissed the complainants' appeals without addressing their arguments. Accordingly, the Committee concluded that the State party's courts failed to examine the case impartially, thereby violating article 13 of the Convention.

69. Complaints Nos. 231/2003 (*S.N.A.W. v. Switzerland*), 235/2003 (*M.S.H. v. Sweden*), 237/2003 (*M.C.M.V.F. v. Sweden*), 238/2003 (*Z.T. v. Norway*), 245/2004 (*S.S. v. Canada*) and 254/2004 (*S.S.H. v. Switzerland*) concerned asylum-seekers claiming that their expulsion, return or extradition to their countries of origin would constitute a violation of article 3 of the Convention, as they will be at risk of being subjected to torture. The Committee, after examining the claims and evidence submitted by the complainants as well as the arguments from the States parties concluded that such risk had not been established. Accordingly, no breach of article 3 was found.

70. In complaint No. 258/2004 (*Mostafa Dadar v. Canada*), the complainant was an Iranian national legally residing in Canada, against whom a Danger Opinion under the Immigration Act had been issued declaring him to be a danger to the public. As a result, he was ordered deported by the Canadian authorities. The complainant claimed before the Committee that his deportation would amount to a violation of article 3 of the Convention by Canada, as he would be at risk of being subjected to torture in Iran. After examining the arguments and evidence submitted to it, the Committee concluded that substantial grounds existed for believing that the complainant may risk being subjected to torture. Accordingly, his deportation would amount to a violation of the Convention. The Committee regrets that, despite the Committee's finding, the State party deported the author to Iran.

71. At its thirty-sixth session, the Committee adopted decisions on the merits in respect of complaints Nos. 181/2001 (*Suleymane Guengueng et al. v. Senegal*), 256/2004 (*M.Z. v. Sweden*) and 278/2005 (*A.E. v. Switzerland*). The text of these decisions is also reproduced in annex VIII, section A, to the present report.

72. Complaint No. 181/2001 (*Suleymane Guengueng et al. v. Senegal*), concerned seven Chadian citizens who claimed having been victims of acts of torture committed by Chadian agents answerable directly to the then President Hissène Habré, between 1982 and 1990.

In 2000 the complainants lodged a complaint against Hissène Habré in Senegal, where he was residing since December 1990. On 3 February 2000, an examining magistrate charged him with being an accomplice to acts of torture and opened an inquiry for crimes against humanity. On 4 July 2000, the Indictment Division of the Dakar Court of Appeal dismissed the charges against Hissène Habré on the grounds of lack of jurisdiction, a decision which was later confirmed by the Court of Cassation. Before the Committee, the complainants alleged a violation by Senegal of article 5, paragraph 2 and article 7 of the Convention, and requested compensation. Subsequently, on 19 September 2005, a Belgian judge issued an international arrest warrant against Hissène Habré, charging him with genocide, crimes against humanity, war crimes, torture and other violations of international humanitarian law. On the same date, Belgium made an extradition request to Senegal. The case was brought by Senegal to the attention of the Assembly of the African Union in January 2006, who decided to set up a committee of eminent jurists to consider all aspects of the case and possible options for trial. In its Decision, the Committee noted that the State party had not contested the fact that it had not taken the measures referred to in article 5, paragraph 2 of the Convention, according to which each State party shall take the necessary measures to establish its jurisdiction over torture offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him. Consequently, the Committee found that the State party had not fulfilled its obligations under such provision. The Committee also held that the State party cannot invoke the complexity of its legal processes as a justification for its failure to comply with its obligations under article 7 of the Convention. At the time when the complaint was submitted to the Committee, the State party had an obligation to prosecute Hissène Habré for alleged acts of torture, unless it could be proved that there was not sufficient evidence to do so. Subsequently, since 19 September 2005, the State party was in another situation covered under article 7, and had the choice of proceeding with the extradition if it decided not to submit the case to its own judicial authorities for prosecution. By refusing both options the State party had failed to fulfil its obligations under article 7 of the Convention.

73. In complaints Nos. 256/2004 (*M.Z. v. Sweden*) and 278/2005 (*A.E. v. Switzerland*) the complainants claimed violations of article 3 of the Convention by the respective States, should they be returned to their countries after being refused asylum. The Committee held, however, that the complainants had not demonstrated the existence of substantial grounds for believing that their return to such countries would expose them to a real, specific and personal risk of torture, and, therefore, no violations of the Convention were found.

74. Also at its thirty-sixth session, the Committee decided to declare inadmissible complaints Nos. 248/2004 (*A.K. v. Switzerland*) and 273/2005 (*A.T. v. Canada*). In both cases the complainants claimed violations of article 3 of the Convention. However, the Committee concluded that domestic remedies had not been exhausted. The text of these decisions is reproduced in annex VIII, section B, to the present report.

D. Follow-up activities

75. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring

about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow-up visits to States parties; preparing periodic reports to the Committee on his/her activities.

76. During its thirty-fourth session, the Committee, through its Special Rapporteur on follow-up to decisions, decided that in cases in which it had found violations of the Convention, including Decisions made by the Committee prior to the establishment of the follow-up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's Decisions.

77. In a follow-up report presented to the Committee during the thirty-fifth session, the Special Rapporteur on follow-up to decisions provided information received from four States parties pursuant to this request: France; Serbia and Montenegro (in relation to 113/1998, Ristic); Switzerland; and Sweden. The following countries did not respond to the request: Austria; Canada (with respect to Tahir Hussain Khan, 15/1994); the Netherlands; Spain; and Serbia and Montenegro (in relation to 161/2000, Hajrizi Dzemajl, 171/2000, Dimitrov, and 207/2002, Dragan Dimitrijevic).

78. Action taken by the States parties in the following cases complied fully with the Committee's Decisions and no further action will be taken under the follow-up procedure: *Mutombo v. Switzerland* (13/1993); *Alan v. Switzerland* (21/1995); *Aemei v. Switzerland* (34/1995); *Tapia Paez v. Sweden* (39/1996); *Kisoki v. Sweden* (41/1996); *Tala v. Sweden* (43/1996); *Avedes Hamayak Korban v. Sweden* (88/1997); *Ali Falakaflaki v. Sweden* (89/1997); *Orhan Ayas v. Sweden* (97/1997); *Halil Haydin v. Sweden* (101/1997). In the following cases, the States parties either responded partially to the request, are in the process of taking further measures and further updates will be requested or comments on the action taken by the State are awaited from the complainant: *Arana v. France* (63/1997); *Brada v. France* (195/2003); *Ristic v. Serbia and Montenegro* (113/1998); and *Agiza v. Sweden* (233/2003).

79. During the thirty-sixth session, the Special Rapporteur on follow-up to decisions presented new follow-up information that had been received since the thirty-fifth session with respect to the following cases: *Dadar v. Canada* (258/2004), *Thabti v. Tunisia* (187/2001), *Abdelli v. Tunisia* (188/2001) and *Ltaief v. Tunisia* (189/2001) and *Chipana v. Venezuela* (110/1998). Represented below is a comprehensive report of replies received with regard to <u>all</u> cases in which the Committee has found violations of the Convention to date and in one case in which it did not find a violation but made a recommendation. Where there is no field entitled "Committee's decision" at the end of the provision of information in a particular case, the follow-up to the case in question is ongoing and further information has or will be requested of the complainant or the State party.

Complaints in which the Committee has found violations of the Convention up to the thirty-fourth session

State party	**AUSTRIA**
Case	Halimi-Nedibi Quani, 8/1991
Nationality and country of removal if applicable	Yugoslav
Views adopted on	18 November 1993
Issues and violations found	Failure to investigate allegations of torture - article 12
Interim measures granted and State party response	None
Remedy recommended	The State party is requested to ensure that similar violations do not occur in the future.
Due date for State party response	None
Date of reply	None
State party response	None
Author's response	N/A
State party	**AUSTRALIA**
Case	Shek Elmi, 120/1998
Nationality and country of removal if applicable	Somali to Somalia
Views adopted on	25 May 1999
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Somalia or to any other country where he runs a risk of being expelled or returned to Somalia.
Due date for State party response	None

Date of reply	23 August 1999 and 1 May 2001
State party response	On 23 August 1999 the State party responded to the Committee's Views. It informed the Committee that on 12 August 1999, the Minister for Immigration and Multicultural Affairs decided that it was in the public interest to exercise his powers under section 48B of the Migration Act 1958 to allow Mr. Elmi to make a further application for a protection visa. Mr. Elmi's solicitor was advised of this on 17 August 1999, and Mr. Elmi was personally notified on 18 August 1999. On 1 May 2001, the State party informed the Committee that the complainant had voluntarily departed Australia and subsequently "withdrew" his complaint against the State party. It explains that the complainant had lodged his second protection visa application on 24 August 1999. On 22 October 1999, Mr. Elmi and his adviser attended an interview with an officer of the Department. The Minister of Immigration and Multicultural Affairs in a decision dated 2 March 2000 was satisfied that the complainant was not a person to whom Australia has protection obligations under the Refugee Convention and refused to grant him a protection visa. This decision was affirmed on appeal by the Principal Tribunal Members. The State party advises the Committee that his new application was comprehensively assessed in light of new evidence which arose following the Committee's consideration. The Tribunal was not satisfied as to the complainant's credibility and did not accept that he is who he says he is - the son of a leading elder of the Shikal clan.
Author's response	N/A
Committee's decision	In light of the complainant's voluntary departure no further action was requested under follow-up.
State party	**CANADA**
Case	Tahir Hussain Khan, 15/1994
Nationality and country of removal if applicable	Pakistani to Pakistan

Views adopted on	15 November 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning Tahir Hussain Khan to Pakistan.
Due date for State party response	None
Date of reply	None
State party response	No information provided to Rapporteur, however, during the discussion of the State party report to the Committee against Torture in May 2005, the State party stated that the complainant had not been deported.
Author's response	None
Case	Falcon Rios, 133/1999
Nationality and country of removal if applicable	Mexican to Mexico
Views adopted on	30 November 2004
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party
Remedy recommended	Relevant measures
Due date for State party response	None
Date of reply	None
State party response	On 9 March 2005, the State party provided information on follow-up. It stated that the complainant had submitted a request for a risk assessment prior to return to Mexico and that the State party will inform the Committee of the outcome. If the complainant can establish one of the motives for protection under the Immigration and Protection of Refugee's Law, he will be able to present a request for permanent residence in Canada. The Committee's decision will be taken into account

	by the examining officer and the complainant will be heard orally if the Minister considers it necessary. Since the request for asylum was considered prior to the entry into force of the Immigration and Protection of Refugee's Law, that is prior to June 2002, the immigration agent will not be restricted to assessing facts after the denial of the initial request but will be able to examine all the facts and information old and new presented by the complainant. In this context, it contests the Committee's finding in paragraph 7.5 of its decision which found that only new information could be considered during such a review.
Author's response	None
Case	Dadar, 258/2004
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	3 November 2005
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Yes and State party acceded
Remedy recommended	The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.
Due date for State party response	26 February 2006
Date of reply	22 March 2006, 24 April 2006
State party response	The State party refers to the note verbale from the Secretariat, dated 13 March 2006 (see below). However, it informed the Committee that it intended to remove the complainant to Iran on 26 March 2006. It submitted that it undertook a review of the file in light of the Committee's determination but reiterated its opinion that it does not share the Committee's view that the complainant has established that he

would face a substantial risk of torture if removed to Iran. It submitted that, it is for the national courts of the States parties to the Convention to evaluate the facts and evidence in a particular case.

It submitted that the reference made by the Ministerial Delegate that the risk that the complainant could represent for the Canadian public outweighed the risk that he would face in Iran was meant only as an alternative argument. The Ministerial Delegate's primary conclusion, and the one adopted by the Federal Court, was that the complainant would not face a substantial risk of torture.

The State notes that the Committee does not refer to the complainant's credibility, despite Canada having raised the issue in its submissions, and accepts much of the complainant's evidence without credible and independent supporting documentation. Although the Committee suggested otherwise, the State party submits that it had questioned the allegations made with respect to the complainant's involvement with the Canadian Intelligence and Security Service in its submissions. In addition, the letter, dated 4 April 2005, which the complainant provided to demonstrate his political involvement was provided after the State party had provided its submissions, and in any event contained no elaboration of his alleged activities. It recalls that the risk of being detained as such is not sufficient to trigger the protection of article 3.

Finally, the State party reminds the Committee that this is the first time that Canada will not follow this Committee's decision on the merits of a case. Nevertheless, its position in this matter should not be interpreted as a sign of any disrespect for the Committee's work in monitoring implementation of the Convention.

On 24 April 2006, the State party responded to the Rapporteur's note verbale of 31 March. It reiterates the Minister's findings and submits that the risk assessment was reaffirmed by the Federal Court on 24 March 2006. Thus, it remains the State party's position that it complied fully with its obligations under article 3.

	Since Mr. Dadar's return, the State party informs the Committee that a Canadian representative spoke with the complainant's nephew who said that Mr. Dadar arrived in Tehran without incident, and has been staying with his family. Canada has no direct contact with Mr. Dadar since he was returned to Iran. In light of this information, as well as Canada's determination that Mr. Dadar did not face a substantial risk of torture upon return to Iran, the State party submits that it was not necessary for Canada to consider the issue of monitoring mechanisms in this case. It submits further that Mr. Dadar is now within the jurisdiction of Iran, which is a party to the ICCPR and bound to respect the rights protected under the Covenant, including the prohibition of torture and cruel, inhuman and degrading treatment or punishment. There are also United Nations special procedures, such as the Special Rapporteur on Torture, which would be available to Mr. Dadar if required.
Author's response	The complainant's counsel has contested the State party's decision to deport the complainant despite the Committee's findings. He has not to date provided information he may have on the author's situation since arriving in Iran.
Action taken	On 13 March 2006, following oral information from the State party on 10 March 2006, that the State party intended to deport the complainant in this case, the Special Rapporteur, sent a note verbale to the State party. The Rapporteur expressed concern that, despite the Committee's decision, the State party intended to deport the complainant back to Iran. On behalf of the Committee, the Rapporteur reminded the State party that it has an obligation under article 3 not to "expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". In view of the Committee's decision (para. 8.9) that, "substantial grounds exist for believing that the complainant may risk being subjected to torture if returned to Iran", the Rapporteur invited the State party to take action in conformity with the Committee's decision.

	Following the author's deportation on 26 March 2006, the Rapporteur, on 31 March 2006, sent another note verbale to the State party, on behalf of the Committee, in which the Rapporteur expressed grave concern at the State party's refusal to comply with its decision, and acknowledged, inter alia, that this was the first time, to the Committee's knowledge, that any State party deported a complainant following a conclusion by this Committee that such a deportation would amount to a violation of article 3. The Rapporteur expressed concern not only for the complainant in this case but also deep concern for the global consequences of the State party's action with respect to compliance with the Committee's decisions under article 22. The Rapporteur requested to be informed of any measures taken by the State party to ensure the complainant's safety on arrival in the Islamic Republic of Iran, including the establishment of any monitoring mechanism through the State party's consular offices, or other procedural or substantive guarantees, and also requested information in due course on the complainant's state of well-being.
Committee's decision	During the consideration of the follow-up at its thirty-sixth session, the Committee deplored the State party's failure to abide by its obligations under article 3, and found that the State party violated its obligations under article 3 not to, "expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".
State party	**FRANCE**
Case	Arana, 63/1997
Nationality and country of removal if applicable	Spanish to Spain
Views adopted on	9 November 1999
Issues and violations found	Complainant's expulsion to Spain constituted a violation of article 3

Interim measures granted and State party response	Request not acceded to by the State party who claimed to have received the Committee's request after expulsion.[4]
Remedy recommended	Measures to be taken
Due date for State party response	5 March 2000
Date of reply	Latest reply on 1 September 2005
State party response	On 8 January 2001, the State party had provided follow-up information, in which it stated that, although the Administrative Court of Pau had found the informal decision to directly hand over the complainant from the French to the Spanish police to be unlawful, the decision to deport him was lawful. The State party adds that this ruling, which is currently being appealed, is not typical of the jurisprudence on the subject. It also submits that since 30 June 2000, a new administrative procedure allowing for a suspensive summary judgement suspending a decision, including deportation decisions, has been instituted. The conditions that need to be proven for a suspension of such a decision are more flexible than the previous conditions, and are proof that the urgency of the situation justifies such a suspension and that there is a serious doubt on the legality of the decision. Thus, there is no longer any necessity to prove that the consequences of the decision would be difficult to repair. On 1 September 2005, and pursuant to the Committee's request of 7 June 2005 on follow-up measures taken, the State party reiterates the information previously provided on the changes in the law since 30 June 2000, and informs the Committee that in a decision of 23 July 2002, the Administrative Court of Bordeaux overturned the decision of the Administrative Tribunal of Pau of 4 February 1999.

[4] No comment was made in the decision itself. The question was raised by the Committee with the State party during the consideration of the State party's third periodic report at the thirty-fifth session.

Author's response	None
Case	Brada, 195/2003
Nationality and country of removal if applicable	Algerian to Algeria
Views adopted on	17 May 2005
Issues and violations found	Removal - articles 3 and 22
Interim measures granted and State party response	Granted but not acceded to by the State party[5]
Remedy recommended	Measures of compensation for the breach of article 3 of the Convention and determination, in consultation with the country (also a State party to the Convention) to which the complainant was returned, of his current whereabouts and state of well-being.
Due date for State party response	None
Date of reply	21 September 2005
State party response	Pursuant to the Committee's request of 7 June 2005 on follow-up measures taken, the State party, informed the Committee that the complainant will be permitted to return to French territory if he so wishes and provided with a special residence permit under article L.523-3 of the Code on the entry and stay of foreigners. This is made possible by a judgement of the Bordeaux Court of Appeal, of 18 November 2003, which quashed the decision of the Administrative Tribunal of Limoges, of 8 November 2001. This latter decision had confirmed Algeria as the country to which the complainant should be returned. In addition, the State party informs the Committee that it is in the

[5] "The Committee observes that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party's action in expelling the complainant in the face of the Committee's request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee's final decision on the merits futile and devoid of object. The Committee thus concludes that in expelling the complainant in the circumstances that it did the State party breached its obligations under article 22 of the Convention."

	process of contacting the Algerian authorities through diplomatic channels to find out the whereabouts and state of well-being of the complainant.
Author's response	None
State party	**THE NETHERLANDS**
Case	A/91/1997
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	13 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Requested and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Tunisia or to any other country where he runs a real risk of being expelled or returned to Tunisia.
Due date for State party response	None
Date of reply	None
State party response	No information provided
Author's response	N/A
State party	**SERBIA AND MONTENEGRO**
Case	Ristic, 113/1998
Nationality and country of removal if applicable	Yugoslav
Views adopted on	11 May 2001
Issues and violations found	Failure to investigate allegations of torture by police - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	Urges the State party to carry out such investigations without delay. An appropriate remedy.

Due date for State party response	6 January 1999
Date of reply	Latest note verbale 5 August 2005
State party response	Ongoing See first follow-up report (CAT/C/32/FU/1). During the thirty-third session, the Special Rapporteur reported upon a meeting he had on 22 November 2004, with a representative of the State party. Following a new post-mortem into the author's death, on 11 November 2004, the District Court in Sabaca transmitted new information to the Institute of Forensic Medicine in Belgrade for an additional examination. The State party indicated its intention to update the Committee on the outcome of this examination. Having received information that the payment of compensation was ordered, the Special Rapporteur requested confirmation that compensation was paid as well as copies of the relevant documents, judgement etc. from the State party. Pursuant to the Committee's request of 18 April 2005 on follow-up measures taken, the State party, by note verbale of 5 August 2005, confirmed that the First Municipal Court in Belgrade by decision of 30 December 2004 found that the complainant's parents should be paid compensation. However, as this case is being appealed to the Belgrade District Court this decision is neither effective nor enforceable at this stage. The State party also informed the Committee that the Municipal Court had found inadmissible the request to conduct a thorough and impartial investigation into the allegations of police brutality as a possible cause of Mr. Ristic's death.
Author's response	On 25 March 2005, the Committee received information from the Humanitarian Law Center in Belgrade to the effect that the First Municipal Court in Belgrade had ordered the State party to pay compensation of 1,000,000 dinars to the complainant's parents for failure to conduct an expedient, impartial and comprehensive investigation into the causes of the complainant's death in compliance with the decision of the Committee against Torture.

Case	Hajrizi Dzemajl et al., 161/2000
Nationality and country of removal if applicable	Yugoslav
Views adopted on	21 November 2002
Issues and violations found	Burning and destruction of houses, failure to investigate and failure to provide compensation - articles 16, paragraph 1, 12 and 13[6]
Interim measures granted and State party response	None
Remedy recommended	Urges the State party to conduct a proper investigation into the facts that occurred on 15 April 1995, prosecute and punish the persons responsible for those acts and provide the complainants with redress, including fair and adequate compensation
Due date for State party response	None
Date of reply	See CAT/C/32/FU/1
State party response	Ongoing See first follow-up report (CAT/C/32/FU/1). Following the thirty-third session and while welcoming the State party's provision of compensation to the complainants for the violations found, the Committee considered that the State party should be reminded of its obligation to conduct a proper investigation into the case.
Author's response	None

[6] Regarding article 14, the Committee declared that article 16, paragraph 1, of the Convention does not mention article 14 of the Convention. Nevertheless, article 14 of the Convention does not mean that the State party is not obliged to grant redress and fair and adequate compensation to the victim of an act in breach of article 16 of the Convention. The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision. The Committee is therefore of the view that the State party has failed to observe its obligations under article 16 of the Convention by failing to enable the complainants to obtain redress and to provide them with fair and adequate compensation.

Case	Dimitrov, 171/2000
Nationality and country of removal if applicable	Yugoslav
Views adopted on	3 May 2005
Issues and violations found	Torture and failure to investigate - article 2, paragraph 1, in connection with 1, 12, 13 and 14
Interim measures granted and State party response	N/A
Remedy recommended	The Committee urges the State party to conduct a proper investigation into the facts alleged by the complainant
Due date for State party response	18 August 2005
Date of reply	None
State party response	None
Author's response	N/A
Case	Dimitrijevic, 172/2000
Nationality and country of removal if applicable	Serbian
Views adopted on	16 November 2005
Issues and violations found	Torture and failure to investigate - articles 1, 2, paragraphs 1, 12, 13, and 14
Interim measures granted and State party response	N/A
Remedy recommended	The Committee urges the State party to prosecute those responsible for the violations found and to provide compensation to the complainant, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.
Due date for State party response	26 February 2006
Date of reply	None

State party response	None
Author's response	N/A
Case	Nikolic, 174/2000
Nationality and country of removal if applicable	N/A
Views adopted on	24 November 2005
Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	N/A
Remedy recommended	Information on the measures taken to give effect to the Committee's Views, in particular on the initiation and the results of an impartial investigation of the circumstances of the death of the complainant's son.
Due date for State party response	27 February 2006
Date of reply	None
State party response	None
Author's response	N/A
Case	Dimitrijevic, Dragan, 207/2002
Nationality and country of removal if applicable	Serbian
Views adopted on	24 November 2004
Issues and violations found	Torture and failure to investigate - article 2, paragraph 1, in connection with articles 1, 12, 13, and 14
Interim measures granted and State party response	None
Remedy recommended	To conduct a proper investigation into the facts alleged by the complainant.
Due date for State party response	February 2005
Date of reply	None

State party response	None
Author's response	On 1 September 2005, the complainant's representative informed the Committee that having made recent enquiries, it could find no indication that the State party had started any investigation into the facts alleged by the complainant.
State party	**SPAIN**
Case	Encarnación Blanco Abad, 59/1996
Nationality and country of removal if applicable	Spanish
Views adopted on	14 May 1998
Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	Relevant measures
Due date for State party response	None
Date of reply	None
State party response	No information provided
Author's response	N/A
Case	Urra Guridi, 212/2002
Nationality and country of removal if applicable	Spanish
Views adopted on	17 May 2005
Issues and violations found	Failure to prevent and punish torture, and provide a remedy - articles 2, 4 and 14
Interim measures granted and State party response	None
Remedy recommended	Urges the State party to ensure in practice that those individuals responsible of acts of torture be appropriately punished, to ensure the author full redress.

Due date for State party response	18 August 2005
Date of reply	None
State party response	No information provided
Author's response	N/A
State party	**SWEDEN**
Case	Tapia Páez, 39/1996
Nationality and country of removal if applicable	Peruvian to Peru
Views adopted on	28 April 1997
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning Mr. Gorki Ernesto Tapia Páez to Peru.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 23 June 1997.
Author's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Kisoki, 41/1996
Nationality and country of removal if applicable	Democratic Republic of the Congo citizen to Democratic Republic of the Congo
Views adopted on	8 May 1996
Issues and violations found	Removal - article 3

Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning Pauline Muzonzo Paku Kisoki to Democratic Republic of the Congo.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 7 November 1996.
Author's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Tala, 43/1996
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	15 November 1996
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning Mr. Kaveh Yaragh Tala to Iran.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 18 February 1997.
Author's response	None

Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Avedes Hamayak Korban, 88/1997
Nationality and country of removal if applicable	Iraqi to Iraq
Views adopted on	16 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Iraq. It also has an obligation to refrain from forcibly returning the complainant to Jordan, in view of the risk he would run of being expelled from that country to Iraq.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 18 February 1999.
Author's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Ali Falakaflaki, 89/1997
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	8 May 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party

Remedy recommended	The State party has an obligation to refrain from forcibly returning Mr. Ali Falakaflaki to the Islamic Republic of Iran.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 17 July 1998.
Author's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Orhan Ayas, 97/1997
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	12 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Turkey or to any other country where he runs a real risk of being expelled or returned to Turkey.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 8 July 1999.
Author's response	None

Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Halil Haydin, 101/1997
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	20 November 1998
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Turkey, or to any other country where he runs a real risk of being expelled or returned to Turkey.
Due date for State party response	None
Date of reply	23 August 2005
State party response	Pursuant to the Committee's request of 25 May 2005 on follow-up, the State party informed the Committee that the complainant was granted a permanent residence permit on 19 February 1999.
Author's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	A.S., 149/1999
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	24 November 2000
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party

Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant to Iran or to any other country where she runs a real risk of being expelled or returned to Iran.
Due date for State party response	None
Date of reply	22 February 2001
State party response	The State party informed the Committee that on 30 January 2001, the Aliens Appeals Board examined a new application for residence permit lodged by the complainant. The Board decided to grant the complainant a permanent residence permit in Sweden and to quash the expulsion order. The Board also granted the author's son a permanent residence permit.
Author's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Chedli Ben Ahmed Karoui, 185/2001
Nationality and country of removal if applicable	Tunisian to Tunisia
Views adopted on	8 May 2002
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	None
Due date for State party response	None
Date of reply	23 August 2005
State party response	No further consideration under follow-up procedure. See first follow-up report (CAT/C/32/FU/1) in which it was stated that, on 4 June 2002, the Board revoked the expulsion decisions regarding the complainant and his family. They were also granted permanent residence permits on the basis of this decision.

Author's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Tharina, 226/2003
Nationality and country of removal if applicable	Bangladeshi to Bangladesh
Views adopted on	6 May 2005
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	Given the specific circumstances of the case, the deportation of the complainant and her daughter would amount to a breach of article 3 of the Convention. The Committee wishes to be informed, within 90 days, from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.
Due date for State party response	15 August 2005
Date of reply	None
State party response	None
Author's response	None
Case	Agiza, 233/2003
Nationality and country of removal if applicable	Egyptian to Egypt
Views adopted on	20 May 2005

Issues and violations found	Removal - articles 3 (substantive and procedural violations) on two counts and 22 on two counts[7]
Interim measures granted and State party response	None
Remedy recommended	In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee requests 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 views expressed above. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party response	20 August 2005
Date of reply	18 August 2005

[7] (1) The Committee observes, moreover, that by making the declaration under article 22 of the Convention, the State party undertook to confer upon persons within its jurisdiction the right to invoke the complaints' jurisdiction of the Committee. That jurisdiction included the power to indicate interim measures, if necessary, to stay the removal and preserve the subject matter of the case pending final decision. In order for this exercise of the right of complaint to be meaningful rather than illusory, however, an individual must have a reasonable period of time before execution of a final decision to consider whether, and if so to in fact, seize the Committee under its article 22 jurisdiction. In the present case, however, the Committee observes that the complainant was arrested and removed by the State party immediately upon the Government's decision of expulsion being taken; indeed, the formal notice of decision was only served upon the complainant's counsel the following day. As a result, it was impossible for the complainant to consider the possibility of invoking article 22, let alone seize the Committee. As a result, the Committee concludes that the State party was in breach of its obligations under article 22 of the Convention to respect the effective right of individual communication conferred thereunder.

(2) Having addressed the merits of the complaint, the Committee must address the failure of the State party to cooperate fully with the Committee in the resolution of the current complaint. The Committee observes that, by making the declaration provided for in article 22 extending to individual complainants the right to complain to the Committee alleging a breach of a State party's obligations under the Convention, a State party assumes an obligation to cooperate fully with the Committee, through the procedures set forth in article 22 and in the Committee's rules of procedure. In particular, article 22, paragraph 4, requires a State party to make available to the Committee all information relevant and necessary for the Committee appropriately to resolve the complaint presented to it. The Committee observes that its procedures are sufficiently flexible and its powers sufficiently broad to prevent an abuse of process in a particular case. It follows that the State party committed a breach of its obligations under article 22 of the Convention by neither disclosing to the Committee relevant information, nor presenting its concerns to the Committee for an appropriate procedural decision.

State party response

The Committee's decision was brought to the attention of several authorities outside the Government Offices, including the Director-Generals of the Aliens Appeals Board, the Migration Board and the Security Police, the Parliamentary Ombudsmen and the Office of the Chancellor of Justice. On 16 June 2005, the Swedish embassies in Cairo and Washington were instructed to inform the relevant authorities in Egypt and in the United States of the Committee's decision. The instructions were implemented in August 2005.

In a bill to Parliament, the Government, on 26 May 2005, tabled a proposal for a completely new Aliens Act and a number of consequential amendments with regard to other acts (Government Bill 2004/05:170). The main feature of the reform is the replacement of the Aliens Appeals Board with three regional Migration Courts and a Supreme Migration Court. Parliament is expected to pass the bill during the autumn of this year and the reform in its entirety is scheduled to enter into force on 31 March 2006. In the proposal for judicial reform in this field, security cases are defined as cases where the Security Police - for reasons pertaining to the security of the realm or to general security - recommends that an alien is either refused entry into the country or expelled/deported, or that a residence permit is denied or revoked. According to the proposal, the Migration Board will determine security cases in the first instance. Appeals may be lodged with the Government by the alien and also by the Security Police. The appealed case shall be referred from the Migration Board directly to the Supreme Migration Court, which shall hold an oral hearing and issue a written opinion. The case-file, including the Court's opinion, shall then be forwarded to the Government for a decision in the matter. If, for instance, the Supreme Migration Court has come to the conclusion that there are impediments to the enforcement of a decision to expel an alien - on account of a risk of torture, for example - the Government may not decide to expel her/him. In other words, the Court's opinion in this respect is binding on the Government.

Under the reform, a new ground for issuing a residence permit will be introduced. Thus, when an international body with competence to examine individual complaints has concluded that a decision to refuse an alien entry, or to expel/deport an alien, is in breach of Sweden's treaty obligations, the alien in question shall be given a residence permit unless there are extraordinary reasons against such measure. No application on the part of the alien will be needed.

Within the framework of the European Union, the Commission has proposed the adoption of a directive on minimum standards when it comes to the procedure for granting or revoking asylum status. For this reason, the Government decided on 11 August 2005 that an expert is to be appointed by the Minister for Asylum Policy and Migration with the mandate to examine how the directive may be implemented in Sweden. In the Government's opinion, security cases may not be put on an entirely equal footing with asylum cases in general. This viewpoint is also expressed in the draft directive's preamble. However, the draft directive includes no particular operative provisions with regard to security cases. It is therefore necessary to look into how a special procedure for the handling of security cases may be established within the framework of the draft directive.

Activities within the Council of Europe

Against the events of 11 September 2001, a set of Guidelines on Human Rights and the Fight against Terrorism was adopted by the Council of Europe in July 2002. It was followed this year by a set of Guidelines on the Protection of Victims of Terrorist Acts. Following a meeting of the Council of Europe in June 2005, Sweden proposed to initiate the elaboration of a non-binding instrument circumscribing the use of diplomatic assurances in aliens' cases. It was stressed that such a document was not to be given the same status as the two already existing sets of Council of Europe guidelines in this field since diplomatic assurances should be a rare phenomenon and be resorted to - if at all - only in exceptional circumstances and when they could be expected to have the intended effect. The suggestion was accepted and a meeting for this purpose was scheduled for December 2005.

International investigation with the assistance of the United Nations

As to the discussions concerning a possible international inquiry under the auspices of the United Nations High Commissioner for Human Rights, while understanding her concerns, the State party expresses its disappointment that the High Commissioner had found no grounds in which the Office could supplement the Committee against Torture's assessment and findings in this case and thus her unwillingness to undertake a proposed investigation.

The State party has had further contact with the Egyptian authorities who continue to deny the allegations of torture. Their reaction to a proposal for an international commission of enquiry is still awaited.

Parliament's Constitutional Committee

In her letter of 26 May 2005 to the Swedish Foreign Minister, the High Commissioner for Human Rights referred to an ongoing investigation undertaken by Parliament's Constitutional Committee. The investigation was initiated in May 2004 by five members of Parliament, requesting that the Constitutional Committee examine the Government's handling of the matter that lead to, inter alia, the complainant's expulsion to Egypt. The Constitutional Committee has requested the Government to answer a number of questions in writing. The State party noted that the report on this investigation was not expected until September 2005, at the earliest.

The issue of criminal prosecution

As to the public prosecutor's investigations, the State party informs the Committee that following a complaint from a private individual, a district prosecutor in Stockholm decided on 18 June 2004 not to initiate a preliminary investigation on the issue of whether or not a criminal offence had been committed in connection with the enforcement of the Government's decision to expel the complainant. The reason for the decision was that there was no ground for assuming that a criminal offence under

	public prosecution had been committed by a representative of the Swedish police in connection with the enforcement. The district prosecutor referred the case to the Prosecutor-Director at the Public Prosecution Authority in Stockholm who similarly found that there was no reason to assume that a criminal offence under public prosecution had been committed by the pilot of the foreign aircraft. Furthermore, the Prosecutor-General decided on 4 April 2005 not to resume the preliminary investigation, following a complaint from the Helsinki Committee for Human Rights. The conclusion was reached that it was not possible to review the Parliamentary Ombudsman's decision to refrain from using his powers to prosecute. It could also be seriously questioned whether the Prosecutor-General could make a new assessment of the issue of whether to start or resume a preliminary, criminal investigation when the matter had already been determined by the Parliamentary Ombudsman. *Continued monitoring by the Swedish Embassy in Cairo* Since the Government last informed the Committee on the visits conducted by the Swedish Embassy in Cairo in order to monitor the complainant's situation (observations of 11 March 2005), there have been three further visits during which the complainant mentioned inter alia that the treatment in prison continued to be good and that there had been no changes in that regard. The Embassy's staff has now visited the complainant on 32 occasions in the prison where he is detained. The intention is for the visits to continue regularly.
Author's response	None
State party	**SWITZERLAND**
Case	Mutombo, 13/1993
Nationality and country of removal if applicable	Zairian to Zaire
Views adopted on	27 April 1994
Issues and violations found	Removal - article 3

Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from expelling Mr. Mutombo to Zaire, or to any other country where he runs a real risk of being expelled or returned to Zaire or of being subjected to torture.
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request for follow-up information of 25 March 2005, the State party informed the Committee that, by reason of the unlawful character of the decision to return him, the complainant was granted temporary admission on 21 June 1994. Subsequently, having married a Swiss national, the complainant was granted a residence permit on 20 June 1997.
Author's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Alan, 21/1995
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	8 May 1996
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning Ismail Alan to Turkey.
Due date for State party response	None
Date of reply	25 May 2005

State party response	Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainant was granted asylum by decision of 14 January 1999.
Author's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Aemei, 34/1995
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	29 May 1997
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant and his family to Iran, or to any other country where they would run a real risk of being expelled or returned to Iran. The Committee's finding of a violation of article 3 of the Convention in no way affects the decision(s) of the competent national authorities concerning the granting or refusal of asylum. The finding of a violation of article 3 has a declaratory character. Consequently, the State party is not required to modify its decision(s) concerning the granting of asylum; on the other hand, it does have a responsibility to find solutions that will enable it to take all necessary measures to comply with the provisions of article 3 of the Convention. These solutions may be of a legal nature (e.g. decision to admit the applicant temporarily), but also of a political nature (e.g. action to find a third State willing to admit the applicant to its territory and undertaking not to return or expel him in its turn).
Due date for State party response	None
Date of reply	25 May 2005

State party response	Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainants had been admitted as refugees on 8 July 1997. On 5 June 2003, they were granted residence permits on humanitarian grounds. For this reason, Mr. Aemei renounced his refugee status on 5 June 2003. One of their children acquired Swiss nationality.
Author's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
State party	**TUNISIA**
Case	M'Barek, 60/1996
Nationality and country of removal if applicable	Tunisian
Views adopted on	10 November 2004
Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	The Committee requests the State party to inform it within 90 days of the steps taken in response to the Committee's observations.
Due date for State party response	22 February 2000
Date of reply	15 April 2002
State party response	Ongoing See first follow-up report (CAT/C/32/FU/1). The State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party.
Author's response	None

Consultations with State party	See note below on the consultations with the Tunisian Ambassador on 25 November 2005
Case	Thabti, Abdelli, Ltaief, 187/2001, 188/2001 and 189/2001
Nationality and country of removal if applicable	Tunisian
Views adopted on	20 November 2003
Issues and violations found	Failure to investigate - articles 12 and 13
Interim measures granted and State party response	None
Remedy recommended	To conduct an investigation into the complainants' allegations of torture and ill-treatment, and 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 views expressed above
Due date for State party response	23 February 2004
Date of reply	16 March 2004 and 26 April 2006
State party response	Ongoing See first follow-up report (CAT/C/32/FU/1). On 16 March 2004, the State party challenged the Committee's decision. During the thirty-third session the Committee considered that the Special Rapporteur should arrange to meet with a representative of the State party. This meeting was arranged, a summary of which is set out below. On 26 April 2006, the State party sent a further response. It referred to one of the authors' (189/2001) requests of 31 May 2005, to "withdraw" his complaint, which it submits calls into question the real motives of the authors of all three complaints (187/2001, 188/2001 and 189/2001). It reiterates its previous arguments and submits that the withdrawal of the complaint corroborates its arguments that the complaint is an abuse of process, that the authors failed to exhaust domestic remedies, and that the motives of the NGO representing the authors are not bona fide.

Author's response	One of the authors (189/2001) sent a letter, dated 31 May 2005, to the Secretariat requesting that his case be "withdrawn", and enclosing a letter in which he renounces his refugee status in Switzerland.
Consultations with State party	On 25 November 2005, the Special Rapporteur on follow-up met with the Tunisian Ambassador in connection with Case Nos. 187/2001, 188/2001 and 189/2001. The Special Rapporteur explained the follow-up procedure. The Ambassador referred to a letter dated 31 May 2005 which was sent to OHCHR from one of the authors, Mr. Ltaief Bouabdallah, the author of case No. 189/2001. In this letter, the author said that he wanted to "withdraw" his complaint and attached a letter renouncing his refugee status in Switzerland. The Ambassador stated that the author had contacted the Embassy to be issued a passport and is in the process of exhausting domestic remedies in Tunisia. He remains a resident in Switzerland which has allowed him to stay despite having renounced his refugee status. As to the other two cases, the Special Rapporteur explained that each case would have to be implemented separately and that the Committee had requested that investigations be carried out. The Ambassador asked why the Committee had thought it appropriate to consider the merits when the State party was of the view that domestic remedies had not been exhausted. The Special Rapporteur explained that the Committee had thought the measures referred to by the State party were ineffective, underlined by the fact that there had been no investigations in any of these cases in over 10 years since the allegations. The Ambassador confirmed that he would convey the Committee's concerns and request for investigations, in case Nos. 187/2001 and 188/2001, to the State party and update the Committee on any subsequent follow-up action taken.
State party	**VENEZUELA**
Case	Chipana, 110/1998
Nationality and country of removal if applicable	Peruvian to Peru
Views adopted on	10 November 1998

Issues and violations found	Complainant's extradition to Peru constituted a violation of article 3
Interim measures granted and State party response	Granted but not acceded to by the State party[8]
Remedy recommended	None
Due date for State party response	7 March 1999
Date of reply	Most recent reply dated 9 November 2005
State party response	On 13 June 2001 (as reflected in the progress report during the thirty-fourth session), the State party had reported on the conditions of detention of the complainant in the prison of Chorrillos, Lima. On 23 November 2000, the Ambassador of Venezuela in Peru together with some representatives of the Peruvian administration visited the complainant in prison. The team interviewed the complainant for 50 minutes, and she informed them that she had not been subjected to any physical or psychological mistreatment. The team observed that the prisoner appeared to be in good health. She had been transferred in September 2000 from the top security pavilion to the "medium special security" pavilion, where she had other privileges such as one hour of visits per week, two hours per day in the courtyard and access to working and educative activities. By note verbale dated 18 October 2001, the State party forwarded a second report made by the Defensor del Pueblo (Ombudsman) dated 27 August 2001 about the complainant's conditions of detention. It included a report of a visit to the

[8] The Committee stated "Furthermore, the Committee is deeply concerned by the fact that the State party did not accede to the request made by the Committee under rule 108, paragraph 3, of its rules of procedure that it should refrain from expelling or extraditing the author while her communication was being considered by the Committee and thereby failed to comply with the spirit of the Convention. The Committee considers that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying the procedure. Compliance with the provisional measures called for by the Committee in cases it considers reasonable is essential in order to protect the person in question from irreparable harm, which could, moreover, nullify the end result of the proceedings before the Committee."

complainant in prison carried out on 14 June 2001 by a member of the Venezuelan Embassy in Peru together with the head of Criminal and Penitentiary Affairs in Peru. She stated that her conditions of detention had improved and that she could see her family more often. However, she informed them both of her intention to appeal her sentence. According to the Ombudsman, the complainant had been transferred from the medium special security pavilion to the "medium security" pavilion where she had more privileges. Furthermore, since 4 December 2000, all the top security prisons in the country have a new regime consisting of (a) Visits: Removal of booths. Any visit from any family member or friend will be accepted with no restrictions; (b) Media: Complainant has access to any media without restriction; (c) Lawyers: Free visits without restrictions four times a week; (d) Courtyard: Freedom of circulation until 2200 hours. He concluded that the complainant has more flexible conditions of detention due to her personal situation and to the changes introduced on 4 December 2000. Moreover, her health is good, except that she is suffering from depression. She had not been subjected to any physical or psychological mistreatment, she has visits of her family weekly and she is involved in professional and educational activities in the prison.

On 9 December 2005, the State party informed the Committee that on 23 November 2005, the Venezuelan Ambassador in Peru contacted Mrs. Nuñez Chipana in the maximum security prison for women in Chorrillos, Lima. According to the note, Venezuelan authorities have been lobbying to prevent the complainant from being sentenced to the death penalty, life imprisonment or more than 30 years' imprisonment, or subjected to torture or mistreatment. In the interview held with the complainant, she regretted that the Peruvian authorities of Chorrillos had denied access to her brother, who had come from Venezuela to visit her. She mentioned that she is receiving medical treatment and that she can receive visits from her son, and that she is under a penitentiary regime which imposes minimum restrictions on detainees. She added that she received visits every six months from members of the Venezuelan Embassy in Peru. The State party

	points out that the situation in Peru has changed since the Committee adopted its decision. There is no longer a pattern of widespread torture, and the Government is engaged in redressing the victims of human rights abuses of the past regime. The complainant has been visited on a regular basis and she has not been subjected to torture or any other ill-treatment. The State party considers that its commitment to ensure, through monitoring, that the complainant is not subjected to treatment or punishment contrary to the Convention, has been met. The Government also considers that it has complied with the recommendation that similar violations should be avoided in the future. It informed the Committee that since the adoption of the law on refugees in 2001, the newly established National Commission for Refugees has been duly processing all the applications of asylum-seekers as well as examining cases of deportation. The Government asks the Committee to declare that the former has complied with the Committee's recommendations, and to release the Government from the duty to monitor the situation of the deportee in Peru.
Author's response	None

Complaints in which the Committee has found no violations of the Convention up to the thirty-sixth session but in which it requested follow-up information

State party	**GERMANY**
Case	M.A.K., 214/2002
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	12 May 2004
Issues and violations found	No violation
Interim measures granted and State party response	Granted and acceded to by the State party. Request by State party to withdraw interim request refused by the Special Rapporteur on new communications.

Remedy recommended	Although the Committee found no violation of the Convention it welcomed the State party's readiness to monitor the complainant's situation following his return to Turkey and requested the State party to keep the Committee informed about the situation.
Due date for State party response	None
Date of reply	20 December 2004
State party response	The State party informed the Committee that the complainant had agreed to leave German territory voluntarily in July 2004 and that in a letter from his lawyer on 28 June 2004, he would leave Germany on 2 July 2004. In the same correspondence, as well as by telephone conversation of 27 September 2004, his lawyer stated that the complainant did not wish to be monitored by the State party in Turkey but would call upon its assistance only in the event of arrest. For this reason, the State party does not consider it necessary to make any further efforts to monitor the situation at this moment.
Author's response	None
Committee's decision	No further action is required

VII. FUTURE MEETINGS OF THE COMMITTEE

80. In accordance with rule 2 of its rules of procedure, the Committee holds two regular sessions each year. In consultation with the Secretary-General, the Committee took decisions on the dates of its regular session for the biennium 2006-2007. Those dates are:

Fortieth	5-23 May 2008
Forty-first	10-28 November 2008
Forty-second	4-22 May 2009
Forty-third	9-27 November 2009

81. The Committee has requested additional meeting time, as per paragraph 14 of A/59/44. Programme budget implications of this decision are contained in annex VII to the present report.

82. Since 1995 the Committee has received 173 reports, an average of 16 reports per year. In this same period the Committee has considered an average of 13 reports per year, a total of 149 reports. This means that at 19 May 2006, the last day of the thirty-sixth session, there were 30 reports awaiting consideration. In 1995, 88 countries were party to the Convention against Torture. In 2006 there are 141 States parties thus constituting a 62 per cent increase. During this time there has been no increase in the plenary meeting time allocated to the Committee.

83. There are two interlinked issues that need to be considered. One is the importance of providing the Committee with sufficient meeting time for it to undertake its work in an efficient manner, and the second is to facilitate the consideration of the backlog of 30 reports awaiting review.

84. Insofar as the first issue is concerned dealing with the incoming workload can be resolved by allowing the Committee to meet for two three-week sessions per year, thereby enabling the Committee to deal with 16 reports per year approximately the number received each year, thus keeping up with the workload it receives (see annex VII).

85. The second issue raises the important requirement of addressing the current backlog of 30 reports pending before the Committee. This represents a backlog of two years, meaning that a report submitted to the Committee in June 2006 would not be considered before May 2009. The Committee considers that it could deal with the backlog were it authorized to meet on an exceptional basis for three sessions per year during the biennium 2008-2009. The third (exceptional) session in each of the years 2008 and 2009 would be dedicated exclusively to the consideration of States parties' reports. The Committee would be able to consider 10 reports per exceptional session.

