



**United Nations**

# **Report of the Human Rights Committee**

## **Volume I**

**100th session  
(11–29 October 2010)**

**101st session  
(14 March–1 April 2011)**

**102nd session  
(11–29 July 2011)**

## **General Assembly**

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*Note*

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

## *Summary*

The present annual report covers the period from 1 August 2010 to 31 July 2011 and the 100th, 101st and 102nd sessions of the Human Rights Committee. Since the adoption of the last report, Pakistan and Guinea-Bissau have become parties to the International Covenant on Civil and Political Rights, Tunisia has acceded to the Optional Protocol, and Kyrgyzstan has become a party to the Second Optional Protocol. In total, there are 167 States parties to the Covenant, 113 to the Optional Protocol and 73 to the Second Optional Protocol.

During the period under review, the Committee considered 12 States parties' reports submitted under article 40 and adopted concluding observations on them (100th session: El Salvador, Poland, Jordan, Belgium and Hungary; 101st session: Togo, Slovakia, Serbia, and Mongolia; 102nd session: Ethiopia, Bulgaria and Kazakhstan – see chapter IV for concluding observations). During the 102nd session, given the commitment of the respective States parties to submit a report, the Committee decided to postpone the examination of the country situation in Dominica in the absence of a report, and to postpone further action on the provisional concluding observations on Seychelles, which had been prepared at the 101st session in the absence of a report.

Under the Optional Protocol procedure, the Committee adopted Views on 151<sup>1</sup> communications, and declared 1 communication admissible and 12 inadmissible. Consideration of 28 communications was discontinued (see chapter V for information on Optional Protocol decisions). So far, 2,076 communications have been registered since the entry into force of the Optional Protocol to the Covenant, and 116 since the writing of the last report.

The Committee's procedure for following up on concluding observations, initiated in 2001, continued to develop during the reporting period. The Special Rapporteur for follow-up on concluding observations, Mr. Abdelfattah Amor, was succeeded by Ms. Christine Chanet during the 102nd session. They presented progress reports during the Committee's 100th, 101st and 102nd sessions. The Committee notes with satisfaction that the majority of States parties have continued to provide it with additional information pursuant to rule 71, paragraph 5, of its rules of procedure, and expresses its appreciation to those States parties that have provided timely follow-up information.

The Committee again deplores the fact that a large number of States parties do not comply with their reporting obligations under article 40 of the Covenant. Fifty-three States parties are currently at least five years overdue with either an initial or periodic report. In 2001, therefore, it adopted a procedure to deal with this situation. During the period under review, the Committee continued applying this procedure and sent reminders to several States parties that will be considered in the absence of a report in future sessions if they do not send their overdue reports by a set deadline.

The Committee's workload under article 40 of the Covenant and the Optional Protocol to the Covenant continues to grow, as demonstrated by the large number of State party reports received and cases registered during the reporting period. Eleven initial or periodic reports were received between 1 August 2010 and 31 July 2011, and by the end of the 102nd session, 24 initial or periodic reports submitted by States parties had not yet been considered by the Committee. At the end of the 102nd session, 323 communications were pending (see chapter V).

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<sup>1</sup> 100 of these cases were cases from the Republic of Korea on the same issue.

The Committee again notes that many States parties have failed to implement the Views adopted under the Optional Protocol. The Committee has continued to seek to ensure implementation of its Views through its Special Rapporteur for follow-up on Views, Ms. Ruth Wedgwood, who was succeeded by Mr. Krister Thelin during the 102nd session. They arranged meetings with representatives of States parties that had not responded to the Committee's requests for information about measures taken to give effect to its Views, or that had given unsatisfactory replies (see annex VII).

Throughout the reporting period, the Committee continued to discuss the improvement of its working methods. During its 100th session, the Committee amended its rules of procedure relating to the admissibility of communications (see chapter V).

The Chairperson, Ms. Zonke Zanele Majodina, represented the Committee at the twenty-third meeting of chairpersons of the human rights treaty bodies (30 June to 1 July 2011), Mr. Amor and Mr. Yuji Iwasawa participated in the first session of the Inter-Committee Meeting working group on follow-up to concluding observations, inquiries, visits and decisions (12 to 14 January 2011) and Mr. Michael O'Flaherty participated in the twelfth Inter-Committee Meeting (27 to 29 June 2011).

During its 102nd session, on 21 July 2011, the Committee adopted general comment No. 34 on article 19 (freedom of opinion and expression) of the Covenant (see annex V).

Finally, recalling the obligation of the Secretary-General under article 36 of the International Covenant on Civil and Political Rights, the Committee reaffirms its grave concern over the lack of sufficient staff resources and translation services which hampers its activities, and once again stresses the importance of providing the Secretariat with the necessary resources to support its work effectively.

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VIII. Follow-up activities under the Optional Protocol

## **I. Jurisdiction and activities**

### **A. States parties to the International Covenant on Civil and Political Rights and to the Optional Protocols**

1. At the end of the 102nd session of the Human Rights Committee, there were 167 States parties to the International Covenant on Civil and Political Rights and 113<sup>2</sup> States parties to the Optional Protocol to the Covenant. Both instruments have been in force since 23 March 1976.
2. Since the last report, Pakistan and Guinea-Bissau have become parties to the Covenant and Tunisia acceded to the Optional Protocol.
3. As of 29 July 2011, 48 States had made the declaration provided for under article 41, paragraph 1, of the Covenant. In this connection, the Committee appeals to States parties to make the declaration under article 41 of the Covenant and to consider using this mechanism with a view to making implementation of the provisions of the Covenant more effective.
4. The Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty entered into force on 11 July 1991. As at 29 July 2011, there were 73 States parties to the Optional Protocol, an increase of 1 (Kyrgyzstan) since the Committee's last report.
5. A list of States parties to the Covenant and to the two Optional Protocols, indicating those States that have made the declaration under article 41, paragraph 1, of the Covenant, is contained in annex I to the present report.
6. Reservations and other declarations made by a number of States parties in respect of the Covenant or the Optional Protocols are set out in the notifications deposited with the Secretary-General. The Committee once again urges States parties to consider withdrawing their reservations.

### **B. Sessions of the Committee**

7. The Human Rights Committee has held three sessions since the adoption of its previous annual report. The 100th session was held from 11 to 29 October 2010, the 101st session from 14 March to 1 April 2011 and the 102nd session from 11 to 29 July 2011. The 100th and 102nd sessions were held at the United Nations Office at Geneva, and the 101st session at United Nations Headquarters in New York.

### **C. Election of officers**

8. On 14 March 2011, the Committee elected the following officers for a term of two years, in accordance with article 39, paragraph 1, of the Covenant:

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<sup>2</sup> The number of States parties will become 114 on 29 September 2011 following the entry into force of the Optional Protocol for Tunisia, which deposited its instrument of ratification on 29 June 2011. (According to article 9, paragraph 2, of the Optional Protocol: For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.)

Chairperson: Ms. Zonke Majodina  
Vice-Chairpersons: Mr. Yuji Iwasawa  
Mr. Michael O'Flaherty  
Mr. Fabián Salvioli  
Rapporteur: Ms. Helen Keller

9. During its 100th, 101st and 102nd sessions, the Bureau of the Committee held 10 meetings (3 per session and 1 extraordinary additional meeting during the 100th session). Pursuant to the decision taken at the seventy-first session, the Bureau records its decisions in formal minutes, which are kept as a record of all decisions taken.

#### **D. Special Rapporteurs**

10. The Special Rapporteurs on new communications and interim measures, Ms. Christine Chanut (during the 100th) and Sir Nigel Rodley (during the 101st and 102nd sessions), registered 116 communications during the reporting period and transmitted them to the States parties concerned, and issued 16 decisions calling for interim measures of protection pursuant to rule 92 of the Committee's rules of procedure.

11. The Special Rapporteurs for follow-up on Views, Ms. Ruth Wedgwood (during the 100th session) and Mr. Krister Thelin (during the 101st and 102nd sessions), and the Special Rapporteurs for follow-up on concluding observations, Mr. Abdelfattah Amor (during the 100th session) and Ms. Chanut (during the 101st and 102nd sessions), continued to carry out their functions during the reporting period. Interim reports were submitted to the Committee by Mr. Amor, Ms. Chanut, Ms. Wedgwood and Mr. Thelin during the 100th, 101st and 102nd sessions. The reports on follow-up on Views can be found in chapter VI. Details on follow-up on Views under the Optional Protocol and on concluding observations appear in annex VIII (Vol. II) and chapter VII, respectively.

#### **E. Working group and country report task forces**

12. In accordance with rules 62 and 95 of its rules of procedure, the Committee established a working group which met before each of its three sessions. The working group was entrusted with the task of making recommendations on the communications received under the Optional Protocol. The former working group on article 40, entrusted with the preparation of lists of issues concerning the initial or periodic reports scheduled for consideration by the Committee, has been replaced since the seventy-fifth session (July 2002) by country report task forces.<sup>3</sup> Country report task forces met during the 100th, 101st, and 102nd sessions to consider and adopt lists of issues on the reports of Bulgaria, Dominican Republic, Guatemala, Iceland, Iran (Islamic Republic of), Jamaica, Kuwait, Maldives, Norway, Turkmenistan and Yemen. The Committee also adopted lists of issues on the situation in three non-reporting States: Côte d'Ivoire (100th session), Malawi (102nd session) and Mozambique (102nd session).

13. The Committee benefits increasingly from information made available to it by the Office of the United Nations High Commissioner for Human Rights (OHCHR). United Nations bodies (such as the Office of the United Nations High Commissioner for Refugees (UNHCR)) and specialized agencies (such as the International Labour Organization (ILO))

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<sup>3</sup> *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40*, vol. I (A/57/40 (vol. I)), para. 56, and annex III, sect. B.

provided advance information on several of the countries whose reports were to be considered by the Committee. Country report task forces also considered material submitted by representatives of a number of national human rights institutions, as well as international and national human rights non-governmental organizations (NGOs). The Committee welcomed the interest shown by and the participation of those agencies and organizations and thanked them for the information provided.

14. At the 100th session, the Working Group on Communications was composed of Ms. Keller, Ms. Majodina, Ms. Iulia Motoc, Mr. O'Flaherty, Mr. Rafael Rivas Posada and Mr. Thelin. Mr. O'Flaherty was designated Chairperson-Rapporteur. The Working Group met from 5 to 9 October 2010.

15. At the 101st session, the Working Group on Communications was composed of Mr. Lazhari Bouzid, Ms. Chanet, Ms. Keller, Ms. Majodina, Ms. Motoc, Mr. O'Flaherty, Mr. Rivas Posada, Sir Nigel Rodley, Mr. Salvioli and Mr. Thelin. Mr. Thelin was designated Chairperson-Rapporteur. The Working Group met from 8 to 11 March 2011.

16. At the 102nd session, the Working Group on Communications was composed of Mr. Bouzid, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Ms. Motoc, Mr. Gerald L. Neuman, Mr. O'Flaherty, Mr. Rivas Posada, Sir Nigel Rodley, Mr. Salvioli and Ms. Margo Waterval. Sir Nigel Rodley was designated Chairperson-Rapporteur. The Working Group met from 4 to 8 July 2011.

## **F. Related United Nations human rights activities**

17. At each session, the Committee was informed about the activities of United Nations bodies dealing with human rights issues. Recent developments in the General Assembly and relating to the Human Rights Council were also discussed.

18. At its ninetieth session, the Committee decided to request Ms. Chanet to submit recommendations on its relations with the Human Rights Council for discussion during the ninety-third session. At the same time, the Committee also requested Ms. Wedgwood to draft recommendations on strengthening cooperation with the special procedures of the Human Rights Council, in particular to have a clearer idea of the Committee's contribution to the universal periodic review mechanism. At its ninety-second session, the Committee requested Ms. Chanet and Ms. Wedgwood to attend, as observers, a session of the Working Group on the Universal Periodic Review. At its ninety-fourth session, the Committee discussed these issues in plenary on the basis of the report presented by Ms. Chanet and Ms. Wedgwood (see CCPR/C/SR.2588).

19. Pursuant to a recommendation of the fourth Inter-Committee Meeting and the seventeenth meeting of chairpersons of the human rights treaty bodies, an inter-committee working group was set up to study the secretariat report on the practice of treaty bodies with regard to reservations to international human rights treaties. This working group met on 8 and 9 June 2006 and on 14 and 15 December 2006 and was chaired by Sir Nigel Rodley, who also represented the Committee. The reports of these two meetings (HRI/MC/2006/5 and Rev.1 and HRI/MC/2007/5) were transmitted to the sixth Inter-Committee Meeting, held from 18 to 20 June 2007, and the nineteenth meeting of chairpersons of the human rights treaty bodies, held on 21 and 22 June 2007. On 15 and 16 May 2007, Sir Nigel Rodley also attended, on behalf of the Committee, a meeting of bodies set up pursuant to the international human rights treaties with the International Law Commission (ILC), on the topic of reservations. Sir Nigel Rodley reported to the Committee, at its eighty-ninth and ninetieth sessions, on the outcome of the work of the working group and the discussions with the International Law Commission. The Committee continues to follow this matter closely and discussed the work of the ILC on reservations to

treaties at its ninety-eighth and ninety-ninth sessions, held respectively in March and July 2010.

20. At its ninety-ninth session, the Chairperson of the Committee sent a letter to the ILC, conveying the Committee's views on the guidelines on reservations to treaties adopted by the Commission in 2009, including guideline 3.2.2,<sup>4</sup> as well as on draft guideline 4.5.3 included in the fifteenth report (A/CN.4/624/Add.1) of the Special Rapporteur of the ILC, Mr. Alain Pellet, which are of great relevance to treaty bodies, in particular to the Human Rights Committee. In the letter, he referred to the first sentence in guideline 3.2.2, which provides that "when providing bodies with the competence to monitor the application of treaties, States or international organizations should specify, where appropriate, the nature and the limits of the competence of such bodies to assess the permissibility of reservations". The Chairperson stated that "some members expressed concern that this recommendation could be used in the future to argue *a contrario* that if a treaty does not have such a clause, a monitoring body established by the treaty has no competence to assess the permissibility of reservations. Furthermore, the meaning of the phrase 'where appropriate' was perceived as insufficiently clear, even though the Commentary explains that 'the expression "where appropriate" emphasizes the purely recommendatory nature of the guideline"'.

21. Thus, in the letter, the Human Rights Committee suggested that the first sentence of Guideline 3.2.2 be amended as follows: "When providing bodies with the competence to monitor the application of treaties, States or international organizations may specify the nature and the limits of the competence of such bodies to assess the permissibility of reservations."

22. The Chairperson also referred in the letter to the second sentence in guideline 3.2.2, which provides that: "For the existing monitoring bodies, measures could be adopted to the same ends." He stated that "many members expressed concern that this open invitation to amend a human rights treaty is not helpful and may also lead to the curtailment of the functions of existing monitoring bodies. Members also expressed concern that it might have retroactive effect, thus negatively impacting for purposes of legal certainty and predictability of treaty body functions". The Human Rights Committee suggested, therefore, that this second sentence be deleted.

23. With regard to guideline 4.5.3, on the effects of invalid reservations, the Chairperson stated in the letter that the working group on reservations established by the meeting of chairpersons of the human rights treaty bodies had made the following recommendation, which had subsequently been endorsed by the meeting of chairpersons: "As to the consequences of invalidity, the Working Group agrees with the proposal of the Special Rapporteur of the International Law Commission according to which an invalid reservation is to be considered null and void. It follows that a State will not be able to rely on such a reservation and, unless contrary intention is incontrovertibly established, will remain a party to the treaty without the benefit of the reservation."

24. Finally, the Chairperson stated in the letter that "the Human Rights Committee welcomed the fact that the Special Rapporteur had proposed draft guideline 4.5.3 along these lines in May 2010 and hopes that the Drafting Committee of the International Law Commission will also give due consideration to the above recommendation".

25. During its 100th and 101st sessions, the Committee discussed the issue of the draft ILC guidelines (A/CN.4/L.760/Add.3), which were to be considered for adoption by the ILC at its meeting in May 2011. During the 101st session, following an informal debriefing by representatives from the Codification Division of the United Nations Office of Legal

<sup>4</sup> Ibid., *Sixty-fourth Session, Supplement No. 10* (A/64/10), chap. V, sect. C.



Affairs, the Committee decided that the Chairperson should write another letter to the ILC. Thus, on 5 April 2011, the Chairperson expressed the Committee's concern on the effect of guideline 3.3.4 adopted in July 2010: "A reservation that is prohibited by the treaty or which is incompatible with its object and purpose shall be deemed permissible if no contracting State or contracting organization objects to it after having been expressly informed thereof by the depositary at the request of a contracting State or a contracting organization."

26. The Chairperson further stated in the letter that:

It would appear to the Committee that this guideline [3.3.4] envisages the development of a new procedure allowing an invalid reservation to become valid through the collective silence of States parties. The Committee notes the detailed commentary on the application of this guideline including commentary No. 5, which states that it cannot be argued that monitoring bodies are prevented from assessing the permissibility of a reservation even if no objection has been raised to it. Nevertheless, it is the Committee's view that the acceptance of an impermissible reservation under this guideline, in the absence of any deliberation, may limit the monitoring bodies' ability to carry out such assessments effectively.

## **G. Derogations pursuant to article 4 of the Covenant**

27. Article 4, paragraph 1, of the Covenant stipulates that, in time of public emergency, States parties may take measures derogating from certain of their obligations under the Covenant. Pursuant to paragraph 2, no derogation is allowed from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18. Pursuant to paragraph 3, any derogation must be immediately notified to the other States parties through the intermediary of the Secretary-General. A further notification is required upon the termination of the derogation.<sup>5</sup> All such notifications are available on the website of the United Nations Office of Legal Affairs.

28. On 11 and 30 August, 16 September and 1 November 2010, the Government of Peru notified the other States parties, through the intermediary of the Secretary-General, that it had extended or declared a state of emergency in different provinces or parts of the country. In these notifications, the Government specified that, during the state of emergency, the rights covered by articles 9, 12, 17 and 21 of the Covenant would be suspended.

29. During the period under review, the Government of Colombia notified the other States parties, through the intermediary of the Secretary-General, on 24 August 2010, that it had partially amended previous decrees declaring a state of emergency.

30. On 2 August and 27 December 2010, and 27 January and 31 May 2011, the Government of Guatemala notified the other States parties, through the intermediary of the Secretary-General, that it had extended or declared a state of emergency in different provinces or parts of the country. In these notifications, the Government specified that, during the state of emergency, the rights covered by articles 9, 12 and 21 of the Covenant would be suspended.

31. During the period under review, the Government of Thailand notified the other States parties, through the intermediary of the Secretary-General, on 10 March 2010, that it had lifted the declaration of a state of emergency, which had been declared on 14 April 2010, and that all derogations of rights covered under the Covenant made pursuant to the said declaration had been terminated, effective as of 22 December 2010.

<sup>5</sup> Ibid., *Sixtieth Session, Supplement No. 40*, vol. I (A/60/40 (vol. I)), chap. I, para. 28.

32. During the period under review, the Government of Algeria notified the other States parties, through the intermediary of the Secretary-General, on 25 February 2011, that it had lifted the declaration of a state of emergency, which had been declared on 9 February 1992.

33. During the period under review, the Government of Bahrain notified the other States parties, through the intermediary of the Secretary-General, on 12 May 2011, that it had lifted the declaration of a state of emergency, which had been declared on 15 March 2011, and that all derogations of rights covered under the Covenant made pursuant to the said declaration (arts. 9, 12, 13, 17, 19, 21 and 22) had been terminated, effective as of 1 June 2011.

## **H. General comments under article 40, paragraph 4, of the Covenant**

34. At its ninety-fourth session, the Committee decided to revise its general comment No. 10 (1983) on article 19 of the Covenant (freedom of expression).<sup>6</sup> The Committee began its consideration of the draft document submitted by the Rapporteur, Mr. O'Flaherty, in a first reading at its ninety-seventh session. The Committee continued to consider the draft in a first reading during the ninety-eighth and ninety-ninth sessions (in public session). The Committee completed the first reading of the draft general comment during the 100th session, following which it posted the draft general comment on the OHCHR website and requested comments from stakeholders. A significant number of comments were received by the Committee from States parties, national human rights institutions, international and national human rights NGOs and academics. The second reading of the draft general comment commenced during the 101st session and continued at the 102nd session; during this reading comments from stakeholders were taken into account. The Committee received submissions from 18 States parties, 1 United Nations body, 1 regional organization, 4 national human rights institutions, 21 NGOs and 4 academics. The general comment was adopted by the Committee during the 102nd session, on 21 July 2011 (see annex V).

## **I. Staff resources and translation of official documents**

35. In accordance with article 36 of the Covenant, the Secretary-General is obliged to provide the Committee members with the necessary staff and facilities for the effective performance of their functions. The Committee reaffirms its concern regarding the shortage of staff resources and stresses once again the importance of allocating adequate staff resources to service its sessions in Geneva and New York and to promote greater awareness, understanding and implementation of its recommendations at the national level. Furthermore, the Committee expresses grave concern that general rules within the United Nations concerning staff mobility in the Secretariat may hamper the work of the Committee, in particular for staff working in the Petitions Unit who need to remain in their position for a sufficiently long period so as to acquire experience and knowledge regarding the jurisprudence of the Committee.

36. The Committee also reaffirms its deep concern at the lack of availability of its official documents in the three working languages of the Committee. At its ninety-eighth session, held in March 2010, the Committee met in a public plenary session with Mr. Franz Baumann, Assistant Secretary-General for General Assembly Affairs and Conference Management, and Ms. Linda Wong, Chief, Service II, Programme Planning and Budget Division, in order to discuss ways in which the Committee could assist in overcoming difficulties with regard to the processing and translation in its three working languages of

<sup>6</sup> *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40).*

official Committee documents, in particular States parties' written replies to lists of issues, presently not considered to be "mandated". During the period under review and despite highlighting their concerns to the responsible persons in March 2010, the Committee reaffirms these same concerns and notes that there remains a particular problem with having States parties' replies to lists of issues translated into its three working languages and requests that this problem be addressed as a matter of urgency. The Committee also expresses concern that the Spanish version of the web pages relating to the work of the Committee on the website of OHCHR is not regularly updated and that hardcopies of its last annual report are unavailable for distribution to the members.

