

VENEZUELA

Follow-up - Jurisprudence Action by Treaty Bodies

CAT, A/60/44 (2005)

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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D. Follow-up activities

150. 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.

151. The Rapporteur on follow-up submitted an oral report to the Committee at its thirty-third session. The report contained information received since the thirty-second session from either the complainants or the States parties on the issue of follow-up to a number of decisions in which the Committee had found violations of the Convention. During the consideration of this report, the Committee requested the Special Rapporteur to provide information on follow-up to all decisions in which the Committee had found violations of the Convention, including decisions in which the Committee found violations, prior to the commencement of the Rapporteur's mandate.

152. During the thirty-fourth session, the Special Rapporteur presented a report on follow-up to all the Committee's decisions, including new information received from both the complainants and States parties since the thirty-third session. This report is provided below.

Report on follow-up to individual complaints to the¹ Committee against Torture

Complaints in which the Committee has found violations of the Convention up to thirty-fourth session

Case	Date of adoption	Nationality of complainant and country of removal if applicable	Article of Covenant violated	Interim measures granted and State party's response	Remedy	Follow-up	Further action
...							

<p>No. 110/1998 <i>Chipana v. Venezuela</i></p>	<p>10 Nov. 1998</p>	<p>Peruvian to Peru</p>	<p>Complainant's extradition to Peru constituted a violation of article 3</p>	<p>Granted but not acceded to by the State party⁴</p>	<p>None</p>	<p>On 13 June 2001, the State reported on the conditions of detention of the complainant in prison of Chorillos, Lima. On 23 November 2000, the Ambassador of Venezuela to Peru, together with representatives of the Peruvian administration, visited the complainant in prison. The team interviewed the complainant for 15 minutes, and she informed them that she had not been subjected to any psychological mistreatment. The complainant observed that the prisoner appeared in good health. She had been transferred in September 2000 from the top security block to the "medium security" block, where she had more privileges such as one hour of outdoor exercise per week, two hours per day in the courtyard, and access to working and educational activities.</p> <p>By note verbale dated 18 October 2001, the State party forwarded a second report by the Defensor del Pueblo (Ombudsman) dated 27 August 2001 about the complainant's conditions of detention. It included a report by the complainant in prison dated 14 June 2001 by a member of the Venezuelan Embassy in Peru together with the Head of Criminal and Penitentiary Affairs in Peru. The complainant stated that her conditions of detention had improved and that she could see her family more often. However, she informed them of her intention to appeal her sentence.</p> <p>According to the Ombudsman, the complainant had been transferred to the block where she had more privileges. Furthermore, since 4 December 2001, all the top security prisons in the country had a new regime consisting of:</p> <ol style="list-style-type: none"> 1. Visits. Removal of booths; any member or friend can visit without restrictions. 2. Media. Prisoners have access to any media without restrictions. 3. Lawyers. Lawyers may visit prisoners four times a week.
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						<p>Courtyard. Prisoners have free movement until 10 p.m. The Ombudsman concluded that the complainant had more flexibility of detention due to her personal and to the changes introduced. Moreover, her health was good that she was suffering from depression. She had not been subjected to physical or psychological mistreatment; she had family visits weekly and was involved in professional and educational activities in the prison.</p>
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¹ The present report reflects information up to the end of the thirty-fourth session

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⁴ The Committee stated, "Furthermore, the Committee is deeply concerned at 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 complainant 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."

CAT/C/SR.717 (2006)

COMMITTEE AGAINST TORTURE
 Thirty-sixth session
 SUMMARY RECORD OF THE 717th MEETING
 Held at the Palais des Nations, Geneva,
 on Tuesday, 16 May 2006, at 10 a.m.

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CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE CONVENTION (agenda item 9) (continued)

50. The CHAIRPERSON invited the Special Rapporteur to introduce the report on follow-up activities (document without a symbol) relating to the Committee's decisions on complaints submitted under article 22 of the Convention.

51. Mr. MARIÑO MENÉNDEZ, Special Rapporteur on Follow-up, summarized the comprehensive report on replies received with regard to all cases in which the Committee had found violations of the Convention and one case in which it had not found a violation but had made a recommendation.