VIII. ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE ON ITS ACTIVITIES

86. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly. Since the Committee holds its second regular session of each calendar year in late November, which coincides with the regular sessions of the General Assembly, it adopts its annual report at the end of its spring session, for transmission to the General Assembly during the same calendar year. Accordingly, at its 722nd meeting, held on 18 May 2006, the Committee considered and unanimously adopted the report on its activities at the thirty-fifth and thirty-sixth sessions.

Annex I

STATES THAT HAVE SIGNED, RATIFIED OR ACCEDED TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, AS AT 19 MAY 2006

Participant	Signature	Ratification, Accession (a), Succession (b)
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994[a]
Algeria	26 November 1985	12 September 1989
Andorra	5 August 2002	
Antigua and Barbuda		19 July 1993[a]
Argentina	4 February 1985	24 September 1986
Armenia		13 September 1993[a]
Australia	10 December 1985	8 August 1989
Austria	14 March 1985	29 July 1987
Azerbaijan		16 August 1996[a]
Bahrain		6 March 1998[a]
Bangladesh		5 October 1998[a]
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	25 June 1999
Belize		17 March 1986[a]
Benin		12 March 1992[a]
Bolivia	4 February 1985	12 April 1999
Bosnia and Herzegovina		1 September 1993[b]
Botswana	8 September 2000	8 September 2000
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986
Burkina Faso		4 January 1999[a]
Burundi		18 February 1993[a]
Cambodia		15 October 1992[a]
Cameroon		19 December 1986[a]
Canada	23 August 1985	24 June 1987
Cape Verde		4 June 1992[a]
Chad		9 June 1995[a]
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988

Participant	Signature	Ratification, Accession (a), Succession (b)
Colombia	10 April 1985	8 December 1987
Comoros	22 September 2000	
Congo		30 July 2003[a]
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995[a]
Croatia		12 October 1992[b]
Cuba	27 January 1986	17 May 1995
Cyprus	9 October 1985	18 July 1991
Czech Republic		22 February 1993[b]
Democratic Republic of the Congo		18 March 1996[a]
Denmark	4 February 1985	27 May 1987
Djibouti		5 November 2002[a]
Dominican Republic	4 February 1985	
Ecuador	4 February 1985	30 March 1988
Egypt		25 June 1986[a]
El Salvador		17 June 1996[a]
Equatorial Guinea		8 October 2002[a]
Estonia		21 October 1991[a]
Ethiopia		14 March 1994[a]
Finland	4 February 1985	30 August 1989
France	4 February 1985	18 February 1986
Gabon	21 January 1986	8 September 2000
Gambia	23 October 1985	
Georgia		26 October 1994[a]
Germany	13 October 1986	1 October 1990
Ghana	7 September 2000	7 September 2000
Greece	4 February 1985	6 October 1988
Guatemala		5 January 1990[a]
Guinea	30 May 1986	10 October 1989
Guinea-Bissau	12 September 2000	
Guyana	25 January 1988	19 May 1988
Holy See		26 June 2002[a]
Honduras		5 December 1996[a]
Hungary	28 November 1986	15 April 1987
Iceland	4 February 1985	23 October 1996

Participant	Signature	Ratification, Accession (a), Succession (b)
India	14 October 1997	
Indonesia	23 October 1985	28 October 1998
Ireland	28 September 1992	11 April 2002
Israel	22 October 1986	3 October 1991
Italy	4 February 1985	12 January 1989
Japan		29 June 1999[a]
Jordan		13 November 1991[a]
Kazakhstan		26 August 1998
Kenya		21 February 1997[a]
Kuwait		8 March 1996[a]
Kyrgyzstan		5 September 1997[a]
Latvia		14 April 1992[a]
Lebanon		5 October 2000[a]
Lesotho		12 November 2001[a]
Liberia		22 September 2004[a]
Libyan Arab Jamahiriya		16 May 1989[a]
Liechtenstein	27 June 1985	2 November 1990
Lithuania		1 February 1996[a]
Luxembourg	22 February 1985	29 September 1987
Madagascar	1 October 2001	
Malawi		11 June 1996[a]
Maldives		20 April 2004[a]
Mali		26 February 1999[a]
Malta		13 September 1990[a]
Mauritania		17 November 2004[a]
Mauritius	18 March 1985	9 December 1992[a]
Mexico		23 January 1986
Monaco		6 December 1991[a]
Mongolia		24 January 2002[a]
Morocco	8 January 1986	21 June 1993
Mozambique		14 September 1999[a]
Namibia		28 November 1994[a]
Nauru	12 November 2001	
Nepal		14 May 1991[a]
Netherlands	4 February 1985	21 December 1988

Participant	Signature	Ratification, Accession (a), Succession (b)
New Zealand	14 January 1986	10 December 1989
Nicaragua	15 April 1985	
Niger		5 October 1998[a]
Nigeria	28 July 1988	28 June 2001
Norway	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986[a]
Poland	13 January 1986	26 July 1989
Portugal	4 February 1985	9 February 1989
Qatar		11 January 2000[a]
Republic of Korea		9 January 1995[a]
Republic of Moldova		28 November 1995[a]
Romania		18 December 1990[a]
Russian Federation	10 December 1985	3 March 1987
Saint Vincent and the Grenadines		1 August 2001[a]
San Marino	18 September 2002	
Sao Tome and Principe	6 September 2000	
Saudi Arabia		23 September 1997[a]
Senegal	4 February 1985	21 August 1986
Serbia and Montenegro		12 March 2001[b]
Seychelles		5 May 1992[a]
Sierra Leone	18 March 1985	25 April 2001
Slovakia		28 May 1993[b]
Slovenia		16 July 1993[a]
Somalia		24 January 1990[a]
South Africa	29 January 1993	10 December 1998
Spain	4 February 1985	21 October 1987
Sri Lanka		3 January 1994[a]
Sudan	4 June 1986	
Swaziland		26 March 2004[a]
Sweden	4 February 1985	8 January 1986
Switzerland	4 February 1985	2 December 1986
Syrian Arab Republic		19 August 2004[a]

Participant	Signature	Ratification, Accession (a), Succession (b)
Tajikistan		11 January 1995[a]
The former Yugoslav Republic of Macedonia		12 December 1994[b]
Timor-Leste		16 April 2003[a]
Togo	25 March 1987	18 November 1987
Tunisia	26 August 1987	23 September 1988
Turkey	25 January 1988	2 August 1988
Turkmenistan		25 June 1999[a]
Uganda		3 November 1986[a]
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland	15 March 1985	8 December 1988
United States of America	18 April 1988	21 October 1994
Uruguay	4 February 1985	24 October 1986
Uzbekistan		28 September 1995[a]
Venezuela (Bolivarian Republic of)	15 February 1985	29 July 1991
Yemen		5 November 1991[a]
Zambia		7 October 1998[a]

Notes

[a] Accession (71 countries).

[b] Succession (6 countries).

Annex II

STATES PARTIES THAT HAVE DECLARED, AT THE TIME OF RATIFICATION OR ACCESSION, THAT THEY DO NOT RECOGNIZE THE COMPETENCE OF THE COMMITTEE PROVIDED FOR BY ARTICLE 20 OF THE CONVENTION, AS AT 19 MAY 2006

Afghanistan

China

Equatorial Guinea

Israel

Kuwait

Mauritania

Morocco

Poland

Saudi Arabia

Syrian Arab Republic

Annex III

STATES PARTIES THAT HAVE MADE THE DECLARATIONS PROVIDED FOR IN ARTICLES 21 AND 22 OF THE CONVENTION, AS AT 19 MAY 2006[a]

State party	Date of entry into force
Algeria	12 October 1989
Argentina	26 June 1987
Australia	29 January 1993
Austria	28 August 1987
Belgium	25 July 1999
Bosnia and Herzegovina	4 June 2003
Bulgaria	12 June 1993
Cameroon	11 November 2000
Canada	24 July 1987
Chile	15 March 2004
Costa Rica	27 February 2002
Croatia	8 October 1991
Cyprus	8 April 1993
Czech Republic	3 September 1996
Denmark	26 June 1987
Ecuador	29 April 1988
Finland	29 September 1989
France	26 June 1987
Germany	19 October 2001
Ghana	7 October 2000
Greece	5 November 1988
Hungary	26 June 1987
Iceland	22 November 1996
Ireland	11 April 2002
Italy	11 February 1989
Liechtenstein	2 December 1990
Luxembourg	29 October 1987
Malta	13 October 1990
Monaco	6 January 1992
Netherlands	20 January 1989
New Zealand	9 January 1990
Norway	26 June 1987
Paraguay	29 May 2002
Peru	7 July 1988
Poland	12 June 1993

State party	Date of entry into force
Portugal	11 March 1989
Russian Federation	1 October 1991
Senegal	16 October 1996
Serbia and Montenegro	12 March 2001
Slovakia	17 April 1995
Slovenia	16 July 1993
South Africa	10 December 1998
Spain	20 November 1987
Sweden	26 June 1987
Switzerland	26 June 1987
Togo	18 December 1987
Tunisia	23 October 1988
Turkey	1 September 1988
Uruguay	26 June 1987
Ukraine	12 September 2003
Venezuela	26 April 1994

States parties that have only made the declaration provided for in article 21 of the Convention, as at 19 May 2006

Japan	29 June 1999
Uganda	19 December 2001
United Kingdom of Great Britain and Northern Ireland	8 December 1988
United States of America	21 October 1994

States parties that have only made the declaration provided for in article 22 of the Convention, as at 19 May 2006[b]

Azerbaijan	4 February 2002
Burundi	10 June 2003
Guatemala	25 September 2003
Mexico	15 March 2002
Seychelles	6 August 2001

Notes

[a] A total of 51 States parties have made the declaration under article 21.

[b] A total of 56 States parties have made the declaration under article 22.

Annex IV

MEMBERSHIP OF THE COMMITTEE AGAINST TORTURE IN 2006

Name of member	Country of nationality	Term expires on 31 December
Ms. Saadia BELMIR	Morocco	2009
Mr. Guibril CAMARA	Senegal	2007
Ms. Felice GAER	United States of America	2007
Mr. Claudio GROSSMAN	Chile	2007
Mr. Fernando MARIÑO	Spain	2009
Mr. Andreas MAVROMMATIS	Cyprus	2007
Mr. Julio PRADO VALLEJO	Ecuador	2007*
Ms. Nora SVAAESS	Norway	2009
Mr. Alexander KOVALEV	Russian Federation	2009
Mr. Xuexian WANG	China	2009

* Mr. Julio Prado Vallejo tendered his resignation on 12 April 2006.

Annex V

OVERDUE REPORTS

State party	Date on which the report was due
Initial reports	
Guinea	8 November 1990
Somalia	22 February 1991
Seychelles	3 June 1993
Cape Verde	3 July 1993
Antigua and Barbuda	17 August 1994
Ethiopia	12 April 1995
Chad	7 July 1996
Côte d'Ivoire	16 January 1997
Malawi	10 July 1997
Honduras	3 January 1998
Kenya	22 March 1998
Bangladesh	3 November 1999
Niger	3 November 1999
Burkina Faso	2 February 2000
Mali	27 March 2000
Turkmenistan	25 July 2000
Mozambique	14 October 2000
Ghana	6 October 2001
Botswana	7 October 2001
Gabon	7 October 2001
Lebanon	3 November 2001
Sierra Leone	24 May 2002
Nigeria	27 July 2002
Saint Vincent and the Grenadines	30 August 2002
Lesotho	11 December 2002
Mongolia	22 February 2003
Ireland	10 May 2003
Holy See	25 July 2003
Equatorial Guinea	6 November 2003
Djibouti	5 December 2003
Timor-Leste	15 May 2004
Congo	18 August 2004
Liberia	22 October 2005

State party	Date on which the report was due	
	Second periodic reports	
Afghanistan	25 June 1992	
Belize	25 June 1992	
Philippines	25 June 1992	
Uganda	25 June 1992	[25 June 2008]*
Togo	17 December 1992	
Guyana	17 June 1993	
Brazil	27 October 1994	
Guinea	8 November 1994	
Somalia	22 February 1995	
Romania	16 January 1996	
Serbia and Montenegro	9 October 1996	
Yemen	4 December 1996	
Jordan	12 December 1996	
Bosnia and Herzegovina	5 March 1997	[5 March 2009]*
Seychelles	3 June 1997	
Cape Verde	3 July 1997	
Cambodia	13 November 1997	
Slovakia	27 May 1998	
Antigua and Barbuda	17 August 1998	
Costa Rica	10 December 1998	
Ethiopia	12 April 1999	
Albania	9 June 1999	[9 June 2007]*
The former Yugoslav Republic of Macedonia	11 December 1999	
Namibia	27 December 1999	
Tajikistan	9 February 2000	
Cuba	15 June 2000	
Chad	8 July 2000	
Republic of Moldova	27 December 2000	[27 December 2007]*
Côte d'Ivoire	16 January 2001	
Democratic Republic of the Congo	16 April 2001	[16 April 2009]*

* The date indicated in brackets is the revised date for submission of the State party's report, in accordance with the Committee's decision at the time of adoption of recommendations regarding the last report of the State party.

State party	Date on which the report was due	
El Salvador	16 July 2001	
Lithuania	1 March 2001	
Kuwait	6 April 2001	
Malawi	10 July 2001	
Honduras	3 January 2002	
Kenya	22 March 2002	
Kyrgyzstan	4 September 2002	
Saudi Arabia	21 October 2002	
Bahrain	4 April 2003	[April 2007]*
Kazakhstan	24 September 2003	
Bangladesh	3 November 2003	
Niger	3 November 2003	
South Africa	8 January 2003	
Burkina Faso	2 February 2004	
Mali	27 March 2004	
Bolivia	11 May 2004	
Turkmenistan	24 July 2004	
Belgium	25 July 2004	
Japan	29 July 2004	
Mozambique	13 October 2004	
Ghana	6 October 2005	
Qatar	9 February 2005	
Botswana	7 October 2005	
Gabon	7 October 2005	
Lebanon	3 November 2005	

Third periodic reports

Afghanistan	25 June 1996	
Belize	25 June 1996	
Philippines	25 June 1996	
Senegal	25 June 1996	
Uganda	25 June 1996	
Uruguay	25 June 1996	
Togo	17 December 1996	
Guyana	17 June 1997	
Turkey	31 August 1997	[31 August 2005]*
Tunisia	22 October 1997	[30 November 1999]*

State party	Date on which the report was due	
Libyan Arab Jamahiriya	14 June 1998	
Algeria	11 October 1998	
Brazil	27 October 1998	
Guinea	8 November 1998	
Somalia	22 February 1999	
Malta	12 October 1999	[30 November 2004]*
Liechtenstein	1 December 1999	
Romania	16 January 2000	
Nepal	12 June 2000	[12 June 2008]*
Serbia and Montenegro	9 October 2000	
Yemen	4 December 2000	
Jordan	12 December 2000	
Bosnia and Herzegovina	5 March 2001	[5 March 2009]*
Benin	10 April 2001	
Latvia	13 May 2001	
Seychelles	3 June 2001	
Cape Verde	3 July 2001	
Cambodia	13 November 2001	
Mauritius	7 January 2002	
Burundi	19 March 2002	
Slovakia	27 May 2002	
Antigua and Barbuda	17 August 2002	
Armenia	12 October 2002	
Costa Rica	10 December 2002	
Sri Lanka	1 February 2003	[1 February 2007]*
Ethiopia	12 April 2003	
Albania	9 June 2003	[9 June 2007]*
United States of America	19 November 2003	
The former Yugoslav Republic of Macedonia	11 December 2003	
Namibia	27 December 2003	
Republic of Korea	7 February 2004	
Tajikistan	9 February 2004	
Cuba	15 June 2004	
Chad	7 July 2004	
Uzbekistan	27 October 2004	

State party	Date on which the report was due	
Republic of Moldova	27 December 2004	
Côte d'Ivoire	16 January 2005	
Lithuania	1 March 2005	
Democratic Republic of the Congo	16 April 2005	[16 April 2009]*
Kuwait	6 April 2005	
Malawi	10 July 2005	
El Salvador	16 July 2005	
Honduras	3 January 2006	
Kenya	22 March 2006	

Fourth periodic reports

Afghanistan	25 June 2000	
Belarus	25 June 2000	
Belize	25 June 2000	
Bulgaria	25 June 2000	[25 June 2008]*
Cameroon	25 June 2000	
France	25 June 2000	[25 June 2008]*
Philippines	25 June 2000	
Senegal	25 June 2000	
Uganda	25 June 2000	[25 June 2008]*
Uruguay	25 June 2000	
Austria	27 August 2000	[27 August 2008]*
Panama	22 September 2000	
Togo	17 December 2000	
Colombia	6 January 2001	
Ecuador	28 April 2001	[28 April 2009]*
Guyana	17 June 2001	
Turkey	31 August 2001	
Tunisia	22 October 2001	
Chile	29 October 2001	[29 October 2005]
China	2 November 2001	
Libyan Arab Jamahiriya	14 June 2002	
Australia	6 September 2002	
Algeria	11 October 2002	
Brazil	27 October 2002	
Guinea	8 November 2002	

State party	Date on which the report was due	
New Zealand	10 January 2002	
Somalia	22 February 2003	
Paraguay	10 April 2003	
Malta	12 October 2003	
Germany	20 October 2003	[20 October 2007]*
Liechtenstein	1 December 2003	
Romania	16 January 2004	
Nepal	12 June 2004	[12 June 2008]*
Bulgaria	25 June 2004	[25 June 2008]*
Cameroon	25 June 2004	
Cyprus	16 August 2004	
Venezuela	20 August 2004	
Croatia	7 October 2004	[7 October 2008]*
Serbia and Montenegro	9 October 2004	
Israel	1 November 2004	
Estonia	19 November 2004	
Yemen	4 December 2004	
Jordan	12 December 2004	
Monaco	4 January 2005	[4 January 2009]*
Colombia	6 January 2005	
Bosnia and Herzegovina	5 March 2005	
Benin	10 April 2005	
Latvia	13 May 2005	
Cape Verde	3 July 2005	
Cambodia	13 November 2005	
Mauritius	7 January 2006	

Fifth periodic reports

Afghanistan	25 June 2004	
Belarus	25 June 2004	
Belize	25 June 2004	
Egypt	25 June 2004	
France	25 June 2004	[25 June 2008]*
Hungary	25 June 2004	
Mexico	25 June 2004	
Philippines	25 June 2004	
Russian Federation	25 June 2004	
Senegal	25 June 2004	

State party	Date on which the report was due	
Switzerland	25 June 2004	[25 June 2008]*
Uganda	25 June 2004	[25 June 2008]*
Uruguay	25 June 2004	
Austria	27 August 2004	[31 December 2008]*
Panama	22 September 2004	
Spain	19 November 2004	
Togo	17 December 2004	
Colombia	6 January 2005	
Ecuador	25 April 2005	[28 April 2009]*
Guyana	17 June 2005	
Turkey	31 August 2005	
Tunisia	29 October 2005	
Chile	29 October 2005	
China	2 November 2005	

Annex VI

COUNTRY RAPPORTEURS AND ALTERNATE RAPPORTEURS FOR THE REPORTS OF STATES PARTIES CONSIDERED BY THE COMMITTEE AT ITS THIRTY-FIFTH AND THIRTY-SIXTH SESSIONS (IN ORDER OF EXAMINATION)

A. Thirty-fifth session

Report	Rapporteur	Alternate
Bosnia and Herzegovina: initial report (CAT/C/21/Add.6)	Ms. Gaer	Mr. Wang
Nepal: second periodic report (CAT/C/33/Add.6)	Mr. Rasmussen	Mr. El-Masry
Sri Lanka: second periodic report (CAT/C/48/Add.2)	Mr. Mavrommatis	Mr. Rasmussen
Ecuador: third periodic report (CAT/C/39/Add.6)	Mr. Grossman	Mr. Mariño Menendez
Austria: third periodic report (CAT/C/34/Add.18)	Mr. El-Masry	Mr. Prado Vallejo
France: third periodic report (CAT/C/34/Add.19)	Mr. Camara	Mr. Grossman
Democratic Republic of the Congo (CAT/C/37/Add.6)	Mr. Mariño Menendez	Mr. Camara

B. Thirty-sixth session

Peru: fourth periodic report (CAT/C/61/Add.2)	Mr. Grossman	Mr. Mariño Menendez
Georgia: third periodic report (CAT/C/73/Add.1)	Mr. Mavrommatis	Mr. Wang
Guatemala: fourth periodic report (CAT/C/74/Add.1)	Mr. Grossman	Ms. Sveaass
United States: second periodic report (CAT/C/48/Add.3)	Mr. Mariño Menendez	Mr. Camara
Qatar: initial report (CAT/C/58/Add.1)	Ms. Gaer	Mr. Wang
Togo: initial report (CAT/C/5/Add.3)	Mr. Mavrommatis	Mr. Camara
Republic of Korea: second periodic report (CAT/C/53/Add.2)	Ms. Gaer	Ms. Sveaass

Annex VII

REQUEST FOR EXTENSION OF THE MEETING TIME OF THE COMMITTEE AGAINST TORTURE CONTAINED IN PARAGRAPH 14 OF A/59/44

PROGRAMME BUDGET IMPLICATIONS IN ACCORDANCE WITH RULE 25 OF THE RULES OF PROCEDURE OF THE COMMITTEE AGAINST TORTURE

1. The Committee against Torture requests the General Assembly to authorize the Committee to meet for an additional week per year as of its thirty-ninth session (November 2007).

2. The activities to be carried out relate to: programme 24 Human Rights and Humanitarian Affairs, and conference services; subprogramme 2.

3. Provisions have been made in the 2006-2007 programme budget for travel and per diem costs of the 10 members of the Committee to attend its two annual regular sessions in Geneva, one of 15 working days the second of 10 working days, with each preceded by a five-day pre-sessional working group meeting, as well as for conference services to the Committee and the pre-sessional working group.

4. Should the General Assembly approve the Committee's request provisions for a total of 10 additional meetings (from 2007) would be required. The additional meetings of the Committee would require interpretation services in the six official languages. Summary records would be provided for the 10 additional meetings of the Committee. The proposed one-week extension would require an additional 50 pages of in-session and 30 pages of post-session documentation in the six languages.

5. Should the General Assembly accept the request made by the Committee against Torture, additional resources estimated at 25,000 United States dollars for per diem costs for the members of the Committee in relation to the extension of its November session from 2007 would be required under section 24 of the programme budget for the biennium 2006-2007. Furthermore, additional conference-servicing costs are estimated at 697,486 dollars from 2007 under section 2; and 2,520 dollars from 2007 under section 29 E.

6. The above requirements relating to the additional meetings of the Committee and the pre-sessional working group are enumerated in the table below:

Requirements relating to additional meetings of the Committee and the pre-sessional working group

			2006 $
I.	Section 24.	Human rights: travel, per diem and terminal expenses	25 000
II.	Section 2.	General Assembly affairs and conference services: meeting servicing, interpretation and documentation	697 486
III.	Section 29 E.	Office of Common Support Services: support services	2 520
Total			725 000

Annex VIII

DECISIONS OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION

A. Decisions on merits

Communication No. 172/2000

Submitted by: Mr. Danilo Dimitrijevic (represented by counsel)

Alleged victim: The complainant

State party: Serbia and Montenegro[a]

Date of the complaint: 7 August 2000 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 16 November 2005,

Having concluded its consideration of complaint No. 172/2000, submitted to the Committee against Torture by Mr. Danilo Dimitrijevic under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22 of the Convention.

1. The complainant is Danilo Dimitrijevic a Serbian citizen of Roma origin, residing in Serbia and Montenegro. He claims to be a victim of violations of article 2, paragraph 1, read in connection with articles 1 and 16, paragraph 1; article 14 alone; and articles 12 and 13 taken alone and/or read in connection with article 16, paragraph 1, by Serbia and Montenegro, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by the Humanitarian Law Center (HLC), based in Belgrade, and by the European Roma Rights Center (ERRC), based in Budapest, both non-governmental organizations.

The facts as submitted by the complainant

2.1 At around noon on 14 November 1997, the complainant was arrested at his home in Novi Sad, in the Serbian province of Vojvodina, and taken to the police station in Kraljevica Marka Street. The arresting officer presented no arrest warrant; nor did he inform the complainant why he was being taken into custody. However, since a criminal case was already pending against him, in which he was charged with several counts of larceny, the complainant assumed that this was the reason for his arrest. He made no attempt to resist arrest. At the police station, he was locked into one of the offices. Half an hour later, an unknown man in civilian clothes entered the office, ordered him to strip to his underwear, handcuffed him to a metal bar

attached to a wall and proceeded to beat him with a police club for approximately one hour from 12.30 p.m. to 1.30 p.m. He sustained numerous injuries, in particular on his thighs and back. The complainant assumes that the man was a plain-clothes police officer. During the beating an officer, whom the complainant knew by name, also entered the room and, while he did not take part in the abuse, he did not stop it.

2.2 The complainant spent the next three days, from 14 to 17 November 1997, during the day, in the same room where he had been beaten. During that time he was denied food and water, and the possibility of using the lavatory. Although the complainant requested medical attention, and his injuries visibly required such attention, he was not provided with any. During the night he was taken from the police station to the Novi Sad District Prison in the Klisa neighbourhood. He was not ill-treated there. At no time was he told why he had been brought to the police station, in contravention of articles 192 (3), 195 and 196 (3) of the Criminal Procedure Code (CPC), which deals with police powers of arrest and detention.

2.3 On 17 November 1997, the complainant was brought before the investigating judge of the Novi Sad District Court, Savo Durdić, for a hearing on the charges of larceny against him, in accordance with article 165 of the Serbian Criminal Code (Case file No. Kri. 922/97). Upon noticing the complainant's injuries, the judge issued a written decision ordering the police immediately to escort him to a forensic specialist for the purpose of establishing their nature and severity.[b] In particular, the judge ordered that a forensic medical expert examine the "injuries visible in the form of bruises on the outside of the suspect's legs …." The judge did not inform the public prosecutor of the complainant's injuries, even though, according to the complainant, he should have done so in accordance with article 165 (2) of the CPC. Rather than taking the complainant to a specialist, as instructed, the police presented him with a release order, on which the required internal registration number was missing and which incorrectly stated that his detention started at 11 p.m. on 14 November 1997, although he had been taken into custody 11 hours earlier.[c] In the complainant's view, this was an effort to evade responsibility for subjecting him to the physical abuse he had been subjected to during that period.

2.4 Upon his release, and being ignorant of his rights under the law and frightened by his experiences in the preceding three days, the complainant did not seek immediate medical assistance. He did, however, go to a privately owned photographic studio and had photographs taken of his injuries. He has provided these photos, dated 19 November 1997. On 24 November 1997, and having consulted a lawyer, the complainant attended the Clinical Centre of the Novi Sad Forensic Medicine Institute for an examination. However, he never received the report and was told that it had been sent to the investigating judge. The case file (No. Kri. 922/97) was examined on several occasions by the complainant's counsel but did not contain the report. In response to queries from counsel, the Medical Institute stated in a letter, dated 30 September 1999, that the report had been forwarded to the judge of the Novi Sad District Court.[d] To date this report has not been found in the case file.

2.5 Also on 24 November 1997, the complainant filed a criminal complaint with the Municipal Public Prosecutor's Office in Novi Sad. He gave a detailed account of the incident and alleged that the following crimes had been committed "extraction of statements, civil injury and slight bodily harm". He also submitted a medical certificate allegedly relating to injuries caused to the complainant by police violence in 1994 (unrelated to the incident in question), a medical report dated 18 November 1997, the police release order, the Novi Sad District Court Order, and photographs of his injuries. Despite many inquiries as to the status of his complaint,

including a letter from the complainant's lawyer, dated 3 March 1999, the Novi Sad Municipal Public Prosecutor's Office has failed to date to respond in any way to the complaint. Criminal proceedings against the complainant with respect to the charges against him for larceny (Case file No. Kri. 922/97) also remain pending. The complainant is currently serving a four-year prison term for larceny in the Sremska Mitrovica Penitentiary, unrelated to case file No. Kri 922/97.

2.6 According to the complainant, under article 153 (1) of the CPC, if the public prosecutor finds on the basis of the evidence, that there is reasonable suspicion that a certain person has committed a criminal offence, he should request the investigating judge to institute a formal judicial investigation further to articles 157 and 158 of the CPC. If he decides that there is no basis for the institution of a formal judicial investigation, he should inform the complainant of this decision, who can then exercise his prerogative to take over the prosecution of the case on his own behalf - i.e. in his capacity of a "private prosecutor". As the Public Prosecutor did not formally dismiss his complaint, the complainant concludes that he was denied the right personally to take over prosecution of the case. As the CPC sets no time limit in which the public prosecutor must decide whether or not to request a formal judicial investigation into the incident, this provision is open to abuse.

The complaint

3.1 The complainant claims that he has exhausted all available criminal domestic remedies by having filed a complaint with the Public Prosecutor's Office. In the complainant's view, civil/administrative remedies would not provide sufficient redress in his case.[e]

3.2 The complainant submits that the allegations of violations of the Convention should be interpreted against a backdrop of systematic police brutality to which the Roma and others in the State party are subjected, as well as the generally poor human rights situation in the State party.[f] He claims a violation of article 2, paragraph 1, read in connection with articles 1, and 16, paragraph 1, for having been subjected to police brutality inflicting on him great physical and mental suffering amounting to torture, cruel, inhuman and/or degrading treatment or punishment, for the purposes of obtaining a confession, or otherwise intimidating or punishing him.[g]

3.3 He claims a violation of article 12 alone and/or read in connection with article 16, paragraph 1, as the State party's authorities failed to conduct an official investigation into the incident, which gave rise to this complaint and failed to respond to queries on the status of the complaint. Since the public prosecutor's office failed formally to dismiss his criminal complaint, he cannot personally take over the prosecution of the case. The complainant alleges that public prosecutors in Serbia and Montenegro seldom institute criminal proceedings against police officers accused of misconduct and delay the dismissal of complaints, sometimes by years, thereby denying the injured party the right to prosecute his/her own case.

3.4 The complainant claims a violation of article 13 alone or read in connection with article 16 of the Convention, as despite exhaustion of domestic remedies and all criminal domestic remedies, he has received no redress for the violation of his rights. The State party's authorities have not even identified the police officer concerned.[h]

3.5 Article 14 is also said to be violated, since the complainant was denied a criminal remedy and has thus been barred from obtaining fair and adequate compensation in a civil lawsuit. The complainant explains that under domestic law, two different procedures exist, through which compensation for criminal offences may be pursued: by criminal proceedings under article 103 of the CPC following criminal proceedings, and/or by civil action for damages under articles 154 and 200 of the Law on Obligations. The first avenue was not an option, as no criminal proceedings were instituted and the second was not availed of by the complainant, as it is the practice of the State party's courts to suspend civil proceedings for damages arising from criminal offences until prior completion of the respective criminal proceedings. Even if the complainant had attempted to avail of this recourse, he would have been prevented from pursuing it, as under articles 186 and 106 of the Civil Procedure Code he would have to identify the name of the respondent. Since the complainant to date remains unaware of the name of the officer against whom he is claiming violations of his rights the institution of a civil action would have been impossible.

State party's submission on the admissibility and the merits

4. On 14 January 2003, the State party provided a submission, merely stating that it "accepts" the complaint. Following a request for clarification from the secretariat, the State party made another submission, on 20 October 2003, in which it states that the "acceptance" of the complaint implied that the State party recognized the competence of the Committee to consider the complaint, "but not the responsibility of the State concerning the complaint in question". In addition, it submitted that the Ministry on Human and Minority Rights of Serbia and Montenegro is still in the process of collecting data from the relevant authorities of the Republic of Serbia for the purposes of giving a response on the merits. The State party has provided no further information since that date.

Complainant's comments on the State party's submission on the admissibility and the merits

5. On 25 November 2003, the complainant commented on the State party's submissions. He submits that by failing seriously to contest the facts and/or his claims, the State party has in effect expressed its tacit acceptance of both.[i]

Issues and proceedings before the Committee as to the admissibility

6.1 The Committee notes the State party's failure to provide information with regard to the admissibility or merits of the complaint. In the circumstances, the Committee, acting under rule 109, paragraph 7 of its rules of procedure, is obliged to consider the admissibility and the merits of the complaint in the light of the available information, due weight being given to the complainant's allegations to the extent that they have been sufficiently substantiated.

6.2 Before considering any claim contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention that the same matter has not been, and is not being examined under another procedure of international investigation or settlement. With respect to the exhaustion of domestic remedies, the Committee has taken note of the information provided by the complainant about the criminal complaint, which he filed with the public prosecutor. It considers that the insurmountable procedural

impediments faced by the complainant due to the inaction of the competent authorities made recourse to a remedy that may bring effective relief to the complainant highly unlikely. In the absence of pertinent information from the State party, the Committee concludes that in any event, domestic proceedings, if any, have been unreasonably prolonged since the end of November 1997. With reference to article 22, paragraph 4, of the Convention and rule 107 of the Committee's rules of procedure the Committee finds no other obstacle to the admissibility of the complaint. Accordingly, it declares the complaint admissible and proceeds to its examination on the merits.

Issues and proceedings before the Committee as to the merits

7.1 The complainant alleges violations by the State party of article 2, paragraph 1, in connection with article 1, and of article 16, paragraph 1, of the Convention. The Committee notes in this respect the complainant's description of the treatment he was subjected to while in detention, which can be characterized as severe pain or suffering intentionally inflicted by public officials for such purposes as obtaining from him information or a confession or punishing him for an act he has committed, or intimidating or coercing him for any reason based on discrimination of any kind in the context of the investigation of a crime. The Committee also notes the observations of the investigating judge with respect to his injuries, and photographs of his injuries provided by the complainant. It observes that the State party has not contested the facts as presented by the complainant, which took place more than seven years ago, and observes that the medical report prepared after the examination of the complainant and pursuant to an order of the Novi Sad District Court Judge, has not been integrated into the complaint file and could not be consulted by the complainant or his counsel. In the circumstances, the Committee concludes that due weight must be given to the complainant's allegations and that the facts, as submitted, constitute torture within the meaning of article 1 of the Convention.

7.2 In light of the above finding of a violation of article 1 of the Convention, the Committee need not consider whether there was a violation of article 16, paragraph 1, as the treatment suffered by the complainant under article 1 exceeds the treatment encompassed in article 16 of the Convention.

7.3 Concerning the alleged violation of articles 12 and 13 of the Convention, the Committee notes that the public prosecutor never informed the complainant whether an investigation was being or had been conducted after the criminal complaint was filed on 24 November 1997. It also notes that the failure to inform the complainant of the results of such investigation, if any, effectively prevented him from pursuing a "private prosecution" of his case. In these circumstances, the Committee considers that the State party has failed to comply with its obligation, under article 12 of the Convention, to carry out a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed. The State party also failed to comply with its obligation, under article 13, to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities.

7.4 As for the alleged violation of article 14 of the Convention, the Committee notes the complainant's allegations that the absence of criminal proceedings deprived him of the

possibility of filing a civil suit for compensation. In view of the fact that the State party has not contested this allegation and given the passage of time since the complainant initiated legal proceedings at the domestic level, the Committee concludes that the State party has also violated its obligations under article 14 of the Convention in the present case.

8. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 2, paragraph 1, in connection with article 1, 12, 13, and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. The Committee urges the State party to prosecute those responsible for the violations found and to provide compensation to the complainant, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.

Notes

[a] The Federal Republic of Yugoslavia (which changed its name to Serbia and Montenegro on 4 February 2003) succeeded the Socialist Republic of Yugoslavia on 27 April 1992.

[b] This order has been provided.

[c] This release order has been provided.

[d] This letter has been provided.

[e] He refers to international jurisprudence to support this claim.

[f] In this context, the complainant provides reports from various national and international non-governmental organizations and the Concluding Observations of CAT of 1998, A/54/44, paras. 35-52.

[g] To support his argument that the treatment he received was torture, cruel, inhuman and/or degrading treatment or punishment, he refers to the United Nations Code of Conduct for Law Enforcement Officials, the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Council of Europe's Declaration on the Police and the European Court of Human Rights.

[h] The complainant refers to communication No. 59/1996, *Encarnacio Blanco Abad v. Spain*, Views adopted on 14 May 1998.

[i] In this regard, he refers to decisions of the Human Rights Committee in particular communication No. 88/1981, *Gustavo Raul Larrosa Bequio v. Uruguay*, Views adopted on 29 March 1983, para. 10.1

Communication No. 174/2000

Submitted by:	Mr. Slobodan Nikolić; Mrs. Ljiljana Nikolić (represented by the Humanitarian Law Center)
Alleged victims:	The complainant's son, N.N. (deceased); the complainants
State party:	Serbia and Montenegro
Date of complaint:	18 March 1999 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 24 November 2005,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1. The complainants are Mr. Slobodan Nikolić and his wife, Mrs. Ljiljana Nikolić, nationals of Serbia and Montenegro, born on 20 December 1947 and on 5 August 1951. They claim that the State party's alleged failure to proceed to a prompt and impartial investigation of the circumstances of their son's death constitutes a violation by Serbia and Montenegro of articles 12, 13 and 14 of the Convention. The complainants are represented by counsel.

The facts as submitted by the complainants

2.1 On 19 April 1994, the complainants' son, N.N., born on 19 April 1972, died in Belgrade. The post-mortem examination of his corpse was carried out on 25 April 1994 by a medical team of the Institute for Forensic Medicine of the Faculty of Medicine in Belgrade. The autopsy report states that the death was caused by damage to vital brain centres caused by the fracture of cranial bones and haemorrhage from the rupture of the aorta and the torn blood vessels surrounding the multiple bone fractures. These injuries "were inflicted with a brandished, blunt and heavy object".

2.2 According to the police report, the complainants' son was found dead on the sidewalk in front of building No. 2 at Pariske Komune Street in Novi Beograd on 19 April 1994. He had fallen out of the window of apartment No. 82 on the 10th floor of the same building at 9.40 a.m. In an attempt to escape his arrest by the police, he had connected several cables and had tied them to a radiator. When trying to descend to the subjacent window on the ninth floor, the cables broke apart and N.N. fell on the concrete pavement.

2.3 According to police inspector J.J., this incident was preceded by the following events: On 19 April 1994, he and two other inspectors, Z.P. and M.L., went to apartment No. 82 at 2, Pariske Komune Street to arrest the complainant on the basis of a warrant, as he was suspected of having committed several property-related offences. Through a slit above the threshold of the entrance door, they noticed a shadow in the corridor. Assuming that N.N. was in the apartment, they unsuccessfully called on him to open the door. After having ordered an intervention team to break the entrance door, inspector J.J. warned N.N. that the police would forcibly enter the flat, if he continued to refuse opening the door. J.J. then went to the eleventh floor and entered the

flat located directly above apartment No. 82. From a window, he saw N.N. looking out of the window below. After having returned to apartment No. 82, J.J. again called on N.N. to surrender, promising that he would not be subjected to physical violence. The intervention team then broke the door of the apartment, where they only found M.K., the girlfriend of the deceased, who was crying and stated that N.N. had fallen out of the window. Looking out of the window, J.J. saw the body of a man lying on the sidewalk.

2.4 The deceased was identified as N.N., based on documents found in one of his pockets, as well as by M.K., and his death was established by a physician of the Secretariat for Internal Affairs. At around 10.30 a.m., the investigating judge of the Belgrade District Court, D.B., arrived together with the deputy public prosecutor of the District of Belgrade (hereafter "deputy public prosecutor"), V.M., inspected "the scene of the crime",[a] interviewed M.K. and ordered that the body of the deceased be sent to the Institute of Forensic Medicine for an autopsy.

2.5 The report of the investigating judge states that several police officers informed him that N.N. had "categorically declined" to unlock the door after having argued with the police for some time. When they entered the flat, the deceased "had just jumped out of the window". M.K. confirmed that N.N. had refused to open the door. When she tried to snatch the keys of the apartment from his pocket, he told her that he would rather escape through the window than to open the door. Although she did not see what happened in the room from where N.N. had tried to escape, M.K. concluded from his absence that he had jumped out of the window, when the policemen entered the flat. She stated that there was no physical contact between N.N. and the members of the police intervention team. Apart from the cables tied to the radiator, the report mentions that a white three-socket extension cable was hanging on a tree above the sidewalk where the corpse of the deceased was lying. One single- and one double-wire of around 2.5 metres length each were tied to the socket box - probably the missing ends that had been torn from the cables tied to the radiator. Lastly, the report states that the investigating judge ordered the police to interview all witnesses of the incident.

2.6 On 22 April 1994, the deputy public prosecutor advised the complainants that he considered that their son's death had been caused by an accident and that, accordingly, no criminal investigation would be initiated.

2.7 On 18 July 1994, the complainants brought charges of murder against unknown perpetrators, asking for a criminal investigation to be initiated by the Belgrade public prosecutor's office. They claimed that the police clubbed their son with a blunt metal object, thereby causing his death, and subsequently threw his corpse out of the window to conceal the act. On 12 August and on 5 December 1994, the deputy public prosecutor informed the complainants that no sufficient grounds existed for instituting criminal proceedings, and advised them to file a criminal report with the public prosecutor's office, submitting the evidence on which their suspicion was based.

2.8 In the meantime, the investigating judge had requested a commission of medical experts of the Belgrade Institute of Forensic Medicine, composed of the same doctors who had conducted the autopsy, to prepare an expert opinion on the death of N.N. In their report dated 22 November 1994, the experts concluded on the basis of the autopsy report, as well as other documents, that the location, distribution and types of injuries observed on N.N. indicated that

they were the result of the fall of his body from a considerable height on a wide, flat concrete surface. The "signs of the injury reactions (inhalation of blood and […] bruises around the wounds and torn tissues)" indicated that N.N. was alive at the moment when he incurred the injuries.

2.9 On 13 and 24 January 1995, the complainants challenged inconsistencies in the medical findings of the expert commission, as well as in the autopsy report, and requested the Belgrade District Court to order another forensic expertise from a different institution at their expense.

2.10 On 27 June 1995, the complainants sought the intervention of the Public Prosecutor of the Republic, who, by reference to the forensic expertise of the expert commission, affirmed the position of the deputy public prosecutor. Similarly, the Deputy Federal Public Prosecutor, by letter of 8 January 1996, advised the complainants that there were no grounds for him to intervene.

2.11 At the complainants' request, Dr. Z.S., a pathologist from the Institute of Forensic Medicine of the Belgrade Military Hospital, evaluated the autopsy report of 19 April 1994 and the expert commission's forensic findings of 22 November 1994. In a letter of 21 March 1996, he informed the complainants that, although the described injuries could be the result of the fall of the body of the deceased from a considerable height, it could not be excluded that some of the injuries had been inflicted prior to the fall. He criticized (a) that the autopsy had been carried out six days after the death of N.N.; (b) that the reports did not describe any decomposition changes of the body; (c) that the autopsy report stated that the brain membranes and brain tissue of the deceased were intact, while at the same time noting the presence of brain tissue on the front side of his sweatshirt; (d) the contradiction between the size of the rupture of the aorta (3 cm x 1 cm) and the relatively small quantity of blood found in the chest cavity (800 ccm); (e) the expert commission's finding that the first contact of the deceased's body with the ground was with his feet, resulting in transverse fractures of the lower leg bones instead of diagonal fractures, which would usually result from a similar fall; (f) the unclear description by the expert commission of the mechanism of injuries, i.e. "that the first contact of the body was with the feet which caused feet and lower leg fractures, which was followed by bending and twisting (extension and rotation) of the thorax", given that extension means stretching of the body rather than bending; and (g) that the autopsy report diagnosed *decollement*, i.e. the separation of the skin of subcutaneous tissue from the muscle membrane, on the external side of the left thigh, although such an injury was usually "inflicted by a strong blow with a brandished blunt weapon", i.e. "the blow of the body on the ground", which was unlikely to occur after a fall on the feet and a fracture of both lower leg bones.

2.12 By letter of 28 August 1996, the complainant's lawyer requested the Belgrade Public Prosecutor's Office to order another forensic expertise, to be conducted by the Institute of Forensic Medicine of either the Belgrade Military Hospital or the Faculty of Medicine of Novi Sad, and, for that purpose, to exhume the body of N.N. at the expense of the complainants to address the doubts expressed by Dr. Z.S. In addition, he requested clarification of the following questions: (a) the time and place of death; (b) whether the contusions of the brain and the wound on the lower forehead of the deceased could have been the consequence of injuries inflicted by blows before the fall; (c) whether the small quantity of blood found in the chest cavity indicated that N.N. was already dead at the time of the fall, given that a living person discharges about 70 millilitres of blood from the left auricle into the aorta with every heartbeat (totalling about 4.9 litres per minute); (d) how it could be explained that the autopsy report did

not establish any circular fractures of the bones of the base of the cranium after a fall from a height of 20 to 30 metres; and (e) which parts of the body would usually be damaged after a fall from this height, based on the weight of the body, its free movement during, as well as the velocity of the fall.

2.13 On 2 October 1996, the complainants' lawyer requested the Belgrade Public Prosecutor's Office that several potential witnesses be interviewed either by the Serbian Ministry of the Interior or by the Secretariat for Internal Affairs of Novi Sad: (a) the complainants, to find out whether M.K., when delivering the tragic news of their son's death, said: "Aunt Ljilja, they have killed Nikolica - they have killed Dumpling!"; (b) R.J. and Z.T., colleagues of the mother, who were present when M.K. told the mother that her son had died; (c) M.K., to establish whether she saw N.N. tying the cables to the radiator; whether he had been sleeping and, if so, whether he was already dressed when the police arrived at the door; how it was possible that she did not see N.N. jump out of the window, if she was in the same room; or, alternatively, how she could claim that there was no contact between N.N. and the policemen, if she was in another room; (d) neighbours in building No. 2, Pariske Komune Street, in particular D.N., the tenant of the flat above apartment No. 82, and S.L., who removed the biological traces in front of the building, to ask him what exactly he removed and whether he did this before or after the end of the in situ investigation; (e) several friends of the deceased, to find out whether N.N. had a fight with M.K. prior to 19 April 1994 and whether M.K. had threatened that she would "fix him"; (f) officials of the Belgrade Central Prison, to elucidate whether N.N. had escaped from prison, but was subsequently released on probation by decision of 23 July 1993 of the deputy public prosecutor; and (g) A.N., the sister of N.N., to ask her whether an intervention team of the Belgrade Secretariat for Internal Affairs came to her flat in January 1994, threatening that they would throw N.N. from the sixth floor, should they capture him.

2.14 In a report dated 27 November 1996, the same medical experts who prepared the autopsy report and the first forensic expertise dated 22 November 1994, while dismissing the questions asked by the complainants' lawyer (para. 2.12) as too vague, addressed the objections raised by Dr. Z.S. (para. 2.11), observing (a) that it was not customary to state the time and place of death in an autopsy report, as this information was already contained in the report of the doctor establishing the death and in the police report; (b) that the reason for the late autopsy was that the blood of the deceased (presumably a drug addict) was tested for HIV and that the results were received late on Friday, 22 April 1994, so that the autopsy could not be carried out before Monday, 25 April; (c) that the corpse had been kept in a refrigerator and only started to decompose during the autopsy and its subsequent cleaning and transport to the hospital chapel; (d) that the purpose of the autopsy report was to record the injuries and changes of the body of the deceased, rather than to explain how the brain tissue came on his sweatshirt; it could have passed through his nose or mouth, as the front skull cavity, which forms the roof of the nose cavity and of the pharynx, displayed numerous fractures of the skull base bones, which were always accompanied by ruptures of the attached hard brain tissue; (e) that the little amount of blood found in the chest cavity of the deceased was not due to death prior to the fall but to the considerable blood loss resulting from his injuries; (f) that Dr. Z.S. himself did not rule out that a fall on the feet could cause transversal fractures of the leg bones; (g) that the bending of the body following the contact of the feet with the ground did not exclude that numerous injuries, such as the aorta rupture, led to hyperextension of the body; (h) that the mechanism of the fall first on the feet and, in a second phase, on the left side of the body and the head explained the *decollement* in the region of the left thigh, the fissure on the lower left forehead, the fracture of the skull bones,

and the brain contusions; and (i) that the fall on the feet reduced the body's impact on the ground, which explained why the autopsy report recorded neither protrusion of the thigh bone heads through pelvic bones, nor circular fractures of the skull base.