## **J. Publicity for the work of the Committee**

37. At its ninetieth session, the Committee discussed the need to develop a media strategy. It continued the discussion during the ninety-first, ninety-second and ninety-third sessions on the basis of a working paper prepared by Mr. Ivan Shearer, which was adopted by the Committee and made public at its ninety-fourth session (see CCPR/C/94/3) and includes the following main recommendations:

(a) The Human Rights Section of the United Nations website, and especially the OHCHR website to which it is linked, should be constantly reviewed, updated, and improved for layout, content, topicality and ease of use. The OHCHR website should also contain references and links to other relevant websites;

(b) At its annual meetings with NGOs, the Committee should enlist their aid in establishing strategies for, and secure their cooperation in, the dissemination of information about the Covenant and the Committee. International NGOs may also be able to assist in identifying appropriate national NGOs that are able to work at the grass-roots level. National NGOs should be given encouragement by the Committee to remain in contact, through registration with OHCHR after identification by United Nations field offices. Further programmes should be developed by OHCHR to assist national NGOs in conducting educational programmes in their countries, suited to local conditions. OHCHR should disseminate the work of the Committee directly to national parliaments and universities;

(c) The consideration of selected State party reports at the Geneva sessions should be held in the Palais des Nations in order to allow a greater number of the public to attend and for the convenience of the press corps present there, where the anticipated public interest in the report under consideration is likely to exceed the capacity of the Palais Wilson;

(d) Webcasting, podcasting and streaming of proceedings of open meetings of the Committee should be permitted. A report should be requested from the OHCHR information officer on the feasibility and logistics of the implementation of this recommendation. Cassette tapes of the public proceedings of the Committee should be made available on request to those who wish to receive them, at a reasonable cost. The Department of Public Information should be requested to promote the video coverage of public proceedings;

(e) The media should be encouraged to cover by radio or film the public proceedings of the Committee, subject to any guidelines that may be adopted for the decorum and dignified conduct of proceedings, and provided that the Committee's work is not disrupted;

(f) Members of the Committee should be encouraged to make public comments on the work of the Committee, except in relation to confidential matters, in their individual capacity, making clear that they do not speak on behalf of the Committee as a whole;

(g) Individual members, in particular country rapporteurs and country report task force members, should be encouraged to speak at press conferences during or at the conclusion of the Committee's sessions. They should also be able to participate in the follow-up activities of the Committee on cases of which they have particular knowledge;

(h) The traditional final press conference should be retained, except in exceptional circumstances. It should be held not later than on the day preceding the final day of the session. Participation in the final press conference should not be restricted to members of the Bureau. The press and other media should have access to the Committee's concluding observations in relation to the countries examined at that session at least 24 hours prior to the final press conference or prior to any special press conference in relation to that particular country. An executive summary of the concluding observations adopted by the Committee at the session should be made available, prepared by the Secretariat, to help inform the media;

(i) In consultation with the Media Unit and Public Affairs Office, arrangements for press briefings during the session should be made so that items of particular interest on the Committee's agenda for that session can be highlighted. An informal lunch or drinks party with members of the press should be arranged at the beginning of the session so that members of the press and members of the Committee can become individually acquainted. This should be accompanied by a formal pre-session media briefing;

(j) The opportunity should be taken to issue press releases during the course of a session of the Committee whenever it seems appropriate to do so. Press releases in each case should be approved by the Chairperson who, in case of doubt, may consult the Bureau. The OHCHR website should contain a dedicated section devoted to press releases regarding the Committee's work.

38. At its ninety-sixth session, the Committee requested the Secretariat to ensure that access of the public be facilitated, in particular for public meetings during sessions held at the United Nations Headquarters in New York. The Committee regrets that to date there has been no progress in this regard and urges those responsible to resolve the issue.

39. During the 100th session, the Committee agreed to allow two NGOs to film public sessions of the Committee, pursuant to recommendations 4 and 5 of the media strategy (CCPR/C/94/3). The Committee decided that filming should be carried out without any disturbance to the Committee members, the examination of reports should be filmed in their entirety, and that NGO requests and unaccredited media requests for filming should be considered on a case-by-case basis. The Committee expresses its appreciation to the Centre for Civil and Political Rights, which webcast the examination of all States parties' reports during the 102nd session in Geneva; the webcast may be accessed at the following link: [www.ustream.tv/channel/un-human-rights-committee](http://www.ustream.tv/channel/un-human-rights-committee).

## **K. Publications relating to the work of the Committee**

40. The Committee notes with appreciation that volumes 5, 6, 7, 8 and 9 of the *Selected Decisions of the Human Rights Committee under the Optional Protocol* have been published, bringing its jurisprudence up to date to the October 2007 session. Such publications will make the Committee's jurisprudence more accessible to the general public and to the legal profession in particular. However, these volumes of the *Selected Decisions* must still be made available in all official languages of the United Nations.

41. The Committee has learned with satisfaction that its decisions adopted under the Optional Protocol have been published in the databases of various institutions.<sup>7</sup> It appreciates the growing interest shown in its work by universities and other institutions of higher learning in this respect. It also reiterates its previous recommendation that the treaty body database of the OHCHR website (<http://tb.ohchr.org/default.aspx>) should be equipped with adequate search functions.

## **L. Future meetings of the Committee**

42. At its ninety-ninth session, the Committee confirmed the following schedule of meetings for 2011: 103rd session from 17 October to 4 November 2011. At its 102nd session, it confirmed the following schedule of meetings for 2012: 104th session from 12 to 30 March 2012, 105th session from 9 to 27 July 2012.

## **M. Adoption of the report**

43. At its 2830th meeting, on 28 July 2011, the Committee considered the draft of its thirty-fifth annual report, covering its activities at its 100th, 101st and 102nd sessions, held in 2010 and 2011. The report, as amended in the course of the discussion, was adopted unanimously. By virtue of its decision 1985/105 of 8 February 1985, the Economic and Social Council authorized the Secretary-General to transmit the Committee's annual report directly to the General Assembly.

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<sup>7</sup> Ibid., *Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (vol. I)), annex VII.

## **II. Methods of work of the Committee under article 40 of the Covenant and cooperation with other United Nations bodies**

44. The present chapter summarizes and explains the modifications introduced by the Committee to its working methods under article 40 of the Covenant in recent years, as well as recent decisions adopted by the Committee on follow-up to its concluding observations on State party reports.

### **A. Recent developments and decisions on procedures**

#### **1. Revised reporting guidelines**

45. At its ninetieth session, the Committee decided to revise its reporting guidelines and requested Mr. O’Flaherty to review the existing guidelines and to prepare a working paper identifying in particular any difficulties that might arise with the implementation of harmonized guidelines. The Committee began a discussion on the basis of Mr. O’Flaherty’s document at its ninety-second and ninety-third sessions and decided to begin work on the preparation of new guidelines. At its ninety-fifth session, the Committee designated Ms. Keller as rapporteur for the preparation of new guidelines.

46. At its ninety-seventh session, held in October 2009, the Committee started discussing its draft revised reporting guidelines and continued this discussion at its ninety-eighth session. The revised reporting guidelines were adopted at the ninety-ninth session.

#### **2. Focused reports based on lists of issues prior to reporting**

47. In October 2009, the Committee also decided to adopt a new reporting procedure whereby it would send States parties a list of issues (referred to as a list of issues prior to reporting) and consider their written replies in lieu of a periodic report (referred to as a focused report based on replies to a list of issues). Under the new procedure, the State party’s answer would constitute the report for purposes of article 40 of the Covenant. The Committee designated Ms. Keller as rapporteur for the modalities of the new procedure. Following a discussion of two papers submitted by Ms. Keller at the ninety-eighth and ninety-ninth sessions, the modalities of implementation of the new optional procedure were decided upon by the Committee during its ninety-ninth session (see for further details CCPR/C/99/4). During the 101st session, pursuant to the timelines set out in the CCPR/C/99/4 document, the Committee announced the names of the first five countries for which the Committee will adopt lists of issues prior to reporting during its 103rd session in October 2011 (Cameroon, Denmark, Monaco, the Republic of Moldova and Uruguay).

#### **3. Statement on Pakistan**

48. During its 101st session, the Committee made a statement on the reservation made by Pakistan to article 40 (reporting process). The Committee stated that Pakistan had ratified the International Covenant on Civil and Political Rights on 23 June 2010, with the following reservations:

“[The] Islamic Republic of Pakistan declares that the provisions of Articles 3, 6, 7, 18 and 19 shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan and the Sharia laws.

“The Islamic Republic of Pakistan declares that the provisions of Articles 12 shall be so applied as to be in conformity with the Provisions of the Constitution of Pakistan.

“With respect to Article 13, the Government of the Islamic Republic of Pakistan reserves its right to apply its law relating to foreigners.

“[The] Islamic Republic of Pakistan declares that the provisions of Articles 25 shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan.

“The Government of the Islamic Republic of Pakistan hereby declares that it does not recognize the competence of the Committee provided for in Article 40 of the Covenant.”

49. The Committee further stated that the Covenant had entered into force for the State party on 23 September 2010. Under Article 40, paragraph 1, the States parties undertake to submit reports on the measures they have adopted which give effect to the rights recognized therein and on the progress made in the enjoyment of those rights, (a) within one year of the entry into force of the present Covenant for the States parties concerned, and (b) thereafter whenever the Committee so requests. Article 40 gives the Human Rights Committee the competence to consider and study reports submitted by the States parties. This competence is of critical importance for the performance of the Committee’s monitoring functions and essential to the *raison d’être* of the Covenant. Under rule 70 of its rules of procedure, the Committee can examine a State party’s actions under the Covenant in the absence of a report. The initial report of the Pakistan is due, according to article 40, paragraph 1 (a), of the Covenant, by 23 September 2011. The Secretariat was instructed to convey this statement to the State party.

#### 4. Press release on executions in Belarus

50. On 27 July 2011, during its 102nd session, the Committee issued a press release, in which it stated that Belarus had violated its international obligations by executing two death-row inmates whose cases were being reviewed by the Human Rights Committee, despite requests to the Government to await the results of the review. The Committee expressed dismay at the second such breach in two years.

51. The news release continues as follows:

“The two men, Mr. Oleg Grishkovtsov and Mr. Andrei Burdyko, had alleged that they were subjected to torture at the pre-trial investigation stage and did not receive a fair trial. The Committee had asked Belarus state authorities not to carry out their execution while their cases were under consideration. The exact date of the executions remains unknown but it is presumed that they took place between 13 and 19 July 2011.

“On 21 July, the Committee sent a letter to the Belarus Permanent Mission in Geneva, expressing concern over the apparent execution of Mr. Grishkovtsov (communication No. 2013/2010) and Mr. Burdyko (communication No. 2017/2010) in violation of the Committee’s request for interim measures of protection. The Committee requested prompt clarifications from the Government but no reply has been received.

““Our requests for interim measures of protection are aimed at averting irreparable harm to alleged victims of human rights violations. The Committee deplores the fact that, by proceeding to execute these two individuals, Belarus has committed a grave breach of its obligations under the Optional Protocol to the International Covenant on Civil and Political Rights”, said Ms. Zonke Zanele Majodina, the Committee’s Chairperson.

““While the Covenant does not as such prohibit the death penalty for the most serious crimes and Belarus is not a State party to the Second Optional Protocol to

the ICCPR, aiming at the abolition of the death penalty, it is imperative that a death sentence be imposed only in full respect of the right to a fair trial. The imposition of a death sentence after a trial that did not meet the requirements for a fair trial amounts to a violation of articles 14 and 6 of the Covenant.’

“This is the second time executions have been carried out in Belarus of individuals whose cases are pending before the Human Rights Committee. In March last year, Mr. Andrei Zhuk and Mr. Vasily Yuzepchuk were executed despite the Committee’s request for interim measures of protection.”

## **5. Cooperation with national human rights institutions and non-governmental organizations**

52. During its 102nd session, at its 2803rd meeting, the Committee held a meeting with NGOs and national human rights institutions to consider ways to improve their cooperation with the Committee. Mr. Flinterman and Ms. Motoc were assigned the task of preparing a paper for the next session, upon which the Committee would base its consideration of how best to continue its collaboration with NGOs and NHRIs.

## **B. Follow-up to concluding observations**

53. Since its forty-fourth session in March 1992,<sup>8</sup> the Committee has adopted concluding observations. It takes the concluding observations as a starting point in the preparation of the list of issues for the consideration of the subsequent State party report. In some cases, the Committee has received, in accordance with rule 71, paragraph 5, of its revised rules of procedure, comments on its concluding observations and replies to the concerns identified by it from the States parties concerned, which are issued in document form.

54. At its seventy-fourth session, the Committee adopted decisions spelling out the modalities for following up on concluding observations.<sup>9</sup> At its seventy-fifth session, the Committee appointed Mr. Maxwell Yalden as its Special Rapporteur for follow-up on concluding observations. At the eighty-third session, Mr. Rivas Posada succeeded Mr. Yalden. At the ninetieth session, Sir Nigel Rodley was appointed Special Rapporteur for follow-up on concluding observations. At the ninety-sixth session, Mr. Abdelfattah Amor succeeded Sir Rodley. At the 101st session, Ms. Christine Chanet succeeded Mr. Amor.

55. At its ninety-fourth session, the Committee requested the Special Rapporteur for follow-up on concluding observations, Sir Nigel Rodley, to present proposals to the Committee on ways to strengthen its follow-up procedure. On the basis of a paper submitted by the Special Rapporteur (CCPR/C/95/5), the Committee discussed and adopted several proposals to strengthen its follow-up procedure at its ninety-fifth session.<sup>10</sup>

56. During the period under review, such comments were received from 24 States parties (Argentina, Australia, Azerbaijan, Bosnia and Herzegovina, China, Croatia, the Czech Republic, Denmark, Guatemala, Ireland, Libyan Arab Jamahiriya, Madagascar, Mexico, New Zealand, the Republic of Moldova, the Russian Federation, Rwanda, San Marino, Spain, Sudan, Switzerland, the former Yugoslav Republic of Macedonia, the United Kingdom of Great Britain and Northern Ireland and Zambia). This information has been published and can be consulted on the OHCHR website (<http://www2.ohchr.org/>

<sup>8</sup> Ibid., *Forty-seventh Session, Supplement No. 40* (A/47/40), chap. I, sect. E, para. 18.

<sup>9</sup> Ibid., *Fifty-seventh Session, Supplement No. 40* (A/57/40), vol. I, annex III, sect. A.

<sup>10</sup> Ibid., *Sixty-fourth Session, Supplement No. 40* (A/64/40), vol. I, annex VI.



english/bodies/hrc/followup-procedure.htm). Chapter VII of the present report summarizes activities relating to follow-up to concluding observations and States parties' replies.

### **C. Links to other human rights treaties and treaty bodies**

57. The Committee views the annual meeting of chairpersons of the human rights treaty bodies as a forum for exchanging ideas and information on procedures and logistical problems, streamlining working methods, improving cooperation among treaty bodies, and stressing the need to obtain adequate secretariat services to enable all treaty bodies to fulfil their mandates effectively. In its opinion on the idea of creating a single human rights treaty body,<sup>11</sup> the Committee proposed that the meeting of chairpersons of treaty bodies and the Inter-Committee Meeting should be replaced by a single coordinating body composed of representatives of the various treaty bodies, which would be responsible for the effective oversight of all questions relating to the harmonization of working methods.

58. The first session of the Inter-Committee Meeting working group on follow-up to concluding observations, inquiries, visits and decisions took place in Geneva from 12 to 14 January 2011; Mr. Amor and Mr. Iwasawa participated. The twenty-third meeting of chairpersons of the human rights treaty bodies was held in Geneva on 30 June and 1 July 2011; Ms. Majodina participated. The twelfth Inter-Committee Meeting took place in Geneva from 27 to 29 June 2011. Representatives from each of the human rights treaty bodies participated. Ms. Majodina and Mr. O'Flaherty represented the Committee.

59. On 16 October 2010, in the context of treaty body strengthening, an informal consultation of Committee members was held in Les Avenières, France. Its objective was two-fold:

(a) To respond to the High Commissioner's call to provide time for members of treaty bodies to consider and identify options for the future of their work and the treaty body system as a whole, including by addressing their working methods;

(b) To allow treaty body members to discuss in advance issues tabled by the Inter-Committee Meeting and the meeting of chairpersons in order to be able to identify grounds for agreement.

60. The issues tabled for discussion during the consultation were some of the key items that had been identified by the treaty bodies' chairs for the Inter-Committee Meeting held in June 2011: the structure of the dialogue between treaty bodies and States parties; the structure and length of treaty bodies' concluding observations; the mode of interaction with stakeholders, in particular national human rights institutions and civil society actors; and enhancing the efficiency of the meeting of chairpersons. The following members participated in this consultation: Mr. Amor, Mr. Mahjoub El Haiba, Mr. Iwasawa, Mr. Rajsoomer Lallah, Mr. Rivas Posada, Sir Nigel Rodley, Mr. Salvioli and Mr. Thelin.

### **D. Cooperation with other United Nations bodies**

61. At its ninety-seventh session, Mr. Sanchez-Cerro took over from Mr. Mohammed Ayat as the Rapporteur mandated to liaise with the Office of the Special Adviser to the Secretary-General for the Prevention of Genocide and Mass Atrocities. Since Mr. Sanchez-Cerro's departure from the Committee in 31 December 2010 this mandate has been left open.

<sup>11</sup> Ibid., *Sixty-second Session, Supplement No. 40 (A/62/40)*, vol. I, annex V.

### **III. Submission of reports by States parties under article 40 of the Covenant**

62. Under article 2, paragraph 1, of the International Covenant on Civil and Political Rights, each State party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. In connection with this provision, article 40, paragraph 1, of the Covenant requires States parties to submit reports on the measures adopted and the progress achieved in the enjoyment of the various rights and on any factors and difficulties that may affect the implementation of the Covenant. States parties undertake to submit reports within one year of the entry into force of the Covenant for the State party concerned and, thereafter, whenever the Committee so requests. Under the Committee's current guidelines, adopted at its sixty-sixth session and amended at the seventieth session (CCPR/C/GUI/66/Rev.2), the five-year periodicity in reporting, which the Committee itself had established at its thirteenth session in July 1981 (CCPR/C/19/Rev.1), was replaced by a flexible system whereby the date for the subsequent periodic report by a State party is set on a case-by-case basis at the end of the Committee's concluding observations on any report, in accordance with article 40 of the Covenant and in the light of the guidelines for reporting and the working methods of the Committee. The Committee confirmed this approach in its current guidelines adopted at the ninety-ninth session (CCPR/C/2009/1).

#### **A. Reports submitted to the Secretary-General from August 2010 to July 2011**

63. During the period covered by the present report, 11 reports were submitted to the Secretary-General by the following States parties: Kenya (third periodic report), Lithuania (third periodic report), Bosnia and Herzegovina (second periodic report), Paraguay (third periodic report), Portugal (fourth periodic report), Turkey (initial report), Germany (sixth periodic report), China, which submitted reports for Macao, China (initial report) and Hong Kong, China (third periodic report), Peru (fifth periodic report) and Ukraine (seventh periodic report).

#### **B. Overdue reports and non-compliance by States parties with their obligations under article 40**

64. The Committee wishes to reiterate that States parties to the Covenant must submit the reports referred to in article 40 of the Covenant on time so that the Committee can duly perform its functions under that article. Those reports are the basis for the discussion between the Committee and States parties on the human rights situation in States parties. Regrettably, serious delays have been noted since the establishment of the Committee.

65. The Committee notes with concern that the failure of States parties to submit reports hinders the performance of its monitoring functions under article 40 of the Covenant. The list below identifies the States parties that have a report more than five years overdue, and those that have not submitted reports requested by a special decision of the Committee. The Committee reiterates that these States are in default of their obligations under article 40 of the Covenant.

**States parties that have reports more than five years overdue (as at 29 July 2011) or that have not submitted a report requested by a special decision of the Committee**

<i>State party</i>	<i>Type of report</i>	<i>Date due</i>	<i>Years overdue</i>
Gambia <sup>a</sup>	Second	21 June 1985	26
Equatorial Guinea <sup>b</sup>	Initial	24 December 1988	22
Somalia	Initial	23 April 1991	20
Saint Vincent and the Grenadines <sup>c</sup>	Second	31 October 1991	19
Grenada <sup>d</sup>	Initial	5 December 1992	19
Côte d'Ivoire	Initial	25 June 1993	18
Seychelles <sup>e</sup>	Initial	4 August 1993	17
Niger	Second	31 March 1994	17
Afghanistan <sup>f</sup>	Third	23 April 1994	17
Dominica <sup>g</sup>	Initial	16 September 1994	16
Guinea	Third	30 September 1994	16
Mozambique	Initial	20 October 1994	16
Cape Verde	Initial	5 November 1994	16
Malawi	Initial	21 March 1995	16
Burundi	Second	8 August 1996	14
Haiti	Initial	30 December 1996	14
Malta	Second	12 December 1996	14
Belize	Initial	9 September 1997	13
Nepal	Second	13 August 1997	13
Sierra Leone	Initial	22 November 1997	13
Romania	Fifth	28 April 1999	13
Nigeria	Second	28 October 1999	11
Bolivia (Plurinational State of)	Third	31 December 1999	11
Lebanon	Third	31 December 1999	11
South Africa	Initial	9 March 2000	11
Burkina Faso	Initial	3 April 2000	11
Iraq	Fifth	4 April 2000	11
Senegal	Fifth	4 April 2000	11
Ghana	Initial	8 February 2001	10
Belarus	Fifth	7 November 2001	9

<i>State party</i>	<i>Type of report</i>	<i>Date due</i>	<i>Years overdue</i>
Bangladesh	Initial	6 December 2001	9
India	Fourth	31 December 2001	9
Lesotho	Second	30 April 2002	9
Cyprus	Fourth	1 June 2002	9
Zimbabwe	Second	1 June 2002	9
Cambodia	Second	31 July 2002	9
Uruguay <sup>h</sup>	Fifth	21 March 2003	8
Guyana	Third	31 March 2003	8
Congo	Third	21 March 2003	8
Eritrea	Initial	22 April 2003	8
Gabon	Third	31 October 2003	7
Trinidad and Tobago	Fifth	31 October 2003	7
Democratic People's Republic of Korea	Third	1 January 2004	7
Djibouti	Initial	5 February 2004	7
Kyrgyzstan	Second	31 July 2004	7
Viet Nam	Third	1 August 2004	6
Egypt	Fourth	1 November 2004	6
Timor-Leste	Initial	19 December 2004	6
Venezuela (Bolivarian Republic of)	Fourth	1 April 2005	6
Mali	Third	1 April 2005	6
Swaziland	Initial	27 June 2005	6
Liberia	Initial	22 December 2005	5
Mauritania	Initial	17 February 2006	5

<sup>a</sup> The Committee considered the situation of civil and political rights in the Gambia during its seventy-fifth session (July 2002) in the absence of a report and a delegation. Provisional concluding observations were sent to the State party. At the end of the eighty-first session (July 2004), the Committee decided to convert them into final and public observations. At its ninety-fourth session (October 2008), the Committee also decided to declare the State party in non-compliance with its obligations under article 40 of the Covenant (see chap. III of the present report, para. 69).

<sup>b</sup> The Committee considered the situation of civil and political rights in Equatorial Guinea during its seventy-ninth session (October 2003) in the absence of a report and delegation. Provisional concluding observations were sent to the State party. At the end of the eighty-first session (July 2004), the Committee decided to convert them into final and public observations. At its ninety-fourth session (October 2008), the Committee also decided to declare the State party in non-compliance with its obligations under article 40 of the Covenant (see chap. III of the present report, para. 71).

<sup>c</sup> The Committee considered the situation of civil and political rights in Saint Vincent and the Grenadines during its eighty-sixth session (March 2006) in the absence of a report but in the presence of a delegation. Provisional concluding observations were sent to the State party, with a request to submit its second periodic report by 1 April 2007. A reminder was sent on 12 April 2007. In a letter dated 5 July 2007, Saint Vincent and the Grenadines undertook to submit its report within one month. At the end of its ninety-second session (March 2008), the Committee decided to convert the provisional concluding observations into final and public observations (see chap. III of the present report, para. 74).