52 It was proposed to send reminders requesting information or updates to the following States parties with regard to the specified communications: Austria (Halimi-Nedibi Quani, 8/1991); Canada (Tahir Hussain Khan, 15/1994; Falcon Ríos, 133/1999); France (Brada, 195/2003); Netherlands (A, 91/1997); Serbia and Montenegro (Ristic, 113/1998; Hajrizi Dzemajl et al., 161/2000; Nikolic, 174/2000; Dimitrijevic, Dragan, 207/2002); Spain (Ecaración Blanco Abad, 59/1996; Urra Guridi, 212/2002); Sweden (Tharina, 226/2003; Agiza, 233/2003); Venezuela (Chipana, 110/1998).

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CAT, A/61/44 (2006)

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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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.

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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 all 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

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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 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

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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.”

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VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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Complaints in which the Committee has found violations of the Convention up to the thirty-eighth session

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State party	Bolivarian Republic of 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 ¹⁴
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 the Bolivarian Republic 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 educational 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 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 weekly visits from her family 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 pointed 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 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.

Complainant's response

None

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14/ 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.”

CAT, CAT/C/SR.817 (2008)

COMMITTEE AGAINST TORTURE
Fortieth session

SUMMARY RECORD (PARTIAL)* OF THE 817th MEETING
Held at the Palais Wilson, Geneva,
on Friday, 2 May 2008, at 3 p.m.

Follow-up on decisions adopted under article 22 of the Convention (continued)
(CAT/C/40/R.1)

1. The CHAIRPERSON invited the Committee to resume its consideration of the report on follow-up activities (CAT/C/40/R.1) relating to the Committee's decisions on individual complaints submitted under article 22 of the Convention.

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29. Mr. MARIÑO MENÉNDEZ said that there were two main developments in the case of Chipana v. Venezuela (communication No. 110/1998) which required clarification: the new proceeding initiated by the complainant with a view to her acquittal; and information received from the State party (Venezuela) concerning the possible modification of the terms of the extradition treaty with Peru under which the complainant had been extradited. However, since the report had been drafted the Petitions team had received additional information from the State party. It indicated that the complainant's detention conditions in Peru were still being monitored, and that Peru had not requested any modification of the terms of the extradition treaty. As regards further action required, he therefore proposed that the Committee should take note of the information provided by Venezuela, and request it to continue monitoring the complainant's situation in Peru.

30. Mr. GALLEGOS CHIRIBOGA asked whether it might be useful for the Committee to seek clarification directly from Peru, not least because it was a party to the Convention.

31. Ms. FOX (Petitions team) said that to date it had not been the practice to contact third parties in such cases, irrespective of whether they were States parties to the Convention.

32. Mr. GALLEGOS CHIRIBOGA said that the matter should nonetheless be given further consideration, particularly in the light of the discussion earlier concerning the Bachan Singh Sogi v. Canada case.

33. Following further comments, the CHAIRPERSON said he took it that the Committee wished to amend the paragraph on further action taken or required along the lines proposed by Mr. Mariño Menéndez. He suggested that the Committee should take up the matter raised by Mr. Gallegos Chiriboga at some future date.

34. It was so decided.

The discussion covered in the summary record ended at 4 p.m.

* No summary records was prepared for the rest of the meeting.

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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D. Follow up activities

93. 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 United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow up visits to States parties; preparing periodic reports for the Committee on his/her activities.

94. 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 recommendations made in the Decisions...

...

97. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing:... *Chipana v. Venezuela* (No. 110/1998);...

98. During the thirty ninth and fortieth sessions, the Special Rapporteur on follow up to decisions presented new follow up information that had been received since the last annual report with respect to the following cases:... *Chipana v. Venezuela* (No. 110/1998);...

99. Represented below is a comprehensive report of replies received with regard to all 45 cases in which the Committee has found violations of the Convention to date and in one case in which although the Committee did not find a violation of the Convention it did make a recommendation.