2.15 On 26 February and 18 June 1997, the complainants' lawyer requested the district public prosecutor to resubmit his questions (para. 2.12) to the commission of forensic experts to seek clarification of the contradictions between the experts' findings and the findings of Dr. Z.S.

2.16 On 21 August 1997, Dr. Z.S. commented on the experts' second forensic report (para. 2.14), criticizing (a) that the experts had not provided a satisfactory explanation as to why the result of the HIV test had not been included in the autopsy report; (b) the contradiction between the experts' finding that the brain tissue on the deceased's clothes came through his nose and mouth and the statement in the autopsy report that the mucous membrane of the lips and mouth cavity were "examined in detail" but that "no signs of injuries [were] observed", and that no "foreign content", i.e. traces of brain tissue, was found in the nose and mouth; (c) the experts' failure to identify the part of the brain from which brain tissue was missing; (d) their failure to explain why such a small amount of blood was found in the thoracic cavities, given that the complainants' son probably continued to breath for some time following the infliction of the injuries, that the total blood flow of an adult is 5,000 ml per minute, and that blood pressure is the highest near the heart where the 3 x 1 cm aorta fissure was located; (e) the experts' superficial and contradictory description of the bone fractures; and (f) their conclusion that all recorded injuries resulted from the body's fall on the concrete ground, ignoring the possibility that some injuries could have been inflicted with a blunt mechanical weapon before the fall.

2.17 In a letter of 29 August 1997 to the Department for the Control of Legality of the Belgrade City Secretariat for Internal Affairs, the complainants drew attention to the fact that inspector J.J. reportedly was crying when the investigating magistrate arrived at Pariske Komune Street No. 2 and that he went on vacation the following day. They referred to the case of N.L., who had allegedly been forced to wear a bulletproof vest, on which he received blows with a baseball bat during his interrogation by, inter alia, inspector J.J., leaving few traces and causing a slow and painful death after two weeks.[b]

2.18 On 30 August 1997, the complainants brought charges of murder against police inspectors J.J., Z.P. and M.L., alleging that they had maltreated their son with hard round objects (such as a baseball bat), inflicting a number of grave injuries to his body, thereby voluntarily causing his death. Assuming that the transversal fractures of the lower legs had been inflicted prior to the fall, it could be ruled out that the injured had tried to escape through the window. The complainants also claimed that the police had breached the Code of Criminal Procedure (a) by forcibly entering the flat without the presence of a neutral witness; (b) by calling the investigating magistrate 30 minutes after the incident, rather than immediately, allegedly to remove incriminating evidence and to put M.K. on tranquilizers; (c) by interviewing no other witnesses than the police inspectors; (d) by having the deceased's body identified by M.K. rather than by his family; (e) by failing to seal the door or to return the keys of the apartment to the complainants; and (f) by sending M.K. to deliver the tragic news to the complainants. The complainants also informed the district prosecutor that several witnesses could testify that the police had previously shot at and threatened their son. They challenged the deputy public prosecutor for bias, since he had already indicated that he would reject any criminal charges.

2.19 After the District Public Prosecutor had decided, on 24 September 1997, not to initiate criminal proceedings against inspectors J.J., Z.P. and M.L., the complainants, on 4 October 1997, filed a request for an investigation of their son's alleged murder with the Belgrade District Court.[c] In particular, they requested the investigating judge to interrogate J.J., Z.P. and M.L. in the capacity of accused, to detain them on remand in order to prevent any interference with witnesses, to summon and examine certain witnesses, including the complainants themselves, and to seek clarification of the remaining forensic inconsistencies. By letter of 28 January to the President of the District Court, the complainants criticized that only one of their requests, i.e. the interrogation of the police inspectors, had been complied with. They also challenged that the authorities persistently refused to state the time of their son's death, that no explanation had been given for the numerous bruises on the deceased's body, that the Institute of Forensic Medicine had refused to hand out any photographs of the deceased and that its forensic findings were intended to conceal their son's abuse by the police, that M.K. had given three different versions of the incident to the investigating judge, the complainants, and her friends, respectively, and that not a single pedestrian on the busy streets facing apartment No. 82 had witnessed their son jumping out of the window.

2.20 By decision of 17 February 1998,[d] the Belgrade District Court found that the absence of any physical contact between the police inspectors and the deceased had been established on the basis of the concurring statements of J.J., Z.P. and M.L., the report of the investigating judge, as well as the police report of 19 April 1994, and the findings and opinions of the experts from the Institute of Forensic Medicine of the Belgrade Faculty of Medicine dated 22 November 1994 and 27 November 1996. It concluded that there were no grounds for conducting an investigation against the charged police inspectors for the criminal offence of murder.

2.21 On 13 March 1998, the complainants appealed to the Supreme Court of Serbia and Montenegro and, on 23 March, they supplemented their reasons of appeal. They challenged that the District Court had failed to address their arguments or the objections raised by Prof. Dr. Z.S., an internationally renowned expert selected by the United Nations for autopsies conducted on the territory of the former Yugoslavia, while merely relying on the contradictory findings of the commission of forensic experts and on the unscrutinized statements of M.K., as well as of the charged inspectors themselves, against one of whom criminal proceedings had previously been instituted for similar conduct. No fingerprints of the deceased had been found in apartment No. 82; the cables attached to the radiator had not even been examined for his biological traces.

2.22 By decision of 21 May 1998,[e] the Supreme Court of Serbia in Belgrade rejected the complainants' appeal as unfounded. It endorsed the findings of the Belgrade District Court, considering that the commission of experts, in its supplementary findings and opinions of 27 November 1996, responded to all objections raised by the complainants' lawyer and by Dr. Z.S. in a precise manner.

The complaint

3.1 The complainants claim that the State party failed to proceed to a prompt and impartial investigation of their son's death and alleged prior torture, in violation of article 12, although the forensic evidence submitted by the complainants strongly suggested that their son was the victim of an act of torture within the meaning of article 1 of the Convention.

3.2 They submit that other inconsistencies further supported their suspicion, inter alia: (a) the fact that N.N. was explicitly told that he would not be subjected to physical force, if he opened the door of apartment No. 82; (b) that the search warrant issued on 19 April 1994 only authorized the police to enter the apartment to "search for goods related to criminal offences", rather than to arrest N.N., and that it stated 11 a.m. as the time of the entry, although the police report stated 9.40 a.m. as the time of death; and (c) that it was unreasonable to expect that anyone would risk his life by trying to climb from the tenth to the ninth floor of a high-rise, only secured by some electric cables, break the window and enter the apartment on the ninth floor, only in order to find himself in the same situation as before, assuming that the police had plenty of time to reach the (presumably locked) door of the apartment on the ninth floor before this could be opened from inside.

3.3 The complainants claim that the dismissal of all their motions to initiate criminal proceedings, and of their subsequent appeals, raises doubts about the impartiality of the Serbian authorities' investigation into N.N.'s death and alleged prior torture, thus disclosing a violation of article 13 of the Convention. Thus, the investigating judge had never initiated an investigation or even heard the complainants; none of the witnesses named by the complainants' lawyer was ever heard or cross-examined.

3.4 The complainants submit an *amicus curiae* by Human Rights Watch/Helsinki dated 24 November 1997, which states that the "[i]nconsistencies in the various police and medical reports could only be adequately addressed in a court of law".

3.5 For the complainants, the State party's failure to investigate the circumstances of their son's death de facto prevents them from exercising their right to a fair and adequate compensation, guaranteed in article 14 of the Convention, as the legal successors of their son and as indirect victims of the acts of torture that he had presumably been subjected to. They refer to a similar case, in which the European Court of Human Rights found that the disappearance of the applicant's son amounted to inhuman and degrading treatment within the meaning of article 3 of the European Convention, and awarded £15,000 compensation for the disappeared son's pain and suffering and an additional £20,000 for the applicants' own anguish and distress.[f]

3.6 The complainants submit that the same matter has not been and is not being examined under another procedure of international investigation or settlement, and that they have exhausted all available domestic remedies.

Committee's request for State party's observations on the admissibility and the merits

4.1 By notes verbales of 2 November 2000, 19 April 2002 and 12 December 2002, the Committee requested the State party to submit its observations on the admissibility and merits of the communication. On 14 January 2003, the State party informed the Committee that it "accepts the individual complaint No. 174/2000".

4.2 After consultations with the Secretariat, the State party, on 20 October 2003, explained that "the acceptance", in its note verbale of 14 January 2003, "implies that Serbia and Montenegro recognizes the competence of the Committee against Torture to consider the aforementioned [complaint], but not the responsibility of the State concerning the individual [complaint] in question".

4.3 At the same time, the State party advised the Committee that it was still in the process of collecting data from the relevant authorities in order to prepare its observations on the merits of the complaint. No such information has been received to date.

Issues and proceedings before the Committee as to the admissibility and the merits

5. Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraphs 5 (a) and (b), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement, and that the complainants have exhausted all available domestic remedies. It therefore considers that the complainant's claims under articles 12, 13 and 14 of the Convention are admissible and proceeds to its examination on the merits.

6.1 The Committee has considered the communication in the light of all information made available to it, in accordance with article 22, paragraph 4, of the Convention. It regrets that the State party has not submitted any observations on the substance of the complaint and observes that, in the absence of any such observations, due weight must be given to the complainants' allegations, to the extent that they are substantiated.

6.2 The Committee must decide, pursuant to article 12 of the Convention, whether there are reasonable grounds to believe that an act of torture has been committed against the complainants' son prior to his death and, if so, whether the State party's authorities complied with their obligation to proceed to a prompt and impartial investigation.

6.3 The Committee considers that the following elements cast doubts on the sequence of events leading to the death of the complainants' son, as established by the State party's authorities:

(a) The fact that the autopsy report states that the injuries "were inflicted with a brandished, blunt and heavy object", thus suggesting that N.N. had been tortured prior to his fall from the window of apartment No. 82;

(b) The statement by inspector J.J. that he promised N.N. that he would not be subjected to physical violence, if he opened the door of apartment No. 82;

(c) The fact that the search warrant issued on 19 April 1994 did not explicitly authorize the police to arrest N.N., and that it states 11 a.m. as the time of entry into the apartment, although the death of N.N. occurred at 9.40 a.m., according to the police report;

(d) The contradiction between the police report and the report of the investigating judge (both dated 19 April 1994) as to the voluntary nature of the death of N.N., describing it as an accident resulting from the deceased's attempt to escape his arrest (police report) or as the result of what appears to have been a suicide (investigation report: "Nikolić had just jumped out of the window");

(e) The absence of witnesses who would have confirmed that N.N. jumped out of the window of apartment No. 82;

(f) The alleged inconsistencies in the testimony of M.K. (paras. 2.5 and 2.19);

(g) The fact that the investigating judge arrived at Pariske Komune Street No. 2 only at 10.30 a.m., apparently because he had not been informed of the death until 30 minutes after the incident, and that, despite his order to interview all witnesses, allegedly only the concerned police inspectors were interviewed;

(h) The alleged inconsistencies in the autopsy report and in the forensic findings of the expert commission and, in particular, the objections raised by Dr. Z.S., particularly his statement that it could not be excluded that some of the injuries had been inflicted prior to the fall, which in turn might have been inflicted by treatment in violation of the Convention;

(i) The alleged prior involvement of inspector J.J. in an act of torture; and

(j) The uncertainty about prior threats by the police and attempts to arrest N.N., allegedly involving the use of firearms by the police.

6.4 On the basis of these elements, the Committee considers that there were reasonable grounds for the State party to investigate the complainants' allegation that their son was tortured prior to his death.

6.5 The question therefore arises whether the investigative measures taken by the State party's authorities, in particular by the Belgrade deputy public prosecutor, were commensurate to the requirement of article 12 of the Convention to proceed to a prompt and impartial investigation of the events preceding the death of N.N. In this regard, the Committee notes the complainants' uncontested claim that the deputy public prosecutor advised them already on 22 April 1994, i.e. three days before the autopsy, that he would not initiate criminal proceedings ex officio, as he considered their son's death an accident, and that he did not examine any of the witnesses named by their lawyer. It also notes that the investigating judge entrusted the same forensic experts, who had conducted the autopsy, with the preparation of both expert opinions, with a view to addressing the alleged inconsistencies in their own autopsy report, despite several requests by the complainants to order a forensic expertise from another institution. The Committee concludes that the investigation of the circumstances of the death of the complainants' son was not impartial and therefore in violation of article 12 of the Convention.

6.6 With regard to the alleged violation of article 13, the Committee observes that, although the complainants were entitled to complain to the courts after the deputy public prosecutor had decided not to institute criminal proceedings against J.J., Z.P. and M.L., both the Belgrade District Court and the Supreme Court based their finding that there had been no physical contact between the police and N.N. exclusively on evidence that had been challenged by the complainants and which, according to them, was flawed by numerous inconsistencies.[g] Both courts dismissed the complainants' appeals without addressing their arguments. The Committee therefore considers that the State party's courts failed to examine the case impartially, thereby violating article 13 of the Convention.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the State party's failure to proceed to an impartial investigation of the death of the complainants' son constitutes a violation of articles 12 and 13 of the Convention.

8. Concerning the alleged violation of article 14 of the Convention, the Committee postpones its consideration until receipt of the information requested from the State party in paragraph 9 below.

9. Pursuant to rule 112, paragraph 5, of its rules of procedure, the Committee wishes to receive from the State party, within 90 days, information on the measures taken to give effect to the Committee's Views, in particular on the initiation and the results of an impartial investigation of the circumstances of the death of the complainants' son.

Notes

[a] The term "scene of the crime" is used in the police report dated 19 April 1994.

[b] See a newspaper article submitted by the authors in *VREME Magazine*, 9 March 1996, "The deadly bat".

[c] In accordance with Section 60 of the Code of Criminal Procedure of the State party, the injured party may apply for criminal proceedings to be instituted, if the public prosecutor finds that there are no sufficient grounds to initiate criminal proceedings ex officio. If the investigating judge rejects the request for the initiation of criminal proceedings, a special chamber of the competent court decides whether such proceedings shall be initiated. See ibid., section 159.

[d] See Belgrade District Court, decision of 17 February 1998, Ki. No. 898/97 (Kv. No. 99/98).

[e] See Supreme Court of Serbia in Belgrade, decision of 21 May 1998, Kž. II 224/98.

[f] See European Court of Human Rights, *Kurt v. Turkey*, Judgement of 25 May 1998.

[g] See paras. 2.20-2.22 above.

Communication No. 181/2001

Submitted by: Suleymane Guengueng et al. (represented by counsel)

Alleged victims: The complainants

State party: Senegal

Date of complaint: 18 April 2001 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 17 May 2006,

Having concluded its consideration of communication No. 181/2001, submitted to the Committee against Torture by Suleymane Guengueng et al. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all the information made available to it by the complainants and the State party,

Adopts the following decision under article 22 of the Convention.[a]

1.1 The complainants are Suleymane Guengueng, Zakaria Fadoul Khidir, Issac Haroun, Younous Mahadjir, Valentin Neatobet Bidi, Ramadane Souleymane and Samuel Togoto Lamaye (hereinafter "the complainants"), all of Chadian nationality and living in Chad. They claim to be victims of a violation by Senegal of article 5, paragraph 2, and article 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "the Convention").

1.2 Senegal ratified the Convention on 21 August 1986 and made the declaration under article 22 of the Convention on 16 October 1996.

1.3 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the communication to the attention of the State party on 20 April 2001. At the same time, the Committee, acting under article 108, paragraph 9, of its rules of procedure, requested the State party, as an interim measure, not to expel Hissène Habré and to take all necessary measures to prevent him from leaving the territory other than under an extradition procedure. The State party acceded to this request.

The facts as submitted by the complainants

2.1 Between 1982 and 1990, during which period Hissène Habré was President of Chad, the complainants were purportedly tortured by agents of the Chadian State answerable directly to President Hissène Habré. The acts of torture committed during this period formed the subject of a report by the National Commission of Inquiry established by the Chadian Ministry of Justice; according to that report 40,000 political murders and systematic acts of torture were committed by the Habré regime.

2.2 The complainants have submitted to the Committee a detailed description of the torture and other forms of ill-treatment that they claim to have suffered. Moreover, relatives of two of them, Valentin Neatobet Bidi and Ramadane Souleymane, have disappeared: on the basis of developments in international law and the case law of various international bodies, the complainants consider this equivalent to torture and other inhuman and degrading treatment, both for the disappeared persons and, in particular, for their relations.

2.3 After being ousted by the current President of Chad, Idriss Déby, in December 1990, Hissène Habré took refuge in Senegal, where he has since resided. In January 2000, the complainants lodged a complaint against him with an examining magistrate in Dakar. On 3 February 2000, the examining magistrate charged Hissène Habré with being an accomplice to acts of torture, placed him under house arrest and opened an inquiry against a person or persons unknown for crimes against humanity.

2.4 On 18 February 2000, Hissène Habré applied to the Indictment Division of the Dakar Court of Appeal for the charge against him to be dismissed. The complainants consider that, thereafter, political pressure was brought to bear to influence the course of the proceedings. They allege in particular that, following this application, the examining magistrate who had indicted Hissène Habré was transferred from his position by the Supreme Council of Justice and that the President of the Indictment Division before which the appeal of Hissène Habré was pending was transferred to the Council of State.

2.5 On 4 July 2000, the Indictment Division dismissed the charge against Hissène Habré and the related proceedings on the grounds of lack of jurisdiction, affirming that "Senegalese courts cannot take cognizance of acts of torture committed by a foreigner outside Senegalese territory, regardless of the nationality of the victims: the wording of article 669 of the Code of Criminal Procedure excludes any such jurisdiction." Following this ruling, the Special Rapporteurs on the question of torture and on the independence of judges and lawyers of the United Nations Commission on Human Rights expressed their concerns in a press release dated 2 August 2000.[b]

2.6 On 7 July 2000, the complainants filed an appeal with Senegal's Court of Cassation against the ruling of the Indictment Division, calling for the proceedings against Hissène Habré to be reopened. They maintained that the ruling of the Indictment Division was contrary to the Convention against Torture and that a domestic law could not be invoked to justify failure to apply the Convention.

2.7 On 20 March 2001, the Senegalese Court of Cassation confirmed the ruling of the Indictment Division, stating inter alia that "no procedural text confers on Senegalese courts a universal jurisdiction to prosecute and judge, if they are found on the territory of the Republic, presumed perpetrators of or accomplices in acts [of torture] … when these acts have been committed outside Senegal by foreigners; the presence in Senegal of Hissène Habré cannot in itself justify the proceedings brought against him".

2.8 On 19 September 2005, after four years of investigation, a Belgian judge issued an international arrest warrant against Hissène Habré, charging him with genocide, crimes against humanity, war crimes, torture and other serious violations of international humanitarian law. On the same date, Belgium made an extradition request to Senegal, citing, inter alia, the Convention against Torture.

2.9 In response to the extradition request, the Senegalese authorities arrested Hissène Habré on 15 November 2005.

2.10 On 25 November 2005, the Indictment Division of the Dakar Court of Appeal stated that it lacked jurisdiction to rule on the extradition request. Nevertheless, on 26 November, the Senegalese Minister of the Interior placed Hissène Habré "at the disposal of the President of the African Union" and announced that Hissène Habré would be expelled to Nigeria within 48 hours. On 27 November, the Senegalese Minister for Foreign Affairs stated that Hissène Habré would remain in Senegal and that, following a discussion between the Presidents of Senegal and Nigeria, it had been agreed that the case would be brought to the attention of the next Summit of Heads of State and Government of the African Union, which would be held in Khartoum on 23 and 24 January 2006.

2.11 At its Sixth Ordinary Session, held on 24 January 2006, the Assembly of the African Union decided to set up a committee of eminent African jurists, who would be appointed by the Chairman of the African Union in consultation with the Chairman of the African Union Commission, to consider all aspects and implications of the Hissène Habré case and the possible options for his trial, and report to the African Union at its next ordinary session in June 2006.

The complaint

3.1 The complainants allege a violation by Senegal of article 5, paragraph 2, and article 7 of the Convention and seek in this regard various forms of compensation.

Violation of article 5, paragraph 2, of the Convention

3.2 The complainants point out that, in its ruling of 20 March 2001, the Court of Cassation stated that "article 79 of the Constitution [which stipulates that international treaties are directly applicable within the Senegalese legal order and can accordingly be invoked directly before Senegalese courts] cannot apply when compliance with the Convention requires prior legislative measures to be taken by Senegal" and "article 669 of the Code of Criminal Procedure [which enumerates the cases in which proceedings can be brought against foreigners in Senegal for acts committed abroad] has not been amended". They also note that, while the State party has adopted legislation to include the crime of torture in its Criminal Code in accordance with article 4 of the Convention, it has not adopted any legislation relating to article 5, paragraph 2, despite the fact that this provision is the "cornerstone" of the Convention, referring in this connection to the *travaux préparatoires*.

3.3 Moreover, the complainants point out, whereas the Court of Cassation states that "the presence in Senegal of Hissène Habré cannot in itself justify the proceedings", it is precisely the presence of the offender in Senegalese territory, that constitutes the basis under article 5 of the Convention for establishing the jurisdiction of the country concerned.

3.4 The complainants consider that the ruling of the Court of Cassation is contrary to the main purpose of the Convention and to the assurance given by the State party to the Committee against Torture, that no internal legal provision in any way hinders the prosecution of torture offences committed abroad.[c]

3.5 The complainants note that, irrespective of article 79 of the Constitution, under which the Convention is directly an integral part of internal Senegalese legislation, it was incumbent on the authorities of the State party to take any additional legislative measures necessary to prevent all ambiguities such as those pointed out by the Court of Cassation.

3.6 The complainants observe that members of the Committee regularly emphasize the need for States parties to take appropriate legislative measures to establish universal jurisdiction in cases of torture. During its consideration of the second periodic report submitted by the State party under article 19 of the Convention, the Committee underlined the importance of article 79 of the Senegalese Constitution, stressing that it should be implemented unreservedly.[d] The State party had, moreover, expressly affirmed in its final statement that it "intended to honour its commitments, in the light of the Committee's conclusions and in view of the primacy of international law over internal law".[e]

3.7 The complainants therefore consider that the State party's failure to make its legislation comply with article 5, paragraph 2, of the Convention constitutes a violation of this provision.

Violation of article 7 of the Convention

3.8 On the basis of several concordant opinions expressed by members of the British House of Lords in the Pinochet case, the complainants argue that the essential aim of the Convention is to ensure that no one suspected of torture can evade justice simply by moving to another country and that article 7 is precisely the expression of the principle *aut dedere aut punire*, which not only allows but obliges any State party to the Convention to declare it has jurisdiction over torture, wherever committed. Similarly, the complainants refer to Cherif Bassiouni and Edward Wise, who maintain that article 7 expresses the principle *aut dedere aut judicare*.[f] They also cite a legal opinion according to which "the Convention's main jurisdictional feature is thus that it does not impose a solely legislative and territorial obligation, in the manner of previous human rights conventions, drawing as it does on the models of collective security of Tokyo and The Hague, dominated by the principle of jurisdictional freedom, *aut dedere aut prosequi*, as well as by the obligation to prosecute".[g]

3.9 The complainants stress that the Committee itself, when considering the third periodic report of the United Kingdom concerning the Pinochet case, recommended "initiating criminal proceedings in England, in the event that the decision is made not to extradite him. This would satisfy the State party's obligations under articles 4 to 7 of the Convention and article 27 of the Vienna Convention on the Law of Treaties of 1969".[h]

3.10 While in its second periodic report to the Committee it described in detail the mechanism for implementing article 7 in its territory, the State party has neither prosecuted nor extradited Hissène Habré, and this the complainants consequently regard as a violation of article 7 of the Convention.

Compensation

3.11 The complainants state that they have been working for over 10 years to prepare a case against Hissène Habré and that the latter's presence in the State party together with the existence of international commitments binding upon Senegal have been decisive factors in the institution

of proceedings against him. The decision by the authorities of the State party to drop these proceedings has therefore caused great injury to the complainants, for which they are entitled to seek compensation.

3.12 In particular, the complainants request the Committee to find that:

- By discontinuing the proceedings against Hissène Habré, the State party has violated article 5, paragraph 2, and article 7 of the Convention;

- The State party should take all necessary steps to ensure that Senegalese legislation complies with the obligations deriving from the above-mentioned provisions. The complainants note in this connection that, while the findings of the Committee are only declaratory in character and do not affect the decisions of the competent national authorities, they also carry with them "a responsibility on the part of the State to find solutions that will enable it to take all necessary measures to comply with the Convention",[i] measures that may be political or legislative;

- The State party should either extradite Hissène Habré or submit the case to the competent authorities for the institution of criminal proceedings;

- If the State party neither tries nor extradites Hissène Habré, it should compensate the complainants for the injury suffered, by virtue inter alia of article 14 of the Convention. The complainants also consider that, if necessary, the State party should itself pay this compensation in lieu of Hissène Habré, following the principle established by the European Court of Human Rights in the case of *Osman v. the United Kingdom*;[j]

- The State party should compensate the complainants for the costs they have incurred in the proceedings in Senegal; and

- Pursuant to article 111, paragraph 5, of the Committee's rules of procedure, the State party should inform the Committee within 90 days of the action it has taken in response to the Committee's views.

The State party's observations on the admissibility

4. On 19 June 2001, the State party transmitted to the Committee its observations on the admissibility of the communication. It maintains that the communication could be considered by the Committee only if the complainants were subject to the jurisdiction of Senegal. The torture referred to by the complainants was suffered by nationals of Chad and is presumed to have been committed in Chad by a Chadian. The complainants are not, therefore, subject to the jurisdiction of the State party within the meaning of article 22, paragraph 1, of the Convention since, under Senegalese law, in particular article 699 of the Code of Criminal Procedure, a complaint lodged in Senegal against such acts cannot be dealt with by the Senegalese courts, whatever the nationality of the victims. The State party is consequently of the opinion that the communication should be declared inadmissible.

Complainants' comments on the State party's observations on the admissibility

5.1 In a letter dated 19 July 2001, the complainants first stress that, contrary to what is indicated by the State party, the substance of the alleged violation by Senegal is not the torture they underwent in Chad but the refusal of the Senegalese courts to act upon the complaint lodged against Hissène Habré. The incidents of torture were presented to the Committee solely for the purpose of describing the background to the complaints lodged in Senegal.

5.2 The complainants go on to observe that the State party's interpretation of the expression "subject to its jurisdiction", appearing in article 22 of the Convention would effectively render any appeal to the Committee on Torture meaningless.

5.3 In this connection, the complainants point out that article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights is drafted in the same terms as article 22 of the Convention and has on several occasions been discussed by the Human Rights Committee, which has interpreted the clause in an objective, functional manner: an individual should be considered subject to the jurisdiction of a State if the alleged violations result from an action by that State. It matters little whether the author of the communication is, for example, a national of that State or resides in its territory.[k] In the *Ibrahima Gueye et al. v. France* case, the complainants, of Senegalese nationality and living in Senegal, were found by the Human Rights Committee to be subject to French jurisdiction in the matter of pensions payable to retired soldiers of Senegalese nationality who had served in the French army prior to the independence of Senegal, although the authors were not generally subject to French jurisdiction.[l] The fact of being subject to the jurisdiction of a State within the meaning of article 22 of the Convention must be determined solely on the basis of consideration of the facts alleged in the complaint.[m]

5.4 It follows, in the present case, that the complainants should be considered subject to the jurisdiction of the State party inasmuch as the facts alleged against Senegal under the Convention concern judicial proceedings before the Senegalese courts. Thus, contrary to the contention of the State party, it matters little that the torture occurred in another country or that the victims are not Senegalese nationals. To establish that the complainants are subject to Senegalese jurisdiction in the present instance, one has only to establish that the communication concerns acts that fell under Senegal's jurisdiction, since as only Senegal can decide whether to continue with the legal proceedings instituted by the complainants in Senegal. By instituting proceedings in the Senegalese courts, the complainants came under the jurisdiction of the State party for the purposes of those proceedings.

5.5 The complainants also make the subordinate point that, under Senegalese law, foreigners instituting judicial proceedings in the State party must accept Senegalese jurisdiction. This shows that, even if Senegal's restrictive interpretation is accepted, the complainants do indeed come under the State party's jurisdiction.

5.6 Lastly, the authors argue that the State party cannot invoke domestic law to claim that they are not subject to its jurisdiction since that would be tantamount to taking advantage of its failure to comply with article 5, paragraph 2, of the Convention, under which States parties are obliged to take such measures as may be necessary to establish their jurisdiction over the offences referred to in article 4 of the Convention. In invoking this argument, the State party is disregarding both customary law and international law. The principle of *nemo auditur propriam turpitudinem allegans* is applied in most legal systems and prevents anyone asserting a right

acquired by fraud. Moreover, under article 27 of the Vienna Convention on the Law of Treaties, "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty". The complainants point out that the Vienna Convention thus reaffirms the principle that, regardless of the arrangements under internal law for the implementation of a treaty at the national level, such arrangements cannot detract from the State's obligation at an international level to ensure the implementation of and assume international responsibility for the treaty.

The Committee's decision on the admissibility

6.1 At its twenty-seventh session, the Committee considered the admissibility of the complaint. It ascertained that the matter had not been and was not being examined under another procedure of international investigation or settlement, and considered that the communication did not constitute an abuse of the right to submit such communications and was not incompatible with the provisions of the Convention.

6.2 The Committee took note of the State party's argument that the communication should be found inadmissible since the complainants are not subject to Senegal's jurisdiction within the meaning of article 22 of the Convention.

6.3 To establish whether a complainant is effectively subject to the jurisdiction of the State party against which a communication has been submitted within the meaning of article 22, the Committee must take into account various factors that are not confined to the author's nationality. The Committee observes that the alleged violations of the Convention concern the refusal of the Senegalese authorities to prosecute Hissène Habré despite their obligation to establish universal jurisdiction in accordance with article 5, paragraph 2, and article 7 of the Convention. The Committee also observes that the State party does not dispute that the authors were the plaintiffs in the proceedings brought against Hissène Habré in Senegal. Moreover, the Committee notes, the complainants in this case accepted Senegalese jurisdiction in order to pursue the proceedings against Hissène Habré which they instituted. On the basis of these elements, the Committee is of the opinion that the authors are indeed subject to the jurisdiction of Senegal in the dispute to which this communication refers.

6.4 The Committee also considers that the principle of universal jurisdiction enunciated in article 5, paragraph 2, and article 7 of the Convention implies that the jurisdiction of States parties must extend to <u>potential</u> complainants in circumstances similar to the complainants'.

6.5 Accordingly, the Committee against Torture declared the communication admissible on 13 November 2001.

State party's observations on the merits

7.1 The State party transmitted its observations on the merits by note verbale dated 31 March 2002.

7.2 The State party points out that, in accordance with the rules of criminal procedure, judicial proceedings in Senegal opened on 27 January 2000 with an application from the public prosecutor's office in Dakar for criminal proceedings to be brought against Hissène Habré as an accessory to torture and acts of barbarism and against a person or persons unknown for torture,

acts of barbarism and crimes against humanity. Hissène Habré was charged on both counts on 3 February 2000 and placed under house arrest. On 18 February 2000, Hissène Habré submitted an application for the proceedings to be dismissed on the grounds that the Senegalese courts were not competent, that the charges had no basis in law, and that the alleged offences were time-barred.

7.3 On 4 July 2000, the Indictment Division of the Court of Appeal dismissed the proceedings. On 20 March 2001, the Court of Cassation rejected the appeal lodged by the complainants (plaintiffs). That ruling, handed down by the highest court in Senegal, thus brought the proceedings to an end.

7.4 Regarding the allegations that the executive put pressure on the judiciary, in particular by transferring and/or removing the judges trying the case, namely the chief examining magistrate and the President of the Indictment Division, the State party reminds the Committee that the President of the Indictment Division is *primus inter pares* in a three-person court and is thus in no position to impose his or her views. The other two members of the Indictment Division were not affected by the reassignment of judges, which in any case was an across-the-board measure.

7.5 It is also important to bear in mind that any country is free to organize its institutions as it sees fit in order to ensure their proper functioning.

7.6 The independence of the judiciary is guaranteed by the Constitution and the law. One such guarantee is oversight of the profession and rules of conduct of the judiciary by the Higher Council of the Judiciary, whose members are judges, some of them elected and others appointed. Appeals may be lodged when the appointing authority is accused of having violated the principle of the independence of the judiciary.

7.7 A basic element of judicial independence is that judges may appeal against decisions affecting them, and that the executive is duty-bound not to interfere in the work of the courts. Judges' right of appeal is not merely theoretical.

7.8 The Council of State did indeed revoke a number of judges' appointments on 13 September 2001, considering that they failed to apply a basic safeguard designed to protect trial judges and thereby ensure their independence, namely the obligation to obtain people's prior consent before assigning them to new positions, even by means of promotion.

7.9 It must be acknowledged that the Senegalese judiciary is genuinely independent. Criminal proceedings necessarily culminate in decisions which, unfortunately, cannot satisfy all the parties. The judicial investigation is a component of criminal procedure and, by its very nature, is subject to all the safeguards provided for in international instruments. In the present case, the parties benefited from conditions recognized as ensuring fair dispensation of justice. Where no legal provision exists, proceedings cannot be pursued without violating the principle of legality; that was confirmed by the Court of Cassation in its ruling of 20 March 2001.

On the violation of article 5, paragraph 2, of the Convention

7.10 In its ruling on the Hissène Habré case, the Court of Cassation considered that "duly ratified treaties or agreements have, once they are published, an authority higher than that of laws, subject to implementation, in the case of each agreement or treaty, by the other party", and

that the Convention cannot be applied as long as Senegal has not taken prior legislative measures. The Court adds that ratification of the Convention obliges each State party to take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4, or to extradite perpetrators of torture.

7.11 Proceedings were brought against Hissène Habré. However, since the Convention against Torture is not self-executing, Senegal, in order to comply with its commitments, promulgated Act No. 96-16 of 28 August 1996 enacting article 295 of the Criminal Code. The principle *aut dedere aut judicare* comprises the obligation to prosecute or to extradite in an efficient and fair manner. In this regard, Senegalese legislators have endorsed the argument of Professor Bassiouni, according to whom "[t]he obligation to prosecute or extradite must, in the absence of a specific convention stipulating such an obligation, and in spite of specialists' arguments to this effect, be proved to be part of customary international law".

7.12 Pursuant to article 4 of the Convention, torture is classified in the Senegalese Criminal Code as an international crime arising from *jus cogens*. It should be noted that Senegal is aware of the need to amend its legislation; however, under the Convention a State party is not bound to meet its obligations within a specific time frame.

On the violation of article 7 of the Convention

7.13 Since the Convention is not self-executing, in order to establish universal jurisdiction over acts of torture it is necessary to pass a law establishing the relevant procedure and substantive rules.

7.14 While the Committee has stressed the need for States parties to take appropriate legislative measures to ensure universal jurisdiction over crimes of torture, the manner in which this procedure is accomplished cannot be dictated. Senegal is engaged in a very complex process that must take account of its status as a developing State and the ability of its judicial system to apply the rule of law.

7.15 The State party points out that the difficulty of ensuring the absolute application of universal jurisdiction is commonly acknowledged. It is therefore normal to provide for different stages of its application.

7.16 However, the absence of domestic codification of universal jurisdiction has not allowed Hissène Habré complete impunity. Senegal applies the principle *aut dedere aut judicare*. Any request for judicial assistance or cooperation is considered benignly and granted insofar as the law permits, particularly when the request relates to the implementation of an international treaty obligation.

7.17 In the case of Hissène Habré, Senegal is applying article 7 of the Convention. The obligation to extradite, unless raised at another level, has never posed any difficulties. Consequently, if a request is made for application of the other option under the principle *aut dedere aut judicare*, there is no doubt that Senegal will fulfil its obligations.

On the request for financial compensation

7.18 In violation of the principle *Electa una via non datur recursus ad alteram* (once a course of action is chosen, there is no recourse to another), the complainants have also instituted proceedings against Hissène Habré in the Belgian courts. The State party believes that, in the circumstances, to ask Senegal to consider financial compensation would be a complete injustice.

7.19 The Belgian Act of 16 June 1993 (as amended by the Act of 23 April 2003) relating to the suppression of serious violations of international humanitarian law introduces significant departures from Belgian criminal law in both procedure and substance. A Belgian examining magistrate has been assigned, and pretrial measures have been requested, just as they had been in Senegal. The State party maintains that it is advisable to let these proceedings follow their course before considering compensation of any kind.

Complainants' comments on the State party's observations on the merits

8.1 In a letter dated 1 July 2002, the complainants submitted their observations on the merits.

On the violation of article 5, paragraph 2, of the Convention

8.2 With regard to the State party's argument that there is no specific time frame for complying with its obligations under the Convention, the complainants' principal contention is that the State party was bound by the Convention from the date of its ratification.

8.3 According to article 16 of the Vienna Convention on the Law of Treaties (hereinafter "the Vienna Convention"), "unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon: […] (b) their deposit with the depositary […]". The *travaux préparatoires* relating to this provision confirm that the State party is immediately bound by the obligations arising from the treaty, from the moment the instrument of ratification is deposited.

8.4 According to the complainants, the State party's arguments call into question the very meaning of the act of ratification and would lead to a situation in which no State would have to answer for a failure to comply with its treaty obligations.

8.5 With regard to the specific legislative measures that a State must take in order to meet its treaty obligations, the complainants maintain that the manner in which the State in question fulfils its obligations is of little importance from the standpoint of international law. Moreover, they believe that international law is moving towards the elimination of the formalities of national law relating to ratification, on the principle that the norms of international law should be considered binding in the internal and international legal order as soon as a treaty has entered into force. The complainants add that the State party could have taken the opportunity to amend its national legislation even before it ratified the Convention.

8.6 Finally, the complainants recall that article 27 of the Vienna Convention prohibits the State party from invoking the provisions of its internal law as a justification for its failure to perform its treaty obligations. This provision has been interpreted by the Committee on Economic, Social and Cultural Rights as an obligation for States to "modify the domestic legal order as necessary in order to give effect to their treaty obligations".[n]

8.7 As a subsidiary argument, the complainants maintain that, even if one considers that the State party was not bound by its obligations from the moment the treaty was ratified, it has committed a violation of article 5 by not adopting appropriate legislation to comply with the Convention within a reasonable time frame.

8.8 Article 26 of the Vienna Convention establishes the obligation of parties to perform their obligations under international treaties in good faith; the complainants point out that, since it ratified the Convention Against Torture on 21 August 1986, the State party had 15 years before the submission of the present communication to implement the Convention, but did not do so.

8.9 In this regard, the Committee, in its concluding observations on the second periodic report of Senegal, had already recommended that "the State party should, during its current legislative reform, consider introducing explicitly in national legislation the following provisions: (a) The definition of torture set forth in article 1 of the Convention and the classification of torture as a general offence, in accordance with article 4 of the Convention, which would, inter alia, permit the State party to exercise universal jurisdiction as provided in articles 5 et seq. of the Convention; […]".[o] The State party has not followed up this recommendation and has unreasonably delayed adoption of the legislation necessary for implementing the Convention.

On the violation of article 7 of the Convention

8.10 With regard to the argument that article 7 has not been violated because the State was prepared, if necessary, to extradite Hissène Habré, the complainants maintain that the obligation under article 7 to prosecute Hissène Habré is not linked to the existence of an extradition request.

8.11 The complainants appreciate the fact that Senegal was prepared to extradite Hissène Habré and in this connection point out that on 27 September 2001 President Wade had stated that "if a country capable of holding a fair trial - we are talking about Belgium - wishes to do so, I do not see anything to prevent it". Nevertheless, this suggestion was purely hypothetical at the time of the present observations since no extradition request had yet been made.

8.12 On the basis of a detailed examination of the *travaux préparatoires*, the complainants refute the argument that the State party appears to be propounding, namely that there would be an obligation to prosecute under article 7 only after an extradition request had been made and refused. They also condense long passages from an academic work[p] to demonstrate that the State's obligation to prosecute a perpetrator of torture under article 7 does not depend on the existence of an extradition request.

On the request for financial compensation

8.13 The complainants reject the State party's claim that they have instituted proceedings in Belgian courts. It is, in fact, other former victims of Hissène Habré who have applied to the Belgian courts. The complainants are not parties to those proceedings.

8.14 The complainants also maintain that there is no risk of double compensation because Hissène Habré can be tried only in one place.

The Committee's considerations on the merits

9.1 The Committee notes, first of all, that its consideration on the merits has been delayed at the explicit wish of the parties because of judicial proceedings pending in Belgium for the extradition of Hissène Habré.

9.2 The Committee also notes that, despite its note verbale of 24 November 2005 requesting the State party to update its observations on the merits before 31 January 2006, the State party has not acceded to that request.

9.3 On the merits, the Committee must determine whether the State party violated article 5, paragraph 2, and article 7 of the Convention. It finds - and this has not been challenged - that Hissène Habré has been in the territory of the State party since December 1990. In January 2000, the complainants lodged with an examining magistrate in Dakar a complaint against Hissène Habré alleging torture. On 20 March 2001, upon completion of judicial proceedings, the Court of Cassation of Senegal ruled that "no procedural text confers on Senegalese courts a universal jurisdiction to prosecute and judge, if they are found on the territory of the Republic, presumed perpetrators of or accomplices in acts [of torture] … when these acts have been committed outside Senegal by foreigners; the presence in Senegal of Hissène Habré cannot in itself justify the proceedings brought against him". The courts of the State party have not ruled on the merits of the allegations of torture that the complainants raised in their complaint.

9.4 The Committee also notes that, on 25 November 2005, the Indictment Division of the Dakar Court of Appeal stated that it lacked jurisdiction to rule on Belgium's request for the extradition of Hissène Habré.

9.5 The Committee recalls that, in accordance with article 5, paragraph 2, of the Convention, "each State party shall […] take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him […]". It notes that, in its observations on the merits, the State party has not contested the fact that it had not taken "such measures as may be necessary" in keeping with article 5, paragraph 2, of the Convention, and observes that the Court of Cassation itself considered that the State party had not taken such measures. It also considers that the reasonable time frame within which the State party should have complied with this obligation has been considerably exceeded.

9.6 The Committee is consequently of the opinion that the State party has not fulfilled its obligations under article 5, paragraph 2, of the Convention.

9.7 The Committee recalls that, under article 7 of the Convention, "the State party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution". It notes that the obligation to prosecute the alleged perpetrator of acts of torture does not depend on the prior existence of a

request for his extradition. The alternative available to the State party under article 7 of the Convention exists only when a request for extradition has been made and puts the State party in the position of having to choose between (a) proceeding with extradition or (b) submitting the case to its own judicial authorities for the institution of criminal proceedings, the objective of the provision being to prevent any act of torture from going unpunished.

9.8 The Committee considers that the State party cannot invoke the complexity of its judicial proceedings or other reasons stemming from domestic law to justify its failure to comply with these obligations under the Convention. It is of the opinion that the State party was obliged to prosecute Hissène Habré for alleged acts of torture unless it could show that there was not sufficient evidence to prosecute, at least at the time when the complainants submitted their complaint in January 2000. Yet by its decision of 20 March 2001, which is not subject to appeal, the Court of Cassation put an end to any possibility of prosecuting Hissène Habré in Senegal.

9.9 Consequently and notwithstanding the time that has elapsed since the initial submission of the communication, the Committee is of the opinion that the State party has not fulfilled its obligations under article 7 of the Convention.

9.10 Moreover, the Committee finds that, since 19 September 2005, the State party has been in another situation covered under article 7, because on that date Belgium made a formal extradition request. At that time, the State party had the choice of proceeding with extradition if it decided not to submit the case to its own judicial authorities for the purpose of prosecuting Hissène Habré.

9.11 The Committee considers that, by refusing to comply with the extradition request, the State party has again failed to perform its obligations under article 7 of the Convention.

9.12 The Committee against Torture, acting under article 22, paragraph 7, of the Convention, concludes that the State party has violated article 5, paragraph 2, and article 7 of the Convention.

10. In accordance with article 5, paragraph 2, of the Convention, the State party is obliged to adopt the necessary measures, including legislative measures, to establish its jurisdiction over the acts referred to in the present communication. Moreover, under article 7 of the Convention, the State party is obliged to submit the present case to its competent authorities for the purpose of prosecution or, failing that, since Belgium has made an extradition request, to comply with that request, or, should the case arise, with any other extradition request made by another State, in accordance with the Convention. This decision in no way influences the possibility of the complainants' obtaining compensation through the domestic courts for the State party's failure to comply with its obligations under the Convention.

11. Bearing in mind that, in making the declaration under article 22 of the Convention, the State party recognized the competence of the Committee to decide whether or not there has been a violation of the Convention, the Committee wishes to receive information from the State party within 90 days on the measures it has taken to give effect to its recommendations.

Notes

[a] In accordance with rule 103 of the Committee's rules of procedure, Mr. Guibril Camara did not take part in the Committee's deliberations on this case.

[b] According to the press release, "[t]he Special Rapporteur on the independence of judges and lawyers, Mr. Dato Param Cumaraswamy, and the Special Rapporteur on the question of torture, Sir Nigel Rodley, have expressed their concern to the Government of Senegal over the circumstances surrounding the recent dismissal of charges against Hissène Habré, the former President of Chad. […] The Special Rapporteurs reminded the Government of Senegal of its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which it is party. They also draw its attention to the resolution adopted this year by the Commission on Human Rights on the question of torture (resolution 2000/43), in which the Commission stressed the general responsibility of all States to examine all allegations of torture and to ensure that those who encourage, order, tolerate or perpetrate such acts be held responsible and severely punished".

[c] See the second periodic report of Senegal to the Committee against Torture, CAT/C/17/Add.14, para. 42

[d] See the concluding observations of the Committee against Torture, A/51/44, para. 117.

[e] CAT/C/SR.249, para. 44.

[f] Cherif Bassiouni and Edward Wise, *Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law*, Martinus Nijhoff Publishers, 1997, p. 159.

[g] Marc Henzelin, *Le principe de l'universalité en droit pénal international. Droits et obligations pour les Etats de poursuivre et de juger selon le principe de l'universalité*, Helbing & Lichtenhahn, ed. Bruylant, Basel-Brussels, 2000, p. 349.

[h] Concluding observations of the Committee against Torture, 17 November 1998, A/54/44, para. 77 (f).

[i] Communication No. 34/1995 *Seid Mortesa v. Switzerland*, CAT/C/18/D/34/1995, para. 11.

[j] ECHR/87/1997/871/1083, 28 October 1998.

[k] See *Primo Jose Essono Mika Miha v. Equatorial Guinea*, communication No. 414/1990 submitted to the Human Rights Committee, A/49/40, vol. II (1994), annex IX, part O (pp. 96-100). The complainants also point out that the nationality of the author of a communication is not sufficient to establish that the author is subject to that State's jurisdiction (see *H. v. d. P. v. the Netherlands*, communication No. 217/1986, A/42/40 (1987), annex IX, part C (pp. 185-186), para. 3.2.