<sup>d</sup> The Committee considered the situation of civil and political rights in Grenada at its ninetieth session (July 2007) in the absence of a report and a delegation but on the basis of written replies from the State party. Provisional concluding observations were sent to the State party, which was requested to submit its initial report by 31 December 2008. At the end of its ninety-sixth session (July 2009), the Committee decided to convert the provisional concluding observations into final and public observations (see chap. III of the present report, para. 77).

<sup>e</sup> The Committee considered the situation of civil and political rights in Seychelles at its 101st session, in March 2011, in the absence of a report, a delegation and absent replies to the list of issues. Provisional concluding observations were sent to the State party, with a request to submit its initial report by 1 April 2012 and to comment on the concluding observations within one month from the date of their transmission. On 26 April 2011, the State party requested an extension of time until the end of May 2011 to respond to the concluding observations. On 27 April 2011, the Committee granted the State party this request. On 13 May 2011, the State party submitted comments on the provisional concluding observations and indicated that it would submit a report by April 2012. In July 2011, during the 102nd session, the Committee decided to await the State party's report before taking matters any further (see chap. III, para. 78 of the present document).

<sup>f</sup> On 12 May 2011, Afghanistan accepted the new optional procedure on focused reports based on replies to the list of issues prior to reporting. It is thus waiting for the Committee to adopt a list of issues prior to reporting.

<sup>g</sup> The Committee scheduled Dominica for examination under article 70 of its rules of procedure in the absence of a report during its 102nd session in July 2011. Prior to the session, the State party requested a postponement indicating that it was in the process of drafting its report and would do so by 30 January 2012. The Committee agreed to a postponement and decided to await the report before taking matters any further.

<sup>h</sup> On 26 November 2010, Uruguay accepted the new optional procedure on focused reports based on replies to the list of issues prior to reporting. A list of issues prior to reporting will be adopted by the Committee during its 103rd session in October 2011.

66. The Committee once again draws particular attention to the fact that 31 initial reports are overdue (including the 22 initial reports overdue by at least five years listed above). The result is frustration of a crucial objective of the Covenant, namely, to enable the Committee to monitor compliance by States parties with their obligations under the Covenant on the basis of periodic reports. The Committee addresses reminders at regular intervals to all those States parties whose reports are significantly overdue.

67. Owing to the concern of the Committee about the number of overdue reports and non-compliance by States parties with their obligations under article 40 of the Covenant,<sup>12</sup> two working groups of the Committee proposed amendments to the rules of procedure in order to help States parties fulfil their reporting obligations and to simplify the procedure. These amendments were formally adopted during the seventy-first session, in March 2001,

<sup>12</sup> Ibid., chap. III, sect. B, and *ibid.*, *Fifty-seventh Session, Supplement No. 40 (A/57/40)*, chap. III, sect. B.

and the revised rules of procedure were issued (CCPR/C/3/Rev.6 and Corr.1).<sup>13</sup> All States parties were informed of the amendments to the rules of procedure, and the Committee has applied the revised rules since the end of the seventy-first session (April 2001). The Committee recalls that general comment No. 30, adopted at the seventy-fifth session, spells out the States parties' obligations under article 40 of the Covenant.<sup>14</sup>

68. The amendments introduced a procedure to be followed when a State party has failed to honour its reporting obligations for a long time, or requests a postponement of its scheduled appearance before the Committee at short notice. In both situations, the Committee may henceforth serve notice on the State concerned that it intends to consider, from material available to it, the measures adopted by that State party to give effect to the provisions of the Covenant, even in the absence of a report. The amended rules of procedure further introduced a follow-up procedure to the concluding observations of the Committee: rather than setting in the last paragraph of the concluding observations a date by which the State party's next report should be submitted, the Committee invites the State party to report back to it within a specified period regarding its follow-up to the Committee's recommendations, indicating what steps, if any, it has taken. The responses received are thereafter examined by the Committee's Special Rapporteur for follow-up on concluding observations, and a definitive deadline is then set for the submission of the next report. Since the seventy-sixth session, the Committee has, as a rule, examined the progress reports submitted by the Special Rapporteur on a sessional basis.<sup>15</sup>

69. The Committee first applied the new procedure to a non-reporting State at its seventy-fifth session. In July 2002, it considered the measures taken by the Gambia to give effect to the rights set out in the Covenant, in the absence of a report and a delegation from the State party. It adopted provisional concluding observations on the situation of civil and political rights in the Gambia, which were transmitted to the State party. At its seventy-eighth session, the Committee discussed the status of the provisional concluding observations on the Gambia and requested the State party to submit by 1 July 2004 a periodic report that should specifically address the concerns identified in the Committee's provisional concluding observations. If the State party failed to meet the deadline, the provisional concluding observations would become final and the Committee would make them public. On 8 August 2003, the Committee amended rule 69A of its rules of procedure<sup>16</sup> to provide for the possibility of making provisional concluding observations final and public. At the end of its eighty-first session, the Committee decided to make the provisional concluding observations on the Gambia final and public, since the State party had failed to submit its second periodic report. At its ninety-fourth session (October 2008), the Committee also decided to declare the State party in non-compliance with its obligations under article 40 of the Covenant.

70. At its seventy-sixth session (October 2002), the Committee considered the situation of civil and political rights in Suriname, in the absence of a report but in the presence of a delegation. On 31 October 2002, it adopted provisional concluding observations, which were transmitted to the State party. In its provisional concluding observations, the Committee invited the State party to submit its second periodic report within six months. The State party submitted its report by the deadline. The Committee considered the report at its eightieth session (March 2004) and adopted concluding observations.

<sup>13</sup> Ibid., *Fifty-sixth Session, Supplement No. 40* (A/56/40), vol. I, annex III, sect. B. The revised rules were confirmed in the updated rules of procedure adopted at the 100th session (CCPR/C/3/Rev.9).

<sup>14</sup> Ibid., *Fifty-seventh Session, Supplement No. 40* (A/57/40), vol. I, annex VI.

<sup>15</sup> Except for the eighty-third session, when a new Special Rapporteur was appointed.

<sup>16</sup> Rule 70 of the rules of procedure.

71. At its seventy-ninth and eighty-first sessions (October 2003 and July 2004), the Committee considered the situation of civil and political rights in Equatorial Guinea and the Central African Republic, respectively, in the absence both of a report and a delegation in the first case, and in the absence of a report but in the presence of a delegation in the second case. Provisional concluding observations were transmitted to the States parties concerned. At the end of the eighty-first session, the Committee decided to make the provisional concluding observations on the situation in Equatorial Guinea final and public, the State party having failed to submit its initial report. At its ninety-fourth session (October 2008), the Committee also decided to declare the State party in non-compliance with its obligations under article 40 of the Covenant. On 11 April 2005, in conformity with the assurances it had made to the Committee at the eighty-first session, the Central African Republic submitted its second periodic report. The Committee considered the report at its eighty-seventh session (July 2006) and adopted concluding observations.

72. At its eightieth session (March 2004), the Committee decided to consider the situation of civil and political rights in Kenya at its eighty-second session (October 2004), as Kenya had not submitted its second periodic report, due on 11 April 1986. On 27 September 2004, Kenya submitted its second periodic report. The Committee considered the second periodic report of Kenya at its eighty-third session (March 2005) and adopted concluding observations.

73. At its eighty-third session, the Committee considered the situation of civil and political rights in Barbados, in the absence of a report but in the presence of a delegation, which pledged to submit a full report. Provisional concluding observations were transmitted to the State party. On 18 July 2006, Barbados submitted its third periodic report. The Committee considered the report at its eighty-ninth session (March 2007) and adopted concluding observations. As Nicaragua had not submitted its third periodic report, due on 11 June 1997, the Committee decided, at its eighty-third session, to consider the situation of civil and political rights in Nicaragua at its eighty-fifth session (October 2005). On 9 June 2005, Nicaragua gave assurances that it would submit its report by 31 December 2005 at the latest. Then, on 17 October 2005, Nicaragua informed the Committee that it would submit its report by 30 September 2006. At its eighty-fifth session (October 2005), the Committee requested Nicaragua to submit its report by 30 June 2006. Following a reminder from the Committee, dated 31 January 2007, Nicaragua again undertook, on 7 March 2007, to submit its report by 9 June 2007. Nicaragua submitted its third periodic report on 20 June 2007.

74. At its eighty-sixth session (March 2006), the Committee considered the situation of civil and political rights in Saint Vincent and the Grenadines, in the absence of a report but in the presence of a delegation. Provisional concluding observations were transmitted to the State party. In accordance with the provisional concluding observations, the Committee invited the State party to submit its second periodic report by 1 April 2007 at the latest. On 12 April 2007, the Committee sent a reminder to the authorities of Saint Vincent and the Grenadines. In a letter dated 5 July 2007 Saint Vincent and the Grenadines pledged to submit its report within a month. The State party having failed to submit its second periodic report, the Committee decided to make the provisional concluding observations on the situation in Saint Vincent and the Grenadines final and public at the end of its ninety-second session (March 2008).

75. As San Marino had not submitted its second periodic report, due on 17 January 1992, the Committee decided, at its eighty-sixth session, to consider the situation of civil and political rights in San Marino at its eighty-eighth session (October 2006). On 25 May 2006, San Marino gave assurances to the Committee that it would submit its report by 30 September 2006. San Marino submitted its second periodic report in conformity with that commitment, and the Committee considered it at its ninety-third session.

76. As Rwanda had not submitted its third periodic report or a special report, due respectively on 10 April 1992 and 31 January 1995, the Committee decided, at its eighty-seventh session, to consider the situation of civil and political rights in Rwanda at its eighty-ninth session (March 2007). On 23 February 2007, Rwanda undertook, in writing, to submit its third periodic report by the end of April 2007, thereby superseding the planned consideration of the situation of civil and political rights in the absence of a report. Rwanda submitted its periodic report on 23 July 2007 and the Committee considered it at its ninety-fifth session.

77. At its eighty-eighth session (October 2006), the Committee decided to consider the situation of civil and political rights in Grenada at its ninetieth session (July 2007), as the State party had not submitted its initial report, due on 5 December 1992. At its ninetieth session (July 2007), the Committee undertook this review in the absence of a report or a delegation but on the basis of written replies from Grenada. Provisional concluding observations were sent to the State party, which was requested to submit its initial report by 31 December 2008. At the end of its ninety-sixth session (July 2009), the Committee decided to convert the provisional concluding observations into final and public observations.

78. At its ninety-eighth session (October 2006), the Committee decided to consider the situation of civil and political rights in Seychelles at its 101st session (March 2011) in the absence of a report, as the State party had not submitted its initial report, due on 4 August 1993. At its 101st session (March 2011), the Committee undertook this review in the absence of a report and a delegation and absent replies to the list of issues. Provisional concluding observations were sent to the State party, with a request to submit its initial report by 1 April 2012 and to comment on the concluding observations within one month from the date of their transmission. On 26 April 2011, the State party requested an extension of time until the end of May 2011 to respond to the concluding observations. On 27 April 2011, the Committee granted the State party this request. On 13 May 2011, the State party submitted comments on the provisional concluding observations and indicated that it would submit a report by April 2012. In July 2011, during the 102nd session, the Committee decided to await the State party's report before taking matters any further.

79. At its ninety-ninth session (July 2010), the Committee decided to consider the situation of civil and political rights in Dominica at its 102nd session (July 2011) in the absence of a report, as the State party had not submitted its initial report, due on 16 September 1994. The Committee scheduled Dominica for examination during its 102nd session in July 2011. Prior to the session, the State party requested a postponement indicating that it was in the process of drafting its report and would do so by 30 January 2012. The Committee agreed to a postponement and decided to await the report before taking matters any further.

80. The procedure under rule 70 of the rules of procedure, to examine States parties in the absence of a report, has been initiated in 13 cases to date.



**C. Periodicity with respect to State parties' reports examined during the period under review**

81. The periodicity of the State parties' reports examined during the period under review is indicated in the table below.

<i>State party</i>	<i>Date of examination</i>	<i>Due date for next report</i>
Belgium	October 2010	31 October 2015
Poland	October 2010	31 October 2015
Bulgaria	July 2011	31 October 2015
El Salvador	October 2010	31 October 2014
Hungary	October 2010	31 October 2014
Jordan	October 2010	31 October 2014
Mongolia	March 2011	1 April 2015
Serbia	March 2011	1 April 2015
Slovakia	March 2011	1 April 2015
Togo	March 2011	1 April 2015
Ethiopia	July 2011	29 July 2014
Kazakhstan	July 2011	29 July 2014

#### IV. Consideration of reports submitted by States parties under article 40 of the Covenant

82. The text below, arranged on a country-by-country basis in the sequence followed by the Committee in its consideration of the reports, contains the concluding observations adopted by the Committee with respect to the States parties' reports considered at its 100th, 101st and 102nd sessions. The Committee urges those States parties to adopt corrective measures, where indicated, consistent with their obligations under the Covenant and to implement these recommendations.

##### 83. El Salvador

(1) The Human Rights Committee considered the sixth periodic report of El Salvador (CCPR/C/SLV/6) at its 2744th and 2745th meetings (CCPR/C/SR.2744 and 2745), held on 11 and 12 October 2010. At its 2767th meeting (CCPR/C/SR.2767), held on 27 October 2010, the Committee adopted the following concluding observations.

##### A. Introduction

(2) The Committee welcomes the submission of the sixth periodic report of the State party, which gives information on the measures taken by the State party to promote the implementation of the Covenant. It also welcomes the delegation's openness and frankness in its replies to the Committee's questions, the written replies to the list of issues (CCPR/C/SLV/Q/6/Add.1) and the additional information supplied.

##### B. Positive aspects

(3) The Committee welcomes the following measures taken since its consideration of the State party's previous periodic report:

(a) The establishment, by Executive Decree No. 5, of 18 January 2010, of the National Commission on the Search for Children who Disappeared during the Internal Armed Conflict;

(b) The establishment, by Executive Decree No. 57, of 5 May 2010, of the National Commission on Reparations for the Victims of Human Rights Violations in the context of the Internal Armed Conflict;

(c) The adoption of Decree No. 56, of 4 May 2010, which contains provisions to prevent all forms of discrimination in the civil service on grounds of gender identity or sexual orientation;

(d) The establishment, by Executive Decree No. 1, of 1 June 2009, of the Secretariat for Social Integration within the Office of the President;

(e) The ratification in 2006 of the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

##### C. Principal subjects of concern and recommendations

(4) The Committee is concerned that there are no specific mechanisms in the State party to resolve any discrepancies between domestic laws and the Covenant, or any procedure for ensuring that draft legislation is in line with the Covenant (article 2 of the Covenant).

**The State party should take steps to bring its legislation into line with the Covenant. It should ensure that draft legislation is in line with the Covenant and that judges,**

**prosecutors and lawyers have access to in-service training on the provisions of the Covenant.**

(5) Although the State party has taken steps to address past human rights violations, such as the public recognition of responsibility by the President and steps to honour the memory of the murdered Monsignor Óscar Romero, the Committee expresses concern that these steps may not be enough to put an end to impunity for such violations, which include, according to the Truth Commission, thousands of deaths and enforced disappearances. The Committee reiterates its concern that the General Amnesty Act of 1993 is still in force and impedes the investigation of these events. Although the Constitutional Chamber of the Supreme Court provided a narrow interpretation of the Amnesty Act in 2000, the Committee is concerned that this judicial precedent has not resulted in practice in the reopening of investigations into these serious events. In particular, no investigations into the murder of Monsignor Óscar Romero have been pursued since 1993 (arts. 2, 6 and 7 of the Covenant).

**The Committee reiterates its recommendation that the State party should repeal the General Amnesty Act or should amend it to make it fully compatible with the Covenant. The State party should actively pursue investigations into all human rights violations documented by the Truth Commission, notably the murder of Monsignor Óscar Romero. The State party should ensure that those responsible are identified in the investigations and prosecuted and punished in proportion to the seriousness of the crimes.**

(6) Although the Criminal Code was amended in 1998 to exclude the application of a statute of limitations to a range of serious offences such as torture and enforced disappearance, the Committee is concerned that such a statute has been applied to serious human rights violations that took place in the past, such as the murder of six Jesuit priests and their co-workers (arts. 2, 6 and 7 of the Covenant).

**The Committee reiterates its recommendation that the State party should review its rules on the statute of limitations and bring them fully into line with its obligations under the Covenant so that human rights violations can be investigated and those responsible prosecuted and punished in proportion to the seriousness of the violations committed (see the Committee's general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant, para. 18).**

(7) In view of the gravity and scale of the human rights violations documented by the Truth Commission, the Committee is concerned that the National Reparations Programme does not appear to fully guarantee all aspects of the right to adequate reparation, and also that the Programme does not provide for the involvement of victims at every stage of its implementation and does not have an adequate budget or clear legal framework for its work (art. 2 of the Covenant).

**The State party should include in the National Reparations Programme all measures that are consistent with the right to reparation, such as rehabilitation measures, fair and adequate compensation, satisfaction and guarantees that there will be no repetition. Steps should also be taken to ensure that victims are involved at every stage of implementation and evaluation of the Programme and that specific legal provisions and funds are in place to enable it to function properly.**

(8) Despite the fact that the role of the Inspectorate-General of the National Civil Police has been strengthened to monitor and oversee the actions of the National Civil Police, and that the State party has taken measures to provide continuing human rights training to students at the National Public Security Academy of the National Civil Police, the Committee remains concerned by the fact that since the 1990s only 139 National Civil Police officers responsible for human rights violations have been dismissed, and that the

number of acquittals in the figures provided to the Committee is much higher than the number of convictions. The Committee is also concerned about the complaints of sexual harassment and workplace harassment of women police officers by their colleagues and superiors (arts. 2 and 3 of the Covenant).

**The State party should thoroughly investigate all human rights violations attributed to police officers, especially those involving torture and ill-treatment, identify and prosecute those responsible, and impose not only the relevant disciplinary sanctions, but also, where appropriate, criminal sanctions commensurate with the seriousness of the offence. The State party should also guarantee the right of victims to reparation, including fair and adequate compensation. It should also investigate complaints of sexual harassment and workplace harassment of women by police officers and impose appropriate penalties on those responsible. The State party should extend human rights training to all National Civil Police officers.**

(9) The Committee expresses its concern about the situation of women in the State party, the persistence of stereotypes and prejudices regarding the role of women in society, reports that the number of murders of women has remained constant or even increased during the reporting period, impunity for these murders, the lack of disaggregated statistical data on crimes against the lives and integrity of women, the high rates of domestic violence in the State party, inadequate coordination among State bodies involved in preventing and punishing domestic violence, and the still sparse representation of women in public or elected office (arts. 3, 6, 7 and 25 of the Covenant).

**The State party should design and implement programmes aimed at eliminating gender stereotypes in society. It should implement the right of women victims of violence to justice and reparation, including fair and adequate compensation. The State should also use all the means at its disposal to investigate acts of violence against women, especially murders of women, identifying those responsible, prosecuting them and imposing appropriate penalties, and establishing a statistical system that can provide disaggregated data on gender violence. The State should also improve coordination among the bodies responsible for preventing and punishing domestic violence, in order to make them more effective. The State party should also ensure that those responsible for domestic violence are identified, prosecuted and duly punished, and should adopt special measures to further increase the participation of women in public or elected office.**

(10) The Committee expresses its concern that the current Criminal Code criminalizes all forms of abortion, given that illegal abortions have serious detrimental consequences for women's lives, health and well-being. The Committee remains concerned that women seeking treatment in public hospitals have been reported to the judicial authorities by medical staff who believe they have been involved in abortions, that legal proceedings have been brought against some of these women, and that in some cases these proceedings have resulted in severe penalties for the offence of abortion or even homicide, an offence interpreted broadly by the courts. Even though the Constitutional Chamber of the Supreme Court has ruled that in cases of vital need a woman facing criminal proceedings for abortion can be absolved of criminal responsibility, the Committee is concerned that this legal precedent has not been followed by other courts and that criminal proceedings against women accused of abortion have not been dropped as a result (arts. 3 and 6 of the Covenant).

**The Committee reiterates its recommendation that the State party should amend its legislation on abortion to bring it into line with the Covenant. The State party should take measures to prevent women treated in public hospitals from being reported by the medical or administrative staff for the offence of abortion. Furthermore, until the current legislation is amended, the State party should suspend the prosecution of**

**women for the offence of abortion. The State party should open a national dialogue on the rights of women to sexual and reproductive health.**

(11) The Committee expresses concern about the situation of women and girls performing domestic work in the State party, which primarily concerns rural and indigenous women and girls and those in vulnerable situations. The Committee is concerned that domestic workers are subjected to particularly harsh working conditions, excessive working hours and unpaid or poorly paid work (arts. 3 and 26 of the Covenant).

**The State party should adopt effective measures to remedy the discriminatory treatment of women domestic workers, and ensure that there is no discrimination in their working conditions.**

(12) The Committee expresses its concern about the high school dropout rate in the State party, affecting mainly girls in rural areas (arts. 2, 3 and 24 of the Covenant).

**The State party should take all necessary steps to improve the attendance rate of children, and especially that of girls in rural areas, at all levels of education.**

(13) The Committee is concerned about the situation with regard to trafficking in persons, which affects mainly women, the fact that there have been investigations, prosecutions and convictions in only a very small proportion of cases, and the fact that there are only a limited number of shelters for trafficking victims (arts. 3, 7 and 8 of the Covenant).

**The State party should effectively investigate trafficking in persons, identify and prosecute those responsible and apply penalties commensurate with the seriousness of the offence. It should also ensure the protection of the rights of victims of trafficking, including by providing an adequate number of shelters for them. The State party should also compile reliable statistics in order to combat the problem effectively.**

(14) The Committee is concerned that police custody, which can last for up to 72 hours, may be extended by a further 72 hours by decision of a judge (art. 9 of the Covenant).

**The State party should amend the legislation on police custody to bring it into line with the Covenant and to ensure that pretrial detention does not exceed 48 hours and is never extended after the individual has been brought before the court.**

(15) The Committee is also concerned that pretrial detention may be extended under certain circumstances up to 24 months (art. 9 of the Covenant).

**The circumstances under which pretrial detention may be extended should be interpreted narrowly to ensure that pretrial detention is applied as an exceptional measure.**

(16) Although the State party has adopted a public security policy that focuses not only on punishing offences but also on preventing crime and reintegrating into society those who have committed a criminal offence, the Committee remains concerned at the high number of persons deprived of their liberty in overcrowded prisons in the State party and at the fact that a significant proportion of those persons have not been sentenced (arts. 7, 9 and 10 of the Covenant).

**The State party should continue to make use of alternative measures to pretrial detention, and should also eliminate the problem of prison overcrowding without delay.**

(17) The Committee is concerned at the situation of foreigners facing deportation and expulsion proceedings in the State party, particularly with regard to an effective right to be heard, to have an adequate defence and to have their case reviewed by a competent authority (art. 13 of the Covenant).