**Complaints in which the Committee has found violations of the
Convention up to the fortieth session**

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State party	Bolivarian Republic of 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. ¹⁴
Remedy recommended	None
Due date for State party response	7 March 1999
Date of reply	9 October 2007 (had previously responded on 13 June 2001, and 9 December 2005)
State party response	On 13 June 2001, the State party had reported on the conditions of detention of the complainant. On 23 November 2000, the Ambassador of the Bolivarian Republic of Venezuela in Peru together with some representatives of the Peruvian administration visited the complainant in prison and found her 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. On 18 October 2001, the State party had referred to a visit to the complainant on 14 June 2001, during which she stated that her conditions of detention had improved, that she could see her family more often and that

she intended to appeal her sentence. She had been transferred from the medium special security pavilion to the “medium security” pavilion where she had more privileges. Her health was good, except that she was suffering from depression. She had not been subjected to any physical or psychological mistreatment, she had weekly visits of her family and she was involved in professional and educational activities in the prison.

On 9 December 2005, the State party had informed the Committee that, on 23 November 2005, the Venezuelan ambassador in Peru had contacted Mrs. Nuñez Chipana. The complainant regretted that the Peruvian authorities had denied her brother access, who had come from Venezuela to visit her. She mentioned that she was receiving medical treatment, that she could receive visits from her son, and that she was placed under a penitentiary regime which imposed minimum restrictions on detainees. She also mentioned that she would request the judgement against her to be quashed and that she was currently making a new application under which she hoped to be acquitted. The State party considered that it had complied with the recommendation that similar violations should be avoided in the future, through the adoption of the law on Refugees in 2001, according to which the newly established National Commission for Refugees now processes all the applications of potential refugees as well as examining cases of deportation. It requested the Committee to declare that it had complied with its recommendations, and to release it from the duty to supervise the complainant’s situation in Peru.

On 9 October 2007, the State party responded to the Committee’s request for information on the new procedure initiated by the complainant. The State party informed the Committee that Peru has not requested a

modification of the terms of the extradition agreement, which would allow it to prosecute the complainant for crimes other than those for which the extradition was granted (offence of disturbing public order and being a member of the subversive movement Sendero Luminoso). It did not respond on the status of the new procedure initiated by the complainant.

Complainant's response

None

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...

14/ 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."

VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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D. Follow-up activities

89. 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 United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow up visits to States parties; preparing periodic reports for the Committee on his/her activities.

90. 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 recommendations made in the decisions. ...

...

93. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing: ... *Chipana v. Venezuela* (No. 110/1998); ...

...

95. Represented below is a comprehensive report of replies received with regard to all 48 cases in which the Committee has found violations of the Convention to date and in 1 case in which although the Committee did not find a violation of the Convention it did make a recommendation.

Complaints in which the Committee has found violations of the Convention up to the forty-second session

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State party

VENEZUELA (Bolivarian Republic of)

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. ¹³
Remedy recommended	None
Due date for State party response	7 March 1999
Date of reply	9 October 2007 (had previously responded on 13 June 2001, and 9 December 2005)
State party response	<p>On 13 June 2001, the State party had reported on the conditions of detention of the complainant. On 23 November 2000, the Ambassador of the Bolivarian Republic of Venezuela in Peru together with some representatives of the Peruvian administration visited the complainant in prison and found her 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. On 18 October 2001, the State party had referred to a visit to the complainant on 14 June 2001, during which she stated that her conditions of detention had improved, that she could see her family more often and that she intended to appeal her sentence. She had been transferred from the medium special security pavilion to the "medium security" pavilion where she had more privileges. Her health was good, except that she was suffering from depression. She had not been subjected to any physical or psychological mistreatment, she had weekly visits of her family and she was involved in professional and educational activities in the prison.</p> <p>On 9 December 2005, the State party had informed the Committee that, on 23 November 2005, the</p>

Venezuelan Ambassador in Peru had contacted Mrs. Nuñez Chipana. The complainant regretted that the Peruvian authorities had denied her brother access, who had come from Venezuela to visit her. She mentioned that she was receiving medical treatment, that she could receive visits from her son, and that she was placed under a penitentiary regime which imposed minimum restrictions on detainees. She also mentioned that she would request the judgement against her to be quashed and that she was currently making a new application under which she hoped to be acquitted. The State party considered that it had complied with the recommendation that similar violations should be avoided in the future, through the adoption of the law on Refugees in 2001, according to which the newly established National Commission for Refugees now processes all the applications of potential refugees as well as examining cases of deportation. It requested the Committee to declare that it had complied with its recommendations, and to release it from the duty to supervise the complainant's situation in Peru.