[l] Communication No. 196/1985, A/44/40 (1989), annex X, part B (pp. 189-195).

[m] See *Sophie Vidal Martins v. Uruguay*, communication No. 57/1979, A/37/40 (1982), annex XIII (pp. 157-160).

[n] General comment No. 9, 3 December 1998, E/C.12/1998/24, para. 3.

[o] See A/51/44, para. 114.

[p] Mark Henzelin, *Le Principe d'universalité en Droit pénal international. Droit et obligation pour les Etats de poursuivre et juger selon le principe de l'universalité*, Bruylant, Bruxelles, 2000.

Communication No. 231/2003

Submitted by: Mr. S.N.A.W. et al. (represented by counsel, Mr. Bernhard Jüsi)

Alleged victims: The complainants

State party: Switzerland

Date of complaint: 12 June 2003 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 24 November 2005,

Having concluded its consideration of complaint No. 231/2003, submitted to the Committee against Torture by Mr. S.N.A.W. et al. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant,

Adopts the following decision under article 22 of the Convention.

1.1 The complainants are Mr. S.N.A.W. (first complainant), born on 6 February 1974, his sister P.D.A.W. (second complainant), born on 2 March 1964, and her daughter S.K.D.D.G.S. (third complainant), born on 30 December 1992. They are Sri Lankan nationals, currently residing in Switzerland and awaiting deportation to Sri Lanka. They claim that their forcible return to Sri Lanka would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, since they would be at risk of being subjected to torture in Sri Lanka. The complainants are represented by counsel, Mr. Bernhard Jüsi.

1.2 On 20 June 2003, the Committee, through its Rapporteur on New Complaints and Interim Measures, transmitted the complaint to the State party and requested it, under rule 108, paragraph 1, of its rules of procedure, not to return the complainants to Sri Lanka while their case was under consideration by the Committee. The Rapporteur indicated that this request could be reviewed in the light of new arguments presented by the State party. The State party acceded to this request by note of 12 August 2003.

The facts as submitted by the complainants

2.1 In 1992, the first and second complainants' brother, a suspected JVP (Janatha Vimukthi Peramuna) activist, was shot dead while taking a shower in the backyard of his house in Jayawadanagama, Battaramulla (Sri Lanka). Allegedly, the police refused to investigate the assassination. The police officer in charge of the case told the complainants that the bullets found in their brother's body belonged to a police gun. He was subsequently reassigned to another post. When the complainants insisted on a proper investigation, they were warned that it would be better for their own safety not to ask more questions. In 1993, the complainants' family moved to another town (Akkuressa), because of the pressure exercised on them by the authorities.

2.2 During the winter of 1994/95, the second complainant's husband was arrested at the house of the complainants' family, after failing to return to service in the Sri Lankan Army at the end of his leave. The police denied that he had been detained and accused the complainants of hiding him. Unaware of her husband's whereabouts, the second complainant was subsequently harassed and allegedly almost raped by members of the security forces, which forced her to go into hiding.

2.3 The first complainant was arrested on 27 June 1995, without being informed of the charges against him, and detained at the Colombo Fort police post, from where he was transferred to Mahara prisons after one week. During his detention at Colombo Fort, he was interrogated several times about his brother-in-law and his deceased brother. He was allegedly subjected to torture every day, receiving blows with a stick on his feet, testicles and stomach.

2.4 Subsequently, charges of attempted armed robbery were brought against the first complainant, on the basis that he and two accomplices had attacked a man while the latter was exchanging money. He remained in detention until his release on 22 December 1995, on the condition that he would report to the police every other week. Due to his fear to be detained again he decided to leave the country together with the other complainants on 20 March 1997. On 8 April 1997, they arrived in Switzerland and applied for asylum.

2.5 On 12 November 1998, the Federal Office for Refugees (BFF) informed the second complainant that her husband had applied for asylum in Switzerland. The marriage between the second complainant and her husband was dissolved by divorce judgement of 5 October 1999.

2.6 On 8 December 1998, the BFF rejected the first complainant's asylum application, considering that the evidence for his release from prison, i.e. a bail receipt dated 21 December 1995, was forged, thus undermining the credibility of his claims, in the absence of any other evidence such as an indictment, a judgement or a decision to discontinue criminal proceedings against him. In a separate decision, the BFF also rejected the second and third complainants' asylum claim, based on: (a) inconsistencies between the statements of the second complainant and her husband about the date of the latter's desertion from the army and about the time when both spouses lost contact; (b) the fact that desertions from the Sri Lankan army were unlikely to lead to persecution of family members; and (c) the fact that the second complainant left Sri Lanka before her husband, although he was at the centre of the authorities' attention. The BFF did not consider that the complainants' brother's death in 1992 would still give rise to any persecution of the surviving family members. It ordered the complainants' removal from Switzerland, arguing that their Sinhalese ethnicity and the existence of an internal flight alternative in Sri Lanka minimized any risk of ill-treatment on return.

2.7 On 28 August 2000, the Asylum Appeals Board (ARK) dismissed the first complainant's appeal against the decision of the BFF. It rejected new evidence submitted by the first complainant (copy and translation of a document issued by Mahara prisons, confirming that he had been detained from 4 July to 22 December 1995; summons for a High Court hearing on 22 October 1998; and two warrants dated 9 December 1998 and 1 July 1999 with translations), arguing that, in the absence of the original, the copy of the confirmation from Mahara prisons only had very limited evidentiary value, that it was unusual for such a document to be signed by a prison warden, that the file reference on the summons and on the warrant dated 9 December bears no apparent link to the reference number of the proceedings, and that his address on both warrants referred to the town where he had lived prior to 1993, although the

authorities must have known that he had moved to Akkuressa, where he was arrested in June 1995. The ARK considered that several inconsistencies undermined the credibility of the first complainant's claims: (a) the contradiction between his initial statement before the immigration authorities that his mother had provided his bail and his statement during ARK proceedings that he would submit copies of recent summons of his two bailors; (b) the fact that there was no need for the Sri Lankan authorities to arrest him under the pretext of a common criminal offence, if they suspected him of hiding his brother-in-law, given that sheltering a deserter would have been a sufficient basis for arrest under Sri Lankan law; and (c) the fact that he did not leave Sri Lanka before March 1997, although he claims that since January 1996, he had feared to be rearrested.

2.8 On 28 August 2000, the ARK also dismissed the second and third complainants' appeal, based on the same inconsistencies as the ones which had been identified by the BFF.

2.9 On 19 December 2002, the ARK dismissed the first complaint's extraordinary appeal. It rejected a certified copy dated 10 July 2000 of his indictment and the trial transcript of the High Court of Colombo as out of time, finding that this evidence should have been introduced during the appeal proceedings, given that the first complainant had sufficient time to obtain the document from his lawyer in Colombo. The new evidence would, in any event, not give rise to a non-refoulement claim, in the absence of a credible claim that the first complainant's indictment for robbery was intended to punish him for his brother-in-law's army desertion. Only in exceptional cases involving much more serious offences than desertion were family members held responsible for acts of their relatives in Sri Lanka. For analogous reasons, the ARK dismissed the second and third complainants' extraordinary appeal.

The complaint

3.1 The complainants claim that the combined effect of their deceased brother's JVP membership; their efforts to initiate a proper investigation of his death; the torture experienced by, and the criminal proceedings pending against, the first complainant; the disappearance for several years of the second complainant's husband; as well as their long stay in Switzerland, where Sri Lankan opposition groups are traditionally active, would culminate in their exposure to a high risk of being subjected to torture upon return to Sri Lanka, in violation of article 3 of the Convention.

3.2 They submit that the first complainant's risk of being arrested is increased by the fact that he continues to face criminal proceedings in Sri Lanka, whereas the second complainant would run a high risk of sexual harassment and rape during police interrogation in Sri Lanka.

3.3 By reference to annual reports of Amnesty International, the U.S. Department of State and a report of the Commission on Human Rights, the complainants submit that torture and cruel, inhuman or degrading treatment are common occurrences in Sri Lanka.

State party's observations on the admissibility and the merits

4.1 On 12 August 2003, the State party conceded the admissibility of the complaint. On 15 December 2003, it disputed that the complainants' removal would violate article 3 of the Convention, fully endorsing the findings of the BFF and the ARK and arguing that the complainants did not submit any new arguments to challenge the decisions of the BFF and the

ARK. They failed to clarify the contradictions which undermined their credibility, to submit any medical evidence that would corroborate the alleged torture of the first complainant or its claimed after-effects, or to substantiate their participation in any political activities during their time in Switzerland.

4.2 Neither their deceased brother's membership in the JVP, which had been legalized as a political party, nor the second complainant's husband's desertion from the army, an offence that is no longer prosecuted since March 2003, would be tantamount to expose the complainants to a risk of persecution today. Besides, the complainants would not have been able to leave Sri Lanka by plane, had any of them been sought by the police, given the strict security measures at Colombo airport.

4.3 By reference to the Committee's jurisprudence, the State party submits that even if the first complainant faced criminal charges in Sri Lanka, the mere fact that he would be arrested and tried upon return would not constitute substantial grounds for believing that he would be at risk of being subjected to torture.

4.4 Lastly, the State party refers to the report[a] on the Committee's inquiry on Sri Lanka under article 20 of the Convention, finding that the practice of torture was not systematic in Sri Lanka. It concludes that the complainants cannot substantiate a real, present and personal risk of being subjected to torture upon return to Sri Lanka.

Complainant's comments on the State party's observations on the admissibility and the merits

5.1 On 16 January 2004, the complainants commented on the State party's observations, criticizing the rejection for late submission by the ARK of the first complainant's trial transcripts, despite their relevance for his risk of torture. While conceding that neither the desertion from the army of the second author's husband, nor the extrajudicial execution of the first and second complainant's brother were, as of themselves, sufficient to constitute a foreseeable, real and personal risk of torture for the complainants, the opposite was true of the combined effect of these and other elements, even if it were to be assumed that torture was not systematic in Sri Lanka.

5.2 The complainants submit that, despite the strong after-effects of the first complainant's torture, he never consulted a medical doctor, but rather tried to suppress his traumatic experience. As regards their departure from Sri Lanka, they contend that it was possible to leave the country with a forged passport.

5.3 The complainants request the Committee to proceed with an independent assessment of the authenticity of the documentary evidence and to grant the first complainant a personal hearing to witness his emotional distress when talking about his torture experiences.

Issues and proceedings before the Committee as to the admissibility and the merits

6. Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the

Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. In the present case, the Committee also notes that all domestic remedies have been exhausted and that the State party has conceded that the communication is admissible. It therefore considers that the communication is admissible and proceeds to an examination on the merits of the case.

7.1 The Committee must decide whether the forced return of the complainants to Sri Lanka would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (*refouler*) individuals to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture. In reaching its conclusion, the Committee must take into account all relevant considerations, including the existence, in the State concerned, of a consistent pattern of gross, flagrant or mass violations of human rights (article 3, paragraph 2, of the Convention).

7.2 The Committee has noted recent reports on the human rights situation in Sri Lanka to the effect that, although efforts have been made to eradicate torture, instances of torture in police custody continue to be reported and complaints of torture are frequently not investigated effectively.[b]

7.3 The Committee reiterates that the aim of its examination is to determine whether complainants would personally risk torture in the country to which they would return. It follows that, irrespective of whether a consistent pattern of gross, flagrant or mass violations of human rights can be said to exist in Sri Lanka, such existence would not as such constitute sufficient grounds for determining that the complainants would be in danger of being subjected to torture upon return to Sri Lanka. Additional grounds must be adduced to show that they would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not necessarily mean that the complainants cannot be considered to be in danger of being subjected to torture in the specific circumstances of their case.

7.4 As regards the complainants' personal risk of being subjected to torture at the hands of the Sri Lankan police, the Committee notes their claim that the combined effect their deceased brother's JVP membership, their efforts to see his death investigated properly, the first complainant's past torture and the criminal proceedings pending against him, as well as the desertion from the army of the second complainant's husband and its consequences, would be tantamount to expose them to a high risk of torture upon return to Sri Lanka. It also takes note of the State party's challenge to the complainants' credibility, to the authenticity and relevance of the evidence submitted by them, and to their assessment of their personal risk and of the general human rights situation in Sri Lanka.

7.5 Insofar as the first complainant alleges that he was tortured in 1995, the Committee has noted the total absence of any medical evidence which would corroborate this claim. It observes that the burden would have been upon the complainants to present pertinent evidence to that effect.[c] Even assuming that the first complainant was tortured during his detention at Colombo Fort police station, the alleged instances of torture occurred in 1995 and, thus, not in the recent past.[d] Similarly, the political activities and the execution of the first and second complainant's brother cannot be considered relevant in relation to their non-refoulement claim, as they date back to 1992.

7.6 The Committee has finally taken note of the copies and translations of the documentary evidence submitted by the complainants, including a bail receipt dated 21 December 1995 for the amount of 10,000 rupees; a written statement dated 14 July 1998 signed by a warden of Mahara prisons, confirming that the first complainant was detained between 4 July and 22 December 1995; an arrest warrant dated 9 December 1998 against the first complainant for failure to appear in court; his indictment for attempted robbery on 27 June 1995 and the pertinent trial transcript of the Colombo High Court with translations dated 18 August 2000. But even if these documents were to be considered authentic, they merely prove that the first complainant was detained and released on bail and that, subsequently, he might have been indicted and tried in absentia for attempted robbery. In this regard, the Committee recalls that the mere fact that the first complainant would be arrested, retried and possibly convicted in Sri Lanka would not as of itself constitute torture within the meaning of article 1, paragraph 1, of the Convention; nor would it constitute substantial grounds for believing that any of the complainants would be in danger of being subjected to torture in the event of their return to Sri Lanka.[e]

7.7 With regard to the desertion from the Sri Lankan army in 1994/95 of the second complainant's ex-husband, the Committee does not consider that any of the complainants would have to fear persecution on the basis of family co-responsibility, as the second complainant's marriage was dissolved by divorce judgement of 5 October 1999.

7.8 In the light of the above, the Committee need not consider the first complainant's request, under rule 111, paragraph 4, of the Committee's rules of procedure, for a personal hearing.

7.9 The Committee therefore concludes that the complainants have not adduced sufficient grounds for believing that they would run a substantial, personal and present risk of being subjected to torture upon return to Sri Lanka.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, concludes that the complainants' removal to Sri Lanka by the State party would not constitute a breach of article 3 of the Convention.

Notes

[a] *Official Records of the General Assembly*, document A/57/44, para. 181.

[b] See Amnesty International, Annual Report 2004: Sri Lanka; Human Rights Watch, World Report 2005: Sri Lanka; U.S. Department of State, Country Reports on Human Rights Practices, Sri Lanka, 28 February 2005.

[c] See general comment No. 1: *Implementation of article 3 of the Convention in the context of article 22*, 21 November 1997, para. 5.

[d] Ibid., para. 8 (b).

[e] See communication No. 57/1996, *P.Q.L. v. Canada*, Views adopted on 17 November 1997, para. 10 (5).

Communication No. 235/2003

Submitted by: Mr. M.S.H. (represented by counsel, Ms. Gunnel Stenberg)

Alleged victim: The complainant

State party: Sweden

Date of complaint: 26 September 2003 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2005,

Having concluded its consideration of complaint No. 235/2003, submitted to the Committee against Torture by Mr. M.S.H. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following decision under article 22 of the Convention.

1.1 The complainant is M.S.H., born 1973, a citizen of Bangladesh currently residing in Sweden. He claims that his forcible return to Bangladesh would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 26 September 2003, the Committee transmitted the complaint to the State party, together with a request under rule 108, paragraph 1, of the Committee's rules of procedure that the complainant not be expelled to Bangladesh pending the Committee's consideration of his complaint; the State party acceded to this request.

Facts as submitted by the complainant

2.1 The complainant was an active member of the Bangladesh Freedom Party (Freedom Party) from 1990, and Assistant Secretary of the party at Titumir College from 1995. His activities included calling people to meetings and mass demonstrations. In 1996, the Awami League came to power in Bangladesh, which set out to "destroy" the Freedom Party. Following a demonstration by the Freedom Party on 1 August 1996, the complainant was arrested by police and taken to a local police station, where he was interrogated about other members of the Freedom Party. He was held for 11 days, during which he was subjected to torture, consisting of beatings with sticks, warm water being poured through his nose, and being suspended from the ceiling. He was released on condition of abandoning his political activities for the Freedom Party.

2.2 The complainant however continued his activities. In January 1997, he received death threats from members of the Awami League. Following a large demonstration of the Freedom Party on 17 March 1999, he was arrested and again tortured by the police; they poured water

down his nose and beat him. He was released after seven days in custody, but only after providing a written statement that he would cease his political activities. The police threatened to shoot him if he broke this promise. In February 2000, the Freedom Party participated in a demonstration together with three other parties; shortly afterwards, the complainant learnt from his parents that he had been falsely accused of, and charged under the *Public Safety Act* with, illegal possession of arms, throwing bombs and disrupting public order. Fearing further detention and torture, he fled the country.

2.3 The complainant entered Sweden on 24 May 2000 and applied for asylum on the same day. He referred to his experiences in Bangladesh, and claimed that he feared imprisonment if returned. He invoked NGO and government reports about the human rights situation in Bangladesh, which attested to a climate of impunity for torture, and deficiencies in the legal system. However, the Migration Board noted that the Awami League was no longer in power in Bangladesh, and that accordingly the complainant had no basis to fear persecution at its hands. On 19 December 2001, the Migration Board rejected the asylum application and ordered the complainant to be deported.

2.4 The complainant appealed to the Aliens Appeals Board, arguing that torture continued to be widespread in Bangladesh despite changes in the political situation. He referred in particular to the so-called "Operation Clean Heart". The Appeals Board did not question that the complainant had previously been subjected to torture in Bangladesh; however it considered that the general human rights situation in Bangladesh was not itself sufficient to place the complainant at risk of torture or other degrading treatment. On 6 March 2003, the Appeals Board upheld the decision of the Migration Board.

2.5 On 21 March 2003, the complainant filed a new application with the Migration Board, and presented detailed medical evidence corroborating the torture to which he had been subjected in Bangladesh, and that he suffered from post traumatic stress disorder. The complainant also invoked a report by the Swedish Foreign Office on Bangladesh dating from 2002, which confirmed that torture was widespread. Based on the above, he claimed to be at risk of torture if returned to Bangladesh. On 19 May 2003, the Migration Board rejected the application, finding that nothing had been submitted by the complainant which would cause it to review its earlier decision.

The complaint

3. The complainant claims that his deportation to Bangladesh would amount to a violation of article 3 of the Convention, on the basis that there are substantial reasons for believing that he would be subjected to torture or other inhuman treatment in Bangladesh. He states that, although the Awami League is no longer in power, the Freedom Party is also an "enemy" of the current Government, and that changes in the political situation since he left the country do not diminish the risk of mistreatment if returned to Bangladesh.

State party's observations on the admissibility and the merits

4.1 In its observations dated 21 November 2003, the State party objects to the admissibility of the claim and addresses the merits of the case. In relation to admissibility, it submits that the complainant has failed to establish a prima facie case of a violation of article 3.

4.2. The State party recalls the procedures governing asylum claims in Sweden. Under chapter 3 of the Aliens Act, an alien is entitled to a residence permit in Sweden if he left his country of nationality because of a well-founded fear of being subjected to torture or other inhuman or degrading treatment or punishment. Chapter 8 prohibits the expulsion of such persons. A residence permit may also be issued to an alien for humanitarian reasons. Aliens cannot be refused asylum until the Migration Board has heard the application. The decision of the Migration Board can be appealed to the Aliens Appeals Board.

4.3 In relation to the complainant, the State party notes that he was interviewed for a first time on the day of his arrival in Sweden. He stated that he had been a member of the Freedom Party since 1990, and, due to his political activities, was arrested in 1996 when the Awami League came to power. He had been arrested and tortured on two occasions, in August 1996 and March 1999. In February 2000, he had been falsely accused of disturbing public order, and following the issue of an order for his arrest, he fled to Sweden with the help of a smuggler. At his second interview on 23 November 2001, he added a number of details about his political activities and his experiences in Bangladesh, including that he had been falsely accused and charged with illegal possession of weapons under the *Public Safety Act*.

4.4 On 19 December 2001, the Migration Board dismissed his application for asylum, noting that the political situation in the country had changed, and that the Awami League was no longer in power. The Board found that he was not entitled to asylum as a refugee or to a residence permit as a person otherwise in need of protection. The complainant's appeal to the Aliens Appeals Board was rejected on 6 March 2003.

4.5 The State party acknowledges that all domestic remedies are exhausted. However, it contends that the communication should be considered inadmissible under article 22, paragraph 2, of the Convention, on the basis that the complainant's submission that he risks being subjected to torture upon return to Bangladesh fails to rise to the basic level of substantiation required for the purposes of admissibility, and is therefore manifestly unfounded.[a]

4.6 On the merits, the State party submits that the question is whether there are substantial grounds for believing that the individual concerned would be personally at risk of being subjected to torture in the country to which he is being returned.[b] It follows that the existence of a consistent pattern of human rights violations in a country does not as such constitute sufficient ground for determining that a particular person would be in danger of being subjected to torture.

4.7 In relation to the general human rights situation in Bangladesh, the State party notes that, whilst problematic, the situation has improved. Violence remains a pervasive element in the country's politics, and supporters of different parties frequently clash with each other and with police during rallies. The police reportedly use torture, beatings and other forms of abuse while interrogating suspects. The Government often uses the police for political purposes - thus several members of the Awami League have been detained. But when members of the Swedish Aliens Appeals Board conducted a study tour to Bangladesh in October 2002, they concluded that there was no institutionalized persecution in Bangladesh, and that persecution for political reasons was rare at the grass-roots level. Those most at risk of harassment were opposition politicians and party members in leading positions. In any event, the State party emphasizes that the crucial factor in this case is that the Awami League is no longer in power.

4.8 On the complainant's personal circumstances, the State party submits that Swedish asylum law reflects the principles contained in article 3 of the Convention, and that Swedish authorities apply the same test when considering an application for asylum as that applied by the Committee in considering a complaint under the Convention. The authorities have considerable experience in dealing with asylum claims from Bangladesh and in assessing whether a person deserves protection, having regard to the risk of torture and other ill-treatment. Between 1990 and 2002 it dealt with over 1,700 such applications, and over 700 were granted. For the State party, considerable weight should be attached to the opinions of its immigration authorities, which in the present instance found no reason to conclude that the complainant should be granted asylum.

4.9 The State party submits that the complainant in this case bases his claim on the fact that he was twice previously subjected to torture in Bangladesh. It recalls the Committee's jurisprudence that, whilst past torture is one factor to take into account in considering a claim under article 3, the focus of the Committee's deliberation is whether the complainant would presently be at risk of torture if returned to his home country; past experience of torture does not of itself establish a present risk.[c] Furthermore, the Committee's general comment and jurisprudence indicate that past experience of torture is pertinent if it has occurred in the recent past, which is not the case in the present instance.[d]

4.10 The complainant resumed his political activities after being released from custody the second time, despite the death threat from the police. He was able to continue his political activities until February 2000. He even felt safe enough to participate in a demonstration that was attacked by the police and members of the Awami League. The State party considers that this is indicative of the fact that the complainant may not have believed himself to be in danger.

4.11 The State party notes that the complainant has not provided any evidence that he is wanted by the authorities in connection with criminal charges under the *Public Safety Act*, nor was any information presented about the current state of these charges. In any event, the Act has been repealed in April 2002. In view of the Government's information that false accusations tend to be levelled primarily against senior opposition figures, individuals active in politics at the grass-root level may avoid harassment by relocating within the country. In the absence of any evidence adduced by the complainant, the State party considers his claim about pending criminal charges to be unfounded. Even if he did risk detention in connection with criminal charges, this does not demonstrate that there are substantial reasons for believing that he would face a personal risk of torture.[e]

4.12 The State party reiterates that the political situation in Bangladesh has changed considerably since the complainant left. According to the complainant, it was the ruling party, the Awami League, which persecuted him, but this party was defeated in the general elections of October 2001. There is nothing to suggest that the complainant has anything to fear from the parties currently in power. Indeed, according to information from the Swedish embassy in Dhaka, the ruling BNP and the Freedom Party are both "anti-Awami League" and on good terms with each other. Accordingly, nothing suggests that the complainant would be in danger of politically motivated persecution which would render him vulnerable to torture.

Complainant's comments on the State party's observations on the admissibility and the merits

5.1 In his comments on the State party's observations dated 26 February 2004, the complainant provides further information about the general human rights situation in Bangladesh. He invokes Amnesty International's report from 2003, which concludes that torture has been widespread in the country for years, that successive Governments have not addressed the problem, and that there is a climate of impunity. Court proceedings against a public employee, such as a police officer, are only possible with the Government's agreement, which is rarely forthcoming. The complainant challenges the State party's assessment that activists at grass-roots level are not the subject of false accusations and submits that it is generally such people who are more vulnerable to persecution than leading opposition figures, who are more closely followed by the media, resulting in a certain level of protection.

5.2 In relation to his personal circumstances, the complainant reiterates that he faces a foreseeable, real and personal risk of torture if he is returned to Bangladesh. He argues that, where it is established that a person has been subjected to torture in the past, there should be a presumption that this person runs a risk of torture in the future, unless circumstances have manifestly changed. The complainant argues that in his own case, no fundamental changes have taken place. Those who work for the Freedom Party are still in opposition to the present Government, and political opponents continue to be subjected to arrest and torture in Bangladesh. The Freedom Party is considered a "political enemy" by the current Government.

5.3 The complainant recalls that, following his release from custody in 1999, he continued his political activities out of conviction, despite the dangers and not because there was no danger, as suggested by the State party. He argues that it is not possible to obtain documents substantiating charges under the *Public Safety Act* until one is actually arrested, and that, although the Act has been repealed, no amnesty has been granted to persons charged under the Act. The complainant notes that in October 2003, he spoke with his mother, who told him that the police had come to look for him, and that they had not believed her when she told them he now lived abroad. This demonstrates that he remains the subject of interest to the authorities. Finally, the complainant submits that the risk of being detained in connection with pending charges, combined with the widespread phenomenon of torture in detention in Bangladesh, and the fact that the complainant has been tortured in the past, together justify the conclusion that he faces a real and personal risk of torture if returned to Bangladesh.

Issues and proceedings before the Committee as to the admissibility and the merits

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being considered under another procedure of international investigation or settlement. The Committee notes that the exhaustion of domestic remedies was not contested by the State party in its initial submission.

6.2 The State party objects to admissibility on the grounds that the complainant has not established a prima facie case of a violation. However, the Committee considers that the

complainant has provided sufficient information in substantiation of his claim to warrant consideration on the merits. As the Committee sees no further obstacles to the admissibility of the communication in this regard, it proceeds to its consideration on the merits.

6.3 The Committee must determine whether the forced return of the complainant to Bangladesh would violate the State party's obligations under article 3, paragraph 1, of the Convention not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.4 The Committee recalls its general comment on article 3, pursuant to which the Committee must assess whether there are "substantial grounds for believing that the author would be in danger of torture" if returned, and that the risk of torture "must be assessed on grounds that go beyond mere theory or suspicion". The risk involved need not be "highly probable", but it must be "personal and present".[f] In this regard, in previous decisions the Committee has consistently determined that the risk of torture must be "foreseeable, real and personal."[g]

6.5 In assessing the risk of torture in the present case, the Committee has noted the complainant's submission that he was twice previously tortured in Bangladesh. However, as the State party points out, according to the Committee's general comment, previous experience of torture is but one consideration in determining whether a person faces a personal risk of torture upon return to his country of origin; in this regard, the Committee must consider whether or not the torture occurred recently, and in circumstances which are relevant to the prevailing political realities in the country concerned. In the present case, the torture to which the complainant was subjected occurred in 1996 and 1999, which could not be considered recent, as well as in quite different political circumstances, i.e. when the Awami League was in power in Bangladesh and was, according to the complainant, bent on destroying the Freedom Party.

6.6 The Committee has taken note of the submissions regarding the general human rights situation in Bangladesh and the reports that torture is widespread; however, this finding alone does not establish that the complainant himself faces a personal risk of torture if returned to Bangladesh. The Committee observes that the main reasons the complainant fears a personal risk of torture if returned to Bangladesh are that he was previously subjected to torture for his membership in the Freedom Party, and that he risks being imprisoned and tortured upon his return to Bangladesh pursuant to his alleged charges under the *Public Safety Act*.

6.7 The complainant submits that the Freedom Party remains an enemy of the current Government. However, the State party's information on this issue is to the contrary. The Committee recalls that in accordance with its general comment No. 1,[h] it is for the complainant to present an arguable case and to establish that he would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present. In the present case, the Committee is not satisfied by the complainant's argument that given current political situation in Bangladesh, he would still be in danger of being tortured merely for being a member of the Freedom Party in a non-prominent position.

6.8 In relation to the charges which the complainant says were filed against him, the Committee has noted both the State party's argument that no evidence has been produced in support of this contention, and the complainant's response that he would only be able to obtain

such evidence once arrested. The current status of the charges against him remains in any event unclear, since, according to the State party, the relevant legislation has been repealed. While the complainant notes that no amnesty has been issued in relation to offences under the legislation, such an amnesty would ordinarily only apply to a conviction, rather than to criminal charges - the Committee also considers that the complainant has not been able to substantiate his claims that the prosecution of charges filed against him will proceed, even though the relevant legislation has been repealed. As a consequence, it does not consider it likely that the complainant risks imprisonment on return.

6.9 In the circumstances, the Committee concludes that the expulsion of the complainant to Bangladesh would not violate the State party's obligations under article 3 of the Convention.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, concludes that the removal of the complainant to Bangladesh would not constitute a breach of article 3 of the Convention.

Notes

[a] Reference is made to *H.I.A. v. Sweden*, communication No. 216/2002, Views adopted on 2 May 2003, para. 6.2.

[b] Reference is made to *S.L. v. Sweden*, communication No. 150/1999, Views adopted on 11 May 2001, para. 6.3.

[c] Reference is made to *X, Y and Z v. Sweden*, communication No. 61/1996, Views adopted on 6 May 1998, para. 11.2.

[d] Reference is made to *S.S. v. Netherlands*, communication No. 191/2001, Views adopted on 5 May 2003, para. 6.6.

[e] Reference is made to *I.A.O. v. Sweden*, communication No. 65/1997, Views adopted on 6 May 1998, para. 14.5; and *P.Q.L. v. Canada*, communication No. 57/1996, Views adopted on 17 November 1997.

[f] General comment No. 1, sixteenth session (1996).

[g] *H.K.H. v. Sweden*, communication No. 204/2002, Views adopted on 28 November 2002.

[h] General comment No. 1, sixteenth session (1996).

Communication No. 237/2003

Submitted by: Ms. M.C.M.V.F.

Alleged victims: Ms. M.C.M.V.F., her husband V.M.F.Z., and their children P.C.F.M. and V.M.F.M.

State party: Sweden

Date of the complaint: 7 August 2003 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2005,

Having concluded its consideration of complaint No. 237/2003, submitted to the Committee against Torture by Ms. M.C.M.V.F. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following decision under article 22 of the Convention.

1.1 The complainant (submissions of 7 August 2003 and 10 September 2003) is Ms. M.C.M.V.F., a Salvadorian citizen, acting on behalf of herself, her husband V.M.F.Z. and their children P.C.F.M. and V.M.F.M. The family is facing expulsion from Sweden to El Salvador. The complainant claims that the expulsion of the family would constitute a violation by Sweden of article 3 of the Convention against Torture. She is not represented by counsel.

1.2 On 4 April 2005, the complainant requested the Committee to adopt interim measures of protection. She informed the Committee that in November 2004 the Swedish authorities were searching for her in order to enforce the deportation order and that she managed to escape from being arrested. On 12 April 2005, the Special Rapporteur on New Communications and Interim Measures, acting on behalf of the Committee, declined the complainant's request.

Factual background

2.1 In 1987, the complainant joined a committee for the unemployed (Codydes) and the Salvadorian Women's Movement (MSM) in El Salvador, which protested against certain government policies. As a result of the political repression against social activists, the complainant joined the guerrilla movement *Frente Farabundo Martí para la Liberación Nacional* (FMLN), and became an active comrade leading the women's division of eastern San Salvador.

2.2 On 11 November 1989, the complainant was apprehended by police agents and violently pushed into a pick-up. She was taken to a police facility where she was allegedly beaten and forced to take off her clothes before being subjected to an interrogation about the activities of

FMLN's members. When she refused to answer the questions, the officers put a plastic bag containing lime over her head. She was subjected to this type of interrogation several times. She was allegedly abused, repeatedly beaten and given electric shocks. She remained in detention for 40 days, during which she was not taken before a judge or visited by a doctor. She was released on 19 December 1989, thanks to ICRC intervention.

2.3 After her release, the complainant and her two children went into hiding. In 1990, in the midst of an FMLN campaign for municipal elections, a vehicle with tainted windows attempted to run her over. She did not file a complaint with the police, but the FMLN publicly denounced the event. Her husband was threatened, apparently in connection with his activities as a journalist. The complainant also received death threats over the telephone. Her husband applied for asylum for the whole family at the Swedish embassy. While their application was still pending, on 22 June 1991, the complainant was again intercepted by a vehicle of the security forces, forced to board the car and taken to the police headquarters where she was interrogated, beaten, almost asphyxiated with a plastic bag containing lime, and administered electric shocks to her body, including her vagina. She was released on 31 July 1991. She did not have access to a lawyer nor was she brought before a judge. For fear of reprisal, the complainant did not report the latter incident to the police, to any human rights organization or to the courts. She and her family went into hiding and attempted to contact the Swedish embassy. Meanwhile, their application for asylum had been discontinued.

2.4 In 1992, after the Government and the FMLN had signed the Peace Accords, the complainant was actively involved in the constitution of the new political party FMLN. She gave testimony of the torture she had experienced to the United Nations-led Truth Commission which investigated human rights violations that had occurred during the internal armed conflict in El Salvador. She was disappointed with the amnesty law passed by the right-wing Government of Mr. Alfredo Cristiani immediately after the release of the Commission's report, granting a general pardon to members of the military and the security forces that had allegedly been involved in human rights violations. In 1994, she learned that all the files concerning the activities of FMLN members had been transferred to the Military. One of her torturers was admitted to the new police force created in accordance with the Peace Accords. She was unable to get a job because official records commonly required in employment applications portrayed her as having a "subversive background". In 1996, she participated as a candidate in the municipal elections of San Salvador. She submits that, by that year, almost 30 FMLN members had been killed by death squads. The death squads are said to be supported by right-wing persons with close ties to the Government.

2.5 By the end of 1999, after her husband published an article unmasking a gang of organized crime which included former members of the military and the police, the complainant received more death threats. Her husband was told that he would be killed unless he went into hiding. They received another telephone call threatening that their daughter would be raped if she came back from Sweden where she was visiting her grandmother. In 2000, when the complainant was returning home from a political meeting, she was attacked by people who were driving a vehicle with tinted windows, and tried to run her over. As the family feared for their lives, they moved to another house which was later on destroyed in an earthquake in January 2001. On 16 March 2001, they fled to Sweden where they applied for asylum on the basis of political persecution, as well as having become victims of torture and natural disaster. The family received judicial assistance and attended an asylum hearing. The complainant was provided with psychological treatment and diagnosed with post-traumatic stress disorder caused

by the experience of torture. The Swedish immigration authorities reopened the family's case and, on 15 March 2002, rejected their asylum claim, stating that the human rights situation in El Salvador had improved, that the threats had ceased after 2000 and that the complainant's health had improved. After unsuccessful appeals, the family was deported to El Salvador on 21 March 2003.

2.6 Upon arriving to San Salvador, the family settled in Soyapango, the same place where the complainant had been tortured at first. This situation allegedly had an enormous psychological impact on the complainant. On 31 March 2003, while the complainant and her daughter were driving in a taxi, they were abducted by gunmen who ordered them to get off the taxi and forced them into another vehicle, where they hit them with the guns, ordered them to stay with their faces towards the floor of the car and pretended to shoot them. The kidnappers behaved in the same manner and followed patterns identical to those that the police had used when they had previously captured the complainant. They searched the complainant's bag and passports. The complainant and her daughter were released after 30 minutes and left in a solitary wasteland close to a highway. The men warned them not to denounce the incident to the police. In the days following the incident, the complainant's neighbours were visited by individuals who inquired about her and told them that she was a "communist". Her husband denounced the event to the police, which registered the case as a robbery.

2.7 On 15 April 2003, after contacting the Salvadorian Lutheran Church, the family moved to a shelter in San Salvador. They fled to Sweden on 27 May 2003 and applied for asylum on 5 June 2003. On 11 June 2003, the Swedish immigration authorities rejected their application and ordered their immediate expulsion from Sweden. On 31 July 2003, the appeal was rejected. The complainant alleges that there is no other remedy available to her or her family to challenge the expulsion order, and that she has exhausted domestic remedies.

The complaint

3.1 The complainant submits that she fears being subjected to torture and being killed if deported to El Salvador. Although State agents are not directly involved in the threats against her life and personal integrity as well as the life and personal integrity of her family, the State's responsibility is said to be engaged because of the impunity with which death squads operate, and because the death squads are financed both by right-wing personalities and the ruling party, and their members have infiltrated the New National Civil Police which conducts a policy of terror against FMLN's members.

State party's observations on the admissibility and the merits

4.1 The State party states that, following the complainant's and her family's arrival in Sweden on 22 March 2001, an initial interview was conducted. In that interview the family stated that they were in need of humanitarian help due to the earthquake in El Salvador. According to the complainant's husband, they had also experienced political problems in the past but had managed to overcome them. A second interview of the family took place on 26 April 2001. On that occasion, they stated that due to the complainant's political activities in the FMLN, she had been imprisoned and tortured in 1989 and had been threatened by death squads until 1993. Since the Peace Accords in 1992, she had not been politically active. The complainant's husband worked as a journalist and had been harassed and threatened by criminal elements until 2000. On 15 March 2002, the Migration Board rejected the complainants' asylum

application. It considered that no reasons for asylum had been given and that the threats from criminal elements were insufficient grounds for granting asylum. On 7 November 2002, the Aliens Appeal Board upheld the decision of the Migration Board.

4.2 On 28 May 2003, the complainant and her family returned to Sweden and re-applied for asylum on 5 June 2003. A third interview was conducted in which the complainant stated that, a few days after their arrival in El Salvador, she and her daughter were attacked while riding in a taxi. Three men in a pick-up stopped the taxi and forced them into the pick-up. Two men were masked and armed with guns. The men mistreated them and took a bag with their passports and money, before leaving them in a motorway. The complainant was uncertain whether the perpetrators were criminals or if they were attacked for political reasons. On 11 July 2003, the Migration Board rejected the complainant's application for asylum. It stated that Salvadorian society was polarized and violence was frequent. Since the Peace Accords in 1992, respect for human rights had improved significantly. The Board found it unlikely that they had been attacked on account of the complainant's political activities or her husband's background as a journalist, but rather as a result of rampant crime. On 14 August 2003, the Aliens Appeal Board upheld the decision of the Migration Board.

4.3 The State party contends that the complaint is inadmissible as manifestly unfounded, pursuant to article 22, paragraph 2, of the Convention and rule 107 (b) of the Committee's rules of procedure, and argues that the complainant's claim that they are at risk of torture if returned to El Salvador fails to reach the threshold of substantiation required for admissibility.

4.4 On the merits, the State party states that according to recent reports, El Salvador is a constitutional and multiparty democracy. Since the Peace Accords in 1992, which brought an end to the armed conflict in El Salvador, respect for human rights improved significantly. In 2002, there were no reports of politically motivated killings or disappearances, and according to several non-governmental sources, there was no increase in political violence. According to the same sources, there were few complaints about torture by police in 2002 and some police officers used excessive force and mistreated detainees. In the general elections of March 2003, the FMLN won, for the second time, a majority of seats in the Legislative Assembly. The Constitution provides for freedom of speech and the press and the Government generally respected these rights in practice. Journalists regularly and freely criticized the Government and reported the views of the opposition. Crime remained a serious problem in the country; organized crime was widespread and violent crimes were common. Kidnapping for ransom was frequent, even if the number of kidnappings had declined. Due to the 2001 earthquake, economic conditions deteriorated. This had caused a large number of people to leave El Salvador, including more than 600 persons whom travel agencies lured into going to Sweden by false advertisements, claiming that Sweden had a special programme for accommodating Salvadorians.

4.5 The State party contends that great weight must be attached to the opinions of the Swedish immigration authorities and their conclusions about the complainant's credibility and need for protection. Although it may be considered established that the complainant had been subjected to torture in the past, this does not mean that she has substantiated her claim that she would be at risk of being tortured if returned. The torture took place more than 10 years ago, and the requirement that the ill-treatment occurred in the recent past to make evident the risk of being subjected to torture if returned is not met. As far as the complainant's husband and their children are concerned, they have neither claimed to have been subjected to torture in the past, nor that

they would risk torture if returned to El Salvador. Great weight must be attached to the fact that the situation in El Salvador has changed completely since the time of the complainant's arrest. In those years, there was a civil war and massive human rights violations were committed.

4.6 The State party notes that although the complainant was subjected to torture in 1989 and 1991, she and the rest of the family did not leave El Salvador until March 2001, just after the earthquake. The complainant and her family left the country legally and without any difficulty on two occasions, in 2001 and 2003. They received new passports in April 2003. These factors indicate that the complainants were not even in 1991 in any urgent need of protection and that there was no evidence that they were at risk of any kind of persecution from the authorities of El Salvador today. Neither before the Migration Board nor in their appeal to the Aliens Appeals Board did she argue that they would be at risk of torture if returned. Instead, the complainant's husband stated that they had managed to overcome the political problems they faced in the past. It was not until their new application in December 2002 that the risk of torture in the event of return was raised.

4.7 The State party challenges the complainant's statements about her political activities after 1992. In her second interview with the Migration Board she was asked if she had been politically active after 1992 and she replied in the negative. During the handling of the complainants' application for asylum in Sweden, no further information was submitted about her activities in the FMLN after 1992. Instead, the complainants argued that, due to the complainant's background, she was still at risk of persecution. Concerning the attacks on the complainant and her daughter in March 2003, the Government contends that there is every indication that this attack was a criminal one. The complainant herself had stated that she was uncertain who the perpetrators were. The attack was reported to the police, who registered it as a robbery. The complainant was robbed of some money and their passports but no threats related to political activities were made. The risk of being subjected to ill-treatment by a non-governmental entity or by private individuals without the consent or acquiescence of the Government of the receiving country falls, according to Committee's jurisprudence, outside the scope of article 3 of the Convention. The State party adds that despite the fact that there are problems in El Salvador, it cannot be agued that there exist a consistent pattern of gross, flagrant or mass violations of human rights.

4.8 The State party concludes that the circumstances invoked by the complainant do not suffice to establish that the alleged risk of torture fulfils the requirement of being foreseeable, real and personal. The complainant has not substantiated her claim that there are substantial grounds for believing that she and her family would be in danger of being tortured if returned to El Salvador, and that the enforcement of the expulsion order would not constitute a violation of article 3 of the Convention.

Complainant's comments on the State party's observations on the admissibility and the merits

5.1 The complainant alleges that she has advanced solid grounds to substantiate her claim that she and her family face a personal, real and foreseeable risk of being subjected to torture if returned to El Salvador, and she contends that the March 2003 incident was carried out by armed men who acted in a pattern identical to that used by death squads. The complainant has continued experiencing harsh consequences as a result of the torture she was subjected to.

5.2 The complainant contends that even after the signing of the Peace Accords in 1992, the Intelligence State Service still operates with total impunity against leftist militants. Even after the Peace Accords, there have been at least 20,000 violent deaths, and several targeted murders and attacks against leftist militants by "unknown persons". According to the United Nations Development Programme, El Salvador is the second most violent country after Colombia. The complainant invokes several press reports about violent incidents to demonstrate the level of political violence in El Salvador. She adds that in the past few months 17 FMLN members were wounded while participating in political demonstrations.

5.3 The complainant, while conceding that the FMLN is a legal party represented in Parliament, contends that it is not able to secure the life of several persons that, like the complainants, are mentioned in the archives of the death squads or in the archives of the State Intelligence Service, entities which operate with autonomy. The ruling Arena party is a right-wing political party which is said to have backed up the death squads, the murderers of Bishop Oscar Romero, and of six Jesuits priests as well as hundreds of murders and attacks against human rights activists. The complainant invokes information emanating from the Central Intelligence Agency (CIA) to the effect that Roberto D'Aubuisson, the founder of Arena, was in the 1980s the leader of one of the death squads and participated in the planning of Bishop Romero's assassination; members of Arena are involved in death squads activities; and death squads recruit former members of the military and the police. According to the same report, Arena and members of the military support right-wing terrorism. This and other reports confirm that the illegal armed groups and parallel structures of power have not been dismantled, and that Arena continues financing and supporting the right-wing extremist terrorism.

5.4 The complainant recalls that the Salvadorian Human Rights Ombudsman had denounced, in 2003, that torture was inflicted by the police on detainees, and that she had received death threats as a result.

Issues and proceedings before the Committee as to the admissibility and the merits

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee further notes that domestic remedies have been exhausted, as acknowledged by the State party, and that the complainant has sufficiently substantiated the facts and the basis of the claim, for purposes of admissibility. Accordingly, the Committee considers the complaint admissible and proceeds to its consideration of the merits.

6.2 The issue before the Committee is whether the removal of the complainant and her family to El Salvador would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

6.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to El Salvador. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the

Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights on a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; there must be additional grounds to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.4 The Committee observes that the acts of torture that the complainant allegedly suffered occurred in 1989 and 1991, when El Salvador was mired in internal armed conflict, and when there was a pattern of massive and gross human rights violations in the country. The Committee notes that the general situation of El Salvador has changed since the Peace Accords came into effect in 1992. The FMLN, formerly a guerrilla group, is now a political party which won the majority of seats in the 2003 parliamentary elections. The Committee has not been persuaded that the incidents that concerned the complainant in 2000 and 2003 were linked in any way to her previous political activities or those of her husband, and considers that the complainant has failed to prove sufficiently that those incidents be attributable to State agents or to groups acting on behalf of or under the effective control of State agents. Notwithstanding the occurrence of violence and confrontation in El Salvador, the Committee is not persuaded that the complainant or any members of her family would face a real, personal, and foreseeable risk of torture if deported from Sweden.

7. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7 of the Convention, concludes that the decision of the State party to return the complainant and her family to El Salvador would not constitute a breach of article 3 of the Convention.

Communication No. 238/2003

Submitted by:	Mr. Z.T. (No. 2) (represented by counsel, Mr. Thom Arne Hellerslia)
Alleged victim:	The complainant
State party:	Norway
Date of complaint:	31 July 2001 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2005,

Having concluded its consideration of complaint No. 238/2003, submitted to the Committee against Torture by Mr. Z.G.T. under article 22 of the Convention,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22 of the Convention.

1. The author of the communication is Z.T., an Ethiopian national born on 16 July 1962 and currently residing in Norway, where his request for asylum has been denied and he faces removal. He claims that he would risk imprisonment and torture upon return to Ethiopia and that his forced return would therefore constitute a violation by Norway of article 3 of the Convention. He is represented by counsel.