**The State party should ensure that persons subject to deportation proceedings benefit from an effective right to be heard, to have an adequate defence and to request that their case be reviewed by a competent authority.**

(18) The Committee is concerned at the marginalization of the various indigenous peoples in the State party, the lack of full recognition of indigenous peoples, the lack of statistics on indigenous peoples in the 2007 census, the absence of special measures to promote the realization of their rights as peoples, and the absence of measures to protect indigenous languages.

**The State party should promote the full recognition of all indigenous peoples and consider ratifying the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169). Following consultations with all indigenous peoples, and with their free and informed consent, the State party should include in the next population census questions relating to the identification of indigenous peoples; design and implement public policies to move towards the full realization of their rights; and adopt special measures to address their marginalization. The State party should also, after consultation with all indigenous peoples, adopt measures to revive their languages and cultures.**

(19) The State party should disseminate the text of its sixth periodic report, the written replies it has provided in response to the list of issues drawn up by the Committee and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations, as well as among the general public.

(20) In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the recommendations made by the Committee in paragraphs 5, 10, 14 and 15.

(21) The Committee requests the State party to provide in its seventh periodic report, due to be submitted by 1 July 2014, specific, up-to-date information on all of its recommendations and on the State party's compliance with the Covenant as a whole. The Committee also recommends that the State party, when preparing its seventh periodic report, consult civil society and the non-governmental organizations operating in the country.

#### **84. Poland**

(1) The Committee considered the sixth periodic report of Poland (CCPR/C/POL/6) at its 2746th and 2747th meetings (CCPR/C/SR.2746 and 2747), held on 12 and 13 October 2010, and adopted the following concluding observations at its 2766th meeting (CCPR/C/SR.2766) on 26 October 2010.

##### **A. Introduction**

(2) The Committee welcomes the submission of the sixth periodic report of Poland, submitted in accordance with the guidelines and the inclusion in the report of information on a number of measures taken to address the concerns expressed in the Committee's previous concluding observations (CCPR/CO/82/POL). It welcomes the dialogue that the Committee held with the high-level delegation, the detailed written replies (CCPR/C/POL/Q/6/Add.1) submitted in response to the Committee's list of issues and the additional information and clarifications provided during the consideration of the report.

##### **B. Positive aspects**

(3) The Committee welcomes the following positive developments during the reporting period under consideration:

- (a) The adoption in 2005 of the Law on Domestic Violence and the approval in 2006 of the National Programme on Preventing Domestic Violence 2006–2016;
- (b) The continuation until 2013 of the National Programme against Racial Discrimination, Xenophobia and Related Intolerance;
- (c) The reduction in the number of persons held in pretrial detention;
- (d) The amendment to the Penal Code in September 2010 to include a definition of trafficking in human beings; and
- (e) The adoption in 2005 of the Law on National and Ethnic Minorities and on the Regional Language.

### **C. Principal subjects of concern and recommendations**

- (4) The Committee is concerned that the definition of a terrorist crime, as laid down in article 115 of the Penal Code, is broad and does not adequately define the nature and consequences of the acts (art. 2).

**The State party should ensure that the Penal Code not only defines terrorist crimes in terms of their purpose, but also narrowly defines the nature of those acts.**

- (5) The Committee is concerned that the Law on Equal Treatment is not exhaustive and does not cover discrimination based on sexual orientation, disability, religion or age in the fields of education, health care, social protection and housing (art. 2).

**The State party should further amend the Law on Equal Treatment so that the issue of discrimination based on all grounds and in all areas is adequately covered.**

- (6) The Committee is concerned about a significant rise in cases of racial hatred filed with law enforcement agencies, but notes with regret the reportedly low investigation and prosecution rate. The Committee also remains concerned about persistent manifestations of anti-Semitism, including physical attacks, desecration of Jewish cemeteries and the dissemination of anti-Semitic propaganda through the Internet and print media, despite numerous measures taken by the State party (art. 2).

**The State party should step up efforts to promote tolerance and combat prejudice, particularly within the National Programme against Racial Discrimination, Xenophobia and Related Intolerance, which was extended until 2013. It should pay particular attention to the monitoring of the impact of the previous and current national programmes. The State party is furthermore requested to include in its next periodic report detailed information on the number of investigations carried out into incidences and manifestations of anti-Semitism, as well as prosecutions instigated and sentences passed in each case.**

- (7) The Committee remains concerned about the continued social marginalization and discrimination faced by members of the Roma minority, especially in the fields of education, employment and housing (arts. 2, 26 and 27).

**The State party should continue to take all necessary measures to ensure the practical enjoyment by Roma of their rights under the Covenant by implementing and reinforcing effective measures to prevent and address discrimination and the serious social and economic situation of Roma.**

- (8) The Committee notes with concern a significant rise in manifestations of hate speech and intolerance directed at lesbian, gay, bisexual and transgender people and, since 2005, in the number of cases based on sexual orientation filed with the Ombudsman. The Committee also regrets the absence of the provision in the Penal Code of hate speech and hate crimes based on sexual orientation or gender identity as punishable offences (art. 2).

**The State party should ensure that all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated. It should also: legally prohibit discrimination on the grounds of sexual orientation or gender identity; amend the Penal Code to define hate speech and hate crimes based on sexual orientation or gender identity among the categories of punishable offences; and intensify awareness-raising activities aimed at the police force and wider public.**

(9) While the Committee welcomes efforts to increase the proportion of women in the public and private sector, it remains concerned about the continued underrepresentation of women in senior positions in the public and political sphere, in particular in Parliament, Government administration, the judiciary, civil service, academia, police and prison service. The Committee remains concerned about the unequal remuneration between men and women in senior-level management positions. Finally, it regrets the abolition in 2005 of the Office of the Government Plenipotentiary for the Equality of Men and Women (art. 3).

**The State party should intensify its efforts to achieve equitable representation of women in Parliament and at the highest levels of the Government, judiciary, public service, academia, police force and prison service, within specific and urgent time frames. It should also ensure that women enjoy equal pay for work of equal value, especially in senior management positions. Finally, the State party should reinstitute the Office of the Government Plenipotentiary for Equality of Men and Women as an independent national equality body.**

(10) The Committee expresses its concern about: (a) the continued problem of domestic violence; (b) the high percentage of dismissals of domestic violence cases at the prosecution level; (c) lengthy prosecution procedures, preventing victims from filing a case and increasing the vulnerability of victims; and (d) an insufficient number of specialist support centres for victims of domestic violence. It also notes that, although the law provides for restraining orders against perpetrators, police do not have the authority to issue immediate restraining orders at the scene of an alleged crime (art. 3).

**The State party should amend the Law on Domestic Violence to empower police officers to issue immediate restraining orders at the scene. It should incorporate domestic violence issues into the standard training offered to law enforcement and judicial officials. It should ensure that victims of domestic violence have access to assistance, including legal and psychological counselling, medical help and shelter.**

(11) The Committee notes that, on 21 March 2000, the State party signed the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, but that it has not yet ratified it (art. 6).

**The State party is invited to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.**

(12) The Committee is concerned that, in practice, many women are denied access to reproductive health services, including contraception counselling, prenatal testing and lawful interruption of pregnancy. It notes with concern that procedural safeguards contained in article 39 of the Act of 5 December 1996 on the Medical Profession ("conscience clause") are often inappropriately applied. It also notes with concern that illegal abortions are reportedly very common (with estimates of 150,000 illegal abortions per year), that unsafe abortions have, in some cases, caused women's deaths and that those aiding or abetting abortions (such as husbands or parents) have been convicted. It finally notes with concern that a medical commission's decision on a complaint relating to a dissenting medical opinion about an abortion can be unduly delayed because of the 30-day response deadline (art. 6).



**The State party should urgently review the effects of the restrictive anti-abortion law on women. It should conduct research into and provide statistics on the use of illegal abortion. It should introduce regulations to prohibit the improper use and performance of the “conscience clause” by the medical profession. The State party should also drastically reduce medical commissions’ response deadline in cases related to abortions. Finally, the State party should strengthen measures aimed at the prevention of unwanted pregnancies by inter alia making a comprehensive range of contraceptives widely available at an affordable price and including them on the list of subsidized medicines.**

(13) The Committee is concerned about reports of excessive use of force by law enforcement officials and a rise in the number of investigations of misconduct. The Committee notes, however, that incidents of police violence are not always reported owing to victims’ fear of being prosecuted themselves. It also notes with concern that complaints of persons placed in correctional facilities and detention centres are handled by units of the prison service, who examine the formal criteria relating to the justifiability of the complaints and the overall circumstances connected with the event described in the complaint (art. 7).

**The State party should intensify its efforts to eradicate cases of police misconduct, through, inter alia, training and the thorough and impartial investigation and prosecution of those responsible. It should also establish a competent, independent and impartial body to investigate police misbehaviour, providing for the possibility of complainants (or their agents) to submit a complaint directly and confidentially to this body.**

(14) The Committee is concerned that the Criminal Code does not contain a legislative provision protecting victims of trafficking from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities in which they are involved as a direct consequence of their situation as trafficked persons (art. 8).

**The State party should include in its Criminal Code a provision protecting victims of trafficking from prosecution, detention or punishment for activities they were involved in as a direct consequence of their situation as trafficked persons. The State party should furthermore take measures, including legislative, to ensure that a trafficked victim’s protection is not made conditional upon the person’s cooperation in legal proceedings.**

(15) The Committee is concerned that a secret detention centre reportedly existed at Stare Kiejkuty, a military base located near Szymany airport, and that renditions of suspects allegedly took place to and from that airport between 2003 and 2005. It notes with concern that the investigation conducted by the Fifth Department for Organized Crime and Corruption of the Appellate Prosecution Authority in Warsaw has not yet been concluded (arts. 2, 7 and 9).

**The State party should initiate a prompt, thorough, independent and effective inquiry, with full investigative powers to require the attendance of persons and the production of documents, to investigate allegations of the involvement of Polish officials in renditions and secret detentions and to hold those found guilty accountable, including through the criminal justice system. It should make the findings of the investigation public.**

(16) Despite the decrease in the number of persons in pretrial detention, the Committee is concerned that the length of pretrial detention can last up to two years, as specified in the Code of Criminal Procedure, contributing to the problem of overcrowding. It also notes with concern that, in practice, the two-year limit continues to be exceeded and that the

number of complaints of violations of the right to a fair trial within a reasonable time has significantly increased in 2009 compared to 2008 (art. 9).

**The State party should take additional effective legal and other measures to reduce the period of pretrial detention, in full compliance with article 9, paragraphs 3 and 5, of the Covenant, and ensure that it is only used as an exceptional measure for a limited period of time. The State party should consider a maximum, non-extendible term of pretrial detention, and intensify the use of alternative measures to pretrial detention.**

(17) The Committee is concerned that overcrowding in detention centres and prisons continues to be a problem (art. 10).

**The State party should take urgent measures to address overcrowding in detention centres and prisons, including through increased resort to alternative forms of punishment, such as electronic monitoring and parole, and reduce the use of pretrial detention.**

(18) The Committee is concerned about the absence of specific laws concerning the detention of foreigners after the deadline for their expulsion and that some have been detained in transit zones beyond the deadline of their expulsion without a court order. It also notes with concern reports of inadequate medical assistance in some detention centres for asylum-seekers, as well as of poor conditions in transit zones and deportation detention centres where foreign nationals awaiting deportation are held. Finally, the Committee is concerned about reports that detained foreigners are often unable to learn about their rights, as boards containing such information are often displayed only in offices and interrogation rooms and only in Polish, and some interpreters are not sufficiently qualified to translate (arts. 12 and 14).

**The State party should take measures to ensure that the detention of foreigners in transit zones is not excessively protracted and that, if the detention is to be extended, the decision is adopted by a court. The State party should ensure that the regime, services and material conditions in all deportation detention centres are in conformity with minimum international standards. Finally, the State party should ensure that detained foreigners have easy access to information on their rights, in a language they can understand, even if this requires the provision of a qualified interpreter.**

(19) The Committee is concerned about reports of poor administration and inadequate staffing of the court system and a continuing backlog of cases, the high cost of legal action and the level of compensation in cases of undue delay. It is also concerned that court orders are frequently not, or belatedly, implemented and are poorly enforced (art. 14).

**The State party should urgently improve the functioning of the judicial system, including through increasing the number of qualified and professionally trained judicial personnel, and training judges and court staff in efficient case-management techniques. It should also ensure that adequate compensation is awarded in cases related to lengthy proceedings.**

(20) The Committee reiterates its concern that persons detained cannot enjoy their right to legal aid from the beginning of their detention. It notes with concern that prosecutors, or a person authorized by the prosecutor, are allowed to be present at meetings between a suspect and his/her counsel, and that prosecutors can order that a suspect's correspondence with counsel be inspected. The Committee notes with concern that correspondence between a detained suspect and his/her counsel is routed through the administration of the pretrial detention centre, resulting in some cases in a delivery time of between four and six weeks (art. 14).

**The State party should ensure that persons deprived of their liberty: (a) have immediate access to legal counsel from the beginning of their detention; (b) are able to meet with their lawyers in private, including prior to a court hearing; and (c) can correspond with their lawyer confidentially in all instances, without external monitoring, and in an expeditious manner.**

(21) The Committee notes with concern that the Lustration Law Act of 2006 and the Criminal Procedure Code restrict access by a person against whom lustration proceedings have been initiated to classified archive documentation and case files, in the period leading up to the court proceedings (arts. 14 and 17).

**The State party should amend the Lustration Law Act of 2006 to ensure that persons against whom lustration proceedings have been initiated have full and unhindered access to all case files and classified archive documentation.**

(22) The Committee is concerned that, despite the amendment to the Penal Code of 8 June 2010, the offence of slander is still penalized with deprivation of liberty for one year, as specified in article 212(2) of the Penal Code (art. 19).

**The State party should expedite the process of amending the Penal Code to abolish imprisonment for press offences.**

(23) The Committee is concerned that, under the Assemblies Act of 5 July 1990, the length of the appeals procedure against a prohibition to hold an assembly may jeopardize the enjoyment of the right of peaceful assembly (art. 21).

**The State party should introduce legislative amendments to the Assemblies Act in order to ensure that appeals against a ban to hold a peaceful assembly are not unnecessarily protracted and are dealt with before the planned date.**

(24) The Committee is concerned that children who have run away from foster care centres can allegedly be placed in police custody centres for children (art. 24).

**The State party should introduce new legislation governing in detail the living conditions to be secured in police custody centres for children and the rules governing children's entry and stay in such facilities. It should also ensure that children who have not committed a punishable act are not placed in such custody centres.**

(25) The State party should widely disseminate the text of its sixth periodic report and the present concluding observations.

(26) In accordance with article 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, additional information on the assessment of the situation and the implementation of the Committee's recommendations in paragraphs 10, 12 and 18.

(27) The Committee requests the State party to provide in its next report, which it is scheduled to submit by 26 October 2015, information on its other recommendations and on the Covenant as a whole.

## **85. Jordan**

(1) The Human Rights Committee considered the fourth periodic report of Jordan (CCPR/C/JOR/4) at its 2748th and 2749th meetings, held on 13 and 14 October 2010 (CCPR/C/SR.2748 and 2749). The Committee adopted the following concluding observations at its 2768th meeting, held on 27 October 2010 (CCPR/C/SR.2768).

### **A. Introduction**

(2) The Committee welcomes the submission, albeit 12 years late, of the State party's fourth periodic report and the information provided on measures adopted by the State party

and on its plans to revise its legislation in order to further implement the International Covenant on Civil and Political Rights. The Committee is also grateful to the State party for the written replies submitted in response to the Committee's list of issues.

## **B. Positive aspects**

(3) The Committee welcomes the legislative and other measures taken, such as:

(a) The publication of the Covenant in the Official Law Gazette in 2006, which ensures that the Covenant forms an integral part of and takes precedence over national legislation;

(b) The amended Criminal Code, 2010, which ensures that perpetrators of so-called "honour" killings can no longer benefit from mitigating circumstances;

(c) The de facto moratorium on the death penalty in place since April 2007;

(d) The establishment of the Ombudsman and Human Rights Office of the Public Security Directorate in 2005; and

(e) The creation of the Ministry of Political Development, in 2003.

(4) The Committee also notes with satisfaction that the State party ratified a number of international instruments relating to human rights protected by the Covenant during the reporting period, in particular:

(a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2006;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2007;

(c) The Convention on the Rights of Persons with Disabilities, in 2008;

(d) The Rome Statute of the International Criminal Court, in 2002; and

(e) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in 2009.

## **C. Principal subjects of concern and recommendations**

(5) While noting with satisfaction the establishment of the National Centre for Human Rights, in accordance with the Paris Principles, the Committee considers that further measures could be taken to provide the Centre with adequate human, financial and technical resources for its proper functioning (art. 2).

**The State party should ensure that the selection of members and directors of the National Centre for Human Rights is transparent and that the Centre is provided with adequate human, financial and technical resources.**

(6) The Committee is concerned at the vague and broad definition of "terrorist activities" in the Prevention of Terrorism Act passed in 2006.

**The State party should review the Prevention of Terrorism Act and ensure that it defines terrorism and terrorist acts in a manner that is precise and compatible with the Covenant.**

(7) While noting the prohibition of discrimination enshrined in the Constitution (art. 6), the Committee remains concerned that this provision does not explicitly mention discrimination on the basis of sex. It further notes with concern the discrimination against women under the Personal Status Act (2010) relating to their right to request divorce and to remarry. While welcoming the fact that this Act places certain restrictions on polygamy, the

Committee regrets that polygamy is still permitted. The Committee is also concerned at the inequalities that exist between men and women in matters of inheritance. It is further concerned that Jordanian women cannot transmit their nationality to their children. In general, the Committee expresses its concern about the existence of stereotypes and customs in Jordan that are contrary to the principle of equality of rights between men and women and hinder the effective implementation of the Covenant (arts. 2, 3 and 26).

**The State party should bring its legislation, including the Personal Status Act, into conformity with the Covenant and ensure that women are not subjected to de jure or de facto discrimination, inter alia in matters of marriage, divorce, custody of children, inheritance or the transmittal of nationality to children. The State party should also continue and strengthen its efforts to address discriminatory traditions and customs, including polygamy, through education and awareness-raising campaigns. In this connection, the Committee draws the attention of the State party to its general comment No. 28 (2000) concerning equality of rights between men and women.**

(8) The Committee is concerned at the persistence of domestic violence against women in the State party. It is further concerned at the policy of placing women who risk becoming victims of so-called “honour” crimes in a form of involuntary “protective” custody comparable to detention under the provisions of the Law on Crime Prevention (1954) (arts. 3, 7 and 26).

**The State party should strengthen the legal framework for the protection of women against domestic violence, sexual violence and other forms of violence to which they are subjected. The State party should also take all appropriate measures to ensure that victims fleeing an abusive partner or husband have access to assistance and can take refuge in crisis centres. The State party should immediately terminate its practice of placing women in “protective” custody and instead provide women at risk of violence with protection and support in a way that does not violate their rights.**

(9) The Committee is concerned at the high number of reported cases of torture and ill-treatment in detention centres, particularly in the General Intelligence Directorate facilities. It also notes with concern the absence of a genuinely independent complaints mechanism to deal with cases of alleged torture or ill-treatment by public officials, as well as the low number of prosecutions of such cases. The Committee is further concerned at information that the right to prompt access to a lawyer and an independent medical examination is not granted to detainees (arts. 7 and 9).

**The State party should establish an effective and independent mechanism to deal with allegations of torture. It should also ensure that all cases of torture and ill-treatment are properly investigated and prosecuted, that the perpetrators are sentenced by ordinary civilian courts and that victims of torture and ill-treatment receive adequate reparation and compensation. The State party should further ensure that all detainees can have immediate access to a lawyer of their choice and an independent medical examination.**

(10) While noting that the National Centre for Human Rights and the International Committee of the Red Cross visit correctional and rehabilitation centres regularly, the Committee is concerned at reports that NGOs have been denied access to these centres (arts. 7 and 10).

**The State party should create a system of independent visits to all places of deprivation of liberty, including the facilities of the General Intelligence Directorate. In this connection, the State party is invited to accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

(11) The Committee is concerned that the Law on Crime Prevention (1954) empowers governors to authorize the detention without charge, effective access to guarantees or trial of anyone “deemed to be a danger to society” (arts. 9 and 14).

**The State party should end the practice of administrative detention currently in force, amend the Law on Crime Prevention so as to make it consistent with the Covenant and release or bring to justice immediately all persons who are detained under this law.**

(12) The Committee reiterates its concern at the limited organizational and functional independence of the State Security Court. It is also notes with concern that the Prime Minister has the authority to refer cases that do not affect State security to this court (art. 14).

**The Committee reiterates its 1994 recommendation that the State party consider abolishing the State Security Court (CCPR/C/79/Add.35, para. 16).**

(13) The Committee reiterates its concern at the restrictions on freedom of religion, including the consequences of apostasy from Islam such as denial of inheritance, and the non-recognition of the Baha’i faith (art. 18).

**The Committee reiterates its 1994 recommendation that the State party should take further measures to guarantee freedom of religion (CCPR/C/79/Add.35, para. 17).**

(14) While welcoming the information from the State party that the regulation of the media is under review, the Committee is concerned that journalists continue to risk criminal sanctions if they write articles considered harmful to the State party’s diplomatic relations or relating to the King and the royal family (art. 19).

**The State party should review its legislation and practice to ensure that journalists and media outlets are not penalized as a consequence of expressing critical views, and that any restriction on the press and media activities is strictly compatible with the provisions of article 19, paragraph 3, of the Covenant.**

(15) The Committee notes with concern that the Public Assemblies Act (2008) requires any organizer of a public meeting on general State policy first to obtain the governor’s written authorization (art. 21).

**The State party should amend the Public Assemblies Act and take the necessary steps to ensure that any restriction on freedom of peaceful assembly is strictly compatible with the provisions of article 21 of the Covenant and not subordinate to political considerations.**

(16) The Committee is concerned at the restrictions on NGOs with regard to their establishment and certain aspects of their operation. It is particularly concerned that the Government has full discretion in appointing a State employee to serve as temporary president of a newly established NGO (art. 22).

**The State party should amend the Societies Act and take appropriate steps to ensure that any restriction on freedom of association is strictly compatible with the provisions of article 22 of the Covenant.**

(17) The Committee is concerned at reports that child labour is increasing in the State party, and that the Labour Code does not provide protection for children working in family enterprises or agriculture (art. 24).

**The State party should take all necessary measures to combat child labour, particularly by reviewing its legislation to ensure protection for all children, including those who work in family enterprises and agriculture.**

(18) While welcoming the fact that international observation will be allowed for the first time during the forthcoming elections in November 2010, the Committee is concerned at reports that insufficient measures are being taken to guarantee free and transparent elections (art. 25).

**The State party should take adequate steps to further guarantee free and transparent elections, including the establishment of an independent electoral commission responsible for systematic election monitoring.**

(19) The Committee is concerned about the insufficient participation of women in public life (arts. 3 and 25).

**The State party should take all necessary measures to increase women's participation in the various areas of public life, raise awareness and increase the minimum quotas for women in the House of Representatives (currently 10 per cent) and in municipal councils (20 per cent).**

(20) The Committee invites the State party to accede to the Optional Protocol to the International Covenant on Civil and Political Rights, which provides for a mechanism to deal with complaints from individuals, and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

(21) The State party should widely publicize the text of its fourth periodic report, its written replies to the list of issues drawn up by the Committee, and the present concluding observations.