On 9 October 2007, the State party responded to the Committee's request for information on the new procedure initiated by the complainant. The State party informed the Committee that Peru has not requested a modification of the terms of the extradition agreement, which would allow it to prosecute the complainant for crimes other than those for which the extradition was granted (offence of disturbing public order and being a member of the subversive movement Sendero Luminoso). It did not respond on the status of the new procedure initiated by the complainant.

Complainant's response

None

Committee's decision

The follow-up dialogue is ongoing.

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13/ 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."

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CAT, A/65/44 (2010)

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

...

D. Follow-up activities

108. 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 United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow-up visits to States parties; preparing periodic reports for the Committee on his/her activities.

109. During its thirty-fourth session, the Committee, through its Rapporteur for follow-up of decisions on complaints, 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 recommendations made in the decisions. To date, the following countries have not yet responded to these requests: Canada (with respect to *Tahir Hussain Khan*, No. 15/1994); Serbia¹ and Montenegro (with respect to *Dimitrov*, No. 171/2000,² *Danil Dimitrijevic*, No. 172/2000, *Nikolić, Slobodan and Ljiljana*, No. 174/2000, *Dragan Dimitrijevic*, No. 207/2002 and *Besim Osmani v. Republic of Serbia*, No. 261/2005); and Tunisia (with respect to *Ali Ben Salem*, No. 269/2005).

110. 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: *Halimi-Nedibi Quani v. Austria* (No. 8/1991); *M.A.K. v. Germany* (No. 214/2002);³ *Hajrizi Dzemajl et al. v. Serbia and Montenegro* (No. 161/2000), *the Netherlands* (with respect to *A.J.*, No. 91/1997); *Mutombo v. Switzerland* (No. 13/1993); *Alan v. Switzerland* (No. 21/1995); *Aemei v. Switzerland* (No. 34/1995); *V.L. v. Switzerland* (No. 262/2005); *El Rgeig v. Switzerland* (No. 280/2005); *Tapia Paez v. Sweden* (No. 39/1996); *Kisoki v. Sweden* (No. 41/1996); *Tala v. Sweden* (No. 43/1996); *Avedes Hamayak Korban v. Sweden* (No. 88/1997); *Ali Falakflaki v. Sweden* (No. 89/1997); *Orhan Ayas v. Sweden* (No. 97/1997); *Halil Haydin v. Sweden* (No.

101/1997); *A.S. v. Sweden* (No. 149/1999); *Chedli Ben Ahmed Karoui v. Sweden* (No. 185/2001); *Dar v. Norway*⁴ (No. 249/2004); *Tharina v. Sweden* (No. 266/2003); *C.T. and K.M. v. Sweden* (No. 279/2005); and *Jean-Patrick Iya v. Switzerland* (No. 299/2006).

111. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure: *Elmi v. Australia* (No. 120/1998); *Arana v. France* (No. 63/1997); and *Ltaief v. Tunisia* (No. 189/2001). In one case, the Committee deplored the State party's failure to abide by its obligations under article 3 having deported the complainant, despite the Committee's finding that there were substantial grounds for believing that he would be in danger of being tortured: *Dadar v. Canada* (No. 258/2004). In one case, given the author's voluntary return to his country of origin, the Committee decided not to consider the case any further under the follow-up procedure: *Falcon Rios v. Canada* (No. 133/1999).

112. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing: *Dadar v. Canada* (No. 258/2004); *Brada v. France* (No. 195/2003); *Guengueng et al. v. Senegal* (No. 181/2001); *Ristic v. Serbia and Montenegro* (No. 113/1998); *Blanco Abad v. Spain* (No. 59/1996); *Urra Guridi v. Spain* (No. 212/2002); *Agiza v. Sweden* (No. 233/2003); *Thabti v. Tunisia* (No. 187/2001); *Abdelli v. Tunisia* (No. 188/2001); *M'Barek v. Tunisia* (No. 60/1996); *Saadia Ali v. Tunisia* (No. 291/2006); *Chipana v. Venezuela* (No. 110/1998); *Pelit v. Azerbaijan* (No. 281/2005); *Bachan Singh Sogi v. Canada* (No. 297/2006); *Tebourski v. France* (No. 300/2006); and *Besim Osmani v. Republic of Serbia* (No. 261/2005).