The facts as submitted by the complainant

2.1 The complainant is of Amharic ethnic origin. During his high school in Addis Ababa, he participated in several demonstrations supporting Colonel Mengistu. When Mengistu came to power in February 1977, thousands of youth, including the complainant, were sent to rural areas as part of a literacy campaign. Disappointed with the regime, the complainant began to work for the Ethiopian People's Revolutionary Party (EPRP).

2.2 The EPRP started to organize resistance against the Mengistu regime by calling students and youth back from the rural areas to Addis Ababa. In 1977, the conflicts between the various political groups resulted in the so-called "Red Terror", the brutal eradication of all opposition to the governing Provincial Military Administrative Council (PMAC) and random killings. An estimated 100,000 people were killed. The complainant, who had been distributing pamphlets and putting up posters in Addis Ababa on behalf of the EPRP, was arrested and taken to a concentration camp, together with thousands of other youth, where he was held for one year between 1980 and 1981. While in the camp he was subjected to fake executions and brainwashing. According to the complainant, the Red Terror ended when the regime was convinced that all EPRP leaders were dead. Many political prisoners, including the complainant, were then freed.

2.3 After his release, the complainant went underground and continued work for the EPRP. He states that the Mengistu regime carefully followed the movements of previous political prisoners to suppress a revival of the opposition. In 1986-1987, the complainant was arrested in a mass arrest and taken to Kerchele prison, where he remained for four years. According to him, the prisoners were forced to walk around naked and were subjected to ill-treatment in the form of regular beatings with clubs. While imprisoned, he suffered from tuberculosis.

2.4 In May 1991, the Mengistu regime fell and the Ethiopian People's Revolutionary Democratic Front (EPRDF) came to power. Once freed, the complainant tried to contact members of the EPRP, but all his contacts had left. He then started to work for the Southern Ethiopian Peoples Democratic Coalition (SEPDC), a new coalition of 14 regional and national political opposition parties. According to a translation supplied by the complainant, in early 1994 a warrant for his arrest was issued for interrogation on the basis of political activity. In February 1995, he was on his way to deliver a message to Mr. Alemu Abera, a party leader, when he was caught by the police in Awasa.

2.5 The complainant states that he was kept in detention for 24 hours in Awasa and then transferred to the central prison of Addis Ababa. After three days, he was taken to Kerchele prison where he was kept for one year and seven months. He was never tried nor had contact with a lawyer. The treatment in prison was similar to what he had experienced during his first imprisonment. He says that he was taken to the torture room and threatened with execution if he did not cooperate. He believes that the only reason he was not severely tortured like many other prisoners was that he was already in a weak physical condition. While in prison he developed epilepsy.

2.6 On 5 October 1996, the complainant managed to escape when he was taken to the house of one of the high-ranking guards to make some repairs. Through a friend, the complainant managed to get the necessary papers to leave the country and requested asylum in Norway on 8 October 1996.

2.7 On 18 June 1997, the Directorate of Immigration turned down his application for asylum, mainly on the basis of a report made by the Norwegian Embassy in Nairobi, on the basis of contradictory information said to have been given by the complainant and his mother, and discrepancies in his story. He appealed on 3 July 1997. The appeal was rejected by the Ministry of Justice on 29 December 1997 on the same grounds. On 5 January 1998, a request for reconsideration was made which again was rejected by the Ministry of Justice on 25 August 1998.

2.8 According to the complainant, his right to free legal assistance had been exhausted and the Rådgivningsgruppa (Advisory Group) agreed to take his case on a voluntary basis. On 1 and 9 September 1998, the Advisory Group made additional requests for reconsideration and deferred execution of the expulsion decision, which were rejected on 16 September 1999. The complainant has submitted to the Committee, in this regard, copies of 16 pieces of correspondence between the Advisory Group and the Ministry of Justice, including a medical certificate from a psychiatric nurse indicating that the complainant suffers from post-traumatic stress syndrome. The date of expulsion was finally set for 21 January 1999.

2.9 For the complainant, all the inconsistencies in his story can be explained by the fact that during the initial interrogation he agreed to be questioned in English, not having been informed that he could have an Amharic interpreter present. Since the difference in years between the Ethiopian and Norwegian calendar is approximately eight years, when he tried to calculate the time in Norwegian terms and translate this into English, he became confused. The communication was further complicated by the fact that in Ethiopia the day starts at the equivalent of 6 o'clock in the morning in Norway. That meant that when the complainant said "2 o'clock", this should have been interpreted as 8 o'clock.

2.10 During the interrogation, the complainant referred to the Southern Ethiopian People's Democratic Coalition (SEPDC) as the "Southern People's Political Organization" (SPPO), which does not exist. This error was due to the fact that he only knew the name of the organization in Amharic.

The complaint

3. The complainant argues that he would be in danger of being imprisoned and tortured if he were to return to Ethiopia. He claims that, during the asylum procedure, the immigration authorities did not seriously examine the merits of his asylum claim and did not pay enough attention to his political activities and his history of detention.

The Committee's decision on the admissibility relating to complaint No. 127/1999

4.1 On 25 January 1999, the complainant lodged his initial complaint with the Committee, alleging his expulsion by Norway to Ethiopia would violate article 3 of the Convention. On 19 November 1999, in light of the submissions of the parties, the Committee declared the complaint inadmissible for failure to exhaust domestic remedies.[a] The Committee reasoned as follows:

[7.2] The Committee notes that the State party challenges the admissibility of the communication on the grounds that all available and effective domestic remedies have not been exhausted. It further notes that the legality of an administrative act may be challenged in Norwegian courts, and asylum-seekers who find their applications for political asylum turned down by the Directorate of Immigration and on appeal by the Ministry of Justice have the opportunity to request judicial review before Norwegian courts.

[7.3] The Committee notes that according to information available to it, the complainant has not initiated any proceedings to seek judicial review of the decision rejecting his application for asylum. Noting also the complainant's information about the financial implications of seeking such review, the Committee recalls that legal aid for court proceedings can be sought, but that there is no information indicating that this has been done in the case under consideration.

[7.4] However, in the light of other similar cases brought to its attention and in view of the limited hours of free legal assistance available for asylum-seekers for administrative proceedings, the Committee recommends to the State party to undertake measures to ensure that asylum-seekers are duly informed about all domestic remedies available to them, in particular the possibility of judicial review before the courts and the opportunity of being granted legal aid for such recourse.

[7.5] The Committee notes the complainant's claim about the likely outcome were the case to be brought before a court. It considers, nevertheless, that the complainant has not presented enough substantial information to support the belief that such remedy would be unreasonably prolonged or unlikely to bring effective relief. In the circumstances, the Committee finds that the requirements under article 22, paragraph 5 (b), of the Convention have not been met.

The complainant's renewed complaint

5.1 On 31 June 2001, the complainant filed a new complaint before the Committee, arguing that the grounds upon which the Committee had declared the case inadmissible no longer applied. He stated that, on 24 January 2000, he had applied for legal aid, which was rejected by the County Governor of Aust-Agder on 5 July 2000. On 14 March 2001, the Ministry of Labour and Administration rejected his appeal against the County Governor's decision. As to the possibility of retaining his own lawyer, in view of his precarious pecuniary situation, he would be unable to afford either the necessary legal fees and filing costs, or an award of costs, if unsuccessful. Nor could he represent himself, as he scarcely speaks Norwegian and lacks knowledge of the relevant rules of procedural and substantive law. Accordingly, the complainant argued that in practice, there was no "available" or "effective" remedy which he could pursue, and that the complaint should therefore be declared admissible.

5.2 On 21 August 2002, the renewed complaint was registered as complaint No. 238/2003 and transmitted to the Government of the State party for comments on its admissibility.

State party's submissions on the admissibility of the renewed complaint

6.1 On 27 March 2003, the State party contested the admissibility of the renewed complaint, arguing that paragraph 7.3 of the Committee's original inadmissibility decision could be read in two ways. On the one hand, reading the second sentence in isolation would suggest that once legal aid was sought, admissibility would have to be reconsidered. On the other, the first sentence suggested a complainant must initiate judicial review proceedings, and a failure to do so - even following denial of legal aid - disposed of the issue. In the State party's view, the latter approach was most logical, and was supported by the context of the decision's paragraph 7.2, which rehearsed the arguments on the availability and effectiveness of judicial review. In this light, the first sentence of paragraph 7.3, read in conjunction with 7.5, constitutes the conclusive response of the Committee, and the second sentence inter alia bearing the word "also" was superfluous additional reasoning.

6.2 Even if the Committee held the complaint inadmissible simply for failure to seek legal aid, the complaint would not, according to the State party, become admissible simply because legal aid was subsequently sought, as other reasons of inadmissibility may still apply. In particular, the State party submitted that judicial review was still an "available" remedy to be exhausted. There was no basis for exempting applicants from the obligation to exhaust domestic remedies for lack of financial means, as such an approach had no basis in the text of article 22, paragraph 5, of the Convention. The State party argued that, in any legal system, civil proceedings are generally financed by the parties, and that the framers of the Convention, aware of this approach, made no exception for applicants without resources. Such an approach would interfere with the principle of exhaustion of domestic remedies.

6.3 In the State party's view, were the Committee to do so, States would either (a) have to provide legal aid to a much greater extent than is currently practised or required under international conventions, or (b) accept the Committee's competence to review administrative decisions rejecting asylum claims without the domestic courts having had the opportunity to review those cases. As to the former option, few States would accept such an approach: civil legal aid is a scarce resource anywhere, and is subject to strict conditions (if available at all). Thus, in view of the large number of asylum applications rejected yearly, a State party would have to take the unlikely step of greatly increasing resources supplied to legal aid schemes.

6.4 The result of such a step would be that the Committee de facto makes itself the first review instance in a vast number of cases, and result in significant growth in the Committee's caseload. In Norway alone, 9,000 asylum applications were rejected at last instance in 2002, and most asylum-seekers would claim, as did the current complainant, to be of modest means and unable to access the legal system. There could thus be major consequences for the Committee.

6.5 Administering such an exception would create great difficulties of law and fact for the Committee. It would have to set precise criteria concerning financial ability, and presumably some economic standards that could not be exceeded by applicants claiming impecuniosity. The Committee would have to develop methods to ensure that an applicant does not actually exceed these standards. It would be difficult for States parties to rebut an applicant's allegation of lack of resources, as pertinent information is rarely available. Likewise, in the present case, the State party had ascertained, through tax records, that the complainant had only very modest incomes in the last few years, and it could not scrutinize his financial situation any further. It had no knowledge of any assets abroad, nor any possessions in Norway which could be realized to finance review proceedings.

6.6 In the State party's view, only detailed regulations established in advance could deal with such problems, which would merely underpin the absence of such an exception in the Convention. A decision of admissibility would be a significant innovation in the Committee's case law and a considerable departure from the domestic remedies rule interpreted by treaty bodies. Only the jurisprudence of the Human Rights Committee revealed some very limited exceptions.

Complainant's comments on the State party's submissions

7.1 By letter of 26 May 2003, the complainant rejected the State party's submissions. He stated that he only receives a welfare check for basic daily needs, in addition to housing support, which would not suffice for raising private counsel. His counsel before the Committee was acting pro bono in respect of those proceedings only. Neither he nor others could be expected to operate pro bono in respect of any judicial review proceedings.

7.2 As to the original reasons for inadmissibility, the complainant submitted it was clear that both elements were criteria on which the conclusion was founded. This was confirmed by the context of paragraph 7.4 of the original case. Were it otherwise, it would have been pointless for the Committee to make any remarks on the legal aid question. As both parties had made submissions on the legal aid issue, paragraph 7.3 was necessary to address those points and was thus far from superfluous. At a minimum, the decision should be reviewed to clarify whether, and on what conditions, judicial review is an available remedy even in the absence of legal aid.

7.3 Turning to whether judicial review must be pursued despite the absence of legal aid, the complainant pointed out that article 22, paragraph 5, only requires available and effective remedies to be exhausted by a complainant. Were the complainant to represent himself, with little knowledge of Norwegian law or language, against skilled lawyers of the State, domestic remedies would not be "effective" within the meaning of article 22.

7.4 The complainant argued that human rights treaties must be interpreted so as to make them effective. If complaints are held inadmissible for non-exhaustion in circumstances where domestic remedies are, in fact, unavailable, a victim has remedies neither at the national nor international level.

7.5 The complainant invoked the jurisprudence of the Human Rights Committee, which had found communications admissible under the Optional Protocol to the International Covenant on Civil and Political Rights in circumstances where legal aid was unavailable.[b]

7.6 The complainant observed that in Norway, many people received legal aid in different categories of cases. He easily satisfied the economic criteria. Thus, in support of his claim for legal aid, he invoked the doctrine of "positive obligations" for the State party to prevent human rights violations, as part of the general obligation to secure effectively the right to non-refoulement. The complainant pointed out that if a right to legal aid existed, it would certainly be considered relevant to an assessment of the exhaustion of domestic remedies, and thus the unavailability of legal aid should be treated similarly.

7.7 The complainant rejected the State party's misgivings about the results of holding the present case admissible. Firstly, it would not result in all unsuccessful asylum-seekers pleading before the Committee. A possible violation of article 3 would arise only in few cases. In any event, the outcome on the merits would be a more important guide to the future. The Committee should thus be wary of the adverse consequences advanced by the State party against an interpretation consistent with the Convention's purpose.

7.8 On the facts of his case, the complainant noted that the State party had not disputed the details of his income. In the Norwegian legal aid scheme, the authorities were satisfied with a declaration from the applicant along with a print of tax records, and the State party should not hold the Committee to a stricter standard. In any event, as the Human Rights Committee's experience has shown, the consequences are manageable, and the advantage - greater protection of Convention rights for those who would otherwise go without any protection - is obvious. The complainant thus requested the Committee to declare the case admissible.

The Committee's decision on the admissibility of the renewed complaint

8.1 During its thirty-first session, in November 2003, the Committee considered the admissibility of the renewed complaint. It observed, at the outset, that the question of whether a complainant had exhausted domestic remedies that are available and effective, as required by article 22, paragraph 5, of the Convention, could not be determined *in abstracto*, but had to be assessed by reference to the circumstances of the particular case. In its initial decision, the Committee had accepted that judicial review, in the State party's courts, of an administrative decision to reject asylum was, in principle, an effective remedy. The Committee noted that a

pre-condition of effectiveness, however, was the ability to access the remedy, and, in this case, as the complainant had not pursued an application for legal aid, he had not shown that judicial review was closed, and therefore unavailable, to him, within the meaning of article 22, paragraph 5, of the Convention.

8.2 In the present case, the complainant had since been denied legal aid. Had legal aid been denied because the complainant's financial resources exceeded the maximum level of financial means triggering the entitlement to legal aid, and he was thus able to provide for his own legal representation, then the remedy of judicial review could not be said to be unavailable to him. Alternatively, in some circumstances, it might be considered reasonable, in the light of the complainant's language and/or legal skills, that he/she represented himself or herself before a court.

8.3 In the present case, however, it was unchallenged that the complainant's language and/or legal skills were plainly insufficient to expect him to represent himself, while, at the same time, his financial means, as accepted by the State party for purposes of deciding his legal aid application, were also insufficient for him to retain private legal counsel. If, in such circumstances, legal aid was denied to an individual, the Committee considered that it would run contrary to both the language of article 22, paragraph 5, as well as the purpose of the principle of exhaustion of domestic remedies and the ability to lodge an individual complaint, to consider a potential remedy of judicial review as "available", and thus declaring a complaint inadmissible if this remedy was not pursued. Such an approach would deny an applicant protection before the domestic courts and at the international level for claims involving a most fundamental right, the right to be free from torture. Accordingly, the consequence of the State party's denial of legal aid to such an individual was to open the possibility of examination of the complaint by an international instance, though without the benefit of the domestic courts first addressing the claim. The Committee thus concluded that, since the complainant applied unsuccessfully for legal aid, the initial reasons for inadmissibility no longer applied.

8.4 On 14 November 2003, the Committee declared the case admissible, since the reasons for inadmissibility referred to in its previous decision of 19 November 1999 on the initial complaint No. 127/1999 were no longer applicable and no other grounds for inadmissibility had been advanced. The Committee accordingly invited the State party to supply its submissions on the merits of the renewed complaint.

State party's submissions on the merits of the renewed complaint

9.1 On 23 July 2004, the State party submitted that it considered its submissions on the merits of the renewed complaint to address the same matter as dealt with under complaint No. 127/1999, and invoked as relevant its submissions on the merits regarding the initial complaint. The State party maintained that it observes relevant international standards both in its legal practices and in its administrative proceedings. On 1 January 2001, the State party established a quasi-judicial organ independent of the political authorities, known as Immigration Appeals Board and mandated to handle appeals against all decisions taken by the Directorate of Immigration, including asylum cases. It submitted that the Appeals Board maintained a large number of highly qualified employees, among them a country expert for Ethiopia who undertook a visit to Ethiopia as late as in February 2004, and cooperated closely with the special immigration officer in the Norwegian Embassy in Nairobi.

9.2 Since the State party's submission of 31 March 1999, the Immigration Appeals Board had, on its own initiative, undertaken another examination of the case before the Committee and, on 12 March 2004, upheld the decision to reject the complainant's asylum application. The Board's conclusion was based on its findings that there are no substantial grounds for believing that the complainant, upon return to Ethiopia, would be personally in danger of being subjected to torture or other forms of ill-treatment. The State party accordingly submitted that returning the complainant to Ethiopia would not constitute a violation of article 3 of the Convention.

9.3 Among the factors contributing to a personal risk of the complainant to be subjected to torture upon return to Ethiopia was the complainant's degree of involvement in political activities in the early 1990s in Ethiopia. The State party submitted that the information provided by the complainant in that regard lacked credibility, as it contained numerous contradictions and as his explanations changed throughout the history of this case. According to the information provided by the complainant in his asylum interview on 19 and 20 October 1996, he had been arrested on 20 February either in 1992 or 1993 (Gregorian calendar) and had been imprisoned for one year and seven months, after which he claimed to have fled directly to Norway. However, he did not arrive in Norway until October 1996; the State party concluded that his safe and voluntary stay in Ethiopia for another two years after his imprisonment was incompatible with his alleged fear of persecution.

9.4 The State party further submitted that an inquiry conducted by the Norwegian Embassy in Ethiopia with former leader of the SEPDC coalition, revealed that the latter had not heard of the complainant himself nor of two of the three SPPO leaders who the complainant claimed to have worked for. Upon learning of the former leader's statements, the complainant changed his statements and confirmed that it was in fact the SEPDC coalition he had been a member of and had assisted, and that the confusion resulted from a mistranslation. The State party argued that the confusion between a single political party (the SPPO) and a 14-party coalition (the SEPDC) could not simply be attributed to problems of translation.

9.5 The State party dismissed the credibility of the complainant's claims on the basis of fundamental contradictions between the complainant's claims and those of his mother who was interviewed by the Norwegian Embassy in Ethiopia. After the complainant learned that his mother had informed the Norwegian authorities of his prior imprisonment for his membership of the EPRP, he claimed to have been arrested several times, a fact which he had not previously mentioned. Further discrepancies between his account and that of his mother included the identity of his siblings and his places of residence at different stages in his life, which the State party regarded as undermining the complainant's credibility further.

9.6 The State party noted that in his asylum interview, the complainant had stated that he had never been subjected to any kind of physical torture, but that he had been threatened in a way akin to psychological torture. Two years later, however, when requesting the annulment of the Ministry of Justice's negative decision concerning his asylum claim, he claimed to have been subjected to torture in the form of baton blows to his head. The State party maintained that the late submission of such a crucial fact further undermined the credibility of the complainant's claims. It further argued that his contraction of epilepsy was not, contrary to the arguments advanced by the complainant, a result of the torture he allegedly suffered, but that it more likely emerged from his infection with a tapeworm. The State party finally argued that the contradictions and inconsistencies in the complainant's story cannot, as maintained by the

complainant, be reasonably attributed to post-traumatic stress disorder (PTSD), as the complainant's allegation to be suffering from PTSD had been submitted late and had not been substantiated beyond a declaration by a nurse purely based on the complainant's own account.

9.7 The State party did not regard the support letter from the EPRP's Norwegian group, certifying that the complainant was a victim of imprisonment and political persecution in Ethiopia, as sufficient evidence for the claim that the complainant had been politically active in his home country or that he was viewed with suspicion by the authorities. In the State party's experience, exile organizations had a tendency routinely to issue "confirmations" to country people requesting them. The State party contended that EPRP's Norwegian section had only limited knowledge of the complainant's case.

9.8 In the State party's view, accepting that complete accuracy is seldom to be expected from potential victims of torture, the credibility of the complainant's claim was nonetheless comprehensively undermined by the evident contradictions and inconsistencies set out. Moreover, even if the complainant's account of his political persecution in the past had been true, given the current situation in Ethiopia, there was no basis for holding that he would now be of particular interest to the Ethiopian authorities. The State party therefore concluded that the assessment of the available information and material made by the Norwegian authorities was correct, and that those assessments warranted the conclusion that there were no substantial grounds for believing that the complainant would be at a personal and real risk of being subjected to torture or other ill-treatment if returned to Ethiopia.

The complainant's comments on the State party's submissions

10.1 By letter of 5 November 2004, the complainant noted that the State party's rejection of his claim that he would risk being tortured upon return to Ethiopia was based on its allegations of inconsistencies in his account. He referred to the Committee's case law, according to which neither inconsistencies in an applicant's story, provided they did not raise doubts about the general veracity of the claim,[c] nor late submissions,[d] automatically constituted obstacles to the protection guaranteed by article 3 of the Convention. He pointed out that the Committee has rejected similar arguments advanced by the State party in *Tala v. Sweden*,[e] and that it found, for example in *Mutombo v. Switzerland*,[f] that "even if there are doubts about the facts adduced by the [complainant], [the Committee] must ensure that his security is not endangered". He further submitted that the risk of torture invoking protection under article 3 must go beyond mere theory or suspicion, whereas the wording of article 3 does not demand a demonstration of a "high probability" that torture will occur. He also recalled that the reasons for the danger of being tortured should have been established before or after the flight of the involved person, or as a combination of both.[g]

10.2 The complainant argued that his identity as well as his involvement in politics and his imprisonment for his political activities, both under the former and under the present regime, had been established beyond reasonable doubt. The information provided by his mother confirmed that he disappeared about four years ago, which corresponded to the period of his last imprisonment and his political underground work. His political activities in Ethiopia and his persecution by the Ethiopian authorities were further confirmed by the support letters from the EPRP's Norwegian section. The complainant also submitted a copy of an arrest warrant of 25 March 1994, when he worked for SEPDC, showing that he was wanted for interrogation.

The complainant's continued involvement in the EPRP's Norwegian section was also acknowledged in a support letter from that organization. According to the complainant, his name appeared in the headlines of the Norwegian media several times in that context.[h] All of these facts could not, in the complainant's view, be overshadowed by the alleged inconsistencies in his case.

10.3 Regarding the allegations of inconsistencies and of the complainant intentionally presenting false information, the complainant recalls that he had initially given his account under adverse conditions. Having recently arrived in Norway and been kept in a security cell for some hours before his interrogation, and suffering from PTSD, his uncertainty and fear were worsened by the behaviour of the interrogation officer and the translator who allegedly ridiculed him. Moreover, the complainant communicated his surprise that the interrogation focused mainly on his family background and his departure from Ethiopia (11 pages of the protocol), rather than on what the complainant regards as material to his reasons for seeking asylum (1,5 pages), such as his political involvement and his fear of being returned to Ethiopia.

10.4 Regarding his family and personal history, the complainant submitted that related inconsistencies concern questions of minor importance, whereas the main facts provided by him, such as his family members' names and place of their home, were correct.

10.5 Concerning his alleged persecution in the past, the complainant claimed that, following his first asylum interrogation, he submitted additional details rather than, as the State party alleges, providing another account altogether. In fact, the complainant had, during the asylum interrogation, submitted only those details he deemed relevant, and submitted further facts once informed by the Advisory Group of their importance. The State party's claim that the complainant had said in the interrogation that he was arrested "only" once was false.

10.6 The complainant confirmed that he had stated in the asylum interview to have been "active in", rather than being "a member" of, the SEPDC, whose title he translated freely into English by retaining the main concepts of the organization. The State party's assumption that the former SEPDC leader it interviewed knew all the members of the SEPDC was, in the complainant's view, rebutted by the former's stated willingness to investigate further into the case. The fact that the complainant mainly operated underground in an illegal organization supports the former SEPDC leader's unawareness of the complainant's work as well as his claim that activists were not formally registered. The complainant notes that the State party has not informed the Committee or the complainant about any possible verification work undertaken by it, such as further contact with the former SEPDC leader or the verification of the detailed description of the Kerchele prison in Addis Ababa provided by the complainant.

10.7 Concerning past incidents of torture, the complainant submits that he was beaten during his long imprisonment in the 1980s, whereas he was not subjected to physical torture during his last imprisonment in the 1990s. However, he claims to have been tortured mentally in custody, and witnessed the torture of Abera, one of his political leaders, by the police.

10.8 The complainant submits that he faces a substantial risk of being tortured if returned to Ethiopia. Information provided by Human Rights Watch and United States Department of State reports of 2003 leave little doubt that there is a consistent pattern of gross, flagrant and mass violations of human rights in Ethiopia, a country which still produces refugees. That the

complainant has been politically active in two major opposition movements and escaped from prison eight years ago under the present regime, as well as his continued involvement as an "active member" in the EPRP in Norway[i] all render him at a risk of being tortured if returned. Since Ethiopia has not recognized the Committee's competence to act under article 22 of the Convention, the complainant will have no possibility of bringing a complaint before the Committee if tortured upon return.

Supplementary submissions of the parties

11.1 On 6 April 2005, the State party submitted additional observations regarding the Immigration Appeals Board's decision of 12 March 2004. It states that its decision to review the complainant's case was taken by the Board on its own initiative, without any formal request by the complainant. While the Committee's admissibility decision of 14 November 2003 was the cause for the review, there was no obligation upon the Board to do so. The State party points out that the final decision of 29 December 1997 has now been reviewed four times in total by the Norwegian authorities, who each time did not find substantial grounds for believing that he would be at a substantial, present and personal risk of torture if returned to Ethiopia.

11.2 By letter of 22 April 2005, the complainant responded to the State party's supplementary submission, criticizing the procedure followed by the Immigration Appeals Board concerning its most recent decision of 12 March 2004. He accepts that the decision entailed "an extensive deliberation of the case", but states that due to a change in counsel the decision was apparently not received by him. He argues that he should have been provided with prior notice of the hearing and should have been provided with the Board's decision.

Disposition of procedural issue

12.1 On 10 November 2004, the complainant applied to the Committee, under rule 111, paragraph 4, of the Committee's rules of procedure, for leave to submit oral testimony to the Committee. He argued that he had not had opportunity to present his case in person before the domestic decision-making bodies in his case, nor had he appeared before the courts. Given that a major reason for the rejection of his claim was an assessment of his credibility, an issue that can be well tested in oral testimony, he contended that oral testimony before the Committee would provide it with a basis to assess his credibility.

12.2 On 26 November 2004, at its thirty-third session, the Committee rejected the complainant's application under rule 111, paragraph 4.

Examination of the merits

13.1 The issue before the Committee is whether the removal of the complainant to Ethiopia would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Ethiopia. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention,

including past incidents of torture or the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

13.2 The Committee has considered the periods of imprisonment suffered by the complainant in the 1980s and 1990s and his allegation that he was subjected to beatings, to maltreatment and psychological torture in Ethiopia in the past on account of his political activities. It notes the interest of the Ethiopian authorities in his person apparently demonstrated by an arrest warrant dating from 1994. The Committee has finally noted the complainant's submissions about his involvement in the Norwegian section of the EPRP. Nevertheless, in the Committee's view, the complainant has failed to adduce evidence about the conduct of any political activity of such significance that would still attract the interest of the Ethiopian authorities at the current time, nor has he submitted any other tangible evidence to demonstrate that he continues to be at a personal risk of being tortured if returned to Ethiopia.

13.3 The Committee finds accordingly that, in view of the lengthy period of time that has elapsed since the events described by the complainant, the information submitted by the complainant, including the low-level nature of his political activities in Ethiopia and Norway, coupled with the nature and extent of inconsistencies in the complainant's accounts, is insufficient to establish his claim that he would personally be exposed to a substantial risk of being subjected to torture if returned to Ethiopia at the present time.

14. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7 of the Convention, concludes that the decision of the State party to return the complainant to Ethiopia would not constitute a breach of article 3 of the Convention.

Notes

[a] *Z.T. v. Norway* Complaint No. 127/1999, decision adopted on 19 November 1999.

[b] The complainant cited *Campbell v. Jamaica* Case No. 248/1987, Views adopted on 30 March 1992; *Little v. Jamaica* Case No 283/1988, Views adopted on 24 July 1989; *Ellis v. Jamaica* Case No. 276/1988, Views adopted on 28 July 1992; *Wright v. Jamaica* Case No. 349/1989, Views adopted on 27 July 1992; *Currie v. Jamaica* Case No. 377/1989, Views adopted on 29 March 1994; *Hylton v. Jamaica* Case No. 600/1994, Views adopted on 16 August 1996; *Gallimore v. Jamaica* Case No. 680/1996, Views adopted on 23 July 1999; and *Smart v. Trinidad & Tobago* Case No. 672/1995, Views adopted on 29 July 1998.

[c] *Kisoki v. Sweden* Complaint No. 41/1996, Views adopted on 8 May 1996, *Alan v. Switzerland* Complaint No. 21/1995, Views adopted on 8 May 1996, and *I.A.O. v. Sweden* Complaint No. 65/1997, Views adopted on 6 May 1998.

[d] *Khan v. Canada* Complaint No. 15/1994, Views adopted on 15 November 1994, and *Tala v. Sweden* Complaint No. 43/1996, Views adopted on 15 November 1996.

[e] Ibid.

[f] Case No. 13/1993, Views adopted on 27 April 1994, at para. 9.2.

[g] The complainant here refers to *Aemei v. Switzerland* Complaint No. 34/1995, Views adopted on 9 May 1997.

[h] The complainant supplies no further detail as to the sources or content of these media reports.

[i] The complainant provides no details as to what political activities he undertook in Norway.

Communication No. 245/2004

Submitted by: S.S.S. (represented by counsel, Mr. Stewart Istvanffy)

Alleged victim: The complainant

State party: Canada

Date of the complaint: 25 February 2004 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 16 November 2005,

Having concluded its consideration of complaint No. 245/2004, submitted to the Committee against Torture on behalf of S.S.S. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22 of the Convention.

1.1 The complainant of the communication is S.S.S., an Indian national born on 5 November 1957 in Paddi Jagir, Punjab (India) and currently residing in Canada, from where he faces deportation. He claims that his forcible return to India would constitute a violation by Canada of articles 3 and 16 of the Convention. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 27 February 2004, and requested it, under rule 108, paragraph 1 of the Committee's rules of procedure, not to expel the complainant to India while his complaint is under consideration by the Committee.

The facts as submitted by the complainant

2.1 The complainant is from the Punjab province in India. He is a Sikh; in June 1996 he became a member of the Akali Dal Badal party, campaigning on its behalf during the February 1997 elections. He continued to be involved in politics, organizing meetings and speaking against government policies. He claims that the police arrested him on 20 April 1999 and took him to Gurayan police station. He alleges that he was beaten with sticks and belts, that the police pulled his hair, kicked him in the back, slapped, punched and suspended him from the ceiling. A wooden roller was allegedly used to crush his legs and thighs, and his knee was dislocated. He alleges that he lost consciousness on many occasions and that he was questioned about his cousin and other Sikh militants, as well as his own activities. Finally, the complainant claims that he was released unconscious on 29 April 1999 after a bond of 50,000 rupees was paid. When he regained consciousness he was in a clinic.

2.2 The complainant states further that the police visited him at home while he was undergoing treatment on 12 August and 10 October 1999 and questioned him again about his cousin and other militants. The police allegedly visited his house again on 25 February 2000 while the complainant was out and threatened his wife. On each of these visits, the complainant claims the police received bribes.

2.3 On 23 June 2000 the complainant assisted a group to raise money through his Sikh temple for the children and women of those families whose family members were suspected militants and killed by the police. On 26 June 2000, the police allegedly began arresting persons who had been collecting money with him, and he hid before finding out that the police had gone to his house, beaten his wife and the children. His wife was arrested, beaten and detained for five to six hours.

2.4 The complainant then fled to New Delhi and claims that he paid for an agent to help him arrange his trip to Canada. He arrived in Canada on 23 July 2000 after transiting through the United Arab Emirates and England.

2.5 On 28 September 2000, the complainant applied for refugee status. His application was rejected on 12 March 2002 by the Immigration and Refugee Board. He then applied to the Federal Court on 15 April 2002 for leave to seek judicial review of the rejection. That application was rejected on 24 July 2002. The complainant also submitted his case for a post-determination review on 17 April 2002, which was rejected on 18 April 2002 as it had been made out of time.

2.6 The complainant made submissions under the new pre-removal risk assessment (PRRA) procedure in October 2003, which was denied on 16 December 2003. He also submitted a request for a determination based on humanitarian and compassionate grounds on 11 December 2003; according to the complainant, this procedure has yet to be decided. Finally, he applied for leave to seek judicial review of the PRRA refusal on 28 January 2004, which was dismissed on 2 June 2004, and filed a request for a stay of deportation in the Federal Court on 18 February 2004. This stay of deportation was denied on 23 February 2004.

2.7 The complainant was scheduled to be deported on 29 February 2004.[a]

The complaint

3.1 The complainant argues that he would be imprisoned, tortured or even killed if he were returned to India, where human rights violations within the meaning of article 3, paragraph 2, of the Convention are said to be frequent, particularly against Sikhs. Counsel provides reports from non-governmental sources containing information to that effect, including an Amnesty International report of 2003 which concludes that torture and custodial violence continue to be regularly reported from Punjab.

3.2 Counsel submits a medical certificate dated 21 February 2001 which is said to confirm that the complainant was brought to Rohit Hospital on 29 April 1999 in an unconscious state, with bruises on his body, his feet, buttocks and back swollen and his knee dislocated. The same medical report states that his thigh muscles were crushed and torn, and that the complainant

stayed at the hospital until 30 May 1999, while house visits continued until 30 November 1999. Counsel submits another medical certificate dated 20 March 2001 from a clinic in Canada, which concludes that the complainant presents symptoms of a mixed anxio-depressive mood disorder and "that there is sufficient objective physical and psychological evidence that corroborates with the subjective account of torture".

3.3 In support of his application, counsel refers to letters from family members which support his version of the facts, and medical reports relating to the complainant's family and the alleged torture sustained by them. He also refers to affidavits from the Sarpanch (village elder) of the complainant's village in India corroborating the complaint and claiming that police officers informed him that arrest warrants had been issued against the complainant for involvement with Sikh militants.

3.4 Counsel also submits that the complainant's deportation to India would subject him to severe emotional trauma without the possibility of obtaining appropriate medical treatment, which is said to constitute inhuman and degrading treatment within the terms of article 16 of the Convention.

3.5 Finally, counsel submits that the member of the Immigration and Refugee Board (IRB) who refused refugee status to the complainant "has a record of refusing every Sikh claim" before him, and that the PRRA procedure of risk analysis "is one where practically everyone is refused and that there is a pattern of systematic violations of fundamental rights in this procedure". In particular, counsel submits that the risk assessment is done by immigration agents without any competence in matters of international human rights or legal matters, and that the decision makers do not meet the criteria of impartiality, independence and recognized competence.

State party's observations on the admissibility

4.1 By note verbale of 26 August 2004, the State party contests the admissibility of the communication. It states that the complainant has failed to substantiate on a prima facie basis that there are substantial grounds to believe that he personally faces a risk of torture on return to India, contrary to article 3 of the Convention. It adds that the complainant has failed to substantiate on a prima facie basis that the alleged aggravation of the complainant's health on deportation would amount to cruel, inhuman or degrading treatment for purposes of article 16 of the Convention. Further, the State party submits on the same grounds that there is no merit to the communication.

4.2 On the issue of exhaustion of domestic remedies, the State party does not challenge in principle that the complainant failed to exhaust domestic remedies, except in relation to the new allegation of bias by a member of the IRB. The complainant failed to exercise due diligence in raising this claim in domestic proceedings, and therefore this bias allegation is inadmissible for failure to exhaust domestic remedies. The State party refers to previous decisions of the Committee[b] where it was found that the complainant had failed to substantiate his claim of bias because he did not raise any objections on those grounds until after his application for refugee status had been dismissed.

4.3 The State party clarifies that the complainant's case was heard under the procedure of the former Immigration Act and thus the final decision was determined unanimously by a panel of two members of the IRB, and not by one member, as implied by the complainant. Subsidiarily, the allegations are unfounded, as they are not supported by any evidence. The negative decision of the IRB was based on the complainant's failure to present credible evidence and on several inconsistencies in his testimony.

4.4 As to the allegations that the procedures in Canada are not effective remedies, the State party submits that the PDRCC, PRRA and humanitarian and compassionate review processes do constitute proper risk assessments. It recalls that the Committee previously found[c] that the PDRCC and humanitarian and compassionate review processes constitute effective remedies, and that the same reasoning should apply to the PRRA. The State party adds that the complainant does not submit any evidence to support his claims to the contrary.

4.5 With regard to article 3 of the Convention, the State party submits that the complainant has not prima facie established any substantial grounds for believing that his removal to India will have the foreseeable consequence of exposing him to a real and personal risk of being tortured. Pursuant to the Committee's general comment No. 1, this provision places the burden on the complainant to establish that he would be at risk of being tortured if returned to India. The State party refers to public reports to demonstrate that the situation of Sikhs in India has improved and stabilized in the recent past, and that there is no evidence that the Punjab police are seeking to harm or apprehend the complainant or his family for their militant connections. In particular, the regional party the complainant fears is no longer in power and he has ceased all political and religious activities since 1992.

4.6 The State party also notes that the complainant first visited Canada on 23 June 1998 to attend his father's funeral. A visitor's visa was granted to him following an interview with a visa officer at the Canadian High Commission in New Delhi, India. The complainant did not claim refugee status and returned to India on 30 June 1998. According to the State party, the complainant's allegations of fear of torture are inconsistent with the fact that he returned to India, after his problems with the Punjab police started. Further, the State party highlights that whilst the complainant entered Canada on 23 July 2000 with a Canadian visitor's visa for a single entry for a period of six months, in order to support his mother who was undergoing coronary surgery, he did not claim refugee status until 28 September 2000.

4.7 The State party notes that the complainant has not provided sufficient evidence that the alleged risk he faces exists in all parts of India, and that he would not be able to establish himself anywhere other than in Punjab.[d] Therefore, he has not discharged the burden of establishing substantial grounds to believe that he would be personally at risk of being subjected to torture in India. For the State party, the claim under article 3 is inadmissible.

4.8 With regard to the alleged violation of article 16, the State party refers to the fact that the article 3 obligation does not extend to situations of ill-treatment envisaged in article 16 of the Convention.[e] The State party also submits that the complainant has failed to substantiate any exceptional circumstances relating to the alleged aggravation of his physical or mental state through deportation and that appropriate medical care would be unavailable to him upon his return to India. The State party therefore submits that the claim under article 16 should also be declared inadmissible.

4.9 The State party submits that the record before the Committee confirms that the article 3 standard was duly and fairly considered in domestic proceedings. The Committee should not substitute its own findings on whether there were substantial grounds for believing that the complainant would face a real and personal risk of torture upon return to India, since the material before it discloses no manifest error or unreasonableness in the course of domestic proceedings.

4.10 The State party concludes that the communication should be declared inadmissible because the complainant has failed to establish a prima facie violation of the rights protected by the Convention. If the claims were considered admissible, the Committee should then discuss on the merits, based on the same reasons set out above.

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

5.1 The complainant's counsel commented on the State party's observations on 11 April 2005. As to whether there is an Internal Flight Alternative (IFA) available to the complainant elsewhere in India, counsel relies on an article from a human rights group (ENSAAF), the opinion of a psychologist, as well as newspaper articles for the proposition that the Committee should not follow the decision in *B.S.S. v. Canada*. Counsel concludes that there is no IFA for the complainant, that he is targeted for detention and torture and that there is no possibility of living a normal life in India.

5.2 Counsel submits that the IRB and the PRRA assessments in this case, as well as the State party submission, were based on a supposedly objective view of the situation, but that they misunderstood the real situation in India and Punjab. The State party's submissions to the Committee do not acknowledge some new evidence (medical evidence of the mistreatment of the complainant's wife and children), nor some of the reports filed with the application for a stay. Finally, counsel submits that there is a systematic refusal of Sikh torture victims during the PRRA procedure, and that "article 3 of the Convention against Torture is being violated with impunity in Canada without access to an effective legal recourse to protect these torture victims' lives".

5.3 As to the State party's arguments of inadmissibility regarding IRB bias, counsel acknowledges that this was not raised before the IRB or the Federal Court. Counsel states that although he will not adduce new evidence on this point, a serious case of institutional bias could be made on the basis of the clear bias of one of the IRB's members.

State party's further comments

6.1 By further note verbale of 28 September 2005, the State party denies any impropriety of the handling of the author's claims in the relevant procedures, as alleged by counsel.

6.2 In conclusion, the State party submits that the Committee should render its views on the merits of the communication based on the same submissions that have been made on admissibility.

Admissibility considerations

7.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The

Committee notes, as to the complainant's claim of bias by an IRB officer, that the State party contests admissibility on the ground that domestic remedies have not been exhausted. It observes that the author concedes he has not exhausted domestic remedies, and thus the Committee deems that this part of the communication is inadmissible for failure to exhaust domestic remedies.

7.2 The Committee notes that the State party concedes that domestic remedies have been exhausted in relation to the complainant's other claims. Thus, the issue of whether the legal remedies available under the Canadian immigration review scheme are ineffective, as alleged by counsel, need not be considered by the Committee.

7.3 With regard to the complainant's allegation that the decision to return him to India would in itself constitute an act of cruel, inhuman or degrading treatment or punishment in contravention of article 16 of the Convention, the Committee notes that the complainant has not submitted sufficient evidence in substantiation of this claim. In particular, the Committee recalls that, according to its jurisprudence, the aggravation of the complainant's state of health that could possibly be caused by his deportation does not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16 of the Convention.[f] While the Committee acknowledges that the complainant's deportation to India may give rise to subjective fears, this does not, in its view, amount to cruel, inhuman or degrading treatment, within the meaning of article 16 of the Convention. Therefore, the claim under article 16 of the Convention lacks the minimum substantiation, for purposes of admissibility.

7.4 With regard to the complainant's claim under article 3, paragraph 1, of the Convention, the Committee considers that no further obstacles exist to its admissibility and accordingly proceeds with its consideration on the merits.

Merits considerations

8.1 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to India. In assessing the risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2 of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights.

8.2 In this regard, the Committee takes note of the reports submitted by the complainant, which confirm that incidents of torture in police custody have continued after the end of the militancy period in Punjab in the mid-1990s, and that perpetrators have not been brought to justice in many cases. It also notes the State party's argument that the human rights situation in the Punjab has improved and stabilized in recent years.

8.3 However, the Committee recalls that the aim of the determination is to establish whether the complainant would be personally at risk of being subjected to torture in India. It follows that, even if a consistent pattern of gross, flagrant or mass violations of human rights could be said to exist in that country, such a finding would not as such constitute a sufficient ground for determining that the complainant would be in danger of being subjected to torture upon his return to India; additional grounds must exist to show that he would be personally at risk.

Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.4 The Committee notes that the complainant submitted evidence in support of his claim that he was tortured during detention in 1999, including medical reports, as well as written testimony said to corroborate this allegation. It also notes the 2001 medical report from a clinic in Canada, which concluded that there was sufficient objective physical and psychological evidence that corroborated with the subjective account of torture. Finally, it notes that the complainant contends he was detained and tortured because he was accused of being a militant, and not just because he is a Sikh. However, the Committee considers that, even if it were assumed that the complainant was tortured by Punjabi police in the past, it does not automatically follow that, six years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to India. In particular, the Committee notes that the political party against which the complainant campaigned is no longer in power in Punjab.

8.5 Insofar as the complainant claims that he currently remains at risk of being tortured in India, the Committee notes the evidence submitted by counsel on IFA and his allegation that the complainant does not have the option of living elsewhere in India as he would be targeted by the police. On this point, the Committee has noted that some of the available evidence suggests that high-profile persons may be at risk in other parts of India, but the complainant has not shown that he fits into this particular category. In light of these considerations, the Committee does not consider that he would be unable to lead a life free of torture in other parts of India.

8.6 In the light of the foregoing, the Committee concludes that the complainant has failed to establish a personal, present and foreseeable risk of being tortured if he were to be returned to India.

8.7 The Committee against Torture, acting under article 22, paragraph 7, of the Convention considers that the State party's decision to return the complainant to India would not constitute a breach of article 3 of the Convention.

Notes

[a] The State party subsequently informed the Committee that the removal order had not been enforced.

[b] The State party refers to communication No. 603/1994 *Andres Badu v. Canada*, Views adopted on 12 August 1997; communication No. 604/1994 *Nartey v. Canada*, Views adopted on 12 August 1997; communication No. 24/1995 *A.E. v. Switzerland*, Views adopted on 8 May 1995; and communication No. 654/1995 *Kwane Williams Adu v. Canada*, Views adopted on 12 August 1997 regarding failure to exhaust domestic remedies.

[c] The State party refers to communication No. 95/1997 *L.O. v. Canada*, Views adopted on 5 September 2000; communication No. 86/1997 *P.S. v. Canada*, Views adopted on 16 June 2000; communication No. 66/1997 *P.S.S. v. Canada*, Views adopted on 13 November 1998; communication No. 42/1996 *R.K. v. Canada*, Views adopted on 20 November 1997.

[d] The State party refers to communication No. 183/2001 *B.S.S. v. Canada*, Views adopted on 17 May 2004.

[e] The State party refers to communication No. 228/2003 *T.M. v. Sweden*, Views adopted on 2 December 2003; *B.S.S. v. Canada*, (supra footnote d).

[f] Communication No. 83/1997, *G.R.B. v. Sweden*, Views adopted on 15 May 1998, para. 6.7; *B.S.S. v. Canada*, (supra footnote d), para. 10.2.

Communication No. 254/2004

Submitted by: S.S.H. (represented by counsel, Mr. Werner Spirig)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 7 September 2004 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 November 2005,

Having concluded its consideration of complaint No. 254/2004, submitted to the Committee against Torture by Mr. S.S.H. under article 22 of the Convention,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22 of the Convention.

1.1 The complainant, S.S.H., a Pakistani national, born on 2 March 1969, is now in Switzerland, where he filed an application for asylum on 22 May 2000. The application was rejected on 20 June 2002. The complainant asserts that his return to Pakistan would constitute a violation by Switzerland of article 3 of the Convention against Torture. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 16 September 2004. At the same time the Committee, acting under article 108, paragraph 1, of its rules of procedure, decided that interim measures of protection, as sought by the complainant, were not justified in the circumstances.

The facts as submitted by the complainant

2.1 The complainant was an official in the Pakistani Ministry of Culture, Sport and Tourism from 1989 on. He obtained the post as a result of the contacts maintained by his father with the Minister, Mushahid Hussain Sayyed. The Government of Prime Minister Nawaz Sharif was dismissed on 12 October 1999. The new Government of General Pervez Musharraf then opened an investigation into the activities of the former Minister, who was suspected of corruption and placed under house arrest. In December 1999 a colleague of the complainant, Mr. Mirani, disappeared. The complainant subsequently learned through a friend who at the time worked for the National Accountability Bureau (NAB) that Mr. Mirani had been arrested and tortured by the Bureau, and that before his death in detention he had told them that the complainant was close to the Minister.