(22) In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on follow-up to the Committee's recommendations in paragraphs 5, 11 and 12 above.

(23) The Committee requests the State party to provide in its next report, due to be submitted by 27 October 2014, information on follow-up to the remaining recommendations and on the implementation of the Covenant as a whole.

## 86. **Belgium**

(1) The Human Rights Committee considered the fifth periodic report of Belgium (CCPR/C/BEL/5) at its 2750th and 2751st meetings (CCPR/C/SR.2750 and 2751), held on 14 and 15 October 2010. It adopted the following concluding observations at its 2766th meeting (CCPR/C/SR.2766) held on 26 October 2010.

### **A. Introduction**

(2) The Committee welcomes the submission of the fifth periodic report of Belgium and expresses its satisfaction with the dialogue held between the Committee and the delegation of the State party. It appreciates the written replies (CCPR/C/BEL/Q/5/Add.1) that were submitted in advance to the Committee in response to its list of issues. The Committee thanks the delegation for the additional detailed information provided orally during the consideration of the report and for the supplementary information provided to it in writing.

### **B. Positive aspects**

(3) The Committee welcomes the ratification of or accession to the following instruments:

(a) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, on 2 July 2009;

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 14 June 2004;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 11 August 2004; and

(d) The United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, on 17 November 2005.

(4) The Committee notes the sustained attention devoted by the State party to the protection of human rights and welcomes the following constitutional and legislative measures adopted:

(a) Adoption of a constitutional provision enshrining the principle of the abolition of the death penalty on 2 February 2005;

(b) Adoption of a law on 10 May 2007 to combat certain forms of discrimination;

(c) Adoption of a law on 10 May 2007 amending the Act to Suppress Certain Acts Motivated by Racism or Xenophobia of 30 July 1981;

(d) Adoption of a law on 10 May 2007 to combat discrimination between men and women;

(e) Adoption of a law on 10 May 2007 adapting the Judicial Code to legislation designed to combat discrimination and suppress certain acts motivated by racism or xenophobia;

(f) Adoption of a law on 25 April 2007 to insert article 391 sexies into the Criminal Code and amend certain provisions of the Civil Code to make forced marriage a criminal offence and to broaden the grounds for the annulment of such marriages; and

(g) Adoption of a law on 18 May 2006 which provides for the insertion of a new subparagraph into article 417 ter of the Criminal Code which expressly prohibits the use of the existence of a state of emergency as a pretext for torture.

### **C. Principal subjects of concern and recommendations**

(5) The Committee takes note of the initiatives taken by the State party and the information provided on steps to give effect to its Views in the case of Nabil Sayadi and Patricia Vinck (CCPR/C/D/1472/2006). It regrets, however, that the State party has not been able to provide it with the information requested on the possibility of granting compensation to Nabil Sayadi and Patricia Vinck.

**The State party should consider the possibility of granting compensation to Nabil Sayadi and Patricia Vinck.**

(6) The Committee regrets that the State party has no mechanism for implementing the Committee's Views (art. 2).

**The State party should consider establishing a mechanism for implementing the Committee's Views.**

(7) The Committee notes with concern that the State party maintains its reservations to article 10, paragraphs 2 (a), 3 and 5, of the International Covenant on Civil and Political Rights, article 14, paragraph 1, and articles 19, 21 and 22, as well as its interpretative declarations concerning article 20, paragraph 1, and article 23, paragraph 2 of the Covenant (art. 2).

**The State party should consider withdrawing its reservations and interpretative declarations regarding the provisions of the Covenant.**



(8) Although the Committee takes note of the information provided by the State party concerning the coordination of different human rights structures and the reasons for the absence of a national human rights institution, it regrets that the State party has not created a national human rights institution. The Committee is concerned moreover that the proliferation of bodies focusing on the rights of specific groups may militate against greater effectiveness on the part of the State party in fulfilling its obligations under the Covenant and against greater clarity in its overall policy on human rights (art. 2).

**The State party should consider creating a national human rights institution in accordance with the Paris Principles (General Assembly resolution 48/134).**

(9) The Committee notes with concern that domestic violence persists in the State party and that the State party has still not adopted comprehensive legislation on that subject.

**The State party should increase its efforts to combat domestic violence by, inter alia, adopting comprehensive legislation to combat domestic violence and ensuring that victims will have immediate access to means of redress and protection.**

(10) The Committee expresses concern that access to certain rights set forth in the Covenant may be hindered by the decisions taken by the community authorities in Flanders concerning issues such as the purchase of communal land, access to services and housing, entitlement to certain social services and exercise of the right to be elected and requiring that persons speak or learn Dutch, which leads to discrimination against certain groups within the population (arts. 2, 17, 25 and 26).

**The State party should, in accordance with article 50 of the Covenant, ensure that decisions taken by the community authorities concerning linguistic requirements do not lead to discrimination against certain groups within the population in the exercise of certain rights set forth in the Covenant. It should also foster awareness and the exercise of the right to challenge such decisions among the relevant population groups.**

(11) The Committee is concerned by the fact that discrimination against persons with disabilities persists in the State party and hinders the full integration of those persons into political, social and economic affairs (art. 2).

**The State party should intensify its efforts to combat discrimination, further the integration of persons with disabilities into political, social and economic affairs and adopt measures to facilitate such persons' access to the labour market.**

(12) Despite various steps taken by the State party to promote equality between men and women, the Committee notes with concern that discrimination against women remains strong and that unequal treatment persists within the socio-economic sphere, society and the labour market and in access to decision-making and promotion to certain posts (art. 3).

**The State party should implement all the measures that it has adopted in this sphere, including legislative measures, and evaluate them in order to achieve tangible progress in combating stereotypes, in ensuring the balanced participation of men and women in decision-making and equal treatment and access to employment for women.**

(13) Although the Committee takes note of the information provided by the State party regarding the rules and conditions governing the use of tasers by the police force, it is concerned by the fact that the use of these weapons can lead to severe pain and life-endangering injury (arts. 6 and 7).

**The State party should consider discontinuing authorization to use tasers. While such weapons remain in use, it should intensify its efforts to ensure that the police force adheres to the rules and conditions governing their use. The State party should also assess the effects of these weapons' use.**

(14) The Committee expresses concern about the reports of excessive use of force by members of the police force, not compatible with the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials, particularly when persons are brought in for questioning, and by the fact that complaints against police officers do not always lead to the imposition of commensurate penalties. The Committee is particularly concerned by reports of excessive use of force and preventive arrests during the demonstrations that took place from 29 September to 1 October 2010 in the State party (arts. 7 and 9).

**The State party should take all the necessary steps to guarantee that when the members of the police use force they act in conformity with the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials and to ensure that arrests are carried out in strict adherence to the provisions of the Covenant. The State party should, in the event of complaints of alleged mistreatment, systematically undertake investigations and prosecute and punish those responsible in a manner commensurate with the acts in question. The State party should inform the Committee of the action taken in respect of the complaints lodged following the demonstrations that were held from 29 September to 1 October 2010.**

(15) Although the Committee takes note of the information provided by the State party concerning improvements in the recruitment of members of the Investigations Service of Committee P, which is responsible for investigating complaints against members of the police force, it remains concerned by the doubts that persist as to the independence, objectivity and transparency of Committee P and as to its ability transparently to deal with complaints against police officers (arts. 7 and 14).

**The State party should continue its efforts to guarantee that the members of the Investigations Service of Committee P are completely independent and to ensure that complaints against police officers are handled in a transparent manner.**

(16) The Committee takes note of the information furnished by the State party regarding the steps taken to protect victims of human trafficking, but is nonetheless concerned by the insufficient means made available to assist victims of human trafficking and by the fact that residence permits are not issued to them unless they cooperate with court authorities. The Committee is also concerned by the fact that the resources allocated for this purpose are still insufficient (art. 8).

**The State party should consider amending its laws so that the issuance of residence permits to victims of human trafficking is not conditional upon cooperation with court authorities. It should also give greater assistance to victims of trafficking. The State party should also allocate more resources to programmes and plans for preventing and combating human trafficking.**

(17) The Committee expresses concern about the fact that access to legal counsel is not guaranteed in all cases within the first few hours after a person has been placed under judicial or administrative arrest or has been taken into police custody. The Committee also notes with concern that the right of access to a doctor is not always specifically provided for when judicial arrests are made (arts. 7, 9 and 14).

**The State party should take all the necessary steps to guarantee access to legal counsel within the first few hours after a person is deprived of his or her liberty, whether by being placed under judicial or administrative arrest or by being taken into police custody, and to guarantee the right of access to a doctor on a systematic basis.**

(18) The Committee expresses concern about the conditions in Belgian prisons and particularly about prison overcrowding, which stands at a rate of 150 per cent in some facilities, by the dilapidated condition of prison buildings and by the fact that persons

subject to different custodial regimes are not always separated from one another. The Committee also expresses concern that the provisions of the Dupont Act under which prisoners may lodge complaints have not yet entered into force (arts. 7 and 10).

**The State party should take all steps necessary to improve prison conditions and, in particular, to address overcrowding. In addition to building new facilities, the State party should make more frequent use of alternative, non-custodial penalties, such as electronic monitoring and parole. It should also make a greater effort to separate persons subject to different custodial regimes from one another. Lastly, the State party should expedite the entry into force of the provisions of the Dupont Act under which prisoners may appeal to complaints boards to be established for that purpose.**

(19) The Committee remains concerned about the practice of holding persons suffering from mental illness in Belgian prisons and prison psychiatric wards and the length of time that they must wait before being transferred to social protection establishments (arts. 7, 9 and 10).

**As the Committee recommended in its previous concluding observations, the State party should put an end to its practice of keeping mentally-ill people in prisons and psychiatric annexes. It should also increase the number of beds available in social protection establishments and improve living conditions for patients.**

(20) The Committee notes with concern:

(a) The reports of the use of excessive force against foreign nationals who are subject to a deportation order in closed centres or during their expulsion; and

(b) The difficulty that such persons have in lodging a complaint because of their legal status and the fact that their complaints are unlikely to be heard by the complaints board, whether because they are charged with resisting arrest, or because their expulsion sometimes interferes with the gathering of evidence and the prosecution of those responsible (arts. 2, 7, 10 and 26).

**The State party should take all the steps necessary to prevent the use of violence against foreign nationals subject to a deportation order; it should ensure that in the event of mistreatment they are able to lodge a complaint with the complaints board, whose mission is to prosecute and punish those responsible.**

(21) The Committee expresses concern about allegations that deportation operations are not properly monitored by the relevant oversight bodies and that those bodies are not independent (arts. 2, 7 and 13).

**The State party should ensure that the relevant oversight bodies monitor the deportation of foreign nationals more closely and should ensure those bodies' independence and objectivity.**

(22) The Committee expresses concern about the resurgence of anti-Semitic and racist acts and about the increase in Islamophobic remarks and acts in the State party. The Committee is particularly concerned by the spread of this phenomenon in the media and the Internet, in particular, and by the increasingly widespread use of Islamophobic rhetoric by, among others, political parties that receive public funding. The Committee regrets to note that a bill to prohibit neo-Nazi demonstrations was not adopted by the Chamber of Representatives and has expired (arts. 2 and 20).

**The State party should intensify its efforts to combat anti-Semitic, racist and Islamophobic acts by investigating such acts and by prosecuting and punishing those responsible for them. It should also continue its efforts to take effective action against the spread of this phenomenon in the media, particularly the Internet. Lastly, the State party should consider the possibility of resubmitting the bill designed to prohibit**

**neo-Nazi demonstrations and should consider discontinuing public funding for political parties that propagate hate, discrimination or violence.**

(23) The Committee notes with concern that, although the Youth Protection Act of 8 April 1965 was amended in 2006, it still provides for referral orders whereby minors between the ages of 16 and 18 may be tried as adults (arts. 14, 24 and 26).

**The State party should review its legislation with a view to preventing minors between the ages of 16 and 18 from being tried as adults.**

(24) The State party should widely disseminate the text of its fifth periodic report, its written replies to the list of issues drawn up by the Committee and the present concluding observations in its official languages.

(25) In accordance with article 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, additional information on the current situation and the action taken to implement the recommendations made by the Committee in paragraphs 14, 17 and 21 above.

(26) The Committee requests the State party to provide information on the action taken in response to the Committee's other recommendations and on the application of the Covenant as a whole in its sixth periodic report, which is scheduled for submission by 31 October 2015 at the latest.

#### **87. Hungary**

(1) The Committee considered the fifth periodic report submitted by Hungary (CCPR/C/HUN/5) at its 2754th and 2755th meetings (CCPR/C/SR.2754 and CCPR/C/SR.2755), held on 18 and 19 October 2010. At its 2768th meeting, held on 27 October 2010, it adopted the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the submission of the fifth periodic report of Hungary and the information presented therein. The Committee notes the submission by the State party of the written replies. It expresses appreciation for the constructive dialogue with the delegation as well as the oral responses provided to the list of issues (CCPR/HUN/Q/5/Add.1). It observes that it would have been helpful if this oral information had been included in the report itself or in the written replies.

##### **B. Positive aspects**

(3) The Committee welcomes the adoption of Government Decree No. 1021/2004 (III. 18) and the parliamentary resolution on the Decade of Roma Inclusion that defines a programme for the promotion of social integration of the Roma people; and

(4) The Committee also welcomes the amendment to the Police Act XXXIV of 1994 by Act XC of 2007 to establish the Independent Law Enforcement Complaints Body, which is mandated to investigate complaints lodged against the Police.

(5) The Committee commends the State party for ratifying the following instruments:

- (a) The Convention on the Reduction of Statelessness of 1961;
- (b) The Convention on the Rights of Persons with Disabilities of 2006;
- (c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; and
- (d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

### C. Principal matters of concern and recommendations

(6) The Committee is concerned at the high level of protection afforded by Act LXIII of 1992 on the Protection of Personal Data and Public Access to Data of Public Interest, which prohibits the collection of disaggregated personal data of any kind. The Committee is concerned that this prohibition impedes it from effectively monitoring the implementation of the provisions of the Covenant (arts. 2 and 17).

**The State party should review the provisions of Act LXIII on the Protection of Personal Data and Public Access to Data of Public Interest to ensure that it is in line with the Covenant, particularly article 17, as expounded by the Committee in its general comment No. 16. The State party should ensure that the protection afforded to personal data should not hinder the legitimate collection of data that would facilitate the monitoring and evaluation of programmes that have a bearing on the implementation of the Covenant.**

(7) The Committee is concerned that the State party has not yet established a consolidated national institution with broad competence in the field of human rights in accordance with the Paris Principles (General Assembly resolution 48/134) (art. 2).

**The State party should consider establishing a national human rights institution with a broad human rights mandate, and provide it with adequate financial and human resources, in line with the Paris Principles (General Assembly resolution 48/134, annex).**

(8) While welcoming the establishment of the Equal Treatment Authority (ETA) under the Equal Treatment Act No. CXXV of 2003, and the fact that the State party is considering reviewing the legal status of ETA within the framework of the ongoing constitutional review process, the Committee is concerned at the inadequate human and material resource allocation to this body, considering the exponential increase in its workload since its establishment. The Committee is further concerned at the lack of security of tenure of the Office of the President of the Equal Treatment Authority following Government Decree No. 362/2004 (XII.26), which gives power to the Prime Minister to relieve the President of his duties without justification (art. 2).

**The State party should ensure that the financial and human resource allocation to the Equal Treatment Authority is adequate to enable it to effectively discharge its mandate. The State party should take all necessary steps to ensure the security of tenure of the Office of the President of the Equal Treatment Authority in order to guarantee its independence.**

(9) While the Committee appreciates the State party's need to adopt measures to combat acts of terrorism, including the formulation of appropriate legislation to punish such acts, it regrets the unclear definition of certain offences and the lack of data on the implementation of anti-terrorism legislation (art. 2).

**The State party should ensure that the Penal Code not only defines terrorist crimes in terms of their purpose but also defines the nature of those acts with sufficient precision to enable individuals to regulate their conduct accordingly. The State party must refrain from adopting legislation that imposes undue restrictions on the exercise of rights under the Covenant. In this regard, the State party must compile data on the implementation of anti-terrorism legislation, and how it affects the enjoyment of rights under the Covenant.**

(10) The Committee recalls its previous concluding observations (CCPR/CO/74/HUN, para. 9) and notes that women continue to be underrepresented in the public and private spheres of life, notably in decision-making positions including in parliament, Government ministries and local government (arts. 3, 25 and 26). **The State party should adopt**

**concrete measures to accelerate the full and equal participation of women at all levels in the public sphere of life, and to vigorously promote the participation of women in the private sector, including at senior management levels.**

(11) The Committee recalls its previous concluding observations (CCPR/CO/74/HUN, para. 10) and notes with regret the continuing reports of gender-based violence and sexual harassment in the State party. The Committee also regrets the lack of specific legislation proscribing domestic violence and spousal rape (arts. 3 and 7).

**The State party should adopt a comprehensive approach to preventing and addressing gender-based violence in all its forms and manifestations. In this regard, the State party should improve its research and data collection methods in order to establish the magnitude of the problem, its causes and consequences on women. The State party should also consider adopting specific legislation that prohibits domestic violence and spousal rape. The State party should ensure that cases of domestic violence and spousal rape are thoroughly investigated and that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and the victims adequately compensated.**

(12) The Committee is concerned at the lack of data on trafficking in persons despite reports of persistent trafficking of women and girls for sexual exploitation and domestic servitude (art. 8).

**The State party should investigate the root causes of trafficking and compile statistical data on this phenomenon which should be disaggregated by gender, age, ethnicity and country of origin. The State party should also compile detailed statistical data on the number of prosecutions, convictions and sanctions imposed on perpetrators of trafficking, and the measures taken for the protection of the human rights of victims.**

(13) The Committee recalls its previous concluding observations (CCPR/CO/74/HUN, para. 8) and expresses concern that “short-terms arrests” of up to 12 hours without charge remain possible, that the legal basis remains unclear and that the length of police detention (up to 72 hours) has not been revised by the State party. The Committee further notes that there are still lapses in the system to guarantee access to legal counsel, and that video recording of interrogations is only available if the suspect undertakes to pay for it, which greatly affects indigent suspects (arts. 2, 9 and 14).

**The Committee reiterates its previous concluding observations and recommends that the State party amend the provisions of the Criminal Procedure Act that permit detention for more than 48 hours. The State party should also review its practice on short-term arrests and legislation on pretrial detention to ensure that these are in line with article 9 of the Covenant and that the domestic regulations on short-term arrests are sufficiently clear and have a clear legal basis. Furthermore, the State party should ensure access to legal counsel to all persons deprived of their liberty, and provide free video-recording services so that indigent suspects are not deprived of their rights by virtue of their economic status.**

(14) While appreciating the establishment of the Independent Law Enforcement Complaints Body mandated to investigate violations committed by the Police, the Committee notes with regret the lack of an independent medical examination body to examine alleged victims of torture and other degrading punishment or treatment. The Committee further regrets the presence of law enforcement personnel during the conduct of medical examinations even when such presence is not requested by the examining medical personnel. The Committee also regrets the lack of investigations into allegations of torture and specific training for law enforcement personnel on the prohibition of torture and ill-treatment (arts. 7 and 10).

The State party should consider establishing an independent medical examination body mandated to examine alleged victims of torture and guarantee respect for human dignity during the conduct of medical examinations. The State party should also ensure that law enforcement personnel receive training on the prevention of torture and ill-treatment by integrating the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) in all training programmes for law enforcement officials. The State party should ensure that allegations of torture and ill-treatment are effectively investigated and that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions.

(15) The Committee is concerned that asylum-seekers and refugees are detained in facilities with poor conditions, and, in this regard, that some of them are detained in prisons including the nine prisons that were closed down for failing to meet the standards set by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The Committee regrets that the re-opening of these prison facilities was not preceded by any refurbishment. The Committee is further concerned at reports of unlawful expulsions of Somali and Afghan asylum-seekers (arts. 7, 10 and 13).

**The State party should strengthen its efforts to improve the living conditions and treatment of asylum seekers and refugees and ensure that they are treated with human dignity. Asylum-seekers and refugees should never be held in penal conditions. The State party should fully comply with the principle of non-refoulement and ensure that all persons in need of international protection receive appropriate and fair treatment at all stages, and that decisions on expulsion, return or extradition are dealt with expeditiously and follow the due process of the law.**

(16) The Committee, while noting that the State party has adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners as part of its domestic law, regrets the continuing overcrowding in prisons, further exacerbated by the introduction of the “three strikes rule” which introduced mandatory life sentences into the Penal Code. The Committee further regrets that Grade 4 prisoners and prisoners in Special Regime Units serving lengthy sentences (HSR Unit) are subjected to excessive means of restraint (arts. 7 and 10).

**The State party should take concrete steps to improve the treatment of prisoners and conditions in prisons and detention facilities in line with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners. In this regard, the State party should consider not only the construction of new prison facilities but also the wider application of alternative non-custodial sentences.**

(17) The Committee is concerned at the excessive delay in the conduct of criminal prosecutions following the protests in Budapest in September and October 2006. The Committee is also concerned that out of the 202 criminal proceedings that were launched, only 2 have led to a conviction, and only 7 judgements have been handed down (art. 14).

**The State party should expedite the criminal proceedings arising from the Budapest protests by addressing the difficulties related to the procurement of evidence so that all accused persons are afforded a fair trial. The State party should also ensure that victims of the crimes perpetrated during the protests receive full and adequate compensation.**

(18) The Committee is concerned at the virulent and widespread anti-Roma statements by public figures, the media, and members of the disbanded Magyar Gárda. The Committee is also concerned at the persistent ill-treatment and racial profiling of Roma by the Police. Furthermore, it is concerned at indications of rising anti-Semitism in the State party. The Committee is concerned at the Constitutional Court’s restrictive interpretation of article 269

of the Penal Code on incitement to violence, which may be incompatible with the State party's obligations under article 20 (art. 20).

**The State party should adopt specific measures to raise awareness in order to promote tolerance and diversity in society and ensure that judges, magistrates, prosecutors and all law enforcement officials are trained to be able to detect hate and racially motivated crimes. The State party should ensure that members or associates of the current or former Magyar Gárda are investigated, prosecuted, and if convicted, punished with appropriate sanctions. Furthermore, the State party should remove impediments to the adoption and implementation of legislation combating hate speech that complies with the Covenant.**

(19) The Committee is concerned that the evolution of the so-called "memory laws" in the State party risks criminalizing a wide range of views on the understanding of the post-World War II history of the State party (arts. 19 and 20).

**The State party should review its "memory laws" so as to ensure their compatibility with articles 19 and 20 of the Covenant.**

(20) While noting the State party's efforts in adopting a Strategy on Roma inclusion, the Committee is still concerned at widespread discrimination and exclusion of the Roma in various fields such as education, housing, health, and political participation (arts. 2, 26 and 27).