113. During the forty-third and forty-fourth sessions, the Rapporteur for follow-up of decisions on complaints presented new follow-up information that had been received since the last annual report with respect to the following cases: *Guengueng et al. v. Senegal* (No. 181/2001); *Agiza v. Sweden* (No. 233/2003); *Bachan Singh Sogi v. Canada* (No. 297/2006); *Falcon Rios v. Canada* (No. 133/1999); *Blanco Abad v. Spain* (No. 59/1996); *Urra Guridi v. Spain* (No. 212/2002); *M'Barek v. Tunisia* (No. 60/1996); *Saadia Ali v. Tunisia* (No. 291/2006).

114. Represented below is a comprehensive report of replies received with regard to all 49 cases in which the Committee has found violations of the Convention to date and in 1 case in which although the Committee did not find a violation of the Convention it did make a recommendation.

¹ On 11 June 2008, following requests by the Committee to Serbia and Montenegro to confirm which State would be following up on Decisions adopted by the Committee and registered against the State party "Serbia and Montenegro", the Secretariat received a response from Montenegro only which stated that all the cases were within the remit of the Republic of Serbia.

² In December 2009, the Secretariat learned verbally from the State party that this case had been subsequently reopened but nothing has been received in writing to this effect.

³ Although no violation was found in this case, the Committee welcomed the State party's readiness to monitor the complainant's situation and subsequently provided satisfactory information in this regard (see chart below).

⁴ The State had already remedied the breach prior to consideration of the case.

Complaints in which the Committee has found violations of the Convention up to the forty-fourth session

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State party	Venezuela
Case	<i>Chipana, 110/1998</i>
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 ¹⁸
Remedy recommended	None
Due date for State party response	7 March 1999
Date of reply	9 October 2007 (had previously responded on 13 June 2001 and 9 December 2005)
State party response	On 13 June 2001, the State party had reported on the conditions of detention of the complainant. On 23 November 2000, the Ambassador of the Bolivarian Republic of Venezuela in Peru together with some representatives of the Peruvian administration visited the complainant in prison and found her 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. On 18 October 2001, the State party had referred to a visit to the complainant on 14 June 2001, during which she stated that her conditions of detention had improved, that she could see her family more often and that she intended to appeal her sentence. She had been transferred from the medium special security pavilion to the “medium security” pavilion where she had more privileges. Her health was good, except that she was suffering from depression. She had not been subjected to any physical or psychological mistreatment, she had weekly visits of her family and she was involved in professional and educational activities in the prison.

On 9 December 2005, the State party had informed the Committee that, on 23 November 2005, the Venezuelan Ambassador in Peru had contacted Mrs. Nuñez Chipana. The complainant regretted that the Peruvian authorities had denied her brother access, who had come from Venezuela to visit her. She mentioned that she was receiving medical treatment, that she could receive visits from her son, and that she was placed under a penitentiary regime which imposed minimum restrictions on detainees. She also mentioned that she would request the judgement against her to be quashed and that she was currently making a new application under which she hoped to be acquitted. The State party considered that it had complied with the recommendation that similar violations should be avoided in the future, through the adoption of the law on Refugees in 2001, according to which the newly established National Commission for Refugees now processes all the applications of potential refugees as well as examining cases of deportation. It requested the Committee to declare that it had complied with its recommendations, and to release it from the duty to supervise the complainant’s situation in Peru.

On 9 October 2007, the State party responded to the Committee’s request for information on the new procedure initiated by the complainant. The State party informed the Committee that Peru has not requested a modification of the terms of the extradition agreement, which would allow it to prosecute the complainant for crimes other than those for which the extradition was granted (offence of disturbing public order and being a member of the subversive movement Sendero Luminoso). It did not respond on the status of the new procedure initiated by the complainant.

Complainant’s

None

comments

**Committee's
decision**

The follow-up dialogue is ongoing

...

¹⁸ 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.”