2.2 Fearing that he might suffer the same fate as his colleague, the complainant left the country on 22 February 2000 on his official passport. He did so illegally, since the new Government had introduced a new law requiring all officials to obtain official authorization, the

"no-objection certificate", from the secret service before leaving the country. The complainant obtained authorization to leave the country from his superiors but not the required authorization from the secret service. After he had left the country, on several occasions men asked his father where he was. His mother thought that the authorities wanted to arrest their son.[a]

2.3 The complainant arrived in Europe on 21 May 2000 and filed an application for asylum in Switzerland on 22 May 2000. In a decision of 20 June 2002 the application was rejected by the Federal Office for Refugees (ODR), which ordered his expulsion from Swiss territory. On 7 April 2004 the Asylum Appeal Commission (CRA) rejected the complainant's appeal. The Commission considered that the complainant had no further reason to fear political persecution since the Minister with whom he had maintained close relations was no longer under house arrest. The Commission thus upheld the decision by the Federal Office for Refugees ordering his expulsion. In a letter dated 16 April 2004 the Federal Office for Refugees set 11 June 2004 as the date on which he must leave Switzerland. On 14 June 2004 the complainant filed an application for review with suspensory effect with the Asylum Appeal Commission. The application was rejected on 23 June 2004. On 15 July 2004 the complainant had sought a deferral of the departure date, on the ground that he was required to give two months' notice to leave his job. On 30 July 2004 the Federal Office for Refugees held that this ground was not such as to justify deferral. The complainant is no longer authorized to stay in Switzerland and may thus be expelled to Pakistan at any time.

The complaint

3.1 The complainant asserts that there are substantial grounds for believing that he would be subjected to torture if returned to Pakistan and that his expulsion to that country would constitute a violation by Switzerland of article 3 of the Convention.

3.2 He fears being subjected to torture since he was a close collaborator of the former Minister, Mr. Mushahid Hussain Sayyed. In addition, he is afraid that the authorities will initiate proceedings against him since he left the country illegally in that he did not obtain the required authorization, the "no-objection certificate", from the secret service. He would thus be liable to five years' imprisonment, and would also be liable to seven years' imprisonment for having made use of his official passport.

3.3 The complainant claims that his personal fears of being tortured were consistently substantiated during the review of his application for asylum. He also asserts that the Federal Office for Refugees at no time cast doubt on the details he supplied to the Office of his treatment in Pakistan.

State party's observations on the admissibility and the merits

4.1 By a note verbale of 1 November 2004 the State party indicated that it would not contest admissibility, and on 9 March 2005 formulated observations on the merits. Firstly, it recalled the reasons why, following thorough consideration of the complainant's allegations, the Asylum Appeal Commission, like the Federal Office for Refugees, was unconvinced that the complainant ran a serious risk of being persecuted if returned to Pakistan.

4.2 The State party recalled that the Appeal Commission, in its decision of 7 April 2004, noted that the complainant had apparently not encountered even the slightest difficulty in leaving Pakistan through Karachi airport with his official government passport. According to the Commission, that showed that at the time of his departure the complainant ran no risk of being subjected to ill-treatment. The Commission then considered whether such a risk had materialized in the intervening period and concluded that this was not the case since the house arrest imposed on the former Minister had been lifted in December 2000.

4.3 According to the Asylum Appeal Commission, there were other factors casting doubt on the assertion that the complainant ran a risk of ill-treatment in the event of return to Pakistan. The Commission considered that the family links between the persons cited by the complainant before the Commission meant that their statements could not be relied on with any degree of confidence. Furthermore the complainant never demonstrated that he had been politically active.

4.4 The Asylum Appeal Commission, on reviewing an appeal by the complainant in which he asserted that he was in peril of criminal prosecution owing to his illegal emigration and his improper use of his official passport, in a decision of 23 June 2004 again rejected the appeal, on the ground that the risk was already known to the complainant at the time of the ordinary proceedings and that the new documents produced could have been submitted during those proceedings.

4.5 Secondly, the State party considered the merits of the decision by the Asylum Appeal Commission in the light of article 3 of the Convention and the Committee's jurisprudence. The State party notes that the complainant merely recalled before the Committee the grounds cited before the national authorities and cited no new evidence for reconsideration of the Appeal Commission's decisions of 7 April and 23 June 2004.

4.6 Having recalled the Committee's jurisprudence and its general comment No. 1 on the implementation of article 3 of the Convention, the State party fully endorses the grounds cited by the Asylum Appeal Commission substantiating its rejection of the complainant's application for asylum and upholding his expulsion. It recalls the Committee's jurisprudence whereby the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not constitute sufficient reason for concluding that a particular individual is likely to be subjected to torture on return to his or her country, and that additional grounds must therefore exist before the likelihood of torture can be deemed to be, for the purposes of article 3, paragraph 1, "foreseeable, real and personal".[b] The State party notes that the specific instances of torture in Pakistan cited by the complainant concerned political activists, whereas the complainant himself had never engaged in political activity.

4.7 As for the risk of torture incurred owing to the complainant's links with his former employer, the State party notes that officials who did not discharge particularly sensitive functions within the former Government were not at risk of reprisals from the Pakistani army. As a stenotypist, the complainant did not discharge such duties. In any event, had that been the case, the State party considers that the complainant would certainly have been arrested immediately after the October 1999 coup d'état and placed under house arrest. Furthermore the complainant's name did not appear on the so-called "Exit Control List" drawn up by the

Pakistani army, and which was tantamount to a prohibition on leaving the country for persons whose names appeared on the list. Lastly, the State party notes that the house arrest of the former Minister was lifted after 14 months; he seems not to have suffered ill-treatment and is on good terms with the current Government.

4.8 From the standpoint of article 3 of the Convention, the State party indicates that, according to the Committee's consistent jurisprudence, this provision offers no protection to a complainant who merely alleges a fear of being arrested on return to his or her country.[c] This conclusion is all the more valid where there is simply a possibility of being detained.[d] The State party considers that the complainant has not demonstrated that he is likely to be subjected to torture in the event of arrest. Should criminal proceedings be initiated against the complainant, he could, in any event, be represented by counsel and undoubtedly benefit from the support of the former Minister.

4.9 Lastly, the State party explains that the complainant has never claimed to have suffered ill-treatment in the past, or to have been politically active in Pakistan or elsewhere.

4.10 The State party concludes that the complainant's statements do not lead to the conclusion that there are substantial grounds for believing, as specified in article 3, paragraph 1, that he would be in danger of being subjected to torture if returned to Pakistan.

Complainant's comments on the State party's observations on the admissibility and the merits

5.1 By a letter dated 26 May 2005 the complainant submitted comments on the State party's observations.

5.2 Regarding his position within the Ministry, he explained that while his job title was "stenotypist", that position in Pakistan corresponded to the post of the Minister's personal secretary. As such, he was privy to all communications, directives and orders issued by the former Minister, both in the office and at home. He thus represented a major source of information in any investigation into Mr. Sayyed's activities.

5.3 As for his lack of political involvement, the complainant states that he feared political persecution owing to his familiarity with the former Minister's affairs. Although Mr. Sayyed is now free to resume his political activities, the complainant asserts that, should he oppose the current Government, the old charges of corruption would resurface. In that eventuality the complainant would be compelled to provide the necessary information to the National Accountability Bureau.

5.4 With regard to his fear of being arrested and charged if returned to Pakistan owing to the fact that he left the country illegally, the complainant emphasizes that on his arrest the Pakistani police would present him with a long list of charges arising from his former position within the Ministry. The complainant considers that he would then not receive any support from Mr. Sayyed.

Issues and proceedings before the Committee as to the admissibility and the merits

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. In the present case the Committee further notes that domestic remedies have been exhausted and that the State party does not contest admissibility. Accordingly, the Committee finds the complaint admissible and proceeds to consideration of the merits.

6.2 The first issue before the Committee is whether return of the complainant to Pakistan would constitute a violation of the obligation of the State party, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must determine, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Pakistan. In order to take such a decision, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

6.4 The Committee recalls its general comment on the implementation of article 3, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

6.5 In the present case the Committee considers that the indication that the complainant's former colleague, Mr. Mirani, reportedly gave the complainant's name to the National Accountability Bureau under torture does not in any way mean that the complainant is himself likely to be arrested and tortured. The complainant merely asserts that on several occasions unidentified men sought to determine his whereabouts. It would appear, in any event, that these men ended their investigations around July 2001. Accordingly, the Committee considers that there is nothing to indicate that the complainant is now being sought by the Pakistani authorities.

6.6 Further, the Committee notes that the complainant, as a "stenotypist", did not discharge sensitive duties within the former Government. Further, his name did not appear on the Exit Control List prepared by the Pakistani army, and the complainant himself acknowledges that he was never an active political opposition figure. The Committee is thus unable to conclude that the complainant would be exposed to a substantial risk of being tortured owing to his former position within the Ministry.

6.7 The Committee also notes that the house arrest of the former Minister was lifted after 14 months and that he was not troubled further by the Pakistani authorities. The Committee thus considers it improbable that the complainant would be subjected to ill-treatment on his return to Pakistan.

6.8 With regard to the risk of being arrested and charged owing to the fact that the complainant left Pakistan illegally and made improper use of his official passport, the Committee recalls that the mere fact that the complainant might be arrested and tried would not constitute substantial grounds for believing that he would be in danger also of being subjected to torture.[e] The complainant has not submitted any proof that he is likely to be subjected to torture in the event of arrest.

6.9 In view of the foregoing, the Committee considers that the complainant has not demonstrated the existence of substantial grounds for believing that his return to Pakistan would expose him to a real, specific and personal risk of torture, as required under article 3 of the Convention.

7. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the return of the complainant to Pakistan does not reveal a breach of article 3 of the Convention.

Notes

[a] These men have not reappeared since July 2001.

[b] Communications Nos. 94/1997 (*K.N. v. Switzerland*), decision of 19 May 1998, para. 10.5, and 100/1997 (*J.U.A. v. Switzerland*), decision of 10 November 1998, para. 6.5.

[c] Communication No. 57/1996 (*P.Q.L. v. Canada*), decision of 17 November 1997, para. 10.5.

[d] Communication No. 65/1997 (*I.A.O. v. Sweden*), decision of 6 May 1998, para. 14.5.

[e] Communication No. 57/1996 (*P.Q.L. v. Canada*), decision of 17 November 1997, para. 10.5.

Communication No. 256/2004

Submitted by: M.Z. (represented by counsel)

Alleged victim: The complainant

State party: Sweden

Date of complaint: 22 September 2004 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 May 2006,

Adopts the following decision under article 22 of the Convention.

1.1 The complainant is Mr. M.Z., an Iranian national, currently awaiting deportation from Sweden. He claims that his removal to Iran would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 23 September 2004, the Committee forwarded the complaint to the State party for comments and requested, under rule 108, paragraph 1, of the Committee's rules of procedure, not to return the complainant to Iran while his complaint was under consideration by the Committee. On 21 January 2005, the State party acceded to the complainant's request.

The facts as submitted by the complainant

2.1 The author was born in Abadan (Southern Iran). He moved to Shiraz because of the Iran-Iraq war. In 1996, he married the daughter of the chairman of the Imamjome executive body i.e. Omana, of the city of Faza. An Imamjome is an Islamic priest with special powers.

2.2 According to the complainant, since 1999, he has been an active member of the Socialist party of Iran (known as the PSI) and was its representative in Faza. He took part in different political actions: distributing leaflets and other political material; gathering information; preparing meetings; and renting appropriate meeting places. His brother-in-law was an active politician with a leading position in the SPI in Mashad city. The complainant rented an apartment in Shiraz for his sister and brother-in-law, who were in hiding. During their stay, the complainant frequently visited them. He also distributed videotapes and leaflets on student demonstrations for them in Teheran. His brother-in-law and sister were eventually obliged to flee to Switzerland, where they were granted political asylum.

2.3 The complainant argues that his frequent visits and absences raised the suspicion of his wife's family, who thought that he was having an affair. He was unable to reveal the truth and unable to give a plausible explanation. His wife requested a divorce and obtained it on 28 August 2001. The complainant's ex-wife's family reported him to the authorities on the basis that he frequented a suspicious address in Shiraz, had a parabolic antenna, and frequently drank alcohol. On 1 September 2001, a policeman conducted a search of the complainant's home and

confiscated the parabolic antenna and some alcohol. The complainant was arrested and brought to the "General court" in Faza, where he was detained. He was interrogated for 24 hours and severely beaten. He experienced a severe pain in his kidneys as a result. In the night of 2 September 2001, a medical doctor ordered him to be sent to a hospital, where he was diagnosed as suffering from "inflammation of the kidneys". He was then transferred to a detention centre adjacent to the General Court.

2.4 On 3 September 2001, he was charged with the crime of possessing a parabolic antenna and possessing and drinking alcohol. He explains that the real reason for his arrest was to keep him detained, pending the investigation of his visits to the apartment in Shiraz. On 12 September 2001, the General Court found him guilty as charged and sentenced him to 140 whiplashes (75 for the antenna, and 65 for the possession of alcohol). On 14 September 2001, he appealed to the court with a request to have his punishment transformed into a fine, but his request was denied on 18 September 2001. The verdict was to be enforced on 21 September 2001. On 18 September 2001, the complainant was released on bail. He learned from a friend that his political activities were discovered by the authorities, in the course of the investigation on him. On 18 September 2001, he left Faza and travelled to Shiraz, after having been informed by his lawyer that the authorities were searching for him for "serious crimes".

2.5 On 19 September 2001, the complainant called his neighbours in Faza and learned that the authorities had searched his home and closed his repair shop. He realized that his life was in danger and decided to flee from Iran. He went to Bandar Abbas and stayed there for 25 days, before leaving to Tabriz. A smuggler brought him to the border, and from there he went to Sweden by train and car. On 22 January 2002, he arrived in Sweden. On the same day, he requested political asylum and had a preliminary interview. On 18 December 2002, a complete interview took place. The complainant was represented by a lawyer. On 23 May 2003, he had a complementary interview, and his lawyer represented him by phone. During this third interview, upon being asked questions that he had already answered, the complainant had the impression that the translation during the earlier interviews was inadequate and complained to the authorities. On 4 June 2003, the authorities proceeded to the audition of the tape recordings and concluded that the interview was defective, as the interpreter had left out and added information.

2.6 On 17 June 2004, the Migration Board rejected the complainant's asylum request, on the grounds that his statements were not credible. It considered that he had altered his statements, from a fear of punishment for possessing a parabolic antenna and drinking and possessing alcohol, to a fear of punishment for aiding a person with an illicit political view. The Board considered that the complainant had not made out that the Iranian authorities were aware that he was helping his sister and brother-in-law; it found it unlikely that the complainant had been sentenced to 140 whiplashes, as the penalty in Iran for the charges against him was a monetary fine. As to the effectiveness of translation, the Board pointed out that the complainant had had the possibility of making corrections through counsel. The Board concluded that the complainant had failed to prove that he risked persecution if returned to Iran.

2.7 The complainant appealed to the Aliens Appeal Board with a request to have his counsel replaced and to have an oral hearing. On 6 October 2003, the Board denied both of his requests. He then hired a private lawyer, who submitted supplementary information on the complainant's political activities in Iran. The complainant himself also submitted supplementary documents,

including a letter from SPI, in which it was stated that he had been a political activist, as well as a medical certificate that he had suffered from a heart attack, which could have emanated from the stress to which he was exposed. On 8 June 2004, the Board rejected the appeal on the ground that the complainant was not credible. The Board stated, inter alia, that he had had the opportunity to correct the translations from the second interview, that he could not prove that he had been sentenced to 140 whiplashes and his claim that he was politically active had not been mentioned earlier in the proceedings.

2.8 On 21 June 2004, the complainant lodged a new application with the Aliens Appeal Board. He presented what he purported to be original documents, allegedly proving that his request to change the verdict to a monetary fine was denied by the Iranian authorities. These consisted of a decision, of 18 September 2001, rejecting his application for conversion and a note of criminal record about him. The Board did not consider the documents trustworthy and rejected the application on 15 July 2004.

2.9 On 19 July 2004, the complainant lodged a second new application with the Board, with a clarification on his political activities for the previous five years. The Board found that there was no proof that he had been involved politically in Iran and rejected his application on 1 September 2004. On 9 September 2004, in his final application, the complainant presented what he purported to be original summonses from the Iranian authorities inviting him to attend the general court in Shiraz. He requested the Board to postpone its decision pending the issuing of a medical certificate. On 13 September 2004, the Board denied the complainant's request and, on 17 September 2004, rejected his application.

The complaint

3.1 The complainant claims that the State party would violate article 3 of the Convention if he were returned to Iran, as he has a real and personal fear of being tortured and ill-treated upon return, on account of his previous political activities. The sentence of 140 whiplashes will be imposed upon him. He submits that the real reason behind this verdict was the authorities' desire to persecute him for his political activities.

3.2 In the complainant's view, the domestic authorities failed to examine his case and his statements objectively and impartially. He claims that the documents provided by him to prove his sentence were authentic and that those demonstrating his involvement in the SPI were not accepted. As to the judgement of his sentence to 140 whiplashes, he claims that during the interviews he stated that he had never received a written verdict and that the verdict was only orally communicated to him after the court proceedings in Faza. He claims that the State party failed in its obligation, under domestic law, to ensure that the interviews were conducted properly. He could not correct his statements properly, because the information he received from the interviews was incomplete. The Board refused to allow him an oral hearing, thus preventing him from correcting the information provided during interviews.

State party's submissions on the admissibility and the merits

4.1 By submission of 21 January 2005, the State party submits that the complaint is inadmissible as manifestly ill-founded. On the facts, the State party confirms that the interpretation during the second interview was defective and for this reason the complainant was

allowed to make a number of corrections to the information he had presented during the second interview. It made such amendments in submissions on 3 February and 19 June 2003 and these corrections and clarifications were taken into account by the Migration Board.

4.2 The State party submits that the Aliens Appeal Board found no reason to refer the case back to the Migration Board or to conduct an oral hearing. The complainant had participated in three interviews. After it was discovered that there were deficiencies in the second interview, a third interview was held which involved detailed questions. In addition to the records from the three interviews, the material before the Migration Board included submissions from the complainant. Moreover, the complainant had submitted extensive written material to the Aliens Appeal Board.

4.3 On the merits, the State party notes that, the Government of the Islamic Republic of Iran is reported to violate human rights. However, this does not suffice to establish that the complainant's forced return would violate article 3. For such a violation, he must demonstrate that he faces a foreseeable, real and personal risk of being tortured, present an arguable case that goes beyond mere theory and suspicion, and that it rests primarily with the complainant to collect and present evidence in support of his/her account. The State party sets out the relevant provisions of the Aliens Act and points out that several provisions reflect the same principle as that laid down in article 3, paragraph 1, of the Convention. It also submits that the national authority conducting the asylum interview is naturally in a very good position to assess the credibility of the asylum-seeker's claims. Thus, great weight must be attached to the opinions of the Swedish immigration authorities which considered this case.

4.4 According to the State party, there is no reliable evidence that the complainant was detained, charged or convicted for the possession of a parabolic antenna and alcohol consumption. He failed to demonstrate that there is a risk of being subjected to corporal punishment if expelled to Iran. With the new application submitted to the Aliens Appeals Board on 21 June 2004, he submitted two documents, which were purported to be originals of the decision to reject his application for conversion of the flogging sentence to a fine, and of the note of criminal record. It was submitted that the complainant had authorized his brother to obtain these documents for him. The Aliens Appeal Board considered that the documents were not originals and there were a large number of fabricated documents in circulation. In the Board's view, they lacked probative value.

4.5 On 1 September 2004, the Aliens Appeal Board rejected the complainant's second new application, in which he submitted a certificate, dated 30 June 2004, and purportedly issued by the secretary-general of the SPI. The Board stated that a similar certificate had been submitted and that the new certificate did not contain information that gave the Board reason to depart from its previous assessment. On 17 September 2004, the Board also rejected the complainant's third application. He had appended two summonses to his application, which purported to summon him before an Iranian court, as two named persons had reported to the authorities that he had worked actively against the regime. The Board found that crimes of a political nature are generally dealt with by the Revolutionary Court and, according to information available to the Board, this Court does not issue summonses. In addition, the documents at issue carried the emblem of the ordinary courts and not of the Revolutionary Court.

4.6 In November 2004, the Government requested the Swedish Embassy in Teheran to provide certain information regarding, inter alia, the documents submitted by the complainant. The Embassy consulted an Iranian legal expert to obtain an opinion on the authenticity of the alleged application to an Iranian court for a conversion of the flogging sentence to a fine, the alleged decision of 18 September 2001 of the Court, rejecting the application, and the alleged note of the criminal record, concerning the alleged flogging sentence. The Embassy found that a criminal record does not normally contain the kind of information represented therein. It observed that the note had been issued only 13 days after the alleged judgement was delivered, at a point in time in which the time limit for filing an appeal against the alleged judgement had not yet expired. It is unlikely that it would have been issued so quickly and it generally takes longer than 13 days before a judgement is registered in the criminal record.

4.7 As to the alleged application for a conversion of the flogging sentence, the Embassy noted that the form used for the application is intended for use in civil proceedings. This is not the correct form for the present case. In addition, the Embassy noted that such an application should be directed to the authority responsible for the enforcement of the sentence and not, as in this case, to the court/administration against "social decay". In addition, the text of the alleged application states that the complainant "according to the assessment of the then judge and prison physician, he has problems with his kidneys and is not fit to take corporal punishment". The State party questions why the first instance judge would issue a sentence of corporal punishment if he held this view. Concerning the alleged decision of the Court to reject the application, the Embassy stated that the decision only deals with issues of guilt and not with that of conversion of the sentence. Furthermore, all three documents appear to have been sent by fax, one after another, on 27 February 1999, prior to the alleged events described by the complainant.[a]

4.8 The State party highlights the complainant's failure to furnish the alleged judgement, sentencing him to corporal punishment and submits that, in the course of the proceedings, he provided different reasons why he could not do so. In the current complaint, the complainant states that the judgement was only given orally by the Iranian court and thus he had never received a written version of it at all. According to the Iranian expert, a person who had been sentenced by a public court in Iran, as in this case, would be able to procure the judgement. This would not be the case if it had been the Revolutionary Court that had tried him. The complainant did not mention during the domestic proceedings the misunderstanding that he now invokes, and there is no indication that the interpretation during the third interview was flawed.

4.9 As to the sentence itself, the State party refers to the findings of the Migration Board that the possession of a parabolic antenna does not render punishment as harsh as flogging in Iran and that consumption of alcohol was primarily punished under the set of rules in Iranian Penal Law called *houdud*. The relevant punishment was 80 whiplashes, but such a sentence required that the accused had confessed on two occasions that he had consumed alcohol, and two men should have witnessed this act. The sentence would only be enforced in cases where the accused could not rationally explain his alcohol consumption. There is also the possibility for the accused to be pardoned, or under certain circumstances, to have the sentence set aside, providing that he regretted his actions. The consumption of alcohol could also be punished under the *tazirat* rules of the Iranian Penal Code, under which he may be sentenced to three to six months' imprisonment and/or 74 whiplashes. In view of the high standard of proof required under the

Houdud rules, and the fact that under *Tazirat* rules alcohol consumption was primarily punished by imprisonment, together with the lack of credible documentation on this point, the Board found unlikely that the complainant had been sentenced to, or was at risk of being subjected to, flogging for alcohol consumption or possession of a parabolic aerial.

4.10 As to the claim that he is at risk of being tortured on account of his political activities with the SPI, the State party submits that, the complainant elaborated on this claim in successive stages, which gives reason to serious questions about its reliability. At the first interview by the Migration Board, he stated that he had not been politically active in Iran. Later he submitted that he had assisted his politically active brother-in-law, and in a submission to the Migration Board, in February 2003, he claimed that he should be granted political asylum on these grounds. It was not until his appeal to the Aliens Appeal Board in August 2003, that he invoked his own political involvement as the reason for asylum.

4.11 In support of his claim, the complainant submits two summonses inviting him to attend the Public Court of Shiraz, on 31 July 2004 and 25 August 2004, which he claims were handed to his mother. The same Iranian legal expert was consulted on the authenticity of these documents: he concluded that, although the summonses themselves indicate that they were issued by the Public Court in Shiraz, the stamps on the documents originate from the division of the Public Prosecutor's Office, and prosecutors in Iran do not issue summonses. In addition, the purpose of the hearing normally included on summons is to explain certain circumstances rather than to explain "statements made against you by two named persons", as in this case. In addition, it is noted that these two summonses were invoked in support of his claim that the two named persons had reported to the Iranian authorities that he had worked actively against the regime. As this would appear to suggest that he was wanted by the authorities for some kind of political crime, which are dealt with by the Revolutionary Court and which does not issue summonses, the authenticity of these documents was doubtful.

4.12 In addition, despite efforts made to find information on the SPI, the State party claims that is has found nothing, either in human rights reports, on the Internet, or through the Iranian legal expert in Teheran. Thus, even if it is accepted that this party exists, it has not attracted any attention among those likely to have heard about it if its members had been subjected to persecution by the Iranian authorities, as claimed. As to the claim that he is wanted by the Iranian authorities, the State party points out that this claim, like the claim on his political activities, was not brought up at the beginning of the asylum proceedings. At the beginning of the proceedings, he pointed to the risk of ill-treatment allegedly emanating from his former father-in-law and the private individuals taking orders from him. For the State party, it is not clear whether the complainant continues to invoke this ground as a basis for this communication. If so, the State party submits that this claim falls outside the scope of article 3, as it relates to fear of torture or ill-treatment by a non-governmental entity without the acquiescence of the Government.

4.13 To explain the inconsistencies in his story, the complainant appears to submit that the whole of the national asylum proceedings has been defective. The State party recalls that only the interpretation during the Migration Board's second interview with the complainant has been established as flawed, and the complainant has had an opportunity to rectify any faults that could be found in this recording. The claims that there have been further deficiencies in the handling of the case have not been substantiated.

Complainant's comments on the State party's submissions on the admissibility and the merits

5.1 On 15 May 2005, the complainant commented on the State party's submission. He states that throughout the asylum process, he described his personal background, his previous political activities, and how he helped his sister and brother-in-law to escape from Iran. He submitted that the real reason the authorities detained him was to keep him imprisoned pending the results of the investigation into why he had visited the apartment in Shiraz. Further on in his submission, he states that the reasons he did not mention his political involvement, was due to several factors: he had just escaped from Iran; he was in a foreign country, the interpreter was Persian and he didn't know whether he could be trusted; the interpreter took several telephone calls during the interview and was uninterested in what the complainant had to say; and he was told by the SPI that he should not comment on his political involvement without permission.

5.2 As to the State party's point that the interpretation during the first interview was adequate, the complainant submits that the interpretation during this interview was not reviewed, so it is not clear whether it was in fact adequate. As to the flaws in the interpretation during the second interview, the complainant argues that the fact that the authorities did not receive a correct understanding of the reason for his asylum request and other circumstances of the case, referred to in his asylum application, affected the final outcome of the asylum process. Once it became obvious that the interpretation was inadequate, his request that the case be returned to the Migration Board should have been accepted. The argument that the complainant had the opportunity to correct errors from the second interview during the third interview is incorrect, as the faults only became obvious after the third interview itself. The questions posed during the third interview were apparently based on the incorrect opinion that the Migration Board had received during the second interview.

5.3 The complainant admits that he was given an opportunity to comment on the minutes of the second and third interviews, but that upon pointing out his objections to his lawyer he was told that such corrections were not necessary, as he would be granted asylum regardless of what was noted in the minutes. In addition, he was told during the final interview that she had understood everything that he had stated. In any event, all his efforts to correct the errors and misunderstandings would have been pointless.

5.4 The complainant submits that use of Embassy reports precludes any asylum applicant from opposing the information upon which an asylum application may be rejected. The practice could jeopardize the security of the asylum-seeker if he/she is returned to his country of origin, or his/her relatives that remain in the country of origin. As the information is often supplied by a person living in the country of origin, an informant could feel compelled to give false information to avoid reprisals from the authorities. The complainant submits that it is difficult for him, as he is not a legal expert, either to comment on the arguments made relating to the application for conversion of the flogging sentence or to make any comments on the advice received by the State party from the alleged legal expert. It is also difficult to comment on their qualifications as they remain anonymous. He submits that what is likely to happen as expressed by the legal expert and what actually happened in this case should not be confused. The complainant confirms that the documents submitted were copies of the originals, but continues to claim that they are authentic.

5.5 The author confirms that the judge that returned the verdict of guilty knew of his kidney problem, but would also have known that the sentence would not have been carried out until several days later, when presumably, his state of health would have improved. It is clear from the decision that the reason the court did not approve the complainant's application was due to the fact that no evidence was presented that could strengthen his request for a conversion. The Court denied his application, in accordance with the religious and legal grounds stated in the decision.

5.6 As to the fax marks on the documents, the complainant states that they were faxed from Iran to the Migration Boards' Office fax machine in Kiruna. The incorrect date stamp is a result of the Migration Board's failure to update the time function on the fax machine. As to the State party's remark that it could find no information on the SPI, the complainant submits that the address of its official website (www.jonbesh-iran.com) is written on all the official party papers provided to the State party, and a simple Internet search, produces 365 results.[b]

Supplementary submissions from the State party and the complainant's comments

6.1 On 16 November 2005, the State party submitted that since a new remedy to obtain a residence permit had come into force under temporary legislation, the complaint should be declared inadmissible for non-exhaustion of domestic remedies, or at least be adjourned awaiting the outcome of the application of this new procedure. On 9 November 2005, temporary amendments were enacted to the 1989 Aliens Act. On 15 November 2005, these amendments entered into force and were to remain in force until a new Aliens Act entered into force on 31 March 2006. These temporary amendments introduced additional legal grounds for granting a residence permit with respect to aliens against whom a final refusal-of-entry or expulsion order has been issued. According to the new chapter 2, section 5 (b), of the Aliens Act, if new circumstances come to light concerning enforcement of a refusal-of-entry or expulsion order that has entered into force, the Swedish Migration Board, acting upon an application from an alien or of its own initiative, may grant a residence permit, inter alia, if there is reason to assume that the intended country of return will not be willing to accept the alien or if there are medical obstacles to enforcing the order.

6.2 Furthermore, a residence permit may be granted if it is of urgent humanitarian interest for some other reason. When assessing the humanitarian aspects, particular account shall be taken of whether the alien has been in Sweden for a long time and if, on account of the situation in the receiving country, the use of coercive measures would not be considered possible when enforcing the refusal-of-entry or expulsion order. Further special considerations shall be given to a child's social situation, his or her period of residence in and ties to the State party, and the risk of causing harm to the child's health and development. It shall further be taken into account whether the alien has committed crimes and a residence permit may be refused for security reasons.

6.3 No refusal-of-entry or expulsion order will be enforced while the case is under consideration of the Migration Board. Decisions made by the Migration Board under chapter 2, section 5 (b) as amended, are not subject to appeal. Applications lodged with the Migration Board under the new legislation, which are still pending by 30 March 2006, will continue to be handled according to the temporary amendments of the 1989 Aliens Act. The same applies to cases that the Board has decided to review on its own initiative.

7.1 On 19 April 2006, the complainant responded that on 15 November 2005 the Swedish Migration Board, ex officio, registered the complainant's case for examination under the temporary legislation. The complainant has not been provided with a date for consideration of this matter. In any event, he argues that as his case was registered with the Committee prior to the enactment of the new temporary legislation, the Committee need not wait for the Board's decision before considering the merits of this case.

7.2 The complainant applies the new legal grounds to his case, and argues that: there is no reason to believe that Iran will not accept him (both the Migration Board and Aliens Appeal Board had previously taken this into account and no new circumstances have arisen since); there are no relevant medical obstacles to enforcing the order; the complainant does not have any children residing in Sweden (of crucial importance when considering humanitarian grounds for a permit); and there is no reason to believe that it would not be possible to enforce the expulsion order by coercive means, because of conditions in the country of return. The complainant submits that, considering the current amendment does not aim to encompass people in a similar situation to him, there is no reason to assume that he will be granted a residence permit under this procedure. Thus, according to the complainant, there is no reason to adjourn the case awaiting the outcome of its examination under the temporary legislation.

7.3 On 28 April 2006, the complainant informed the Committee that by decision of the same day the Migration Board had refused to grant him a residence permit under the temporary legislation. Thus, in his view domestic remedies had been exhausted.

Issues and proceedings before the Committee as to the admissibility

8. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. Following information received from the complainant on 28 April 2006, in which he informed the Committee that he had been refused a residence permit under temporary legislation, the Committee is of the opinion that all available domestic remedies have been exhausted. The Committee finds that no further obstacles to the admissibility of the communication exist. It considers the complaint admissible and thus proceeds immediately to the consideration of the merits.

Issues and proceedings before the Committee as to the merits

9.1 The issue before the Committee is whether the removal of the complainant to Iran would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass

violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

9.3 The Committee recalls its general comment No. 1 on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable. The risk need not be highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.

9.4 In assessing the risk of torture in the present case, the Committee has noted the complainant's contention that there is a foreseeable risk that he would be tortured if returned to Iran, on the basis of his alleged previous political involvement, and that the alleged sentence against him of 140 whiplashes would be carried out. The Committee noted his claim that the asylum procedure in Sweden was flawed, in particular, due to inadequate interpretation during the second interview. The Committee considers that the State party took appropriate remedial action by allowing him the opportunity to correct errors in the minutes of the interview. The complainant does not deny that he had such an opportunity.

9.5 The Committee notes that the complainant has adduced three documents, which he purports to validate the existence of the sentence against him. He has adduced what he alleges are two summonses to attend the Public Court of Shiraz, on 31 July 2004 and 25 August 2004. He had originally alleged that these documents were originals but, in his comments on the State party's submission, confirmed that they were copies. The Committee notes that the State party has provided extensive reasons, based on expert evidence obtained by its consular services in Teheran, why it questioned the authenticity of each of the documents. In reply the complainant argues that, apparently, the criminal procedure was not applied in this case. The Committee considers that the complainant has failed to disprove the State party's findings in this regard, and to validate the authenticity of any of the documents in question. It recalls its jurisprudence that it is for the complainant to collect and present evidence in support of his or her account of events.[c]

9.6 As to his alleged previous political involvement, the Committee notes the complainant's affirmation that he did not base his initial asylum request on such involvement. It concludes that he has failed to adduce evidence about the conduct of any political activity of such significance that, would attract the interest of the authorities, and, in the language of the Committee's general comment No. 1 on article 3, would make him "particularly vulnerable" to the risk of being placed in danger of torture.

10. For the above-mentioned reasons, the Committee concludes that the complainant has failed to substantiate his claim that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to Iran.

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, concludes that the removal of the complainant to Iran would not constitute a breach of article 3 of the Convention.

Notes

[a] For instance, he stated that the judgement on which the note of criminal record was based and that his above-mentioned application concerned, was delivered by the court on 12 September 2001.

[b] The complainant provides some of this information.

[c] *S.L. v. Sweden*, No. 150/1999, decision adopted on 11 May 2001.

Communication No. 258/2004

Submitted by: Mostafa Dadar

Alleged victims: The complainant

State party: Canada

Date of the complaint: 29 November 2004 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2005,

Having concluded its consideration of complaint No. 258/2004, submitted to the Committee against Torture by Mr. Mostafa Dadar under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22 of the Convention.

1.1 The complainant is Mr. Mostafa Dadar, an Iranian national born in 1950, currently detained in Canada and awaiting deportation to Iran. He claims that his deportation would constitute a violation of article 3 of the Convention. The Convention entered into force for Canada on 24 July 1987. The complainant is represented by counsel, Mr. Richard Albert.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 30 November 2004. Pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Iran while his case was pending before the Committee. The State party acceded to such request.

Factual background

2.1 From 1968 to 1982 the complainant was a member of the Iranian Air Force, where he obtained the rank of captain. In December 1978, when rioting and widespread protests in the country was at its peak, and prior to the installation of the Ayatollah Khomeini, he was given the responsibility of commander of martial law at "Jusk" Air Force Base. He claims that he was given that assignment, inter alia, because he was an outspoken opponent of Ayatollah Khomeini and strongly loyal to the Shah.

2.2 On 13 February 1979, after Ayatollah Khomeini became President of Iran, he was arrested and kept in Q'asr prison in Tehran for almost three months. He was frequently interrogated and beaten. On 2 May 1979, he was released and soon afterwards was assigned to an Air Force base in Mehrabad, Tehran.

2.3 In December 1980, he was expelled from the Air Force on allegations of being loyal to the monarchist regime, but in February 1981, he was called back to service. He retained his rank of captain and was assigned to "Karaj" radar station in Tehran. In July 1981, he was expelled a second time from the Air Force, due to the fact that he had expressed sentiments of loyalty to the Shah. Subsequently, he became involved with the National Iranian Movement Association ("NIMA"), which staged an unsuccessful coup d'état against the Khomeini regime in 1982. In March 1982, in the aftermath of the coup d'état, many NIMA members were executed. The complainant was arrested, taken to Evin prison in Tehran and severely tortured. He was also kept incommunicado. On 9 July 1982, he was subjected to a false execution. On three occasions, authorities called his brother informing him of the complainant's execution. The complainant provides copy of a newspaper article referring to his detention and trial.

2.4 In December 1984, he was found guilty of an attempt against the security of the State and transferred to Mehr-Shar prison, near the city of Karaj. According to the complainant, this prison is partially underground and he was deprived of sunlight for most of the time. In May 1985, he was transferred to Gezel Hessar prison, where his health deteriorated drastically and he became paralysed from the waist up.

2.5 In July 1987, he got a two-day medical pass to exit the prison in order to obtain medical treatment. At that time, some members of his family were in contact with a pro-monarchist organization known as the Sepah Royalist Organization, based in London. Arrangements had been made through Sepah for removing him from Iran. During his two-day release he fled to Pakistan with his wife.

2.6 The Office of the United Nations High Commissioner for Refugees in Karachi issued the complainant with an identity card and referred him to Canada, which permitted him to enter Canada with his wife as a permanent resident on 2 December 1988.

2.7 The complainant states that, while in Pakistan, he was actively involved in operations on behalf of the Shah. He provides copy of four letters from the Military Officer of the Shah, dated between 1987 and 1989, referring to his activities. The last one, dated 24 January 1989, states the following: "We would like to congratulate your landing in Canada as a permanent resident. We appreciate your sense of duty and thank you. We do not have any activity in Canada or any other country like Canada which would require your services. Certainly, you would be called to a tour of duty any time we need you." He also provides copy of a letter dated 4 April 2005 from the Secretariat of Reza Pahlavi stating: "Given Mr. Mostafa Dadar's background and extended high profile political activities, his return to Iran under existing circumstances will indeed subject him to methods used frequently by the intolerant clerics in Iran, namely, immediate imprisonment, torture and eventually execution."

2.8 In Canada, the complainant was treated for severe depression, anxiety and suicidal tendencies. He was diagnosed with chronic post-traumatic stress disorder, as a result of the treatment to which he was subjected while in prison. The complainant is now divorced from his wife, with whom he has two Canadian-born children.

2.9 On 31 December 1996, the complainant was convicted of aggravated assault and sentenced to eight years in prison. The assault was upon a woman the complainant had recently befriended and resulted in her being hospitalized in intensive care and in the psychiatric ward for

several weeks, unable to speak or walk. She sustained permanent disability. At trial the complainant pled not guilty. He has maintained this position ever since. He lists a number of irregularities that occurred at the trial. He says, for instance, that the judge did not take into consideration the fact that he had been found in a sleepy and drug-induced stupor at the crime scene. He had just woken up from a drug-induced sleep having ingested a high quantity of sedatives prior to the time the assault occurred. The New Brunswick Court of Appeal dismissed his appeal. A motion for leave to appeal to the Supreme Court of Canada was dismissed in 1999.

2.10 The complainant indicates that, while in detention in Canada, he was offered to meet with the Canadian Intelligence and Security Service (CSIS). After the death of Zahra Kazemi, an Iranian-born Canadian photojournalist who died in detention in Iran in 2003, he provided accurate information to the CSIS about her place of arrest and detention, the kind of torture she was subjected to, the hospital where she was taken to, etc. He had obtained such information telephonically through his sources in Iran. The complainant provides this information as evidence of his involvement with the opposition forces in Iran.

2.11 On 30 October 2000 the Minister of Citizenship and Immigration issued a Danger Opinion pursuant to the Immigration Act, declaring the complainant to be a danger to the public. As a result, on 18 June 2001 he was ordered deported. On 20 August 2001, he filed an Application for Judicial Review of the Minister's Danger Opinion citing a breach of his entitlement to procedural fairness among other grounds. On 5 November 2001, the Minister consented to the application and the Danger Opinion was quashed. On 11 April 2002, the complainant was granted conditional release by the National Parole Board. On 15 May 2002, he was ordered detained by the Department of Citizenship and Immigration, pursuant to s. 103 of the former Immigration Act, because it was believed that he posed a danger to the Canadian public.[a] He has remained in detention to date.

2.12 On 21 November 2002, the Minister of Citizenship and Immigration issued a second Danger Opinion. This Opinion was quashed by an Order of the Federal Court of Canada of 8 July 2003.

2.13 On 8 March 2004, the Minister issued a third Danger Opinion, which was upheld after the complainant filed an Application for Judicial Review. This opinion indicates that the complainant had been convicted of the following offences: theft under $5,000 in December 1995, for which he was fined $100; assault of his wife, on 12 July 1995, for which he was sentenced to four days in prison and one year probation; aggravated assault, on 14 January 1997, for which he was sentenced to eight years' imprisonment. The Opinion acknowledged a Correctional Services of Canada Detention Review report dated 18 October 2001 and stated: "This report also indicates that the risk that Mr. D. poses to the general population is low but rises to moderate if he is in a 'conflicted' domestic relationship."

2.14 Regarding the risk of torture the Minister states the following: "I cannot, however, disregard the country conditions present in Iran at this time when considering whether or not a person who has been found to be a Convention refugee may be 'refouled'. I also cannot ignore the material prepared by the Immigration and Refugee Board concerning the lack of force of the monarchist movement in Iran at this time. While there is no doubt in my mind that the human rights situation in Iran is precarious, it is my opinion that Mr. D. would be of limited interest to Iranian authorities due to his former membership in this organization; though I do acknowledge

that he claims that he is still a supporter of this movement. He left Iran some 17 years ago and was imprisoned 21 years ago. (…) In the event that I am in error and Mr. D. would be subjected to torture, death or to cruel and unusual treatment or punishment, I am guided by the principles expressed by the Supreme Court of Canada in the case of Suresh. In Suresh, the Supreme Court noted: (…) 'We do not exclude the possibility that in exceptional circumstances, deportation to face torture might be justified.'"

2.15 The complainant indicates that the Correctional Services of Canada (CSC) is the main agency to make determinations in regard to the future risk of offenders if they were to be released to society. A report completed by a CSC parole officer is one of the most objective tools available to the CSC for determining if the subject of the report will pose any danger to the public if he was to be released. The reporting procedure governing risk assessment is based on file materials, psychological assessments, programme performances, etc. The complainant report concluded that there were no reasonable grounds to believe that he was likely to commit an offence resulting in serious harm prior to the expiration of his sentence according to the law.

2.16 The complainant also sent to the Committee copies of two psychological assessment reports according to which he represented a low risk to the general public and a moderate risk in the context of a spousal relationship.

2.17 The complainant challenges the Danger Opinion in that it states that there has not been a politically motivated arrest or execution of monarchists in Iran since 1996. He says that the founder of the Iran Nation Party, a monarchist political organization, and five of his colleagues were summarily executed in Tehran by members of the Iranian intelligence service in 1998. Monarchists in Iran are very active, but are unwilling to engage in a campaign of terror to achieve their goals.

2.18 The complainant further states that the Danger Opinion is based, in large part, on allegations made by his ex-wife. Such allegations should be regarded as being tainted by strong animosity against the complainant, by reason of their marital separation and divorce.

2.19 The complainant applied for judicial review of the third Danger Opinion. On 12 October 2004, the Federal Court of Canada upheld the Opinion. On 22 February 2005, the complainant filed an application for release on humanitarian and compassionate grounds. On 31 March 2005, he filed an application pursuant to s. 84 (2) of the Immigration and Refugee Protection Act for release as a foreign national who has not been removed from Canada within 120 days after the Federal Court determines a certificate to be reasonable.

The complaint

3. According to the complainant, there are substantial grounds for believing that he would be subjected to torture if returned to Iran, in violation of article 3 of the Convention. He refers to reports indicating that torture is practised extensively in Iran. Should the complainant be removed to that country, attempts to extract information from him will jeopardize not only the complainant's own life, but also the lives of several others in Iran who at one time or another aided or cooperated with him in his activities against the Iranian regime.

State party's observations on the admissibility and the merits

4.1 In its submission of 24 March 2005, the State party indicates that it does not challenge the admissibility of the complaint on the ground of non-exhaustion of domestic remedies. It notes, however, that the complainant had not made an application under s. 25 (1) of the Immigration and Refugee Protection Act, despite the fact that, in his submission to the Committee, he had expressed his intention to do so. However, the State party claims that the case is inadmissible because the complainant failed to establish a prima facie violation of article 3 of the Convention. If the Committee concluded that the communication was admissible, the State party submits, on the basis of the same arguments, that the case is without merit.

4.2 The State party indicates that in July 1995 the complainant was convicted of assault against his former wife, Ms. J. They separated in 1995. They have two children who live with the mother. By court order, the complainant is not permitted access to the children out of concern for their safety and well-being. In December 1995 he was convicted of theft of an amount under $5,000 and was fined $100. In January 1997, he was convicted of aggravated assault upon his then girlfriend and sentenced to eight years of imprisonment. The assault occurred while he was on probation with respect to the 1995 assault conviction.

4.3 Throughout the appeal process, the complainant asserted that he did not commit the offence. However, he has made several statements which effectively amount to admitting his crimes, and has even expressed remorse for the victim. The State party refers, in this respect, to the submissions made by the complainant relating to the Ministerial Opinion Report dated 30 October 2000.

4.4 The Ministerial Opinion Report, dated 15 October 2000, concluded that there was little doubt that the complainant received harsh and inhuman treatment when he was in Iran. Relying on the *1999 US Country Report on Human Rights Practices*, the Opinion also observed that he could face harsh and inhuman treatment upon his return. However, the Opinion determined that the risk that the complainant represented to Canadian society outweighed any risk that he might face upon his return to Iran. As a result of the Report, the complainant was ordered deported on 18 June 2001. On 14 November 2001, due to procedural defects, the Federal Court ordered the Opinion set aside, and referred the matter back for redetermination.

4.5 A second Ministerial Opinion Report was issued against the complainant on 21 November 2002. The Risk Assessment given in the Request of Minister's Opinion, dated 17 July 2002, was that there were no substantive grounds to believe that the complainant would face torture, and that it was unlikely that he would be subject to other cruel, inhuman and degrading treatment or punishment, should he be removed to Iran. This assessment was based on the fact that the complainant did not provide details of his current involvement with the NIMA organization, that it had been 20 years since participating in the failed coup, and 16 years since he had left Iran. On 21 November 2002, the Minister gave his opinion. He noted that the situation in Iran had ameliorated somewhat, but that there was a risk that the complainant could be rearrested due to his prison escape and again subjected to torture. It concluded, however, that the significant risk to the public in Canada had to be given greater weight than the risk that the complainant may be rearrested and tortured upon his return to Iran. On 8 July 2003, due to procedural defects, the Federal Court of Canada ordered the Opinion set aside and referred the matter back for redetermination.