**The State party should step up its efforts to eradicate stereotypes and widespread abuse by, inter alia, increasing awareness-raising campaigns that promote tolerance and respect for diversity. The State party should also adopt measures to promote access to opportunities and services in all fields and at all levels through affirmative action in order to address past inequalities. In this regard, the State party should consider re-introducing the allocation of reserved seats to national and ethnic minorities in order to improve their participation in the conduct of public affairs.**

(21) The Committee is concerned at the administrative shortcomings of the minority election register, and the self-government system, which, inter alia, renders it obligatory for minorities to register their ethnic identity, and therefore deters those who do not wish their ethnic identity to be known, or who have multiple ethnic identities, from registering in particular elections (arts. 2 and 25).

**The State party should adopt measures to address the shortcomings of the minority election register, and the minority self-government system in general, in order to ensure that it does not deter and disenfranchise minorities from participating in minority self-government elections.**

(22) The Committee is concerned at the legal requirement provided by Act LXXVII of 1993 on the Rights of National and Ethnic Minorities which prescribes that only those groups of people who represent a numerical minority and have lived in the territory of the State party for at least one century will be considered a minority or ethnic group under the terms of this act (arts. 26 and 27).

**The State party should consider repealing the condition that a minority group should be able to demonstrate that it has lived in the territory of the State party for at least a century in order to be recognized as a national or ethnic minority group. The State party should ensure that the conditions for State recognition of minority groups are in line with the Covenant, particularly article 27 as expounded by general comment No. 23 of the Committee, so that nomadic and other groups that do not satisfy the requirement due to their lifestyle are not excluded from the full protection of the law.**



(23) In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, information on the current situation and on its implementation of the recommendations given in paragraphs 6, 15 and 18 above.

(24) The Committee requests the State party, in its next periodic report, due to be submitted by 29 October 2014, to provide information on action taken to implement the remaining recommendations and on its compliance with the Covenant as a whole.

#### 88. Togo

(1) The Human Rights Committee considered the fourth periodic report of Togo (CCPR/C/TGO/4) at its 2774th and 2775th meetings, held on 14 and 15 March 2011 (CCPR/C/SR.2774 and 2775). It adopted the following concluding observations at its 2793rd meeting, held on 28 March 2011 (CCPR/C/SR.2793).

##### A. Introduction

(2) The Committee welcomes the fourth periodic report of Togo, prepared in accordance with the Committee's guidelines, which was submitted somewhat late. It thanks the State party for having submitted its written replies (CCPR/C/TGO/Q/4/Add.1) in advance. It also thanks the delegation for having answered the questions put to it orally and supplied other information in the course of its dialogue with the Committee.

(3) The Committee appreciates the contribution that the Togolese non-governmental organizations have made to its work and recalls the State party's obligation to respect and protect the human rights of all human rights defenders in the country.

##### B. Positive aspects

(4) The Committee welcomes the State party's accession, during the period under consideration, to international instruments relating to human rights guaranteed by the Covenant, in particular:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 20 July 2010;

(b) The Convention on the Rights of Persons with Disabilities, on 1 March 2011.

(5) The Committee is also pleased that the State party adopted:

(a) Legislation abolishing the death penalty, on 23 June 2009;

(b) Act No. 2005-04 of 9 February 2005 amending Framework Act No. 96-12 of 11 December 1996 on the composition, organization and operation of the National Human Rights Commission (CNDH) to bring it into line with the Paris Principles.

##### C. Principle subjects of concern and recommendations

(6) While it notes the State party's assurances that legislative reforms are well advanced, namely the imminent adoption of the Criminal Code (CCPR/C/TGO/4, para. 98), the Code of Criminal Procedure and the Personal and Family Code (CCPR/C/TGO/4, para. 47), the Committee notes with concern that the reforms were still at the planning stage, while the Committee had already made a recommendation on their implementation in its preceding concluding observations in 2002 (CCPR/CO/76/TGO) (art. 2 of the Covenant).

**The State party should amend its legislation to bring it into line with the Covenant, especially in the areas covered by the Criminal Code, the Code of Criminal Procedure and the Personal and Family Code.**

(7) As in its preceding concluding observations in 2002 (CCPR/CO/76/TGO), the Committee regrets that, notwithstanding articles 50 and 140 of the Constitution, which give precedence to the Covenant over domestic law, the provisions of the Covenant have not

been taken into account in judicial decisions, although they have sometimes been invoked by the parties in court proceedings. It regrets that the State party has not taken the necessary measures to enforce some of the provisions of the Covenant under domestic law (art. 2).

**The State party should take the necessary measures to enforce the provisions of the Covenant under domestic law and provide appropriate instruction and further training for judges, lawyers and court officers concerning the content of the Covenant to ensure that it is enforced by judicial authorities.**

(8) While noting the efforts made to bring the National Human Rights Commission (CNDH) into line with the Paris Principles (General Assembly resolution 48/134, annex) through the adoption of the Act of 9 February 2005, the Committee observes that the Commission's limited budget does not permit it to carry out its mandate fully. The Committee is concerned about the lack of follow-up to recommendations made by the Commission (art. 2).

**The Committee encourages the State party to allocate additional funds to the Commission so that it can fulfil its mandate effectively and bring cases before the courts if necessary.**

(9) The Committee is concerned about the failure of the State party to impose penalties on political leaders and journalists whose incitement to ethnic hatred during the 2005 elections brought about serious breaches of human rights, such as the violation of the right to life and massive population displacements. The Committee expresses concern at the continuing impunity for such crimes and at the fact that this state of affairs makes it easier for similar violations to recur (arts. 2 and 20).

**The State party should adopt the legislative reforms needed to criminalize any advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence and impose criminal penalties on any person making statements whose effect is the incitement to such acts, in violation of article 20 of the Covenant.**

(10) The Committee notes with regret that the serious human rights violations committed during and after the presidential elections of 24 April 2005, six years after they occurred, have yet to be investigated, that the perpetrators have not been prosecuted and convicted and that compensation has not been granted to the victims of those violations (art. 2).

**With a view to combating the impunity that persists in Togo, the State party should continue its efforts to bring the work of the Truth, Justice and Reconciliation Commission to an early conclusion. Independent and impartial investigations must also be conducted in order to shed light on the human rights violations committed in 2005 and prosecute those responsible. In this connection, the Committee emphasizes that the establishment of a transitional system of justice cannot serve to dispense with the criminal prosecution of serious human rights violations.**

(11) The Committee notes with concern that the legislative reforms guaranteeing equal rights for men and women, in particular the adoption of a new Criminal Code and Personal and Family Code, have still not been completed, although the State party has been announcing for years that they would be. The Committee is concerned that the bills in question still fail to take account of its own recommendations to introduce domestic violence and marital rape into the Criminal Code as separate offences and to repeal all provisions discriminatory against women, and also the recommendations of the Committee on the Elimination of Discrimination against Women relating to polygamy. Furthermore, the Committee regrets that the State party has still not developed a statistical tool to keep track of complaints of violence committed against women (arts. 2, 3 and 26).

**The State party should speed up its legislative reforms to align its domestic law with the Covenant and ensure that women are not subjected to de jure or de facto discrimination. The legislation should make acts of violence against women such as domestic violence and marital rape offences entailing penalties under the Criminal Code that are commensurate with their gravity. The State party should also enable the courts to develop the statistical tools to keep track of cases of violence against women.**

(12) While noting the progress achieved in making Togolese society aware of gender equality issues, the Committee remains concerned that discriminatory laws have remained in force and that few women are recruited in the civil service and in positions of authority.

**The State party should amend any provision of the Personal and Family Code that perpetuates inequality between men and women, such as the stipulation that the man is the “head of the family”. The State party should promote the recruitment of women in the civil service and the role of women in positions of authority. The Committee draws the attention of the State party to its general comment No. 28 (2000) concerning equality of rights between men and women.**

(13) The Committee notes with regret that female genital mutilation continues to be widely practised despite the measures taken by the State party to put an end to it. The Committee is also concerned that the practice is not punished by the Togolese criminal system (arts. 2, 3, 7 and 26).

**The State party should continue and expand its efforts to end traditions and customs that are discriminatory and contrary to article 7 such as female genital mutilation. The State party should step up its efforts to increase awareness about female genital mutilation, particularly in communities where it is still widespread. It should penalize the practice and ensure that those who perform female genital mutilation are brought to justice.**

(14) The Committee remains concerned about the criminalization of sexual relations between consenting adults of the same sex, punishable by 1 to 3 years of imprisonment and a fine of up to 500,000 CFA francs under article 88 of the current Criminal Code. As pointed out by the Committee and other international human rights bodies, such criminalization violates the rights to privacy and to protection against discrimination set out in the Covenant. The Committee’s concerns are not allayed by the information furnished by the State party that the provision in question is not applied in practice or by its statement that it is important to change mindsets before modifying the law in this regard (arts. 2, 9, 17 and 26).

**The State party should take steps to decriminalize sexual relations between consenting adults of the same sex in order to bring its legislation into line with the Covenant. The State party should also take the necessary steps to put an end to prejudice and the social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation.**

(15) The Committee remains concerned that since its last concluding observations were issued in 2002 (CCPR/CO/76/TGO), the State party has not yet adopted criminal legislation that defines and criminalizes torture explicitly and that the use of torture and cruel, inhuman or degrading treatment still goes unpunished (arts. 2 and 7).

**The State party should adopt criminal legislation defining torture on the basis of international standards and legislation criminalizing and penalizing acts of torture with penalties commensurate with their gravity. The State party should ensure that**

**any act of torture or cruel, inhuman or degrading treatment is prosecuted and penalized in a manner commensurate with its gravity.**

(16) The Committee remains concerned at the allegations of torture and ill-treatment in detention facilities, particularly the National Intelligence Agency (ANR) facilities, and by certain deaths alleged to have resulted from abuse in prison. The Committee deplores the lack of any reply from the State party concerning the number of complaints filed regarding torture or ill-treatment and its failure to act on these complaints. It also deplores the fact that investigations are not conducted to shed light on the cases of death in prison (arts. 6, 7 and 2).

**The State party should take steps to investigate all allegations of torture and ill-treatment and all deaths in detention. Such investigations should be conducted expeditiously in order to bring the perpetrators to justice and provide effective compensation to victims.**

(17) The Committee is concerned about the large number of persons who are arbitrarily detained and the fact that no immediate remedy to challenge the legality of detention is available. The Committee is also concerned about the lack of training for judges, who apparently consent to the use of detention for debt (arts. 9, 10 and 11).

**The State party should take steps to guarantee the right of anyone who has been deprived of liberty to have access to an immediate remedy to challenge the legality of detention and make visits to places of detention systematic in order to identify and put an end to all arbitrary detention, including of persons detained for debt.**

(18) While aware of the State party's efforts to ease prison crowding, particularly through the construction of additional facilities — though this measure, in and of itself, would hardly be sufficient to resolve overcrowding — the Committee remains concerned that prison conditions in Togo are such that they constitute a violation of article 10 of the Covenant. Such overcrowding is partly attributable to the persistent phenomenon of arbitrary detention, resulting in the number of pretrial detainees being out of all proportion with the number of persons convicted. The Committee considers it a source of deep concern that, according to the State party, there is no mechanism for detainees to go before the judge with complaints about their conditions of detention (arts. 9 and 10).

**The State party should take steps to ensure that: (a) every detainee has access to mechanisms for reporting violations of which they are victims, in particular arbitrary detention or deplorable conditions of detention; and (b) measures are taken to restore such persons' right to liberty or to conditions respectful of human dignity when in detention.**

(19) The Committee is concerned about the State party's observation that the principle of presumption of innocence is flouted by judges and that the practice of pretrial detention has become the norm, and release the exception. The Committee is also concerned about detainees' lack of access to counsel and delays in the adoption of legislation on legal aid. Although in practice, persons who cannot afford an attorney are provided with the services of a public defender, one is not assigned to them until the final stages of criminal proceedings (arts. 9 and 14).

**The State party should reinforce the importance of the principle of the presumption of innocence and the other guarantees covered by article 14 of the Covenant in training for judges. The Committee invites the State party to adopt criminal legislation guaranteeing all persons deprived of liberty access to an attorney from the outset of their detention, along with legislation on legal aid. The State party should adopt the legislation required to give effect in practice to the right to compensation for miscarriage of justice.**

(20) The Committee notes with concern the unjustified restrictions on freedom of expression, in particular the censorship of certain media by the High Audio-visual and Communications Authority (HAAC), whose independence and operating procedures have been called into question. The Committee is concerned about the restrictions that are imposed on the freedom to demonstrate peacefully and the varying degree of such freedom depending on whether the demonstrations are planned in Lomé or elsewhere in the country. It is also concerned about the threats made against certain journalists and human rights defenders (arts. 18, 19, 21 and 22).

**The State party should take steps to ensure that the new act ensuring the freedom to demonstrate is in conformity with the Covenant. The State party should also review the statutes and operating procedures of the High Audio-visual and Communications Authority in order to guarantee its independence and impartiality and strengthen its authority. Any infringement on the freedom of thought and expression of journalists and human rights defenders or any attack on their integrity must be thoroughly investigated. Those who commit such acts must be prosecuted and subject to criminal penalties.**

(21) The Committee is concerned that minorities are underrepresented in the civil service and the army in particular. It also notes with concern that neither the existence of indigenous peoples in Togo nor their right to free, prior and informed consent is recognized (arts. 2 and 27).

**The State party should take the necessary steps to guarantee the recognition of minorities and indigenous peoples. It should also ensure that indigenous peoples are able to exercise their right to free, prior and informed consent. The State party must also give minorities in Togo the means for better representation in public life and positions of responsibility.**

(22) The State party should disseminate widely the Covenant, the Optional Protocol to the Covenant, the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, the fourth periodic report, its written replies to the Committee's list of issues and these concluding observations so as to raise awareness among the judicial, legislative and administrative authorities, civil society, non-governmental organizations active in the country and the public. The Committee also suggests that the report and the concluding observations be translated into the other official language of the State party.

(23) In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, the information requested on the assessment of the situation and implementation of the Committee's recommendations contained in paragraphs 10, 15 and 16 above.

(24) The Committee requests the State party to provide in its next report, which it is scheduled to submit by 1 April 2015, information on the implementation of other recommendations that are made, and of the Covenant as a whole. It also recommends that the State party include civil society and non-governmental organizations active in its territory in the drafting of its fifth periodic report.

#### 89. **Slovakia**

(1) The Committee considered the third periodic report submitted by Slovakia (CCPR/C/SVK/3) at its 2778th and 2779th meetings (CCPR/C/SR.2778 and CCPR/C/SR.2779), held on 16 and 17 March 2011. At its 2793rd and 2794th meetings (CCPR/C/SR.2793 and 2794), held on 28 March 2011, it adopted the following concluding observations.

**A. Introduction**

(2) The Committee welcomes the submission of the third periodic report of Slovakia and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/SVK/Q/3/Add.1) to the list of issues which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

**B. Positive aspects**

(3) The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) The adoption of Act No. 365/2004 Coll. on equal treatment (Anti-Discrimination Act);

(b) The amendment to Act No. 757/2004 Coll. on courts, which abolished military courts and entered into force on 1 April 2009;

(c) The adoption of Regulation No. 64/2008 on “methods of combating expressions of extremism and curbing spectator violence”, which entered into force on 1 September 2008;

(d) The establishment of the Council on Human Rights, National Minorities and Gender Equality.

(4) The Committee welcomes the ratification by the State party of the following international instruments:

(a) The Convention on the Rights of Persons with Disabilities of 2006;

(b) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2006;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000;

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000.

**C. Principal matters of concern and recommendations**

(5) While noting the commitment of the State party to amend the Act that established the National Centre for Human Rights (NCHR) with a view to strengthening its mandate such as reporting on national human rights issues to the legislature, the Committee is concerned that the NCHR has a limited mandate and independence, and has not been provided with adequate resources to carry out its functions. The Committee thus regrets that the NCHR fails to meet the standards set out by the Paris Principles (General Assembly resolution 48/134) (art. 2).

**The State party should revise the Act that establishes the NCHR to expand the scope of its mandate and competence to effectively promote and monitor the protection of human rights. The State party should also take concrete measures to ensure that the NCHR is provided with adequate financial and human resources in line with the Paris Principles.**

(6) While taking note that international human rights treaties that the State party has ratified and promulgated take precedence over national laws, the Committee is concerned

that none of the provisions of the Covenant have been invoked before national courts since the consideration of the State party's previous report (art. 2).

**The State party should take appropriate measures to raise awareness of the Covenant among judges, lawyers and prosecutors to ensure that its provisions are taken into account before national courts. In this regard, the State party should take effective measures to widely disseminate the Covenant in the State party.**

(7) While the Committee appreciates the State party's efforts to develop a bill that seeks to confer the power on the Constitutional Court to rule on the compatibility of domestic legislation with international treaties, the Committee notes that this bill has not been enacted into law (art. 2).

**The State party is encouraged to ensure that such a bill is enacted into law to provide a remedy to persons who allege an infringement of their rights arising from the incompatibility of provisions of national law with international treaties that the State party has ratified.**

(8) While welcoming the State party's efforts to prosecute law enforcement officers who perpetrate racist attacks, particularly against Roma, the Committee is aware of the continued reports of racist attacks and lack of adequate compensation for the victims (arts. 2 and 27).

**The State party should strengthen its efforts to combat racist attacks committed by law enforcement personnel, particularly against Roma, by, inter alia, providing special training to law enforcement personnel aimed at promoting respect for human rights and tolerance for diversity. The State party should also strengthen its efforts to ensure that police officers suspected of committing such offences are thoroughly investigated and prosecuted, and if convicted, punished with appropriate sanctions, and that the victims are adequately compensated.**

(9) While appreciating the efforts made by the State party to protect the rights of persons who have been granted asylum and refugee status, the Committee is concerned at the slow pace of their integration into society, which hinders their access to employment, education, housing and health (arts. 2 and 26).

**The State party should take concrete measures to promote the integration of persons who have been granted asylum and refugee status in the State party, to ensure equal access to employment, education, housing and health. In this regard, the State party should ensure that access to employment is non-discriminatory, and that recruiters, both in the private and public sectors, respect the principle of equality and non-discrimination.**

(10) While welcoming the adoption of the National Action Plan for Gender Equality (2010–2013) and the data on women's representation in the public sector, the Committee notes with concern that women remain underrepresented in both the public and private sectors, particularly in decision-making positions. The Committee regrets the State party's failure to provide it with information relating to the representation of women in the private sector (arts. 2, 3 and 26).

**The State party should strengthen its efforts to increase the participation of women in the public and private sectors, and if necessary, through appropriate temporary special measures to give effect to the provisions of the Covenant. The Committee urges the State party to include in its next periodic report, disaggregated statistical data on the representation of women in the private sector.**

(11) While noting the adoption of the National Action Plan for the Prevention and Elimination of Violence against Women (2009–2012), the Committee is concerned at the

continuing reports of gender-based violence in the State party, and the low reporting of these cases to the police (arts. 3 and 7).

**The State party should adopt concrete measures to prevent and address gender-based violence in all its forms and manifestations. In this regard, the State party should improve its research and data collection methods in order to establish the magnitude of the problem, its causes and consequences for women. The State party should encourage the reporting of cases of domestic violence by victims. It should also ensure that such cases are thoroughly investigated and that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and that the victims are adequately compensated.**

(12) While taking note of the fact that the current Criminal Code No. 300/2005 Coll. (as amended) criminalizes and punishes the torture and ill-treatment of children, the Committee expresses concern at the permissibility of corporal punishment in the home where it traditionally continues to be accepted and practised as a form of discipline by parents and guardians (arts. 7 and 24).

**The State party should take practical steps to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.**

(13) While welcoming the investigation into the forced sterilization of Roma women and the adoption of Act No. 576/2004 Coll. on health care and services, which introduces the notion of informed consent, the Committee is concerned at the narrow focus of the investigation and the lack of information on concrete measures to eliminate forced sterilization, which, allegedly, continues to take place (arts. 7 and 26).

**The State party should take the necessary measures to monitor the implementation of Act No. 576/2004 Coll. to ensure that all procedures are followed in obtaining the full and informed consent of women, particularly Roma women, who seek sterilization services at health facilities. In this regard, the State party should introduce special training for health personnel aimed at raising awareness about the harmful effects of forced sterilization.**

(14) While appreciating the existence of the Inspection Service Department of the Section of Control and Inspection Service, which is mandated to investigate offences committed by members of the police force, the Committee is concerned that the Inspection Service Department is not fully independent, as complaints against police officers are investigated by a police force investigator. The Committee is also concerned at continued reports of ill-treatment of detainees by law enforcement personnel (arts. 7 and 10).

**The State party should take appropriate measures to strengthen the Inspection Service Department of the Section of Control and Inspection Service to ensure its independence to carry out investigations of alleged misconduct by police officers. In this connection, the State party should ensure that law enforcement personnel continue to receive training on torture and ill-treatment by integrating the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) in all training programmes for law enforcement officials. The State party should thus ensure that allegations of torture and ill-treatment are effectively investigated and that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that the victims are adequately compensated.**

(15) While noting the prohibition of forced military service in the State party's Constitution and the recognition of a person's right to exercise conscientious objection to



military service, the Committee is concerned at the lack of clarity on whether a person retains the right to conscientious objection if the objection is developed in the course of performing military service (art. 18).

**The Committee encourages the State party to take necessary measures to ensure that the law clearly stipulates that individuals retain the right to exercise conscientious objection even during the performance of military service.**

(16) While noting the State party's adoption of a medium term concept for the development of the National Minority Solidarity-Integrity-Inclusion for 2008–2013, and the election of the first Roma woman town mayor, the Committee is still concerned at prevalent stereotypes and widespread exclusion of Roma in various fields such as education, housing, health, and political participation (arts. 2, 26 and 27).

**The State party should strengthen its efforts to eradicate stereotypes and widespread abuse against Roma by, among other things, increasing awareness-raising campaigns that promote tolerance and respect for diversity. The State party should also adopt measures to promote access to opportunities and services in all fields and at all levels through affirmative action in order to address existing inequalities.**

(17) The Committee recalls its previous concluding observations (CCPR/CO/78/SVK, para. 18) and is concerned at the continued reports of de facto segregation of Roma children in the education sector. The Committee is further concerned at the continuing reports of the placement of Roma children in special needs classes that are meant for pupils with psychological disabilities, without conducting proper medical assessments to establish their mental capacity (arts. 26 and 27).

**The State party should take immediate steps to eradicate the segregation of Roma children in its education system by ensuring that the placement in schools is carried out on an individual basis and is not influenced by the child's ethnic group. Furthermore, the State party should take concrete steps to ensure that decisions for the placement of all children, including Roma children, in special needs classes may not be made without an independent medical evaluation nor based solely on the capacity of the child.**

(18) The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of the third periodic report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into the other official language of the State party. The Committee also requests the State party, when preparing its fourth periodic report, to broadly consult with civil society and non-governmental organizations.

(19) In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 7, 8 and 13 above.

(20) The Committee requests the State party, in its next periodic report, due to be submitted on 1 April 2015, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.

#### 90. **Serbia**

(1) The Committee considered the second periodic report submitted by Serbia (CCPR/C/SRB/2) at its 2780th and 2781st meetings (CCPR/C/SR.2780 and 2781), held on

17 and 18 March 2011. At its 2796th meeting (CCPR/C/SR.2796), held on 29 March 2011, it adopted the following concluding observations.

