



General Discussion on the Draft Revised General Comment on the implementation of article 3 of the Convention in the context of article 22

Friday, 28 April 2017, 10.00 a.m. – 1.00 p.m., Room XVII, Palais des Nations, Geneva

Statement of the Alkarama Foundation, delivered by Radidja Nemar, Regional Legal Officer for North Africa and the Nile Region.

We thank the Committee and the secretariat for this opportunity. Alkarama Foundation jointly submitted with other NGOs and endorse earlier statements made by sister NGOs. We support the submissions made by the Working groups on enforced or involuntary disappearance and on arbitrary detention. We would like to provide our observations on three issues, based on our experience introducing complaints to the Committee under article 22.

1. The first one is Involuntary transfers to countries where corporal punishment is provided by law: We suggest that the use of corporal punishment by receiving states should be included in paragraph 30 of the Draft comment as a pertinent indicator of a risk of torture;
2. Our second concern is related to the absence of implementation by some States of Committee's decisions, finding that an involuntary transfer would violate article 3. While in some cases the complainant is neither transferred nor released and is kept in detention for an indefinite period of time, without the possibility to challenge the legality of the detention before an independent judicial body, in others, States would still proceed with the transfer in spite of the decision. The fear of being kept in indefinite detention creates pressure for a complainant to accept a transfer even when the risk of torture is real and when the Committee decided in his/her favour. We suggest you consider stating explicitly in paragraph 12 of the Draft Comment that: States have the obligation to suspend an involuntary transfer immediately after receiving Interim measures requests and if the Committee decides that such a transfer would violate article 3, State parties have the obligation to comply with the decision, within 90 days after its notification, by releasing the complainant if no other charges are brought against him/her, and that otherwise such a prolonged detention would be void legal basis and thus arbitrary.

Furthermore, given that many States consider that Committee's Interim measures requests and decisions are mere non-binding recommendations, we suggest that the Committee stresses that the non-implementation of a decision by transferring a complainant, would not only constitute a violation of article 3 *per se* but would create an additional violation of the obligation to cooperate in good faith with the Committee.

3. Our third and last point is related to the argument introduced by States in individual cases, that internal domestic remedies have not been exhausted when a complainant did not previously raise in a written memorandum, the risk of torture, even though this risk was obvious and known to the authorities. We recommend adding in paragraph 36 of the Draft comment that "When the authorities of the State party know the existence of a real and

foreseeable risk of torture, or when this risk is so obvious that the authorities ought to know its existence, they must raise it *ex officio* and reject the transfer order” and that States cannot use such an omission as an argument against the admissibility of a complaint under article 22 paragraph 5, b of the Convention¹

¹ CAT communication No. 682/2015, *Abdul Rahman Alhaj Ali v. Morocco*, decision of 22 August 2016, para. 7.3. and 7.4.