4.6 A third Ministerial Opinion Report was issued on 8 March 2004. It concluded that the complainant, like other returnees, may be subjected to a search and to extensive questioning upon return to Iran for evidence of anti-government activities abroad. However, in itself, this did not establish any serious risk that he would face torture or other cruel, inhuman or degrading treatment or punishment. The report recalled that it had been 21 years since the complainant was imprisoned for his political activities and that there had been a large reform movement in Iran since 1997. Furthermore, it was difficult to accept that the complainant maintained any high profile within Iranian society. The Opinion also referred to the situation of pro-monarchists in Iran citing two papers that were prepared by the Research Directorate of the Immigration and Refugee Board in March 2000 and October 2002. The first one concluded that the monarchists were no longer organized and active in Iran. The second stated that monarchist demonstrations were dispersed using tear gas and clubs and that some individuals were arrested. The Opinion concluded that the complainant would be of limited interest to Iranian authorities due to his former membership in a pro-monarchist organization which no longer posed a threat to the current regime.

4.7 The report also pointed out certain inconsistencies regarding the circumstances of the complainant's escape from prison. In a Community Assessment document dated 1 September 1998 the complainant's former wife stated that he was sentenced to two years' imprisonment and was released within that time frame, less 22 days for good behaviour. Furthermore, a psychological report dated 8 December 1988 indicated that the complainant went to Pakistan after release from jail.

4.8 The Ministerial Opinion report also indicated that the complainant had presented no specific evidence to establish that he did remain politically active while in Canada. He had not suggested that the Iranian authorities had actively sought him out at any time and there was no mention of any harassment by government officials towards his family members. Taken into consideration that he had been incarcerated for a number of years and, prior to that, had led what was apparently an isolated existence, it was unlikely that he had remained politically active in any significant way.

4.9 The State party concludes that the complainant did not prima facie establish substantial grounds for believing that his removal to Iran will have the foreseeable consequence of exposing him to a real and personal risk of being tortured. While it does not dispute that the complainant was at one time involved in a failed coup d'état or that he was imprisoned as a result of his participation in the coup, he has not shown that he faces any risk of torture if he is removed to Iran by reason of his past association with the NIMA. He has provided a newspaper clipping written in Persian and a letter from the Secretariat of Reza II. Both date back to 1988. He has provided no recent material to suggest that Iranian authorities have any interest or intention to prosecute or detain him and subject him to any treatment contrary to article 3. His participation in an attempted coup that took place over 20 years ago cannot be viewed as having occurred in the recent past.

4.10 The complainant has provided no evidence to suggest that members of his family in Iran have been the victims of retribution by the Iranian authorities because of his alleged political opinions, nor on account of any involvement in his alleged escape from prison and subsequent departure from Iran. In fact, all that remains is the complainant's bare assertion that he will be tortured or executed upon his return. Given the complainant's continuing equivocation with

respect to whether he did or did not commit aggravated assault, as well as other inconsistencies that were noted by the Federal Court in its reasons for dismissing the complainant's application for judicial review, the State party submits that the complainant is not credible and that reliance should not be placed on his word alone.

4.11 Regarding the complainant's activities since leaving Iran, all the complainant has provided is his own unreliable statement that he continued his political involvement in Canada. In the absence of credible and recent evidence, it is impossible to conclude that he faces a danger that is personal, present and foreseeable. Finally, while the human rights situation in Iran remains problematic, the complainant has provided no evidence in support of his allegations that he himself is at any risk of torture.

4.12 The State party submits that three risk assessments were conducted prior to the determination that the complainant was a danger to the public and should be removed from Canada. The complainant had the opportunity to make submissions about the risks he would face on three separate occasions. He used these opportunities and made extensive submissions in relation to his particular circumstances. In none of the three separate assessments was the conclusion reached that the complainant faced a substantial risk of torture if he were to be removed to Iran. In fact, in the most recent assessment, it was determined that the Iranian authorities would have a minimal interest in him. This finding was upheld by the Federal Court.

4.13 The State party contends that the Committee should not substitute its own findings on whether there were substantial grounds for believing that the complainant would be in personal danger of being subjected to torture upon return, since the national proceedings disclose no manifest error or unreasonableness and were not tainted by abuse of process, bad faith, manifest bias or serious irregularities. It is for the national courts of the States parties to the Convention to evaluate the facts and evidence in a particular case and the Committee should not become a "fourth instance" competent to re-evaluate findings of fact or to review the application of domestic legislation.

4.14 Alternatively, if the communication were declared admissible, the State party requests the Committee to conclude, based on the same submissions, that the communication is without merit.

Complainant's comments on the State party's observations on the admissibility and the merits

5. By letter of 11 July 2005, the complainant contends that the Danger Opinion of 8 March 2004 is based, in large part, on allegations made by his ex-wife. However, her statements must be regarded as being tainted by strong animosity against him by reason of their marital separation and divorce. He provides examples of statements made by her in order to demonstrate that she is not a credible witness. For instance, in statements before the police she feigned that she did not know the complainant's girlfriend; this was not true, as both women had a prior acquaintance that predated the assault. According to a police report dated 23 May 1996, police arrived at her residence on 27 April 1996 after she called them alleging that the complainant had threatened her. However, despite such allegations the complainant was not charged. The inference is that the complainant did not threaten her and that her allegations to the police were false.

Additional submission of the State party

6.1 By submission of 29 July 2005, the State party enumerates the list of sources that were consulted in the preparation of the Ministerial Opinion Report with respect to the role of Monarchists in Iran. Reports and publications from the United Nations, the United States Department of State, as well as non-governmental organizations have documented human rights abuses in Iran, including the use of torture against particular groups. These groups generally include: prominent political dissidents, journalists, women, youth and religious minorities. There is scarce mention of monarchists in such reports. What little discussion there is of monarchists is limited to the period immediately following the 1979 Revolution. The complainant refers to a list of individuals belonging to the NIMA who were allegedly executed. However, the date of the executions was 9 November 1982.

6.2 The complainant refers to the 1998 killing of Dariush and Parvaneh Forouhar, founders of the Iran Nation Party, as an example of a recent incident of torture perpetrated against monarchists in Iran. While the State party is not in a position to comment on the circumstances that led to the killing, neither the 2004 United States State Department Report relied on by the complainant, nor any other report found by the Government of Canada describe the Forouhars or the Iran Nation Party as "hard core monarchists". Rather, they are described as "prominent political activists" or "prominent critics of the Government". Moreover, according to Human Rights Watch, Mr. Forouhar was also a former political prisoner under Shah Pahlavi, the founder of the monarchist movement. This casts doubt on the complainant's assertion that the Forouhars were part of a "hard core monarchist political organization". The State party concludes that the link between the Forouhars and the monarchists has not been made out.

6.3 The State party offers information about other alleged monarchists aiming to demonstrate that there have not been any politically motivated arrests or prosecutions of monarchists in Iran over the past several years. Furthermore, the complainant, by his own account, has not been involved with monarchists since he left Pakistan in 1988. As a result, his involvement cannot be said to rise to a level of prominence that would attract the attention of Iranian authorities.

Additional submission of the complainant

7.1 By letter of 27 September 2005, the complainant refers to one of the Danger Opinions, which used sources according to which, in February 2001, the Iranian police used tear gas to disperse a demonstration by monarchists and that dozens of demonstrators were arrested and a number of others were injured. He also submits that the Forouhars, although political prisoners under the Shah Pahlavi, are now pro-monarchist. He names other alleged monarchists or pro-monarchists who were arrested after July 1999, accused of organizing a protest against the Iranian regime and executed on 15 March 2003.

7.2 There are two major groups in Iran which oppose the present regime, namely the MEK and the monarchists. The MEK has been involved in terrorist activities and is therefore a less legitimate replacement for the current regime. Monarchists operate several television stations in different countries and are actively involved in disseminating information criticizing the current Iranian regime.

7.3 The complainant reiterates his involvement with monarchists since 1988. He refers to the letters of 24 January 1989 and 4 April 2005 (see paragraph 2.7) and states that he is an officer on-call for the monarchists. He reiterates that on 20 June 2003 he was interviewed by the Canadian Security and Intelligence Service, who offered to engage his services.

7.4 Regarding the sources referred to by the State party, the complainant submits that the majority of international human rights organizations have not had direct contact with prisoners of the Iranian regime that would allow them to accurately gauge the extent of the regime's brutality against its detractors, including monarchists.

7.5 The complainant refers to the poor human rights record of Iran and cites the 2002 Amnesty International Report, according to which torture and ill-treatment, including of prisoners of conscience, continued to be used.

Issues and proceedings before the Committee as to the admissibility and the merits

8.1 Before considering any claims contained in a complaint, the Committee against Torture decides whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee further notes that the State party does not challenge the admissibility of the complaint on the ground of non-exhaustion of domestic remedies and that the complainant has sufficiently substantiated his allegations for purposes of admissibility. Accordingly, the Committee considers the complaint admissible and proceeds to its consideration of the merits.

8.2 The issue before the Committee is whether the removal of the complainant to Iran would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.4 The Committee recalls its general comment on article 3, which states that the Committee is to assess whether there are substantial grounds for believing that the complainant would be in danger of torture if returned, and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. The risk need not be highly probable, but it must be personal and present.

8.5 In assessing the risk of torture in the present case, the Committee notes that the complainant claims to have been tortured and imprisoned on previous occasions by the Iranian authorities because of his activities against the current regime and that, after his arrival in Canada, he was diagnosed with chronic post-traumatic stress disorder. This is not contested by the State party.

8.6 Although the complainant's torture and imprisonment occurred between 1979 and 1987, i.e. not in the recent past, the complainant claims that he is still involved with the Iranian opposition forces. The State party has expressed doubts about the nature of such involvement. However, there are no clear indications, from the information before the Committee, that such involvement is inexistent. In this regard, the complainant has submitted a number of letters referring to his activities as a member of the monarchist opposition group. In one of them, fears are expressed that he might be imprisoned, tortured and eventually executed if he returns to Iran under existing circumstances. The complainant has also submitted information in support of his claim that the Monarchists are still active inside and outside the country and that they continue to be persecuted in Iran. Furthermore, the State party has not denied that the complainant cooperated with the Canadian Intelligence and Security Service in 2003. The complainant submitted such information to the Committee as evidence of his continuing involvement with Iranian opposition forces.

8.7 The Committee is aware of the human rights situation in Iran and notes that the Canadian authorities also took this issue into consideration when assessing the risk that the complainant might face if he were returned to his country. In this regard, it notes that, according to such authorities, there is no doubt that the complainant would be subjected to questioning if returned to Iran, as are all persons returned through deportation. In the Committee's view, the possibility of being questioned upon return increases the risk that the complainant might face.

8.8 The Committee notes that the complainant's arguments and his evidence to support them, have been considered by the State party's authorities. It also notes the State party's observation that the Committee is not a fourth instance. While the Committee gives considerable weight to findings of fact made by the organs of the State party, it has the power of free assessment of the facts arising in the circumstances of each case. In the present case, it notes that the Canadian authorities made an assessment of the risks that the complainant might face if he was returned and concluded that he would be of limited interest to the Iranian authorities. However, the same authorities did not exclude that their assessment proved to be incorrect and that the complainant might indeed be tortured. In that case, they concluded that their finding regarding the fact that the complainant presented a danger to the Canadian citizens should prevail over the risk of torture and that the complainant should be expelled from Canada. The Committee recalls that the prohibition enshrined in article 3 of the Convention is an absolute one. Accordingly, the argument submitted by the State party that the Committee is not a fourth instance cannot prevail, and the Committee cannot conclude that the State party's review of the case was fully satisfactory from the perspective of the Convention.

8.9 In the circumstances, the Committee considers that substantial grounds exist for believing that the complainant may risk being subjected to torture if returned to Iran.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, concludes that the deportation of the complainant to Iran would amount to a breach of article 3 of the Convention.

10. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

Note

[a] At that time, a valid Danger Opinion was not yet in place, the first Danger Opinion having already been quashed.

Communication No. 278/2005

Submitted by: A.E. (represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 1 September 2005

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 2006,

Having concluded its consideration of complaint No. 278/2005, submitted to the Committee against Torture on behalf of Mr. A.E. under article 22 of the Convention,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following decision under article 22 of the Convention.

1.1 The complainant is A.E., a Sudanese national born in 1964, currently detained in Switzerland and awaiting deportation to Sudan. He claims that his deportation would constitute a violation of article 3 of the Convention. He is represented by counsel. The Convention entered into force for Switzerland on 2 March 1987.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 9 November 2005. Pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Sudan while his case was pending before the Committee. The State party acceded to such request.

The facts as submitted by the complainant

2.1 The complainant is a Sudanese citizen from Darfur belonging to the Borno tribe. From 1986 to 2004, he studied and worked in the former Yugoslavia, his most recent occupation consisting in providing humanitarian relief and medical assistance to injured persons through the "Kuwait Joint Relief Committee in Kosovo", where he was employed until 1 August 2004. The complainant contends that, from March 2002 to August 2004, he secretly provided distance assistance to refugees from Darfur, through a family aid committee. Since 2003, he was an active member of the JEM (Sudanese Movement for Justice and Equality), a non-Arab rebel group contrary to the Government and the *Janjaweed* militias.

2.2 On 20 August 2004, the complainant returned to Sudan. One month later, he was arrested in Khartoum, together with four other persons, by members of the Sudanese security agency, and accused of having supplied weapons to Darfur citizens. He contends that the real reason behind his arrest was his JEM membership. On the third day of his arrest, the author

bribed the person that was guarding him and gained his freedom. Neither the complaint submitted to the Committee nor any further comments by the complainant contain any reference to any acts of torture having occurred during his arrest. However, in the hearings and complaints filed before the Swiss Federal Office for Refugees, the complainant stated that during his three-day arrest, he was left without water for hours and kept in an unlit room, which allegedly amounted to acts of torture.

2.3 The complainant left Sudan for Switzerland through Egypt with a tourist visa. In Switzerland he applied for asylum on 1 October 2004. By decision of 1 November 2004, the Swiss Federal Office for Refugees rejected the application, considering that the complainant's allegations concerning the provision of humanitarian assistance to Darfur refugees and his detention were not credible and full of inconsistencies. In particular, it considered that the complainant was not able to explain the manner in which this assistance was provided and his particular role therein, as well as the exact period of his engagement. It further noted that it was unlikely that the complainant could have bribed the guard on the third day of his detention and free himself when he had declared that his money and passport had been seized by the security agents upon his detention.

2.4 The Appeal Commission rejected the complainant's appeal on 15 April 2005, on grounds of lack of substantiation and credibility. On 30 June 2005, the complainant filed a request for reconsideration based on the fact that his brother had been arrested in Sudan. This request was also dismissed by the Appeal Commission on 8 July 2005, which considered that this new element of proof did not alter the object of the complaint. A request for suspension of the deportation was declined on 3 August 2005, also based on lack of substantiation of the complainant's arguments.

2.5 By letter of 18 August 2005 sent to the Swiss Migration Office, the complainant requested to be deported to a third country, Syria, in order to better organize his return to Sudan without catching the attention of the Sudanese authorities. On 26 August 2005, the Swiss Migration Office acceded to the complainant's request and notified him that, after having consulted the Swiss Embassy in Damascus, a flight had been booked to Damascus departing on 9 September 2005. However, the complainant refused to take that flight.

The complaint

3. The complainant maintains that the Justice and Equality Movement, to which he belongs, is opposed to the Government of Sudan and that its members are systematically arrested by Sudanese security forces and sometimes tortured during their detention. He adds that torture and inhuman and degrading treatment is the order of the day in Sudan, as denounced in the human rights report annexed to the complaint.[a] The complainant sustains that there are substantial grounds for believing that he would be subjected to torture if returned to Sudan, in violation of article 3 of the Convention.[b]

State party's observations on the admissibility and the merits

4.1 By letter of 21 October 2005, the State party does not contest the admissibility of the communication. On the merits, the State party contends that there are no substantial grounds for believing that the author would be in danger of being subjected to torture upon his return to

Sudan. The State party notes that it does not suffice that there is a pattern of gross human rights violations in Darfur to conclude that the complainant would risk being subjected to torture were he to be returned to Sudan and that a real and personal risk needs to be proved. The complainant has not, in the State party's view, substantiated that he personally risks being subjected to torture if deported.

4.2 The State party notes that the complainant has spent his last 18 years of life in the Former Yugoslavia and that his domicile in Sudan is his mother's house in the province of Khartoum. Therefore, the State party considers that the notorious human rights situation in Darfur does not allow in itself to conclude that the complainant would risk being tortured if returned to Khartoum.

4.3 The State party further notes that, contrary to the complainant's allegations before the Swiss authorities, he has not invoked before the Committee having been tortured or maltreated in the past nor has he provided any medical or other evidence in this regard.

4.4 The State party acknowledges that politically active JEM members risk being arrested and even subjected to torture. However, it notes that the complainant has not been able to specify the nature of his political activities in Sudan or abroad when asked by the Swiss authorities, who found the complainant's statements regarding the assistance provided to Darfur refugees full of inconsistencies. These authorities also found that the complainant's allegations regarding his detention and the way he managed to bribe the guard, recover the passport and escape, were not credible. The State party contends that the complaint merely contains general statements on the situation concerning JEM, with no direct link to the complainant's own activities. Additionally, it notes that the complainant only mentioned that he was a member of JEM after his application to the Swiss Federal Office for Refugees had been rejected.

4.5 The State party observes that the author himself requested to be deported to Damascus by letter of 18 August 2005 sent to the Swiss Migration Office and later refused to take the flight to Damascus booked by the Swiss authorities.

Complainant's comments on State party's observations on the admissibility and the merits

5.1 By letter of 12 January 2006, the author reiterates that JEM is a movement fighting for political change in the country, which has a national agenda directed against the present Government of Sudan, and that arbitrary arrests and torture on the mere suspicion of membership or helping the rebels are common and carried out with total impunity.

5.2 The complainant stresses that he is not just any member but a founding member of JEM and well known throughout Sudan due to his activities. Therefore, he contends that it is almost certain that he is well known by Sudanese security forces and that he would be tortured if returned to Sudan. He notes that he was initially instructed by the rebel leadership to refrain from disclosing his close and special relationship with the movement and that, when he was finally told to declare his membership, the Swiss authorities refused to believe him.

5.3 The complainant recalls that Sudan is a country with appalling human rights records, with a pattern of gross, flagrant and massive human rights violations.

Issues and proceedings before the Committee as to the admissibility and the merits

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. In the present case the Committee further notes that domestic remedies have been exhausted and that the State party does not contest admissibility. Accordingly, the Committee finds the complaint admissible and proceeds to consideration of the merits.

6.2 The issue before the Committee is whether the complainant's removal to Sudan would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Sudan, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

6.4 The Committee recalls its general comment on the implementation of article 3, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable."

6.5 In the present case, the Committee observes that the complainant's allegations that he would risk being tortured if returned to Sudan rely on the fact that members of JEM face a high risk of detention and torture and on the general human rights records of Sudan. The Committee also notes the State party's allegations that the complainant has failed to specify the nature of his political activities and the nature of the assistance provided to Darfur refugees. In this regard, the complainant has failed to explain his concrete role within JEM that would make him particularly vulnerable to the risk of being placed in danger of torture were he to be expelled. He has only invoked his condition of "founding member" in his last submission to the Committee, without having justified or proved this condition and without having ever invoked it before the national authorities.

6.6 The Committee further notes the State party's submission that the complainant has not invoked or proved before the Committee that he was tortured or maltreated in the past.

6.7 In view of the foregoing, the Committee considers that the complainant has not demonstrated the existence of substantial grounds for believing that his return to Sudan would expose him to a real, specific and personal risk of torture, as required under article 3 of the Convention.

7. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the return of the complainant to Sudan does not reveal a breach of article 3 of the Convention.

Notes

[a] Amnesty International December 2004 Report on the human rights situation in Sudan.

[b] Attached to the complaint are two letters from members of the JEM German Office declaring that the author would be in danger of being tortured or killed if returned to Sudan.

B. Decisions on inadmissibility

Communication No. 242/2003

Submitted by: R.T. (represented by counsel, Ms. Brigitt Thambiah)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 11 December 2003 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 24 November 2005,

Having concluded its consideration of complaint No. 242/2003, submitted to the Committee against Torture by Mr. R.T. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant,

*Adopt*s the following decision under article 22 of the Convention.

1.1 The complainant is Mr. R.T., a Sri Lankan national of Tamil origin, currently residing in Switzerland pending his return to Sri Lanka. He does not invoke any specific provision of the Convention, but his complaint appears to raise issues under article 3 of the Convention. He is represented by counsel, Ms. Brigitt Thambiah.

1.2 On 12 December 2003, the Committee, through its Rapporteur on new complaints and interim measures, transmitted the complaint to the State party and requested, under rule 108, paragraph 1, of its rules of procedure, not to return the complainant to Sri Lanka while his case was under consideration by the Committee. The Rapporteur indicated that this request could be reviewed in the light of new arguments presented by the State party. The State party acceded to this request.

1.3 On 12 February 2004, the State party challenged the admissibility of the communication and requested the Committee to withdraw its request for interim measures, pursuant to rule 108, paragraph 7, of the Committee's rules of procedure. On 2 April 2004, the complainant objected to the State party's motion for withdrawal of interim measures. On 30 June 2004, the Secretariat informed the State party that the admissibility of the communication would be examined separately from its merits.

The facts as submitted by the complainant

2.1 The complainant claims that he joined the LTTE (Liberation Tigers of Tamil Eelam) in 1992 and participated in armed combat. On 1 April 1994, the LTTE sent him to Colombo without giving reasons. On 20 October 1995, the police arrested him during an identity control in connection with an LTTE attempt, but released him after three days upon payment of a bribe by the LTTE.

2.2 On 12 May 1996, the complainant entered Germany where he unsuccessfully applied for asylum. On return to Sri Lanka on 21 November 1997, he was arrested by the Criminal Investigation Department (CID), but was released after paying a bribe. On 3 February 1998, the complainant was arrested as an LTTE suspect by the CID under the Prevention of Terrorism Act. He was detained for 25 days without access to a judge. He was allegedly ill-treated during detention. Following his release, he was required to report to the police every Sunday for three months. On 11 June 1998, he was again arrested on the suspicion of LTTE membership and was allegedly ill-treated during detention. After 20 days, the Magistrate's Court in Colombo acquitted him and ordered his unconditional release.

2.3 The complainant then went to Singapore. On 25 January 2000, he was returned and arrested by the CID on arrival at the airport. On 30 January, he was released on bail and later acquitted by the Magistrate's Court in Negombo. On 18 June 2000, the CID again arrested him for presumed LTTE contacts, allegedly detained and ill-treated him, until he was acquitted and released by the Magistrate's Court in Colombo on 10 July 2000.

2.4 On 23 August 2000, the complainant made another unsuccessful asylum application at Frankfurt Airport in Germany. Upon return to Sri Lanka on 16 October 2000, he was detained until the Magistrate's Court in Negombo ordered his release on bail. Subsequently, the police allegedly threatened his life on two occasions.

2.5 On 23 February 2001, the complainant applied for asylum at the Swiss Embassy in Colombo. On 27 February 2001, he was invited for an interview on 16 March 2001, which he did not attend. His application was therefore rejected on 11 May 2001.

2.6 Meanwhile, the complainant travelled to China. On 25 October 2001, he was returned to Sri Lanka, after trying to leave Hong Kong for the United States on a false passport. On arrival, he was asked about the reasons for his deportation and was released after paying a bribe. Between 4 and 9 November 2001, he was allegedly detained and again maltreated by the CID.

2.7 On 16 November 2001, the complainant filed a second asylum application with the Swiss Embassy in Colombo and justified his failure to attend the interview on 16 March 2001 as follows: the night before the interview, security forces had been searching for him, thereby forcing him to go into hiding. He had then left Sri Lanka for Hong Kong, where immigration authorities detained him for five months because of the expiry of his visa. In October 2001, he was returned to Sri Lanka.

2.8 On 19 November 2001, the complainant was interviewed at the Swiss Embassy in Colombo. He stated that he had left Sri Lanka in 1996 without the LTTE's knowledge and had not had contact with the Organization since then. On 29 September 2000, he had been detained for six days and subjected to ill-treatment by the CID.

2.9 On 6 March 2002, the Swiss Federal Office for Refugees (BFF) authorized the complainant's travel to Switzerland in order to pursue his asylum proceedings. He arrived in Switzerland on 20 April 2002. During an interview with the BFF on 22 May 2002, he referred to a letter dated 10 February 2001 from the LTTE, stating that the Organization would "forgive" him one last time, as well as to a letter dated 17 January 2002 from the People's Liberation Organization of Tamil Eelam (PLOTE), threatening to arrest him without handing him over to the authorities.

2.10 On 25 September 2002, the BFF rejected the complainant's second asylum application and ordered his expulsion. It challenged the credibility of his account and the authenticity of the letters allegedly sent by the LTTE and the PLOTE. His alleged arrests in 1995, 1998 and 2000 had no sufficient link in time to establish a present risk of persecution or ill-treatment. Even if his return to the north-east of Sri Lanka was too dangerous, the complainant had an internal flight alternative in the southern parts of Sri Lanka.

2.11 On 28 October 2002, the BFF revoked its decision and held another interview with the complainant on 19 December 2002, during which he stated that he had not had any contact with the LTTE since his departure from Jaffna in 1994, and that the Organization had been looking for him since 1995. In February 2003, the BFF invited the complainant's lawyer to comment on the information received from the German immigration authorities, and granted him access to the files of the German asylum proceedings. The lawyer did not comment.

2.12 On 15 May 2003, the BFF rejected the complainant's second asylum application (dated 26 October 2001) and ordered his expulsion, on the following grounds: (a) the absence of any evidence that the complainant was ever detained, indicted or convicted for LTTE membership; (b) the fact that he was acquitted and released after relatively short detention periods; (c) the inconsistencies in his description of the dates and the periods of detention in his applications and in his statements at the Swiss Embassy in Colombo and before the BFF; (d) the context of his arrests, i.e. the Sri Lankan authorities' need to investigate terrorist acts and to check the complainant's status after his forcible return from three different countries; and (e) the improvement of the general human rights situation in Sri Lanka after the conclusion of an armistice on 22 February 2002.

2.13 On 14 October 2003, the Swiss Asylum Review Board (ARK) dismissed the complainant's appeal on the following additional grounds: (a) further inconsistencies in his account, e.g. the contradiction between his statement before the BFF on 19 December 2002 that he had not had any contact with the LTTE since 1994, and his statement at the Swiss Embassy in Colombo that he left the LTTE in 1996, as well as his claim that the LTTE had paid a bribe to free him from detention in October 1995; or (b) the contradiction between his alleged six-day detention from 29 September 2000 and information from the German border police in Weil am Rhein, according to which he had been in Germany between 23 August and 16 October 2000; (c) the fact that the documents submitted by the complainant merely reflected that he was arrested and released on several occasions, without establishing any link with the LTTE; (d) the lack of authenticity of two letters from a Sri Lankan lawyer, confirming that the complainant had been arrested as an LTTE suspect several times; (e) the absence of a risk of treatment contrary to article 3 of the Convention; and (f) the applicability of the Swiss-Sri Lankan repatriation agreement of 1994, under which the complainant would be in possession of valid documents upon return to Sri Lanka, thus excluding a risk of detention related to identity controls.

2.14 On 20 October 2003, the BFF ordered the complainant to leave Switzerland by 15 December 2003. On 9 December 2003, the Directorate for Labour and Migration of the Canton of Uri convoked the complainant for 16 December 2003 to discuss the modalities of his travel under the voluntary repatriation programme ("swissREPAT") chosen by him.

The complaint

3.1 The complainant claims that he cannot return to Sri Lanka, from where he fled during the civil war. He fears that he will be arrested upon return to Sri Lanka and requests the Committee to assist him to obtain asylum in Switzerland or a third country.

3.2 From the documents submitted by the complainant, it transpires that he does not only fear persecution and torture at the hands of the Sri Lankan authorities, but also by the LTTE and the PLOTE.

3.3 As part of the file of his asylum proceedings in Switzerland, the complainant submitted, inter alia, the following documents: (a) a family notification by the ICRC dated 23 July 1996, in Sinhalese; (b) an ICRC card carrying the complainant's name as well as an ICRC number; (c) a letter dated 26 February 1997 from a Colombo-based lawyer, stating that the complainant had been arrested by the army on 13 July 1996 and detained until 26 February 1997; (d) two letters dated 2 September 2000 and 26 December 2002 from another lawyer, confirming arrests of the complainant in 1995, 1998 and 2000, drawing attention to the unsettled political situation in Sri Lanka, and stating that on return, he would be charged under the Immigrants and Emigrants (Amendment) Act No. 42 of 1998,[a] providing for sentences between one and five years' imprisonment, as well as under the Prevention of Terrorism Act, which provides for much longer sentences and involves a risk of being subjected to duress to extract a confession; and (e) a letter dated 28 August 2003 from the manager of the lodge in Colombo where the complainant used to live, warning him that on 7 and 10 August 2003, the CID had come to the lodge to look for him.

State party's observations on the admissibility

4.1 On 12 February 2004, the State party disputed that the complainant's submission meets the minimum requirements of a complaint within the meaning of rule 107 (a) of the Committee's rules of procedure and, subsidiarily, challenged its admissibility for lack of substantiation of a violation of the Convention.

4.2 The State party submits that rule 107 (a) requires "that the individual claims to be a victim of a violation by the State party of the provision of the Convention". Rather than substantiating a violation of the Convention, the complainant merely informed UNHCR on an unspecified date about the rejection of his asylum application by the BFF, the possibility to appeal this decision within 30 days, and requested an appointment to "discuss [his] problem before writing an appeal". In the absence of any claim of a violation, the State party considers it impossible to comment on the complainant's submission.

4.3 The State party submits that, albeit still in force, the provisions pertaining to the return of LTTE suspects adopted under the February 2002 armistice are inapplicable to the complainant, who was never suspected of belonging to the LTTE. It reserves the right to submit its merits observations, should the Committee declare the communication admissible.

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

5.1 On 2 April 2004, the complainant clarified that, rather than his request for consultation with UNHCR concerning the modalities of an appeal to the ARK, his letter

of 11 December 2003 formed the basis of his complaint to the Committee. In this letter, which was signed and dated, he expressed his fear to be arrested upon return to Sri Lanka, after his appeal had been dismissed by the ARK on 14 October 2003. It was obvious from his previous experience that, in addition to arrest, he also feared ill-treatment, to which young Tamils were still subjected in Sri Lankan prisons. The documents appended to his complaint reflected that he had been detained several times in Sri Lanka. Moreover, during the Swiss asylum proceedings, he had already raised his claim that he had been maltreated by the CID during detention.

5.2 The complainant argues that the formal requirements for submitting a complaint should not be overly strict for a layman and concludes that his complaint meets the admissibility criteria under the Convention.

Issues and proceedings before the Committee as to the admissibility

6.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5, of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement, and that the complainant has exhausted all available domestic remedies.

6.2 The Committee recalls that for a claim to be admissible under article 22 of the Convention and rule 107 (b) of its rules of procedure, it must rise to the basic level of substantiation required for purposes of admissibility. It notes that the complainant has provided documentary evidence for his arrest on 3 February 1998 and for his release on 10 July 2000 (following his arrest on 18 June 2000) by the Magistrate's Court in Colombo. However, beyond the mere claim that he was subjected to ill-treatment during detention, he has failed to provide any detailed account of these incidents or any medical evidence which would corroborate his claim or possible after-effects of such ill-treatment. Even assuming that the author was ill-treated during detention periods in 1998 and 2000, this did not occur in the recent past.

6.3 The Committee notes that the complainant has not submitted any corroborating evidence in support of his alleged detention and ill-treatment in September and October 2000 or in November 2001.

6.4 Lastly, the Committee notes that the BFF gave the complainant ample opportunity to substantiate his claims, authorizing his travel to Switzerland to pursue his asylum proceedings and interviewing him several times. The BFF did not hesitate to revoke its decision of 25 September 2002 to reassess his asylum application. The Committee observes that the complainant has not provided fresh evidence which would cast doubts on the findings of, or the factual evaluation made by, the BFF and the ARK.

7. The Committee therefore considers that the complainant's claims fail to rise to the basic level of substantiation required for purposes of admissibility, and concludes, in accordance with article 22 of the Convention and rule 107 (b) of its rules of procedure, that the communication is manifestly unfounded and thus inadmissible.

8. Accordingly, the Committee decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the State party and to the complainant.

Note

[a] Read together with Act No. 16 of 1993.

Communication No. 247/2004

Submitted by:	A.A. (represented by counsel, Mr. Eldar Zeynalov, NGO "Human Rights Center of Azerbaijan")
Alleged victim:	The complainant
State party:	Azerbaijan
Date of complaint:	28 February 2004 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 25 November 2005,

Having concluded its consideration of complaint No. 247/2004, submitted to the Committee against Torture by Mr. A.A., under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22 of the Convention.

1.1 The complainant is Mr. A.A., an Azeri national sentenced to death on 24 August 1994 by the Supreme Court of Azerbaijan. On 10 February 1998, all death sentences handed down in Azerbaijan, including the complainant's, were commuted to life imprisonment following the abolition of the death penalty by Parliament. The complainant claims to be a victim of violation by Azerbaijan of his rights under articles 1, 2, 12 and 13 of the Convention. He is represented by counsel.

1.2 Azerbaijan became a State party to the Convention on 16 August 1996 (date of accession), and made the declaration under article 22 on 4 February 2002.

The facts as submitted by the complainant

2.1 The complainant was a police inspector. On 24 August 1994, he was found guilty of murder, illegal storage of and port of firearms, voluntary destruction of public property, murder with aggravating circumstances, and attempted murder. He was sentenced to death by the Supreme Court of Azerbaijan, allegedly without having been given the right to appeal against this judgement. The complainant claims that his trial did not meet the requirements of due process and was tainted by the authorities' desire to avenge the murder of a policeman. He also explains that two of the three individuals composing the court (so called "people's assessors") had refused to countersign his death sentence.

2.2 After his conviction the complainant was placed on death row in Baylovskaya prison (Baku), where he allegedly shared a 6 m^2 cell with "5 or 6" other prisoners also under sentence of death. The cell was equipped with only one bunk bed for all of them, and the prisoners had to sleep in turns. The window of the cell was obstructed by metal plates and no light could penetrate; there was only a dim lamp in the cell, which was constantly lit.

2.3 According to the complainant, on 1 October 1994, a group of prisoners escaped from Baylovskaya prison.[a] The same day, the prosecutor in charge of prisons allegedly informed the prison authorities that they were allowed to beat (to death) all prisoners "under his responsibility". After this conditions of detention worsened. No recreation walks were authorized between 1994 and 1998. From 1994 to 1996, prisoners were obliged to take showers directly in the cells, while no bathroom existed; a collective bathroom was set up only in the summer of 1996; showers were then allowed at 20-30-day intervals for 10-15 minutes per cell. The complainant states that more than 70 prisoners under sentences of death passed away while he was on death row from 1994 to 1998, due to the worsening conditions of detention.

2.4 The complainant explains that despite the fact that prison regulations allowed him to receive the visit of his family every month, as well as to receive a 5 kg parcel, in reality, and especially after the escaping of prisoners in October 1994, visits and parcels were "irregular".

2.5 According to the complainant, during the morning calls all prisoners had to leave their cells and to stand in front of the door leading to the firing squad basement. In addition, during his detention on death row the execution chambers were cleaned on seven to eight occasions; every time thereafter, the administration threatened that a series of executions was expected.

2.6 The complainant claims that although the law stipulated that former policemen had to be held separately, he was held together with ordinary criminals. There was allegedly an attempt to kill him while he slept, and he was severely beaten by his cellmates twice.

2.7 The complainant explains that after the "escape" in 1994, and until March 1995, no medical doctor visited the death section. Ill prisoners allegedly were held together with other prisoners, surgery was made in inadequate conditions and several prisoners died because of bad medical care.

2.8 It is further stated that immediately after the 1994 "escape", no food or water was supplied to the prisoners; when the supply was restored, rations were reduced by half. Temperatures at night were below 16º C, but no covers were distributed to the prisoners between October 1994 and January 1995; covers were allowed only after an intervention by the International Committee of the Red Cross.

2.9 The complainant gives details on the allegedly bad treatment in 1994-1996: during the morning calls, prisoners were moved out of their cells, one by one, and were beaten (with wooden sticks, police batons, and electric cables, inter alia), up to the point when they fell to the ground losing consciousness. Accordingly, some 45 prisoners lost their lives in such circumstances.

2.10 In May 1996, the prison administration discovered hidden documents in the complainant's cell, in which he recorded the acts of the prison authorities against him, and also listed persons who had died on death row as a consequence of ill-treatment and torture. He was severely beaten; his pens and paper were confiscated. In September 1996, a governmental delegation inspected the prison. Even though only few prisoners filed minor complaints, since they were afraid of retaliation, all those under sentence of death were severely beaten after the inspectors' departure.

2.11 In October 1996, the head of the prison guards allegedly beat all prisoners, thus "celebrating" the second anniversary of the 1994 "escape". The complainant was allegedly beaten for an hour and a half.

2.12 In the autumn of 1996, a prisoner who had been released allegedly met with the complainant's mother and explained to her the conditions in which her son was detained. The mother filed a complaint with the prison authorities. After this the complainant was beaten, threatened with death, and forced to sign a disclaimer.

2.13 In early 1997, another list of deceased prisoners was discovered in the complainant's cell; he was beaten again and was confined, together with his cellmates, to three days of isolation.

2.14 After the commutation of his death sentence in 1998, the complainant was allegedly held "in isolation" for another six months and was unable to meet with his family during this period.

2.15 The complainant alleges that because of the above-mentioned reasons, he was unable to, and was indeed prevented from, exhausting all available domestic remedies:

(a) Since 1997, his counsel has published a series of articles in different newspapers in relation to the complainant's situation and the situation of other death row prisoners, using information provided by the complainant. However, no inquiry followed nor was any prosecution instituted;

(b) In October and December 2002, several prisoners serving life sentences in Gobustan prison, including the complainant, filed complaints in the Gardaksy district court and in the Court of Appeal, denouncing the deplorable conditions of detention and the ill-treatment they had been subjected to. However, the tribunals refused to examine these complaints on the ground that the claimants' signatures had not been certified by the prison authorities. Many prisoners, such as the complainant himself, never received a reply from the courts;

(c) It is stated that the Ombudsman visited the prison on several occasions, but in spite of the complainant's request, he was unable to meet with him.

2.16 The complainant alleges that he believes that, in the light of the facts outlined above, any further communication with the judicial authorities of Azerbaijan would be futile and would subject him to supplementary pressure and intimidation, or even his physical disappearance as an important witness.

2.17 According to the complainant, he had not been hospitalized during his detention. He was examined on 15 November 2003 by a Medical Commission. On 7 January 2004, he received the results and the diagnosis of the Medical Commission: "situational neurosis, elements character psychopathia". The complainant claims that on 8 January 2004, when he examined his medical record sheet, he discovered that it had been changed with a new type of medical form, and that the information from his previous medical records had not been recorded. Thus, according to him, no record was kept of his illnesses in 1994-2002 (haemorrhoids, rheumatism, neurosis, "attacks", and a cerebral attack in 1999).[b] The complainant alleges that his record card was substituted to prevent any possibility for him to seek compensation for the diseases suffered.

2.18 The complainant applied to the European Court of Human Rights (application No. 34132/03 of 29 October 2003, declared inadmissible on 29 April 2005). However, according to him, the allegations before the European Court relate only to the period following the allegations of the present communication, i.e. after 10 February 1998.[c]

The claim

3.1 The complainant claims that the conditions of detention and the manner in which the authorities treated him while he was on death row (1994-1998), amounted to a violation of articles 1 (1) and 2 of the Convention.

3.2 Article 2, paragraphs 1 and 3, are also said to have been violated, as the cells where he was held were allegedly overcrowded by a factor of 2 to 4 compared to the possible occupancy, and the fact that as a former policeman he was held together with ordinary criminals.

3.3 Allegedly, in violation of article 12 of the Convention, the authorities omitted to investigate promptly and impartially deaths of prisoners who awaited execution, "when there were reasonable grounds" that their death was the consequence of the torture and cruel treatment they were subjected to by the prison authorities.

3.4 Finally, the complainant claims a violation of article 13, because of the State party's inability to secure an impartial examination of the claims of torture and cruel treatment.

State party's observations on the admissibility

4.1 The State party contested the admissibility of the communication on 19 July 2004. It recalls that it recognized the Committee's competence to examine individual complaints on 4 February 2002, and that accordingly, the Committee is only competent to examine complaints submitted against Azerbaijan after that date. Accordingly, the State party considers the complainant's communication to be inadmissible.

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

5.1 By letter of 6 November 2004, the complainant concedes that the events complained of occurred before the State party's acceptance of the Committee's competence to examine individual complaints against it. According to him, however, the *ratione temporis* rule does not apply if violations continue after the date of entry into force of the procedure for the State party. As example, he refers to the jurisprudence of the Human Rights Committee (case of *K. and K. v. Hungary*, communication No. 520/1992, Inadmissibility decision adopted on 7 April 1994, paragraph 6.4).

5.2 On the issue of exhaustion of domestic remedies, he reiterates that he did not believe in the effectiveness of the procedures in the State party. In support of this statement, he names five former death row prisoners who were granted new trials in 2002-2004. Allegedly, all of them had complained of torture and ill-treatment in detention, but the courts allegedly ignored all of their claims and confirmed their life sentences.[d]

5.3 According to the complainant, in 2004, one prisoner serving a life sentence sought to obtain compensation for tuberculosis he had contracted while he was on death row from 1996 to 1998, detained in an overcrowded cell together with prisoners who suffered from tuberculosis. He lost his case and his cassation appeal.[e]

Issues and proceedings before the Committee as to the admissibility

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

6.2 The Committee has noted, first, that the complainant's allegations (see paragraph 3.3 above) that the State party's authorities have consistently failed to investigate reports of deaths of prisoners on death row. It recalls that it can only examine complaints if they are submitted by the alleged victims, close relatives, or by a representative duly authorized to act on the victim's behalf. In the present case, the complainant has not presented any authorization to act on behalf of any other alleged victim. Accordingly, the Committee finds that this part of the communication is inadmissible under rule 98, paragraph 2 (c), of its rules of procedure.[f]

6.3 On the remaining parts of the complainant's claims, the Committee recalls that the State party had challenged the admissibility of the communication on the ground that the events complained of took place before its acceptance on 4 February 2002, of the Committee's competence to deal with individual communications under article 22 of the Convention. The complainant has refuted this assertion by invoking the "continuing effect" doctrine.

6.4 The Committee recalls that a State party's obligations under the Convention apply from the date of its entry into force for that State party.[g] It considers, however, that it can examine alleged violations of the Convention which occurred before a State party's recognition of the Committee's competence to receive and consider individual communications alleging violations of the Convention (i.e. before the declaration under article 22 became effective, i.e. 4 February 2002, in the present case), if the effects of these violations continued after the declaration under article 22 became effective, and if the effects constitute in themselves a violation of the Convention. A continuing violation must be interpreted as an affirmation, after the formulation of the declaration, by act or by clear implication, of the previous violations of the State party.

6.5 The Committee has noted that in the present case the complainant's allegations under articles 1, 2 and 13 of the Convention (see paragraphs 3.1, 3.2 and 3.4 above) all relate to events which occurred before the State party's recognition of the Committee's competence to consider individual complaints. According to the complainant, however, these alleged violations had effects which continued after the State party's acceptance of the Committee's competence under article 22.

6.6 The Committee has equally noted that the complainant filed an application in the European Court of Human Rights regarding events which occurred after 10 February 1998, which, according to him, can be clearly distinguished from the issues submitted to the Committee. This application was declared inadmissible on 29 April 2005. The European Court held, inter alia, that the complainant's allegations of mistreatment on death row, which are identical to the claims in the present communication, were inadmissible.[h]

6.7 In this context, the Committee recalls that it shall not consider any communications from an individual under article 22, paragraph 5 (a), of the Convention, unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement; the Committee is satisfied that examination by the European Court of Human Rights constitutes an examination by such a procedure.

6.8 The Committee considers that a communication has been, and is being, examined by another procedure of international investigation or settlement if the examination by the procedure relates/related to the "same matter" within the meaning of article 22, paragraph 5 (a), that must be understood as relating to the same parties, the same facts, and the same substantive rights. It observes that Application No. 34132/03 was submitted to the European Court by the same complainant, was based on the same facts, and related, at least in part, to the same substantive rights as those invoked in the present communication.

6.9 Having concluded that the "same matter" has been the object of the complainant's Application before the European Court and it was examined and declared inadmissible, the Committee considers that the requirements of article 22, paragraph 5 (a), have not been met in the present case. In the circumstances, the Committee decides that it is not necessary to examine the other two grounds of inadmissibility, namely on *ratione temporis* and non-exhaustion of domestic remedies.

7. The Committee against Torture consequently decides:

(a) That the communication is inadmissible;

(b) That the present decision shall be communicated to the State party and to the complainant.

Notes

[a] Throughout the text the complainant refers to the events of October 1994 as to "escape" and "attempt to escape", without differentiation. It transpires however, that 10 prisoners had escaped.

[b] According to the complainant, the medical card of his cellmate, G., who had suffered from different diseases, including tuberculosis, was completely blank.

[c] The European Convention for Human Rights has entered into force for Azerbaijan on 15 April 2002.

[d] According to the complainant, only on one occasion a life sentence was commuted to 15 years of imprisonment, due to a decriminalization of an offence.

[e] It is stated however, that the Supreme Court made no decision on the case, because the plaintiff was pardoned, released and left the country.

[f] CAT/C/3/Rev.4.

[g] See *O.R.*, *M.M.*, and *M.S. v. Argentina*, communications Nos. 1, 2, and 3/1988, Inadmissibility decision adopted in November 1989.

[h] The Committee has noted that the European Court, acting through a Committee of three judges, declared the application inadmissible on two grounds: partly on (a) non-exhaustion of domestic remedies (articles 3, 8, 14 and 34 of the European Convention), and (b) with regard to the applicant's remaining complaints, on the ground that the information before the Court does not reveal any violation of the applicant's rights and freedoms under the Convention.

Communication No. 248/2004

Submitted by: A.K. (not represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 5 March 2004 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 2006,

Having concluded its consideration of complaint No. 248/2004, submitted by Mr. A.K. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention.

1.1 The complainant, Mr. A.K., an Angolan national born on 1 December 1972, is currently in Switzerland, where he applied for asylum on 13 June 2000. His application was rejected on 10 July 2003. The complainant maintains that sending him back to Angola would constitute a violation by Switzerland of article 3 of the Convention. He is not represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the attention of the State party on 15 March 2004. On 1 April 2004, the State party contested the admissibility of the communication. On 30 June 2004, the secretariat informed the State party that the admissibility of the complaint would be considered separately from the merits.

Summary of the facts

2.1 The complainant says he was a supporter of the *União Nacional para a Independência Total de Angola* (UNITA) and worked for a government agency, where he was spying for UNITA. In January 1993, he warned that the Government was planning to exterminate everyone belonging to the Bakongo ethnic minority. His father, who was also a UNITA supporter, and his mother were killed shortly afterwards. His sister and her husband were reported missing. Shortly afterwards, the complainant left Luanda and went into hiding outside the capital. He was finally arrested in 1998, but managed to escape and left the country on 5 June 2000.