#### **A. Introduction**

(2) The Committee welcomes the submission of the second periodic report of Serbia, and expresses appreciation for the constructive dialogue with the delegation of the State party, and the oral and written responses provided. It also appreciates the written replies (CCPR/SRB/Q/2/Add.1) that were submitted in response to the list of issues.

(3) The Committee recalls its previous consideration of the human rights situation in Kosovo (see CCPR/C/UNK/CO/1, adopted on 27 July 2006). The Committee notes that, as the State party continues to accept that it does not exercise effective control over Kosovo, and in accordance with Security Council resolution 1244 (1999), civil authority continues to be exercised by the United Nations Interim Administration Mission in Kosovo (UNMIK). The Committee considers that the Covenant continues to apply in Kosovo, and it therefore encourages UNMIK to provide it, in cooperation with the institutions of Kosovo, and without prejudice to the final legal status of Kosovo, with a report on the human rights situation in Kosovo since July 2006.

#### **B. Positive aspects**

(4) The Committee welcomes the following positive developments in the State party, in particular in light of the reforms engaged as a result of the State party's candidacy to the European Union:

(a) Adoption of a new Constitution in 2006, which allows the Constitutional Court to examine individual complaints on human rights violations (article 170 of the Constitution);

(b) Adoption, in March 2009, of the Law on the Prohibition of Discrimination, and the appointment by the National Assembly, in May 2010, of the Commissioner for the Protection of Equality, empowered to examine complaints about discrimination, and make recommendations thereon;

(c) Adoption of the Law on the Ombudsman (NHRI), and the appointment by the National Assembly, in July 2007, of an Ombudsman with broad competence in the field of human rights, in accordance with the Paris Principles (General Assembly resolution 48/134);

(d) Ratification, in 2006, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(e) Ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2009.

#### **C. Principal matters of concern and recommendations**

(5) The Committee takes note of the information that the provisions of international human rights treaties, including those under the Covenant, are part of the State party's laws and can be invoked directly in court. The Committee notes, however, that there are only limited examples where the provisions of the Covenant have been invoked in particular cases. While welcoming the delegation's contention that the provisions of the Covenant will be part of the curricula of the Judicial Academy, the Committee expresses concern about the insufficient awareness of the provisions of the Covenant among the judiciary and the wider legal community, and the practical application of the Covenant in the domestic legal system (art. 2).

**The State party should ensure that its authorities, including judges, prosecutors, and lawyers, are adequately trained and fully aware of the provisions of the Covenant, and**

**of their applicability in the State party. The State party should also take effective measures to widely disseminate the Covenant within the State party.**

(6) The Committee is concerned that, as admitted by the delegation, the authorities of the State party do not have a coordinated approach nor a specific mechanism to examine and give effect to the Committee's conclusions of violation in cases decided under the individual complaints mechanism of the Optional Protocol to the Covenant (art. 2).

**The State party should establish a mechanism to study the Committee's conclusions to individual communications, and propose measures to be taken by the State party to give effect to the Committee's views under the Optional Protocol, and provide victims with an effective remedy for any violation of their rights.**

(7) While welcoming the establishment, in 2007, of the National Human Rights Institution (Ombudsman) and its work conducted to date, and noting with interest the information provided by the delegation to the effect that the Ombudsman is to be officially empowered to act as a National Preventive Mechanism for the purposes of the Optional Protocol to the Convention Against Torture, the Committee is concerned that, if no adequate resources are allocated, the effective functioning of the institution may be affected (art. 2).

**The State party should consider providing the Office of the Ombudsman with the necessary additional financial and human resources, given its new role as National Preventive Mechanism, so as to ensure fulfilment of its current activities and to enable it to carry out its new functions effectively.**

(8) While welcoming the efforts made by the State party during the reporting period to address the discriminatory situation of women in various areas of life, including the adoption of the Law on Gender Equality, in 2009, and other initiatives, the Committee is concerned about the limited results obtained in practice. It is concerned about the subsisting gap between women and men in violation of the principle of equal pay for equal work, as well as about the low number of women in high-level and decision-making positions, and the fact that stereotypes subsist with respect to the position of women in society, including with regard to Roma women (arts. 2, 3 and 26).

**The State party should continue its efforts to improve the representation of women, including in high-level, decision-making positions within the State and local administration. It should ensure that men and women are treated equally, including with respect to their salaries for similar positions. In general, the State party should take the necessary practical steps to eradicate stereotypes regarding the position of women in society in general, and with regard to Roma women in particular.**

(9) With reference to its previous concluding observations (para. 17), the Committee remains concerned that domestic violence prevails, and that few cases regarding domestic violence reach the courts. The Committee is also concerned that, in spite of the progress made, including the establishment of hotlines for victims, and the adoption, in 2009, of the National Strategy for Improving the Position of Women and the Advancement of Gender Equality, non-governmental organizations remain the main providers of assistance to victims of domestic violence, including with respect to the running of shelters (arts. 2, 3 and 26).

**The State party should continue its efforts to combat domestic violence and establish support centres for victims with adequate medical, psychological and legal support, and shelters for victims of violence, including for children. In order to raise public awareness, it should disseminate information on this issue through the media. The State party should ensure that cases of domestic violence are thoroughly investigated and that the perpetrators are prosecuted and punished with appropriate sanctions, if**

**convicted. It should also ensure that the victims are adequately compensated. For these purposes, the State party should ensure that the police, local authorities, medical and social workers are adequately trained and sensitized on the issue.**

(10) With reference to its previous concluding observations (para. 9), the Committee remains concerned at the persistence of impunity for serious human rights violations, committed both before and after 2000. While it notes that the authorities of the State party have conducted investigations into such crimes, it regrets that few investigations have led to prosecutions, and that relatively light sentences have been handed down, which are not commensurate with the gravity of the crimes committed. The Committee is also concerned at the difficulties faced by individuals trying to obtain compensation from the State for human rights violations, in particular regarding war crimes, as well as the existing statutory limitation period of five years (arts. 2, 6 and 7).

**The Committee recalls its previous recommendation that the State party has an obligation to fully investigate all cases of alleged violations of human rights, in particular violations of articles 6 and 7 of the Covenant, during the 1990s, and to bring those responsible for such violations to trial so as to avoid impunity. The State party should also ensure that all victims and their families receive adequate compensation for such violations.**

(11) The Committee is concerned that torture and ill-treatment are only punishable by a sentence of up to a maximum of eight years' imprisonment, and that the statutory limitation period is 10 years (art. 7).

**The State party should amend its legislation and practice, both with respect to the length of the maximum prison term for torture and related crimes, and extend the statutory limitation period, bearing in mind the gravity of such crimes.**

(12) With reference to its previous concluding observations (para. 10), the Committee remains concerned that no significant progress has been made to investigate, prosecute, and punish those responsible for the killing of more than eight hundred persons whose bodies were found in mass graves in and near Batajnica, and to compensate the relatives of the victims (arts. 2 and 6).

**The State party should urgently take action to establish the exact circumstances that led to the burial of hundreds of people in Batajnica region, and to ensure that all individuals responsible are prosecuted and adequately sanctioned under the criminal law. The State party should also ensure that relatives of the victims are provided with adequate compensation.**

(13) While noting the ongoing cooperation of the authorities of the State party with the International Criminal Tribunal for the former Yugoslavia (ICTY), the Committee remains concerned at reports that alleged war criminals remain within the territory of the State party territory, but have neither been arrested nor brought to justice (arts. 6 and 7).

**The State party should ensure that it continues to cooperate fully and effectively with the ICTY, and ensure that all remaining individuals, including Ratko Mladic, suspected of war crimes and violation of international humanitarian law, who are under its jurisdiction, are transferred to the ICTY.**

(14) With reference to its previous concluding observations (para. 15), the Committee remains concerned that no organization for independent, effective and systematic monitoring of police detention premises exists in the State party. The Committee is also concerned about the poor and inadequate conditions of detention in police detention premises, as well as the fact that accused and suspects have been held together, and that minors have been detained together with adults (arts. 7 and 10).

**The State party should ensure that an appropriate system for monitoring police detention exists, in particular in light of the State party's obligations resulting from its ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It should also ensure that all police detention facilities are in line with its obligations under the Covenant.**

(15) While noting that the State party has started building new prison facilities and renovating others, the Committee remains concerned about the continuing overcrowding in prisons (arts. 7 and 10).

**The State party should take further steps to improve the treatment of prisoners and the prison conditions, in line with its obligations under the Covenant and the Standard Minimum Rules for the Treatment of Prisoners. In this regard, the Committee invites the State party to consider not only the construction of new prison facilities, but also the wider application of alternative non-custodial sentences.**

(16) While taking note of the progress made with regard to combating trafficking in persons, the Committee is concerned at information indicating that more than half of the victims of trafficking and sexual exploitation are minors. It is also concerned about the uncertain situation of witnesses who are foreign nationals in trafficking trials, and the fact that they are only granted temporary residence permits for the duration of the trial (art. 8).

**The State party should continue its efforts to raise awareness and to combat trafficking in persons, including at the regional level and in cooperation with neighbouring countries. It should ensure that all individuals responsible for trafficking in persons are prosecuted and punished commensurate with the crimes committed, and that victims of trafficking are rehabilitated. The State party should vigorously pursue its public policy to combat trafficking, in particular in minors for sexual exploitation, through the adoption of specific targeted measures and action plans on the issue, bearing in mind that the best interests of the child must be a primary consideration in all such actions. Child victims of trafficking should be provided with appropriate assistance and protection, and full account should be taken of their special vulnerabilities, rights and needs. The State party should also ensure that the situation of foreign nationals acting as official witnesses in trafficking trials is reviewed individually at the end of such trials, with the aim of assessing whether they would be at risk if they returned to their country of origin.**

(17) While noting the efforts made by the State party to reinforce its judiciary and secure its independence, such as the enactment of the new Law on Judges, the Committee is concerned about issues arising from the overall inadequate functioning of the courts in the administration of justice, resulting in unreasonable delays and other shortcomings in the procedures. In addition, with respect to cases of judges dismissed in the 2009 re-election process, the Committee is concerned that the re-election process, which was aimed at reinforcing the judiciary and which resulted in the reduction in the number of judges, lacked transparency and clear criteria for re-election, and did not provide for a proper review of the cases dismissed (art. 14).

**The State party should ensure strict observance of the independence of the judiciary. It should also ensure that judges who were not re-elected in the 2009 process are given access to a full legal review of the process. The State party should also consider undertaking comprehensive legal and other reforms to make the functioning of its courts and general administration of justice more efficient.**

(18) While noting the information provided by the State party that the Law on Criminal Procedure allows for free legal aid to be granted in certain criminal cases, the Committee is concerned that no comprehensive system on the granting of legal aid exists in the State

party, and that neither legislation nor practice provides for free legal aid in civil cases (arts. 9 and 14).

**The State party should review its free legal aid scheme to provide for free legal assistance in any case where the interests of justice so requires.**

(19) Despite the action taken so far by the State party to address the problem of individuals without identification documents, including displaced persons, as a result of the past conflicts, a large number of persons under the State party's jurisdiction, mainly Roma, live without any identification documents, and their births were never registered with the authorities. The Committee considers that this situation creates an impediment for members of the State party's most vulnerable group, namely Roma, to enjoy a range of human rights, including those under the Covenant, and prevents them from benefiting, *inter alia*, from social services, social benefits and adequate housing, as well as limits their access to employment (arts. 12, 24 and 26).

**The State party should continue its efforts to provide all persons under its jurisdiction with identification documents, in particular those who were never registered or issued such documents. The State party should increase its efforts to ensure effective access to adequate housing, social benefits and services for all victims of past conflicts under its jurisdiction, including Roma.**

(20) Despite article 44 of the State party's Constitution, which states that all churches and religious communities are equal, the Committee is concerned at the differentiation made in the Act on Churches and Religious Communities, regarding "traditional" and other religions, in particular when it comes to the official registration of a Church or religious community and the acquisition of legal personality (arts. 18 and 26).

**The State party should review its legislation and practice to ensure that the principle of equal treatment, as proclaimed under article 44 of its Constitution, is fully respected, and in compliance with the requirements of articles 18 and 26 of the Covenant.**

(21) With regard to its previous concluding observations (para. 22), the Committee remains concerned that journalists, human rights defenders, and media workers continue to be attacked, threatened, and murdered. It is also concerned that defamation remains a crime under national law, in particular taking into account that defamation complaints are being widely used against journalists and human rights defenders by Government and public officials (arts. 6, 7 and 19).

**The Committee urges the State party to take the necessary measures to ensure that the restrictions imposed on freedom of opinion and expression are in line with the provisions of the Covenant. The State party should take vigorous measures to ensure the protection of journalists, independent civil society actors, including non-governmental organizations and media representatives. The State party should make sure that those responsible for crimes against media or civil society workers are identified, prosecuted, and, if convicted, punished accordingly. The State party should also consider decriminalizing defamation.**

(22) While noting the State party's efforts to improve the situation of Roma, including the adoption of the Strategy for Improving the Status of Roma (2009) and its accompanying Action Plan, as well as the establishment of the Governmental Council for Improving the Status of Roma and the Implementation of the Decade of Roma Inclusion (2005–2015), the Committee remains concerned at widespread discrimination and exclusion of Roma in various areas of life, such as education, housing, adequate health care, and political participation (arts. 2, 26 and 27).

**The State party should strengthen its efforts to eradicate stereotypes and widespread abuse against Roma by, among others, conducting more awareness-raising campaigns to promote tolerance and respect for diversity. The State party should also adopt measures to promote access by Roma to various opportunities and services at all levels, including, if necessary, through appropriate temporary special measures.**

(23) While recognizing the efforts undertaken by the State party to ensure better protection to representatives of national minorities, including the adoption of the Law on National Minority Councils (2009), the Committee remains concerned at the low level of representation of minorities in State organs or local authorities. The Committee is also concerned about the lack of disaggregated statistics collected at the national level, which would enable a better assessment of the actual situation of all minorities (arts. 25, 26 and 27).

**The State party should continue its efforts aimed at ensuring full protection and equal treatment of members of national minorities under its jurisdiction. It should take measures, including, if necessary, through appropriate temporary special measures, to ensure enhanced representation of members of national minorities in national and local organs. The State party should also collect statistical data reflecting the posts occupied in the central and local organs, disaggregated by ethnic group. Such information should be made available to the Committee in the State party's next periodic report.**

(24) The State party should widely disseminate the Covenant and its two Optional Protocols, as well as the text of the second periodic report, the written replies to the list of issues drawn up by the Committee, and the present concluding observations, so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also requests the State party to broadly consult with civil society and non-governmental organizations when preparing its third periodic report. The State party should ensure that the present concluding observations are translated into the minority languages of the State party (art. 2).

(25) In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on the implementation of the recommendations made by the Committee in paragraphs 12, 17 and 22 herein.

(26) The Committee requests the State party to provide, in its third periodic report due for submission by 1 April 2015, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole.

#### **91. Mongolia**

(1) The Committee considered the fifth periodic report submitted by Mongolia (CCPR/C/MNG/5 and Corr.1) at its 2784th and 2785th meetings (CCPR/C/SR.2784 and 2785), held on 21 and 22 March 2011, and adopted at its 2797th meeting (CCPR/C/SR.2797), held on 30 March 2011, the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the submission of the State party's fifth periodic report, which gives detailed information on measures adopted by the State party to further the implementation of the Covenant. Furthermore, it expresses its appreciation for the constructive dialogue with the delegation, the written replies to the list of issues (CCPR/C/MNG/Q/5/Add.1) provided in advance by the State part, the answers provided to the Committee during the consideration of the report, and the additional information provided after the consideration of the report.

**B. Positive aspects**

(3) The Committee welcomes the following positive developments since the examination of the fourth report:

(a) The adoption of the Law on the National Human Rights Commission in 2007 and the fact that it is considered in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) by the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights;

(b) The implementation of the National Human Rights Action Plan in 2005;

(c) The following policy measures that the Government of Mongolia has taken: the National Programme on Combating Domestic Violence (2005–2015); the National Programme on the Protection of Women and Children from Human Trafficking Especially for the Purpose of Sexual Exploitation (2005–2014); the National Programme on Fulfilling Gender Equality (2003–2015); and the National Programme on Supporting People with Disabilities (2006–2015).

**C. Principal subjects of concern and recommendations**

(4) While welcoming article 10 of the Constitution, which enables the direct invocation of the Covenant before domestic courts, the Committee remains concerned about the lack of application of the provisions of the Covenant by domestic courts. It is also concerned about information according to which an accused person received a longer sentence in a criminal case when references were made to international human rights treaties (arts. 2, 7, 14 of the Covenant).

**The State party should take measures to promote the effective application of the provisions of the Covenant before domestic courts, including through the organization of compulsory training programmes and follow-up programmes for judges and lawyers on international human rights treaties. The State party should ensure that references to Covenant provisions during legal proceedings should not be met with a response that threatens the right to a fair trial.**

(5) While welcoming the adoption of the Law on the National Human Rights Commission in 2007 and the fact that it is considered in compliance with the Paris Principles by the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, the Committee is concerned about information alleging the lack of transparency of the Human Rights Commission's appointments procedure, and questioning its vigilance in monitoring, promoting and protecting human rights during the 2008 state of emergency (art. 2 of the Covenant).

**The State party should strengthen its efforts to ensure that the National Human Rights Commission enjoys independence by providing it with adequate funding and human resources, and revising the appointment process of its members.**

(6) The Committee notes with concern that the death penalty has yet to be abolished *de jure* in the State party despite the welcome moratorium on the execution of death sentences in force since January 2010 (art. 6).

**The State party should take the necessary measures to abolish the death penalty *de jure* at the earliest possible moment, and consider acceding to the Second Optional Protocol to the Covenant.**

(7) The Committee is concerned that there are substantial lacunas in the Mongolian legislation on discrimination in so far as the prohibited grounds of discrimination under



article 14 of the Constitution are not comprehensive and that there is no effective mechanism to ensure that victims of discrimination have access to a remedy (arts. 2 and 26 of the Covenant).

**The State party should take appropriate measures to ensure that its definition of discrimination prohibits all forms of discrimination as set out in the Covenant (race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) and put in place effective mechanisms to provide access to justice and remedies in cases of violation of those rights.**

(8) While noting the adoption of the Law on Gender Equality and the implementation of the National Programme on Fulfilling Gender Equality, the Committee remains concerned about the low level of representation of women in Parliament and in decision-making positions in both the public and private sectors. The Committee also regrets the limited impact of the measures taken to address traditional discriminatory practices and persisting stereotypes about the roles and responsibilities of women and men, including in legislation, policies and programmes (arts. 3, 25, 26 of the Covenant).

**The State party should take measures to increase the participation of women in decision-making positions in the public and private sectors through the implementation of new practical initiatives including, if necessary, appropriate temporary special measures. It should also intensify its efforts to eradicate traditional stereotypes regarding the roles and responsibilities of women and men within the public and private spheres, including through comprehensive awareness-raising campaigns.**

(9) The Committee notes with regret, as acknowledged by the State party, the widespread discriminatory attitudes towards lesbian, gay, bisexual and transgender (LGBT) persons (arts. 20, 24 and 26 of the Covenant).

**The State party should take urgent measures to address the widespread discriminatory attitudes, social prejudice and stigmatization of LGBT persons in the State party. It should ensure that LGBT persons have access to justice, and that all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated.**

(10) The Committee notes with concern the limited access of persons with disabilities to education, health and social services because of widespread discrimination and the lack of adequate structures (arts. 20, 24 and 26 of the Covenant).

**The State party should strengthen the measures taken to adopt and implement a plan of action to address the situation of persons with disabilities, and facilitate their access to education, health and social services.**

(11) The Committee remains concerned that both in law and practice only a limited number of the provisions referred to in article 4 of the Covenant are considered non-derogable during a state of emergency (arts. 4, 5 and 6 of the Covenant).

**The State party should amend article 19, paragraph 2, of the Constitution and the Law on State of Emergency to ensure that national law prohibits derogation from the provisions of the Covenant which are considered non-derogable, and take all the necessary measures to enable its immediate implementation and effect.**

(12) The Committee is concerned that although the cases of four senior police officials in connection with deaths, torture and cruel, inhumane or degrading treatment having occurred during the state of emergency of July 2008 were reopened, these cases have not yet been brought to a conclusion. The Committee is also concerned that the charges against all other police officers prosecuted for human rights violations during this emergency were dropped

due to a lack of evidence and that no one has been convicted to date (arts. 2, 6, 9 and 14 of the Covenant).

**The State party should take the necessary measures to thoroughly investigate all allegations of human rights violations committed during the state of emergency of July 2008, including in the cases where compensation has been paid to the families. It should also ensure that those involved are prosecuted and, if convicted, punished with appropriate sanctions, and ensure that the victims are adequately compensated.**

(13) The Committee is concerned about articles 100 and 251 of the Criminal Code, which limit the investigation of acts of torture or cruel, inhuman or degrading treatment to the “inquirer” or “investigator”, and do not refer to the *eruugiin tuluulugh* or “criminal delegate” of the police force, who commissions intelligence acts for the purpose of discovering evidence in support of the investigation process. The Committee is also concerned about article 44.1 of the Criminal Code, which exempts from investigation anyone “who acted under orders”. Finally, the Committee regrets the lack of financial and human resources in the Investigation Unit under the General Prosecutor’s Office, and the lack of an independent body to investigate allegations of mistreatment and torture by police officers (art. 7 of the Covenant).

**The State party should without delay adopt a definition of torture that fully complies with international standards and includes punishment proportionate to the gravity of the crime, and the applicability of the prohibition of torture and inhuman or degrading treatment to anyone who commits it, including when acting under orders. The State party should ensure that the Investigation Unit has the necessary authority, independence and resources to adequately investigate all offences committed by the police.**

(14) While welcoming the efforts of the State party to install television cameras in police detention facilities of local and municipal police authorities to record interrogations, the Committee is concerned about the limited proportion of cases actually recorded. It is also concerned about the lack of information on the storage of monitoring information and on the regulation of its use during future investigations, including by the victims (art. 7 of the Covenant).

**The State party should introduce a legal obligation to record interrogations systematically, and provide the necessary financial, material and human resources to that end. Regulations should also be adopted and implemented by the State party to control the storage of monitoring information and its use in later investigations.**

(15) While welcoming the training programmes on the prevention and investigation of torture and cruel, inhuman or degrading treatment that have been developed by the National Legal Institute for judges, prosecutors and attorneys, the Committee remains concerned about the absence of systematized training for police and prison personnel (arts. 7 and 14 of the Covenant).

**The State party should ensure the implementation of a systematic and compulsory training course for all law-enforcement, prison and judicial personnel on the prevention and investigation of torture and cruel, inhuman or degrading treatment or punishment.**

(16) The Committee is concerned at the continuing overcrowding of prisons and at the failure to regularly and independently monitor places of detention (art. 10 of the Covenant).