2.2 The complainant arrived in Europe on 12 June 2000 and applied for asylum in Switzerland on 13 June 2000. In a decision dated 10 July 2003, the Federal Office for Refugees rejected his application. According to that Office, the Angolan Government had enacted an amnesty law on 4 April 2002 and the situation in the country had improved: the complainant therefore no longer had any reason to fear persecution because he had spied for UNITA in a government agency. The amnesty applied to UNITA supporters and members of the Angolan

army. The ceasefire between UNITA and the Angolan army had held since the end of the civil war and the situation of former UNITA supporters had improved considerably. Under the circumstances, the Federal Office for Refugees deemed it unnecessary to respond to the complainant's allegations, which contained numerous inconsistencies.

2.3 The Federal Office for Refugees argues that, according to demobilized former UNITA fighters, some of whom have since joined the Angolan army, the complainant is unlikely to face persecution by the State authorities for things he did more than 10 years ago. The Office also points out that the complainant did not occupy an important position in UNITA.

2.4 On 11 August 2003 the complainant appealed against the decision of the Federal Office for Refugees. On 7 January 2004, the Asylum Appeals Commission rejected his appeal. The Commission considered that he had not proved that his return to Angola would place him in danger, and therefore upheld the Office's decision ordering his expulsion. By letter of 13 January 2004, the Federal Office for Refugees set 9 March 2004 as the date by which he had to leave Switzerland.

The complaint

3. The complainant asserts that he would be at risk of being tortured for betraying the Movimento Popular de Libertação de Angola (MPLA) if he was returned to Angola, in violation of article 3 of the Convention.

State party's observations on the admissibility

4.1 By note verbale of 1 April 2004, the State party argued that the complainant's application failed to meet the minimum conditions established by rule 107 (a) of the Committee's rules of procedure; it also challenged the admissibility of the communication on the grounds that the complainant's allegations had not been substantiated for the purposes of admissibility.

4.2 The State party contests the existence, in this case, of any individual communication within the meaning of article 22 of the Convention. It recalls that, under rule 107 (a) of the Committee's rules of procedure, the individual must claim to be a victim of a violation by the State party concerned of the provisions of the Convention, yet in his letter to the Committee of 5 March 2004, the complainant makes no mention of any violation of the Convention and adduces no arguments to substantiate any such violation. In the State party's view, the letter is really no more than a written authorization for the Federal Office for Civil Protection to "represent [him], write to [him] and correspond with all Swiss authorities in matters relating to [his] asylum".

4.3 The State party argues that it does not know in what respect the Convention might have been violated or what arguments there might be in support of such an allegation. It claims that it is not possible for it to comment on the complainant's communication.

4.4 The State party therefore asks the Committee to find that the letter from the complainant does not constitute a communication within the meaning of article 22 of the Convention. Were it nevertheless to be found to constitute a communication, the State party asks the Committee to rule it inadmissible on the grounds that it contains no allegation whatsoever concerning any violation of the Convention by the State party.

Additional information provided by the complainant

5. The complainant submitted additional information in his letters of 30 March 2004 and 8 April 2004. He was recognized as the father of Nathan Tiapele, a child born on 11 February 2003. In a decision dated 13 February 2004, the justice of the peace in Bäretswil (in the canton of Zurich) ordered him to pay maintenance for his son as from 1 May 2004. In the light of this development, on 30 March 2004, he lodged a further application with the Asylum Appeals Commission, for a review with suspensive effect. In a decision dated 8 April 2004, the Commission ordered that his application for review should be referred to the Federal Office for Refugees and that the expulsion decision should be suspended pending a new decision by that body. The Committee has been informed by the Federal Office for Refugees that this application for review was rejected on 3 June 2004. The complainant appealed against this decision to the Asylum Appeals Commission on 3 July 2004.

State party's comments on the additional information

6. The additional information submitted by the complainant in his letters of 30 March 2004 and 8 April 2004 was transmitted to the State party for comment on 20 April 2004. In notes dated 25 June 2004 and 24 January 2006, the State party maintained the conclusion reached in its comments of 1 April 2004 on the admissibility of the complaint, namely that the communication should be ruled inadmissible as containing no allegation whatsoever concerning any violation of the Convention.

Issues and proceedings before the Committee as to the admissibility

7.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

7.2 The Committee notes that, on 30 March 2004, the complainant lodged an application for review with the Asylum Appeals Commission and that, on 8 April 2004, the Commission ordered that this application for review should be referred to the Federal Office for Refugees, which rejected the application on 3 June 2004. It likewise notes that the complainant filed an appeal against the latter decision of the Federal Office for Refugees with the Asylum Appeals Commission on 3 July 2004 but the Commission has not yet taken a decision on this appeal. The communication is consequently inadmissible under article 22, paragraph 5 (b), of the Convention, as the complainant has not exhausted all available domestic remedies.

8. Accordingly, the Committee against Torture decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the complainant and to the State party.

Communication No. 250/2004

Submitted by:	Mr. A.H. (represented by counsel, Mr. Didar Gardezi and Mr. Paul Berkhuizen)
Alleged victim:	The complainant
State party:	Sweden
Date of the complaint:	18 June 2004 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 November 2005,

Having concluded its consideration of complaint No. 250/2004, submitted to the Committee against Torture on behalf of Mr. A.H. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22 of the Convention.

1.1 The complainant is Mr. A.H., a citizen of Iran, currently awaiting expulsion from Sweden. He claims that his forcible return to Iran would constitute a violation by Sweden of article 3 of the Convention. He is represented by counsels Messrs. Gardezi and Berkhuizen.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 16 June 2004. Pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Iran while his case was pending before the Committee.

1.3 By submission of 16 March 2005, the State party requested that the admissibility of the complaint be examined separately from the merits. On 29 March 2005, the Special Rapporteur on new communications and interim measures granted the State party's request, pursuant to rule 109, paragraph 3, of the Committee's rules of procedure.

The facts as submitted by the complainant

2.1 The complainant arrived in Sweden as a student at the end of the 1970s. He later applied for asylum and was granted refugee status on the basis of a declaration that he had been a Kurdish guerrilla soldier, had been shot, and had received injuries to his legs, among other reasons.

2.2 In 1981, the complainant began smuggling Iranians to democratic countries, including Sweden. For that purpose he founded an organization called "Solh" (peace). During the first year of operation, the organization smuggled 50 Iranians out of Iran; by the beginning of 1987,

it had smuggled approximately 20,000 Iranians into Sweden. Those smuggled out were principally opposed to the Iran-Iraq war, i.e. soldiers who had deserted the front line or evaded military service, as well as Jews, and Muslims who had converted to Christianity.

2.3 Ever since his arrival in Sweden, the complainant criticized the Iranian regime in European and Swedish media. He published articles in national newspapers criticizing the use of particular types of weapons by the Iranian Government during the Iran-Iraq war.

2.4 On 29 June 1982, the complainant was granted refugee status, permanent residence, and a work permit in Sweden. In 1984, he was convicted in Sweden on several counts of forgery of documents and sentenced to one year of imprisonment. In 1988, when he was wanted by the Swedish police, his brother in Sweden informed the authorities that he had left the country in 1987. Consequently, the Swedish Population Office determined that the complainant was no longer resident in Sweden. In 1993, he was convicted by the District Court of Uppsala for aggravated fraud, forgery of documents and violation of the Aliens Act, and sentenced to one year of imprisonment. The District Court ordered his expulsion because he had allegedly visited Iran and lost his entitlement to protection. On appeal, the Svea Court of Appeal quashed the expulsion order but increased the term of imprisonment to four years.

2.5 On 10 May 1995, the Swedish Migration Board withdrew his residence permit as he was no longer considered domiciled in the country. The withdrawal was based on the fact that the complainant had left Sweden and failed to register his re-entry. In its decision, the Migration Board stated that the complainant had re-entered Sweden in August 1996, after which he had not applied for a resident permit. According to the complainant, this decision was arbitrary since it was taken without making investigations into his case, and without allowing him an opportunity to appeal.

2.6 On 7 January 1997, the Uppsala District Court sentenced the complainant to one year of imprisonment for his assistance and complicity in forgery of official documents and ordered his expulsion. In ordering his deportation the District Court noted that the applicant had been repeatedly convicted of document forgery both in Sweden and Denmark. The complainant did not appeal this decision.

2.7 On 25 April 1997, an application was submitted to the Government to cancel the expulsion order as there was a risk that the complainant would be subjected to torture or death on return because, inter alia, of his involvement in smuggling dissident Iranians out of Iran; his views expressed in the media against the Iranian regime; as well as the fact that no investigation about his reasons for seeking asylum had been made since the early 1980s. Moreover, the Swedish Embassy in Teheran reported an investigation in Iran, in which it was stated that the complainant may be punished for activities aimed against national security of the Islamic Republic of Iran and, “in the event that his contacts in Iran cannot protect him from punishment, he probably risks prison sentence. Harsher punishment could not be ruled out”.

2.8 On 3 July 1997, the Government dismissed the application without giving reasons. On the same day the case was submitted to the European Commission which dismissed the complaint on admissibility grounds - i.e. the complainant’s failure to challenge the District Court’s judgement of 7 January 1997. Subsequently, an extract from a book written by the

complainant was published, in which he argued that religions are the cause of conflict. In his view, this may be taken as criticism directed against the Iranian Government. On this basis, a further request was made to the Government on 7 July 1997 to cancel the expulsion order; this was rejected.

2.9 On 7 January 2002, the complainant was sentenced by the Court of Appeal of Western Sweden, inter alia, for receiving stolen goods. He was scheduled to be released on 19 June 2004. Thereafter, he was scheduled to be deported to Iran.

The complaint

3.1 The complainant claims that if returned to Iran he will be subjected to torture, corporal punishment, and/or the death penalty for his involvement in smuggling many Iranian dissidents to Sweden and other European countries, and his criticism of the Iranian regime in the media.

3.2 The complainant claims that his refugee status was never revoked and could under no circumstance be deemed to have been revoked by virtue of the 1995 cancellation of his permanent residence permit, since the conditions laid down in Swedish immigration law for the revocation of refugee status, which resemble those set out in the 1951 United Nations Refugee Convention, were not met either then or subsequently.

3.3 The complainant claims that there is a consistent pattern of gross human rights violations in Iran, and that repression has become harsher. He provides documents from Amnesty International and an organization called FARR to confirm that if returned to Iran he would risk torture and possibly be sentenced to death.

State party's observations on the admissibility

4.1 By submission of 24 September 2004, the State party argues that the complaint primarily concerns expulsion on account of criminal offences. Under the Aliens Act, decisions on expulsion on account of a criminal offence are taken by the Court in which the criminal proceedings take place. The Court may request a non-binding opinion from the Migration Board on the issue of expulsion, but the Migration Board's opinion is mandatory, when the alien alleges that there are impediments to enforcement of an expulsion order. An alien may not be expelled unless certain conditions are satisfied: he must have been convicted of a crime punishable by imprisonment; it may be assumed that he would continue his criminal activities in Sweden; or, the offence is so serious that he should not be allowed to remain in the country.

4.2 According to Swedish Immigration Law, an alien who holds a permanent residence permit for at least four years when proceedings are initiated against him may be expelled only in exceptional circumstances, i.e. if he has committed a particularly serious crime or been involved in organized criminal activities. A refugee may not be expelled unless he has committed a serious crime against public order, unless security would be seriously endangered if he were allowed to remain, or unless he engaged in activities threatening national security. There is an absolute ban against expelling an alien to a country where there are reasonable grounds for believing that he would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment. A judgement or order of expulsion on account of a criminal offence is subject to appeal. It may be appealed to the Court of Appeal,

and the Court's decision may in turn be appealed to the Supreme Court. The Government may cancel a judgement or order for expulsion if it finds that the judgement or order cannot be enforced. The Government's power may be invoked only in respect of judgements or orders for expulsion that have become executory.

4.3 The State party dismisses the complainant's claim that he obtained refugee status in 1982. According to the State party, he had applied for a permanent resident permit and travel documents in March 1982, which were granted on 29 June 1982. Although, at that time, he was considered to be in need of protection as a refugee, he did not obtain a formal declaration on refugee status because he had not applied for one. In an opinion of 21 March 1984, the Migration Board stated that the complainant was to be considered as a refugee according to section 3 of the 1980 Aliens Act and thus that he could not be expelled.

4.4 The State party notes that on 25 January 1988, when the complainant was wanted by Swedish police, his brother informed the authorities that he had left the country in October 1987. He returned to Sweden in early 1989. In criminal proceedings before the District Court of Uppsala, in 1993, he stated that he moved from Sweden on 24 August 1987. On 10 May 1995, the Migration Board revoked his residence permit on the grounds that since January 1988 the complainant was reported as having left Sweden. He remained in Sweden to serve the 1993 prison sentence, was released on parole on 12 October 1995 and left the country some time after. He re-entered Sweden on 2 August 1996 without reporting his arrival and without applying for a new residence permit. On 7 January 1997, the District Court of Uppsala sentenced him to one year of imprisonment, ordered his deportation and banned him from re-entering Sweden. The complainant did not appeal.

4.5 The State party maintains that the complainant has been convicted on repeated occasions, both in Sweden and other European countries, of different crimes related to smuggling Iranians into Western European countries. He was convicted in Denmark in 1992 and in Sweden in 1984, 1990, 1992, 1997 and 2002. He completed his latest conviction on 20 June 2004. However, on 18 June 2004, the Minister of Justice decided that he should remain in custody.

4.6 The State party notes that, on 12 February 1993, the District Court of Uppsala convicted the complainant and ordered his expulsion since, after having left Sweden in 1987, he visited Iran, where the authorities issued a new identification document for him on the name of H.S. The Court considered that he had voluntarily re-availed himself of the protection of his country of origin. On appeal, however, the Svea Court of Appeal quashed the expulsion order based on the complainant's retraction of his alleged former statement. On 7 January 1977, the same court ordered the complainant's expulsion, taking into account two opinions from the Migration Board that the complainant was ineligible as a refugee, and on the basis that he had been sentenced for crimes punishable by imprisonment, and that there were reasons to believe that he would continue to commit new crimes. The Court considered that the complainant was no longer a refugee because he was no longer in need of protection; the special restrictions on the expulsion of refugees were not applicable to his case.

4.7 On 29 April 1997 the complainant submitted his first petition to the Government to obtain a cancellation of the expulsion order. On 16 June 1997, the Swedish Embassy in Iran submitted an opinion which challenged the complainant's allegations. On 3 July 1997, the Government rejected his request. On the same date, he filed an application with the European Commission. On 7 July 1997, he submitted a new application seeking the revocation of the

expulsion order, referring to a book on the subject of religious conflicts and an information booklet for asylum-seekers that he had written three years earlier. On 7 July 1997, the Minister of Justice stayed the enforcement of the expulsion order, pending the Government's decision on the new application. On 18 September 1997, the Swedish Embassy in Teheran submitted a second opinion on the complainant's case. On 12 November 1997, he withdrew his second petition with the Government and his request was then struck off its list. On 22 January 1998, the European Commission declared the complainant's application inadmissible for failure to exhaust domestic remedies.

4.8 On 28 January 1998, the complainant reapplied for cancellation of the expulsion order. On 27 March 1998, the Migration Board reported that impediments against the enforcement of the expulsion order under the Aliens Act could not be totally ruled out. On 5 November 1998, the Government granted the complainant a temporary resident permit, valid six months on the grounds of the special circumstances that were considered applicable at the time. Thereafter, the Government rejected two further applications for cancellation of the expulsion order on 13 January 2000 and on 4 July 2002. In those cases, the Migration Board also maintained that impediments against the expulsion of the complainant could not be totally ruled out. On 17 June 2004, the Government rejected the complainant's last request for cancellation of the expulsion order. The Migration Board informed the Government on 11 June 2004 that no impediments existed against expelling the complainant.

4.9 The State party challenges the admissibility of the complaint since it refers to a matter that has been examined under another procedure of international investigation and settlement (art. 22, para. 5 (a)). The European Commission for Human Rights already examined the "same matter" and declared his application inadmissible. The case before the Commission concerned the same complainant, the same facts, and the same substantive rights as the case before the Committee.

4.10 The State party further alleges that the complaint is inadmissible for the complainant's failure to exhaust domestic remedies (art. 22, para. 5 (b)), since he did not appeal the judgement of the District Court of Uppsala of 7 January 1997. It adds that an appeal to the competent court of appeal, and, if necessary, a further appeal to the Supreme Court constitute domestic remedies that the complainant must exhaust. There is no basis to consider such remedies as "unreasonably prolonged" or "unlikely to bring effective relief". The remedy available to the complainant through the regular appellate process cannot be replaced by a petition to the Government seeking a cancellation of the expulsion order. Such a petition is an extraordinary remedy that could be considered to be equal to a petition for mercy. Furthermore, no special circumstances exist that would absolve the complainant from his obligation to exhaust domestic remedies.

4.11 The State party adds that the complaint is inadmissible as manifestly ill-founded (article 22 and rule 107 (b) of the rules of procedure), because the complainant failed to meet the basic level of substantiation, for purposes of admissibility.

New communication submitted on behalf of the complainant and complainant's allegations on the admissibility of the case

5.1 On 14 December 2004, the complainant's newly appointed counsel submitted a new communication on his behalf. According to this complaint, the State party omitted to clarify that:

(a) On nine different occasions, Swedish authorities officially declared that there were impediments to the enforcement of the expulsion order;

(b) The Uppsala District Court and the Svea Court of Appeals considered that the complainant was a political refugee in Sweden and that impediments against the enforcement of the deportation order did exist;

(c) Following the ruling of the European Commission of Human Rights, the State party granted a temporary residence and work permit to the complainant for six months in November 1998;

(d) Legislation other than that invoked by the State party is relevant for the complainant's case;

(e) Neither the Uppsala District Court nor the Migration Board commented on the complainant's refugee status and his need for protection;

(f) The Migration Board did not give reasons for arbitrarily revoking the complainant's permanent resident permit;

(g) The Migration Board did not carry out investigations into the existence of impediments to the enforcement of the expulsion orders;

(h) There were contradictions between the Migration Board's statement on 27 March 1998 certifying that "it could not be ruled out that impediments to the complainant return exist" and the opposite conclusion reached on 21 July 2004;

(i) In 1997, the Uppsala District Court did not carry out any investigation into the complainant's allegation that his deportation would expose him to a risk of torture;

(j) According to Swedish Immigration Law, the Government's decision of 7 January 1997 confirming the expulsion order became statute-barred on 7 January 2000, after the four-years statutory time limit elapsed;

(k) The complainant had never forfeited his status as permanent resident or authorized anyone to report him as having left Sweden with the intention to settle elsewhere permanently.

5.2 The complainant challenges the State party's account of the facts, which is said to undermine his credibility. He highlights the following alleged discrepancies between his own account and that of the State party: the complainant did actively participate in the Kurdish rebellion against Khomeini in 1979; he held a prominent position in the Kurdish guerrilla movement; was wounded and shot in both legs; he was active in politics since 1974. Upon arrival in Sweden, on 4 May 1981, he was recognized as a "de facto" refugee in accordance with the 1980 Aliens Act. On 29 June 1982, he was granted "indefinite protection and refugee status", a refugee travel document, and a permanent residence and work permit. He also received written confirmation of his refugee status. The Official Report of the Swedish Embassy in Teheran of 16 June 1997 confirms that he was a political refugee in need of protection.

5.3 The complainant states that in 1981, Kurdish political parties in Iran asked him to found an independent organization that would help Kurdish guerrilla members seek asylum in Western Europe, "Sohl", which began helping persecuted Iranians to seek asylum in Sweden and other European countries. The complainant alleges that, in 1984, in retaliation for his activities, Sweden passed a law imposing heavier penalties on those aiding foreigners to enter the country without a valid visa. On 22 February 1984, the District Prosecutor in Uppsala requested that the complainant be expelled from Sweden. On 30 March 1984, the Uppsala District Court dismissed the request on grounds that the complainant was a political refugee.

5.4 The complainant argues that during the 1980s, as a result of the worsening of the political situation in Iran, the flow of asylum-seekers increased, which in turn generated a wave of xenophobia and anti-immigrant discrimination, which was backed up by extreme right-wing Swedish political parties. Many refugees began to be harassed. In 1987, the complainant, who by that time publicly claimed that he had helped at least 20,000 Iranians to settle in Sweden, began receiving death threats and was maltreated on several occasions. During an interview on local radio, he mentioned figuratively that his "soul" had visited Iran to contact H.S., which used to be his alias in the Kurdish guerrilla. An official of the Migration Board, however, reported this statement as if he had truly visited Iran. In January 1998, his brother was questioned about his whereabouts and referred that he was travelling. His brother never implied that he was visiting Iran. An employee of the Vaksala Population Registry prepared a note in which the Registry required the complainant to inform the Population Registry Office of his whereabouts before 4 February 1988. According to the complainant, this note was never delivered to him. On 25 January 1988, the Swedish Population Registry struck the complainant's name from the list of residents. The purpose of striking someone from the National Population Registry is to assure that from that day onward the individual would not be allowed to enjoy the welfare and social benefits extended to legal residents. Since the Registry's decision was never communicated to any other Swedish authority, the complainant continued to receive welfare and social benefits.

5.5 On 17 March 1989, the complainant applied for a renewal of his refugee travelling document, which was granted. He then opened two bank accounts and applied for a new driving license. From 22 May 1991 to 30 December 1992, the complainant served prison sentences in Germany and Denmark. On 30 December 1992, Denmark extradited him to Sweden, in accordance with Sweden's request. In the meantime, the Uppsala District Court prepared to indict the complainant. On 14 January 1993, in a reply to a query from the Uppsala District Prosecutor, the Migration Board stated that the complainant had obtained refugee status on 29 June 1982 and had been domiciled in Sweden ever since. The note added that nothing indicated that the complainant had ceased to be a refugee and that his temporary travel outside Sweden had not affected his refugee status, concluding that impediments against his expulsion existed. At the same time, the note added that the complainant was said to have admitted, in a radio interview, that he had travelled to Iran.

5.6 Later in 1993, the Uppsala District Court sentenced the complainant to one year of imprisonment and ordered his expulsion and a re-entry ban, based on the allegedly false information provided by the Migration Board. The complainant states that the District Court should have carried out an enquiry to determine whether there were any obstacles to ordering his expulsion. The issue of the complainant's alleged deletion from the Swedish Population Registry was discussed at length at the court hearings. On appeal, the Svea Court of Appeal

accepted the complainant's arguments, cancelled the expulsion order, but decided to increase the complainant's imprisonment from one to four years. The complainant realized that the issuance of an expulsion order was essentially a "hidden trap" to unreasonably prolong the period of imprisonment.

5.7 On 7 January 1997, the Uppsala District Prosecutor ordered his expulsion, relying on false allegations that the complainant had voluntarily registered himself on 25 January 1988 as having emigrated to another country. The Court did not investigate whether there were any impediments to the enforcement of an expulsion order. The Court was also aware of its judgement of 1993, which had been quashed by the Svea Court of Appeal. The complainant argues that it is unlikely that the judges of the District Court had forgotten that the arguments about the complainant's alleged trip to Iran and his removal from the Swedish Population Registry had been proven false in the 1993 proceedings. The Court was not authorized to use the same invalid arguments in support of the issuance of another expulsion order. The complainant explains that, in the light of his past experience, he assumed that the 1997 expulsion order was just another "cruel technicality" which would entrap him on appeal, as the Svea Court of Appeal would overturn the expulsion order but impose a heavier prison sentence. For these reasons, he decided not to challenge the part of the judgement which imposed the penalty, but to limit his challenge to the expulsion order by filing an application with the Government. On 11 June 1997, the Government decided that there was no impediment to implementing the expulsion order. That same day, the complainant applied for legal aid to have the deportation order quashed, which was rejected by the Government. The complainant lodged a complaint with the Swedish Ombudsman on 7 March 1997 and again requested the Government on 25 April 1997 to quash the expulsion order; both were dismissed.

5.8 The complainant claims that the European Court of Human Rights rejected his application on procedural grounds, without having examined the merits. He concludes that his complaint could not be deemed to have been "examined" under another proceeding of international investigation, and that it is admissible. Furthermore, after the European Court of Human Rights handed down its judgement, the Swedish Government granted a temporary residence permit to the complainant on 5 November 1998, which is said to constitute an implicit acknowledgement that there were impediments to implementing the deportation order.

5.9 Concerning the requirement of exhaustion of domestic remedies, the complainant asserts that the removal of his name from the Swedish Population Registry on 25 January 1988, the alleged revocation of his permanent residence permit on 10 May 1995, and the issuance of a new expulsion decision on 7 January 1997 were a plot to unfairly and unlawfully deprive him of his asylum status. For him, the purpose of the 1997 judgement of the Uppsala District Court was to force him to seek a remedy from the higher court which would unlawfully increase his punishment. He points out that he had already complained against the Uppsala District Court's expulsion decision early in 1993, and that the Svea Courts of Appeals had already overturned this decision. For him, the Uppsala District Court was not authorized to issue a second expulsion order when the first expulsion order had been overturned by a higher court according to law. He was convinced that complaining to the same authority would be futile and useless. The Svea Court of Appeal would undoubtedly have overturned the Uppsala District Court's decision but, in doing so, it would have also unlawfully increased the length of his imprisonment. The complainant affirms that he had exhausted all legal remedies in Swedish courts and that he immediately proceeded to exhaust fully all other domestic remedies available to him.

He submitted numerous complaints to the Swedish Government and the Swedish Parliament's Ombudsman to have the expulsion order quashed. He further explains that his decision not to appeal to the Svea Court of Appeal was based on the extreme stress, trauma and shock he was experiencing at that moment.

5.10 The complainant argues that the complaint raises questions of facts and law of such a complex nature that their determination requires an examination of the merits.

State party's further comments on the admissibility

6.1 By note of 18 March 2005, the State party insists that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. It challenges the complainant's allegation that applications to the Government and the Parliamentary Ombudsman can replace an appeal to the ordinary courts for purposes of exhaustion of domestic remedies. A petition to the Government is an extraordinary remedy that cannot replace an appeal to the ordinary courts. The State party recalls that the European Commission held that the gist of the complainant's allegations could have been made already at the level of criminal proceedings against him, ultimately resulting in a request for leave to appeal to the Supreme Court. The State party argues that, since the European Commission concluded that the complainant's petition to the Government could not be considered a remedy for purposes of admissibility, the Committee should do likewise.

6.2 The complainant's submissions to the Parliamentary Ombudsman cannot rectify his omission to appeal the expulsion order. The Parliamentary Ombudsman is not competent to set aside courts decisions; thus, a complaint to this body can hardly be considered capable of bringing adequate and effective redress.

6.3 With regard to further circumstances invoked by the complainant, the State party recalls that article 22, paragraph 5 (b), of the Convention and rule 107 of the rules of procedure only stipulates two permissible grounds for failing to exhaust domestic remedies: i.e. that the remedies are unreasonably prolonged or are unlikely to bring effective relief. The State party maintains that there is no basis for finding that either of these grounds applies to the present case. It recalls that the Committee has observed that, in principle, it is not within its purview to evaluate the prospect of success of domestic remedies, but only to ascertain whether they are proper remedies for the determination of a complainant's claim. Concerning the complainant's case, the State party also recalls that in 1993 the Svea Court of Appeal had ruled in favour of the complainant and set aside the first expulsion order issued against him.

6.4 Concerning the complainant's allegation that he chose not to appeal the expulsion order because of the risk that the prison sentence would be increased arbitrarily if the expulsion order was repealed, the State party considers it irrelevant to the assessment of whether the appeal was likely to bring effective relief or not. Since the expulsion order depends directly on the existence of an alleged risk of torture, there would no longer be any basis for the complainant's claim if the order was set aside. Furthermore, the State party observes that, under the Swedish Penal Code, the expulsion order operates as a mitigating factor in the determination of appropriate punishment. If the expulsion order was later set aside, the relevant sentence would be increased. In any case, punishment is determined according to the severity of the crime, and it cannot be said to be "arbitrary" or "disproportionate".

6.5 Concerning the complainant's allegation that his mental condition at the time of the District Court of Uppsala's judgement prevented him from appealing, the State party notes that this is not a circumstance that would absolve the complainant from exhausting domestic remedies.

6.6 The State party reiterates that the complaint should be declared inadmissible as the "same matter" has been examined under another procedure of international investigation or settlement and as manifestly unfounded. [It contests the complainant's allegation that the expulsion order has become statute-barred under the Aliens Act, because it had not been enforced within four years. According to the State party, the four-year limit is not applicable to decisions taken by an ordinary court.]

Issues and proceedings before the Committee as to the admissibility

7.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

7.2 The Committee has taken note of the complainant's argument that he chose not to appeal the 1997 judgement of the Uppsala District Court because he risked incurring a heavier sentence if the expulsion order was repealed. It also notes the complainant's allegation that this fear was not merely subjective, but that it was based on his previous experience in 1993, when his term of imprisonment was increased. However, since the Court of Appeal had repealed the expulsion order in 1993, the Committee considers that the complainant has not sufficiently substantiated, for purposes of admissibility, that an appeal to repeal the 1997 expulsion order would have been ineffective. Nor is the Committee persuaded that remedies such as petitions to the Government or the Parliamentary Ombudsman absolved the complainant from pursuing available judicial remedies before the ordinary courts against the judgement which had ordered his expulsion. The complainant's alleged mental and emotional problems at the time of the second Uppsala District Court expulsion order (in 1997) also did not absolve him from the requirement to exhaust domestic remedies. The Committee concludes that, in these circumstances, the complaint is inadmissible for non-exhaustion of domestic remedies, pursuant to article 22, paragraph 5 (b), of the Convention.

7.3 Having decided that the complaint is inadmissible for the above-mentioned reason, the Committee deems it unnecessary to consider the other grounds of inadmissibility invoked by the State party.

8. The Committee decides that:

(a) That the complaint is inadmissible under article 22, paragraph 5 (b), of the Convention;

(b) That this decision shall be transmitted to the State party and to the complainant.

Communication No. 273/2005

Submitted by: Mr. Thu AUNG (represented by counsel)

Alleged victim: The complainant

State party: Canada

Date of the complaint: 13 July 2005 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 May 2006,

Having concluded its consideration of complaint No. 273/2005, submitted to the Committee against Torture on behalf of Thu AUNG under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22 of the Convention.

1.1 The complainant is Mr. Thu AUNG, a Burmese national born on 8 January 1978 in Yangon, Myanmar, and currently residing in Canada, from where he faces deportation. He claims that his forcible return to Myanmar would constitute a violation by Canada of articles 3 and 16 of the Convention. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 15 July 2005, and requested it, under rule 108, paragraph 1 of the Committee's rules of procedure, not to expel the complainant to Myanmar while his complaint is under consideration by the Committee. The request was made on the basis of the information contained in the complainant's submission and could be reviewed at the request of the State party in light of information and comments from the State party and the complainant.

1.3 By submission of 21 December 2005, the State party requested that the admissibility of the complaint be examined separately from the merits. On 26 January 2006, the Special Rapporteur on new communications and interim measures granted the State party's request, pursuant to rule 109, paragraph 3, of the Committee's rules of procedure.

The facts as submitted by the complainant

2.1 The complainant was involved in student demonstrations while attending the University of Hlaing, Myanmar, in 1998. In November 1998 he was involved in a demonstration where he was detained and questioned. In detention, the complainant alleges that the police made him sign a document stating that if he was caught in anti-government activities again, he would be detained indefinitely. After his release, he was interrogated on several occasions and he knew that the Government was monitoring his activities. In 2001 the complainant distributed documents relating to human rights abuses, although he did not belong to a democracy

organization. He was not caught distributing these documents. In 2001 a friend of the complainant founded a soccer (football) association ("union") and asked him to join. The complainant agreed and recruited more members to play soccer. At the time in Myanmar such associations or unions were not allowed.

2.2 In January 2002 the complainant was granted a visa to study English at the Global Village School in Vancouver, Canada. He arrived in Canada on 14 December 2002, on a student visa.

2.3 In February 2003 he applied for refugee status after his mother had informed him that the Government of Myanmar was looking for him for distributing anti-government literature. She told him that the authorities had detained his father and interrogated him about the complainant's activities. His mother also told him that one of his friends had been arrested.

2.4 The complainant's application for refugee status was dismissed on 25 September 2003. Counsel explains that the complainant did not highlight that he was a member of a soccer "union" at the time of his application for refugee status, as he thought that "relevant organizations" for the purposes of the application meant political organizations, not sporting organizations. He did not consider at the time that he was at risk for his involvement in the soccer "union", and only learned of a warrant for his arrest based on his involvement in the soccer "union" at a later stage. On 20 July 2004 the complainant made submissions under the pre-removal risk assessment (PRRA) procedure, including new evidence in the form of a letter from his father and a copy of the warrant for his arrest dated 29 December 2003. The PRRA was denied on 17 September 2004. At the hearing on 29 September 2004 the complainant was advised to return by 7 October 2004 with an itinerary to return to Myanmar. He was scheduled to leave Canada on 26 October 2004.

2.5 The complainant applied for leave and judicial review of the PRRA decision before the Federal Court of Canada on 14 October 2004, which was due to be heard on 25 October 2004. In the meantime, on 22 October 2004 a consent agreement was reached between the complainant and the Minister of Citizenship and Immigration. As part of the agreement, the complainant was required to provide new PRRA submissions by 5 November 2004, which was extended to 26 November 2004, while a stay of deportation was granted on 22 October 2004. The second PRRA was denied on 8 June 2005. The complainant was advised that he was to complete his departure requirements on 18 June 2005. An application for leave and judicial review of this PRRA decision was filed at the Federal Court on 30 June 2005. A motion to stay the removal was filed in the Federal Court on 8 July 2005. In the meantime, the complainant was notified by the Canada Border Services Agency that a travel document to Myanmar had been obtained on his behalf, and that he was scheduled to be deported on 18 July 2005.[a]

2.6 On 15 July 2005 the Federal Court granted the stay of execution of the removal order, on the basis that the officer who performed the complainant's PRRA assessment had attributed little weight to the arrest warrant and had not clearly indicated whether the warrant was genuine or not.

2.7 In light of this finding, on 3 August 2005 the Special Rapporteur on new communications and interim measures of the Committee lifted the provisional interim measures previously issued by the Committee.

The complaint

3.1 The complainant argues that he would be at risk of arbitrary arrest, beatings and torture if he were returned to Myanmar, where human rights violations within the meaning of article 3, paragraph 2, of the Convention are said to be frequent.

3.2 Counsel refers to the U.S. Department of State Report for Burma (2004) and its reports of the human rights violations in Myanmar, including the fact that in January 2004 seven students who had formed an illegal football "union" were given sentences ranging from 7 to 15 years' imprisonment. Counsel also provides reports from non-governmental sources containing information on the human rights situation in Myanmar, and that those suspected of pro-democratic political activity are killed, arrested and detained without trial. Counsel refers to evidence from a medical training programme manager at the International Rescue Committee confirming that the Burmese Government regularly detains those deportees that it believes left Myanmar for political reasons.

3.3 The complainant highlights that he has been active in pro-democratic Burmese groups since his arrival in Canada. Specifically, he is involved in the Action Committee for Free Burma, is a supporter of the National League for Democracy, the Burmese Children Fund as well as the Myanmar Heritage Cultural Association. There is currently a warrant out for his arrest in Myanmar for his involvement with the soccer "union". In addition, the complainant argues that the fact the Canadian authorities have applied for, and received, a passport on his behalf has alerted the Myanmar authorities.

State party's observations on the admissibility

4.1 On 21 December 2005, the State party contested the admissibility of the communication on two grounds. Firstly, it argues that the complainant has not exhausted domestic remedies. On 26 October 2005 the Federal Court granted the complainant's application for leave to apply for judicial review of the decision on his pre-removal risk assessment (PRRA). The hearing on the application for judicial review was scheduled for 24 January 2006. If his application is successful, the complainant will be entitled to a new PRRA assessment. If the application is not successful, the decision of the Federal Court can be appealed to the Federal Court of Appeal if the Federal Court judge certifies that the case raises a serious question of general importance, under section 74 (d) of the Immigration and Refugee Protection Act (IRPA). A decision of the Federal Court of Appeal can be appealed, with leave, to the Supreme Court of Canada. Further, if the judicial review is not successful, the complainant could also apply for a further PRRA on the basis of any new evidence that may have arisen since the last determination, although in that case he would not have the benefit of a statutory stay of removal. However, he could apply for a judicial stay of removal pending the disposition of that application. The State party refers to the jurisprudence of the Committee to find that judicial review is widely and consistently accepted to be an effective remedy.[b]

4.2 In the view of the State party, the PRRA procedure is an effective remedy which should be exhausted, contrary to the Committee's jurisprudence.[c] The State party notes that during its examination the complainant would not be removed. If successful, the complainant will become a protected person and barring serious security concerns will be eligible to apply for permanent resident status, and ultimately citizenship. It also considers that the PRRA is more comprehensive than the "post-determination refugee claimants in Canada" risk assessment,

which had been considered as an effective remedy by the Human Rights Committee.[d] In the view of the State party, the Committee's decision in *Falcon Ríos* was based on the erroneous finding of fact that in the PRRA application in that case "it would only be any fresh evidence that would be taken into consideration, and otherwise the application would be rejected".[e] It is correct that pursuant to section 113 (a) of the IRPA "an application whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection". However, the State party highlights that an exception has been read in by the Federal Court for those applicants whose claims for refugee protection had been rejected prior to the coming into force of the IRPA.[f] PRRA applications are considered by specially trained officers, trained to consider provisions of the Canadian Charter of Rights and Freedoms as well as of international human rights treaties. Further, the State party submits, contrary to the Committee's jurisprudence,[g] that PRRA officers are independent and impartial, referring to the jurisprudence of the Federal Court of Canada.[h] Further, PRRA is said to be a remedy governed by statutory criteria for protection, conducted pursuant to a highly regulated process and in accordance with extensive and detailed guidelines. It is subject to judicial review, and there is no authority for the proposition that a discretionary remedy cannot be an effective remedy, for purposes of admissibility.[i]

4.3 Further, the complainant has not yet filed an application on the basis of humanitarian and compassionate considerations, which the State party maintains would also be an available and effective domestic remedy. The assessment of a humanitarian and compassionate application, under section 25 of the IRPA, consists of a broad, discretionary review by an officer who determines whether a person should be granted permanent residence in Canada for humanitarian and compassionate reasons. The test is whether the person would suffer unusual, underserved or disproportionate hardship if he had to apply for a permanent resident visa from outside Canada. The assessing officer considers all the relevant information, including the person's written submissions. A humanitarian and compassionate application can be based on allegations of risk, in which case the officer assesses the risk the person may face in the country to which he would be returned. Included in the assessment are considerations of the risk of being subjected to unduly harsh or inhumane treatment, as well as current country conditions. In the event that such an application is granted, the person receives permanent residency subject to medical and security screening which can eventually lead to Canadian citizenship.

4.4 For the State party, the humanitarian and compassionate consideration application is also an effective remedy which should be exhausted, contrary to the Committee's jurisprudence.[j] The State party argues that the simple fact that a remedy is discretionary does not necessarily mean that it is not effective.[k] It invokes a judgment of the European Court of Human Rights in which the court determined that a discretionary remedy available to unsuccessful refugee claimants in Germany to prevent removal to a substantial risk of torture was adequate to fulfil Germany's obligations under article 3 of the European Convention on Human Rights.[l] Furthermore, while the decision adopted in humanitarian and compassionate applications is technically discretionary, it is in fact guided by defined standards and procedures and must be exercised in a manner consistent with the Canadian Charter of Rights and Freedoms and Canada's international obligations. In the event that the application is refused, the person can make an application for leave to apply for judicial review to the Federal Court on the standard of "reasonableness *simpliciter*", which means that the "discretion" is far from absolute.

4.5 The State party challenges the Committee's reasoning in *Falcon Ríos* to the effect "that the principle of exhaustion of domestic remedies requires the petitioner to use remedies that are directly related to the risk of torture in the country to which he would be sent, not those that might allow him to stay where he is".[m] The State party argues that article 3 of the Convention obliges States not to expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. If an individual is permitted to stay in Canada, it follows that he will not be returned to the country where he alleges to be at risk. It should not matter on what grounds a person is not removed.[n] The State party invokes the Committee's decision in *A.R. v. Sweden*[o] where it was determined that an application for a residence permit, which could be based on humanitarian grounds but which could be decided on the grounds of a risk of torture was a remedy required to be exhausted for the purposes of admissibility. The State party argues that since a humanitarian and compassionate application may also be based and approved on the ground of risk the person may face in the country to which he would be returned, it meets the requirements set out by the Committee.

4.6 Secondly, since the complainant is not in immediate danger of removal, the communication is also inadmissible under article 22, paragraph 2, of the Convention and rule 107 (c) of the rules of procedure, as incompatible with article 3 of the Convention, and is manifestly unfounded under rule 107 (b) of the rules of procedure.

4.7 On 10 February 2006 the State party informed the Committee that the author's judicial review application was granted on 27 January 2006. Pending the completion of the new PRRA, the complainant will have the benefit of a statutory stay of removal, and is therefore not presently at risk of removal to Myanmar. Therefore, the communication is inadmissible on the basis of non-exhaustion of domestic remedies.

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

5.1 On 12 February 2006 counsel commented on the State party's observations. She notes that the complainant submitted his humanitarian and compassionate application on 17 January 2006. Further, on 27 January 2006 the Federal Court granted the judicial review and remitted the PRRA application to be determined by a new officer. New PRRA submissions were due on 17 March 2006.

5.2 The complainant argues that the PRRA is not an effective remedy for purposes of admissibility.[p] Although PRRA officers may be considered to be specially trained, they are not experts when it comes to official documents such as warrants or summons for arrests and do make erroneous findings in such regard. The fact that, in the present case, such an error occurred during the first PRRA is evidence that such findings are not an effective remedy for those facing arrest in countries such as Myanmar. The complainant further submits that although he is now subject to a new PRRA assessment, he cannot be sure that the new PRRA officer will not make the same erroneous finding in respect of the warrant and the risk. For this reason, counsel argues that the Committee should declare the communication admissible. In the alternative, should the Committee find that the communication is inadmissible, the Committee should suspend its decision until the new PRRA determination has been made.

Issues and proceedings before the Committee as to the admissibility

6.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. The Committee has ascertained that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the individual has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of the remedies has been unreasonably prolonged, or that it is unlikely, after a fair trial, to bring effective relief to the alleged victim.

6.3 The Committee takes note of the State party's contention that the complaint should be declared inadmissible under article 22, paragraph 5 (b), of the Convention since domestic remedies have not been exhausted, and since the complainant was granted a stay of removal and is not currently at risk of being deported. The Committee notes that the complainant's application for refugee status was refused, that pursuant to the new IRPA he has already completed two sets of PRRA procedures, and that he was granted a stay of removal each time. The Committee also notes the State party's statement that, when a refugee claim was rejected prior to the coming into force of the new IRPA, an exception has been made by the Federal Court for similar cases, which does not restrict PRRA submissions to new evidence that became available after the rejection of the refugee claim. The Committee recalls that the complainant subsequently applied for leave and judicial review of the second PRRA decision. On 15 July 2005, the Federal Court of Canada granted the stay of execution, on the grounds that the previous PRRA officer had attributed little weight to the arrest warrant and had not clearly indicated whether the warrant was genuine or not. Finally, on 27 January 2006 the Federal Court granted the judicial review and remitted the PRRA application to be determined by a new officer. In the view of the Committee, the decisions of the Federal Court support the contention that applications for leave and judicial review are not mere formalities, but that the Federal Court may, in appropriate cases, look at the substance of a case.

6.4 The Committee further notes that pursuant to section 232 of the IRPA Regulations the complainant is not at risk of deportation during the ongoing consideration of the new PRRA. It notes that the complainant has not addressed the State party's arguments about the effectiveness or availability of the PRRA, except to speculate that he cannot be sure that a third PRRA officer will not make new erroneous findings about the arrest warrant issued in Myanmar and the risks in that country. He has furnished no evidence that it would be unreasonably prolonged or unlikely to bring effective relief in his particular case. In light of this information, the Committee is satisfied with the arguments of the State party that, in this particular case, there was a remedy which was both available and effective, and which the complainant has not exhausted. Further, as the complainant is not presently at any risk of being deported, the Committee finds that the conditions in article 22, paragraph 5 (b), of the Convention have not been met.

6.5 In light of the foregoing, the Committee does not consider it necessary to address the effectiveness and availability of the humanitarian and compassionate ground application.

6.6 The Committee is therefore of the view that domestic remedies have not been exhausted, in accordance with article 22, paragraph 5 (b), of the Convention.

7. The Committee consequently decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the authors of the communication and to the State party.

Notes

[a] The State party subsequently informed the Committee that the removal order had not been enforced.

[b] The State party refers to, inter alia, communication No. 183/2001 *B.S.S. v. Canada*, Views adopted on 12 May 2004, para. 11.6.

[c] The State party refers to communications No. 133/1999, *Falcon Ríos v. Canada*, Views adopted on 23 November 2004, para. 7.4 and No. 232/2003, *M.M. v. Canada*, admissibility decision of 7 November 2005, para. 6.4.

[d] The State party refers to communication No. 604/1994, *Nartey v. Canada*, inadmissibility decision of 18 July 1997, para. 6.2; communication No. 603/1994, *Badu v. Canada*, inadmissibility decision of 18 July 1997, para. 6.2; communication No. 654/1995, *Adu v. Canada*, inadmissibility decision of 18 July 1997, para. 6.2

[e] Communication No. 133/1999, *Falcon Ríos v. Canada*, Views adopted on 23 November 2004, para. 7.5.

[f] The State party refers to *Nikolayeva v. Canada (Minister of Citizenship and Immigration)*, [2003] 3 F.C. 708; *Cortez v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 725.

[g] The State party refers to communication No. 232/2003, *M.M. v. Canada*, admissibility decision of 7 November 2005, para. 6.4.

[h] *Say v. Canada (Solicitor General)*, 2005, FC 739. The State party also refers to numerous Canadian Federal Court cases.

[i] *T.I. v. United Kingdom*, App. No. 43844/98, Reports of Judgments and Decisions, 2000-III; communication No. 250/2004 *A.H. v. Sweden*, inadmissibility decision of 15 November 2005. The State party also refers to communication No. 939/2000, *Dupuy v. Canada*, inadmissibility decision of 18 March 2005, para. 7.3 (HRC), concerning the effectiveness of judicial review of an application for mercy to the Minister of Justice.

[j] The State party refers, inter alia, to communication No. 133/1999, *Falcon Ríos v. Canada*, Views adopted on 23 November 2004, para. 7.3.

[k] The State party refers to communication No. 169/2000, *G.S.B. v. Canada*, discontinued by letter of the Committee dated 25 November 2005, in which a failed refugee's humanitarian and compassionate consideration application was granted.

[l] *T.I. v. United Kingdom*, App. No. 43844/98, Reports of Judgments and Decisions, 2000-III, para. 460.

[m] Communication No. 133/1999, *Falcon Ríos v. Canada*, Views adopted on 23 November 2004, para. 7.4.

[n] The State party refers to *T.I. v. United Kingdom* (App. No. 43844/98, Reports of Judgments and Decisions, 2000-III, paras. 458-459), where the European Court of Human Rights was concerned with whether there were "procedural safeguards of any kind" protecting the applicant from removal.

[o] Communication No. 170/2000, *A.R. v. Sweden*, inadmissibility decision of 23 November 2001, para. 7.2.

[p] Referring to communication No. 232/2003, *M.M. v. Canada*, admissibility decision of 7 November 2005.