**The State party should establish an independent mechanism to monitor the places of detention and take measures to eliminate the problems of overcrowding in all its prisons and to guarantee the full respect for the Standard Minimum Rules for the Treatment of Prisoners.**

(17) While welcoming the reform project of the judiciary, which was initiated in 2009, the Committee is concerned about allegations of corruption and a lack of transparency and independence of the judiciary. The Committee is also concerned that certain benefits afforded to the judiciary may contribute to these concerns, such as social benefits, loans, diplomatic immunities and educational expenses, granted for having demonstrated “effectiveness” in their work (art. 14 of the Covenant).

**The State party should adopt the reform project of the judiciary after having reviewed its full compliance with the Covenant and making sure that the structures and mechanisms introduced guarantee the transparency and independence of its institutions. The State party should make sure that the project is drafted, adopted and implemented through a process that integrates the consultation of specialized sectors, including civil society actors. The State party should also take all the necessary measures to guarantee the thorough investigation of all allegations of corruption of the judiciary.**

(18) The Committee notes with regret the high level of domestic violence against women in the State party and the low number of cases dealt with by the judicial system. The Committee is also concerned that marital rape is not criminalized under the Criminal Code (arts. 7, 29 and 14).

**The State party should extend and intensify its strategies of information and prevention of domestic violence against women through information campaigns and the promotion of judicial prosecution of the cases. Specific measures should be taken to facilitate the access of the victims of domestic violence to justice and their protection throughout the legal processes, and to guarantee a specialized professional attention to these cases by the police, the lawyers and the judiciary. The State party should also adopt, without delay, the necessary legislation to criminalize marital rape.**

(19) While taking note of the prohibition of corporal punishment under the Education Law, the Committee is concerned about the continual practice of corporal punishment in all settings (art. 7 of the Covenant).

**The State party should take practical steps to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.**

(20) While welcoming the measures taken by the State party to further reduce maternal mortality, the Committee remains concerned about the high levels of maternal mortality, especially in the rural areas, and the lack of health services for high-risk pregnancy cases (arts. 6 and 24 of the Covenant).

**The State party should urgently take all necessary measures to reduce maternal mortality, including by implementing the project of the nationwide network of national ambulance services and opening new medical clinics in rural areas. It should also include within its priorities improving access to health services for cases of high-risk pregnancies throughout the country.**

(21) While welcoming the progress made through the adoption of legislation against human trafficking, the Committee is concerned about its enforcement and the difficulties victims and witnesses experience in receiving access to legal advice, effective protection and shelters, and adequate compensation and rehabilitation. The Committee is also concerned about the gaps in the criminal prosecution of human trafficking, including in cases that allegedly involve law-enforcement officials in the trafficking and forced prostitution of minors. The Committee regrets that a high proportion of cases of trafficking are dismissed by the courts, and that article 124 of the Criminal Code (on inducement to

engage in prostitution and organization of prostitution) is applied to the majority of prosecuted cases instead of article 113 (on the sale and purchase of human beings), resulting in the application of lighter sanctions (art. 8 of the Covenant).

**The State party should take all the necessary measures to guarantee that all cases of human trafficking are investigated, prosecuted and, if resulting in convictions, adequately sanctioned. The State party should also implement mechanisms to protect witnesses and victims during all stages of the judicial process. State resources should be allocated for the establishment and running of shelters for victims of trafficking.**

(22) While welcoming the progress made in the provision of legal aid services through legal aid centres, the Committee remains concerned about the information provided alleging the lack of independence of the lawyers in the exercise of their profession, and the limited availability of legal aid services due to the lack of financial and human resources (art. 14 of the Covenant).

**The State party should take all the necessary measures to guarantee the independence of lawyers and of the Law Association. It should also ensure that the necessary budgetary allocation and human resources are provided to the legal centres, including in the rural areas, paying special attention to strengthening the access to legal aid services.**

(23) The Committee is concerned about the absence of an alternative civil service that would enable conscientious objectors to military service to exercise their rights in accordance with the provisions of the Covenant. The Committee is also concerned about the exemption fee that can be paid in lieu of doing military service, and the discrimination that may result therefrom (arts. 18 and 26 of the Covenant).

**The State party should put in place an alternative to military service, which is accessible to all conscientious objectors and neither punitive nor discriminatory in nature, cost and/or duration.**

(24) While welcoming the information provided by the State party as to the increase of the number and diversity of religions registered in Mongolia, the Committee remains concerned about allegations that certain religious groups face difficulties during the registration process, exacerbated by burdensome administrative procedures that can take many years to be finalized and that often result in registration for a limited period only (art. 18 of the Covenant).

**The State party should develop a thorough analysis of the administrative and practical difficulties faced by religious groups to register and therefore conduct their activities, and adopt the modifications that are necessary in terms of the formulation and application of the Law on Relations between the State and Religious Institutions (1993) and its regulations to bring them in compliance with the Covenant.**

(25) The Committee is concerned about information received on frequent threats and attacks on journalists and/or their family members, and about the delays that have elapsed since the commencement of the discussion on the draft law on freedom of information in 2001. The Committee also regrets the application of the legislation on defamation in the case of journalists prosecuted after having criticized public servants, or lawyers who contested judges' decisions (art. 19 of the Covenant).

**The State party should guarantee the full compliance of the draft law on freedom of information with the Covenant and enact it. It should consider decriminalizing defamation and ensure that measures are taken to protect journalists from threats and attacks. It should also ensure that all allegations of such threats and attacks are immediately and thoroughly investigated, and that the perpetrators are prosecuted.**

(26) While welcoming the possibility for children of stateless persons to apply for citizenship in their late teenage years, and the six-month legal deadline in which the authorities are supposed to attend any request to acquire Mongolian nationality, the Committee is concerned about allegations according to which, in practice, the process takes between 9 and 13 years. The Committee is also concerned about persons who have become stateless as a result of the legal obligation for individuals to renounce their nationality upon application for another nationality, including ethnic Kazakhs who renounced their Mongolian nationality, but subsequently failed to acquire the Kazakh nationality they applied for and became stateless (arts. 24 and 26 of the Covenant).

**The State party should conduct a thorough analysis of its legal framework to identify the provisions that lead to statelessness, and implement immediate reforms to guarantee the right of all persons to receive a nationality, including for stateless children who were born on the territory of Mongolia to stateless parents. The State party should ensure respect for the six-month legal deadline for the finalization of this procedure.**

(27) While taking note of the measures taken to promote the access to education of the Kazakh people, the Committee remains concerned about the difficulties faced by this population with regard to access to education in their language (arts. 2 and 27 of the Covenant).

**The State party should further promote the access of the Kazakh people to education in their own language.**

(28) The State party should widely disseminate the text of the fifth periodic report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations among the general public and the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country. Hard copies of those documents should be distributed to universities, public libraries, the Parliamentary library and all other relevant places. The Committee also suggests that the report and the concluding observations be translated into the official language of the State party.

(29) In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 5, 12 and 17 above.

(30) The Committee requests the State party to provide, in its sixth periodic report, due for submission by 1 April 2015, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its sixth periodic report, to consult civil society and non-governmental organizations operating in the country.

## 92. Ethiopia

(1) The Committee considered the initial report submitted by Ethiopia (CCPR/C/ETH/1) at its 2804th, 2805th and 2806th meetings (CCPR/C/SR.2804, 2805 and 2806), held on 11 and 12 July 2011. At its 2823rd meeting (CCPR/C/SR.2823), held on 25 July 2011, it adopted the following concluding observations.

### A. Introduction

(2) The Committee welcomes the submission of the initial report of Ethiopia and the information presented therein while regretting that it was submitted as much as 17 years late. The Committee is grateful to the State party for its written replies (CCPR/ETH/Q/1/Add.1) to the list of issues which were supplemented by the oral responses provided by the delegation.

**B. Positive aspects**

(3) The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) The adoption, in 2004 of the Revised Criminal Code which criminalizes all acts of torture and cruel, inhuman or degrading treatment or punishment, sexual violence and harmful traditional practices; and

(b) The submission of a comprehensive core document, in compliance with the revised reporting guidelines, under a joint treaty reporting project of the Ministry of Foreign Affairs, the Ethiopian Human Rights Commission and the Office of the United Nations High Commissioner for Human Rights.

(4) The Committee welcomes the ratification by the State party of the following international instruments:

(a) The Convention on the Rights of Persons with Disabilities, in 2010;

(b) The United Nations Convention against Transnational Organized Crimes and its Protocols, in 2007;

(c) The ILO Convention against Forced or Compulsory Labour No. 29, in 2003; and

(d) The ILO Convention against the Worst Forms of Child Labour No. 182, also in 2003.

**C. Principal matters of concern and recommendations**

(5) While taking note that international human rights treaties which the State party has ratified take precedence over national laws, albeit not over the Constitution, the Committee is concerned that none of the provisions of the Covenant have been invoked before national courts, and that the Covenant has not yet been translated into local languages and published in full in the Federal Negarit Gazette (art. 2).

**The State party should take appropriate measures to raise awareness of the provisions of the Covenant among judges, lawyers and prosecutors to ensure that they are taken into account before national courts. In this regard, the State party should take effective measures to widely disseminate it in national languages. The State Party should also consider ratifying the Optional Protocol to the Covenant.**

(6) While the Committee welcomes the establishment of the Ethiopian Human Rights Commission, it notes that it is not yet compliant with the Paris Principles (General Assembly resolution 48/134). However, the Committee notes the fact that it has not made any recommendation regarding existing or new laws, it has undertaken very few investigations on alleged human rights violations, and its recommendations and suggestions following its monitoring of correctional facilities were not implemented by the State party (art. 2).

**The State party should promptly take the necessary measures to guarantee the development and proper functioning of the National Human Rights Commission. It should take all necessary steps to guarantee its independence, in line with the Paris Principles (General Assembly resolution 48/134, annex).**

(7) While welcoming the efforts of the State party towards establishing equality between men and women, including through the inclusion of the principle in the constitution and the adoption of the National Action Plan on Gender Equality, the Committee notes with concern that there are significant discrepancies in the improvement of the situation of women in the different regions (arts. 2, 3 and 26).

**The State party should continue its efforts to increase in practice the access of women to employment, public life, education, housing and health, in all the regions of the country. The State party should include disaggregated statistical data on this matter in its next periodic report.**

(8) The Committee is concerned that marital rape is not criminalized, in the revised Criminal Code (arts. 2, 3 and 26).

**The State party should criminalize marital rape. It should vigorously prosecute and punish such acts, and provide the police with clear guidelines, together with awareness-raising and other training.**

(9) The Committee is concerned that even if polygamy is *de jure* prohibited at the Federal level, polygamy remains widespread and is still legal under the family laws of certain regional States of Ethiopia. The Committee recalls its view that polygamy violates the dignity of women as set out in the general comment No. 28 (2000) on the equality of rights between men and women, paragraph 24 (arts. 2, 3, and 26).

**The State party should ensure that polygamy is effectively prosecuted at the Federal level and also prohibited at all levels and subject to prosecution. The State party should continue its efforts of raising awareness in order to change mentalities and eradicate polygamy, which is a form of discrimination against women.**

(10) While noting the recent decrease in the number of cases of female genital mutilation and other harmful traditional practices, as indicated in the State party's report, the Committee notes with regret that such practices continue. The Committee regrets the discrepancy in the statistics related to these practices presented by different sources, which makes it difficult for the Committee to have a clear picture of the situation in the country. The Committee also regrets the lack of information on possible cases of prosecution of perpetrators (arts. 2, 3, 7 and 26).

**The State party should further enhance its efforts to prevent and eradicate harmful traditional practices including female genital mutilation and strengthen its awareness-raising and education programmes in that regard, in particular in those communities where the practice remains widespread. It should ensure that perpetrators are brought to justice and present data on this matter in its next report.**

(11) While the Committee acknowledges the efforts of the State party to address and combat trafficking in women and children, the Committee remains concerned about the prevalence of this phenomenon in Ethiopia, about the lack of information on the investigation and prosecution of trafficking cases and the protection of the rights of victims (arts. 3, 8, 24 and 26).

**The State party should reinforce its measures to combat trafficking in women and children and prosecute and punish perpetrators. The State party should collect and submit data in this regard in its next periodic report. The State party should also put in place strong programmes to support the human rights of the victims.**

(12) The Committee is concerned about the criminalization of "homosexuality and other indecent acts", as are other international human rights treaty bodies. As pointed out by the Committee, such criminalization violates the rights to privacy and to protection against discrimination set out in the Covenant. The Committee's concerns are not allayed by the information furnished by the State party that the provision in question is not applied in practice or by its statement that it is important to change mindsets before modifying the law in this regard (arts. 2, 17 and 26).

**The State party should take steps to decriminalize sexual relations between consenting adults of the same sex in order to bring its legislation into line with the Covenant. The**

**State party should also take the necessary steps to put an end to the social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation.**

(13) While the Committee welcomes the development since August 2010 of the out-of-camp policy for Eritrean refugees and is conscious of the increasingly large refugee population within its borders, it is concerned by the difficulties other refugees experience, which are preventing any long-term solution for them, beside resettlement (arts. 2 and 26).

**The State party should strive to promote the integration of asylum-seekers and refugees, including by extending the out-of-camp policy to the extent possible. The Committee invites the State party to ratify the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961).**

(14) The Committee notes with concern that there is no comprehensive mechanism established by the State party to address the protection needs of internally displaced persons, and in particular for those who are displaced as a result of conflict (arts. 2, 3, 12 and 24).

**The State party should, in accordance with international standards on the subject, including the Guiding Principles on Internal Displacement, take measures to: (a) increase protection for displaced persons; (b) formulate and adopt a legal framework and a national strategy covering all phases of displacement; (c) create conditions that offer lasting solutions to displaced persons, including their voluntary and safe return. The Committee invites the State party to consider ratifying the African Union Convention for the Protection and Assistance of Internally Displaced Persons (2009).**

(15) While the Committee appreciates the State party's need to adopt measures to combat acts of terrorism, it regrets the unclear definition of certain offences in Proclamation 652/2009 and is concerned by the scope of some of its provisions, including the criminalization of encouragement of and inducement to terrorism through publication, which can lead to abuse against the media (arts. 2, 15 and 19).

**The State party should ensure that its anti-terrorism legislation defines the nature of those acts with sufficient precision to enable individuals to regulate their conduct accordingly. The State party should ensure that its legislation is limited to crimes that deserve to attract the grave consequences associated with terrorism, and revise its legislation that imposes undue restrictions on the exercise of rights under the Covenant.**

(16) The Committee notes with concern the numerous reports received about serious human rights violations committed in the Somali Regional State of Ethiopia<sup>17</sup> by members of the police and the army, including murder, rape, enforced disappearance, arbitrary detention, torture, destruction of property, forced displacement and attacks on the civilian population, as well as the recent reports of apprehension of foreign journalists in the region. The Committee is also concerned at the lack of cases in which perpetrators of serious crimes have been prosecuted and punished and by the refusal of the State party to have an independent inquiry on the situation (arts. 2, 3, 4, 6, 7 and 12).

**The State party should put a stop to such violations and ensure that all allegations of such violations are effectively investigated, that the alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that the victims have access to effective remedies, including adequate reparation.**

<sup>17</sup> Some information received by the Committee also refers to this area as Ogaden.



(17) The Committee notes with concern numerous reports suggesting that torture and cruel, inhuman or degrading treatments are widespread in the State party and used against detainees by the police, prison officers and military, especially with regard to alleged members of armed insurgent groups active in certain regions of Ethiopia (the Somali Regional State and the Oromia Regional State of Ethiopia).<sup>18</sup> Moreover, perpetrators reportedly very often go unpunished (arts. 2, 6, and 7).

**The State party should (a) guarantee that all allegations of torture or cruel, inhuman or degrading treatment are effectively investigated, and that the alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that the victims have access to effective remedies and adequate reparation; (b) improve the training of State agents in this regard, in order to ensure that all persons who are arrested or held in custody are treated with respect; and (c) in its next report, provide disaggregated data on all allegations of torture.**

(18) The Committee is concerned over allegations of the resort to excessive and sometimes lethal force by the security forces, notably during the post-elections violence in 2005, and by the manner in which the Commission of Inquiry established to investigate these events may be presumed to have applied an inappropriate test of proportionality and necessity, its actual content of which the State party failed to clarify (arts. 6 and 7).

**The State party should take measures to eradicate all forms of excessive use of force by law enforcement officials. It should, in particular (a) establish a mechanism to carry out independent investigations of complaints; (b) initiate proceedings against alleged perpetrators; (c) provide training to law enforcement officers; (d) bring its legislative provisions and policies into line with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and (e) provide adequate reparation to the victims.**

(19) While acknowledging the de facto moratorium on the death penalty, the Committee remains concerned that death sentences are still imposed by courts for crimes which appear to have a political dimension, as well as following in-absentia trials without adequate legal safeguards (arts. 6 and 14).

**The State party should consider abolishing the death penalty. It should ensure that, if the death penalty is imposed, it is only for the most serious crimes and in compliance with article 14 of the Covenant. The State party should consider commuting all death sentences and ratifying the Second Optional Protocol to the Covenant. The State Party should ensure legal safeguards for persons tried in absentia.**

(20) The Committee notes the information provided by the State party regarding the legal safeguards during criminal proceedings. However, the Committee remains concerned that the time for the transportation of an arrested person to a judge is not included in the rule that requires an arrested person to be presented before a judge within 48 hours. It is also concerned by reports that in practice the provision of free legal aid has been seriously impeded by the restrictions imposed on non-governmental organizations (NGOs) by the Proclamation to Provide for the Registration and Regulation of Charities and Societies (CSO) No 621/2009, as free legal aid was frequently provided by NGOs given the lack of capacity of the Public Defender Office (art. 14).

**The State party should ensure that, where a person is undefended, the Office of the Public Defender Office provides all persons suspected of having committed a crime with legal counsel from the outset of their detention. The State party should also take**

<sup>18</sup> Some information received by the Committee also refers to these areas as Ogaden and Oromia.

**steps to guarantee that all the other legal safeguards are implemented in practice. The State party should also remove those restrictions on NGOs which in effect preclude them from offering legal aid services.**

(21) The Committee notes with concern that a statute of the State party totally precludes the possibility of appealing a conviction based on a guilty plea. Although limiting the issues that can be raised on appeal from such a conviction may be consistent with its article 14, paragraph 5, the Covenant does not permit total preclusion of an appeal (art. 14).

**The State party should amend its statute to recognize, within appropriate limits, the right of persons convicted of a criminal offense after a guilty plea to appeal both the sentence and the conviction.**

(22) While acknowledging that submission to sharia courts can only happen with the consent of the parties, the Committee remains concerned by the fact that such courts can take binding decisions, which cannot be appealed against on the substance, in matters such as marriage, divorce, guardianship of minors, and inheritance. The Committee also notes that the Covenant is not part of the laws applied by the sharia courts (art. 14).

**The State party should ensure that all tribunals and courts in Ethiopia operate in accordance with the principles set out in article 14 of the Covenant and paragraph 24 of the Committee's general comment No. 32 (2007). Accordingly, religious courts should not hand down binding judgments recognized by the State, unless the following requirements are met: proceedings before such courts are limited to minor civil and criminal matters, meet the basic requirements of fair trial and other relevant guarantees of the Covenant, and their judgements are validated by State courts in light of the guarantees set out in the Covenant and can, if necessary, be challenged by the parties concerned in a procedure meeting the requirements of article 14 of the Covenant. These principles are notwithstanding the general obligation of the State to protect the rights under the Covenant of any persons affected by the operation of religious courts.**

(23) While taking note of the State party's plans to ease prison overcrowding and improve the conditions of detention, particularly through the construction of new facilities, the Committee regrets the lack of concrete details received about this plan and its implementation. It is concerned that the present prison conditions remain alarming, in particular for women and children, and not compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners. The Committee also notes with regret that the International Committee of the Red Cross (ICRC) is not granted the right of accessing prisons and other places of detention (art. 10).

**The Committee recalls the recommendation made by the Committee against Torture, that the State party should establish an effective independent national system to monitor and inspect all places of deprivation of liberty and to follow up on the outcome of such systematic monitoring. In addition, the State party should grant independent international monitoring mechanisms access to prisons, detention centres and any other places where persons are deprived of their liberty, including in the Somali Regional State.**

(24) The Committee is concerned by provisions of the Proclamation on the Freedom of the Mass Media and Access to Information (No. 591/2008), in particular the registration requirements for newspapers, the severe penalties for criminal defamation, and the inappropriate application of this law in the combat against terrorism, as illustrated by the closure of many newspapers and legal charges brought against some journalists. The Committee is also concerned by reports received about the impossibility of accessing various foreign websites and radio stations (art. 19).

**The State party should revise its legislation to ensure that any limitations on the rights to freedom of expression are in strict compliance with article 19, paragraph 3, of the Covenant, and in particular it should review the registration requirements for newspapers and ensure that media are free from harassment and intimidation.**

(25) The Committee is concerned by the provisions of the Proclamation on Charities and Societies No. 621/2009, which prohibits Ethiopian NGOs from obtaining more than 10 per cent of their budget from foreign donors, and at the same time, prohibits the NGOs considered by the State party to be foreign, from engaging in human rights and democracy related activities. This legislation impedes the realization of the freedom of association and assembly as illustrated by the fact that many NGOs and professional associations were not authorized to register under the new Proclamation or had to change their area of activity (arts. 21 and 22).

**The State party should revise its legislation to ensure that any limitations on the right to freedom of association and assembly are in strict compliance with articles 21 and 22 of the Covenant, and in particular it should reconsider the funding restrictions on local NGOs in the light of the Covenant and it should authorize all NGOs to work in the field of human rights. The State party should not discriminate against NGOs that have some members who reside outside of its borders.**

(26) The Committee notes the recognition of the rights of ethnic and linguistic communities to self-determination at the level of the regional State according to the “ethnic federalism” established by the Constitution, but is concerned about the lack of recognition and participation in public life of the ethnic and linguistic minorities living outside their designated “ethnic regions” (arts. 1, 2, 25, 26, 27).

**The State party should recognize the existence of the various ethnic and linguistic minorities in each regional State and ensure their adequate political representation and participation at regional State and federal levels.**

(27) The State party should widely disseminate the Covenant, the text of the initial report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into official languages of the State party. The Committee also requests the State party, when preparing its first periodic report, to broadly consult with civil society, the National Human Rights Institution and non-governmental organizations.

(28) In accordance with rule 71, paragraph 5, of the Committee’s rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee’s recommendations made in paragraphs 16, 17 and 25 above.

(29) The Committee requests the State party, in its next periodic report, due to be submitted on 29 July 2014, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.

### 93. **Bulgaria**

(1) The Committee considered the third periodic report submitted by Bulgaria (CCPR/C/BGR/3) at its 2808th and 2809th meetings (CCPR/C/SR.2808 and 2809), held on 13 and 14 July 2011, and adopted at its 2823rd meeting (CCPR/C/SR.2823), held on 25 July 2011, the following concluding observations.

**A. Introduction**

(2) The Committee welcomes the submission of the third periodic report of Bulgaria and the information presented therein, but regrets that it was submitted late. It expresses appreciation for the opportunity to renew constructive dialogue with the high level delegation on the measures taken by the State party during the reporting period to implement the provisions of the Covenant. The Committee also appreciates the written replies (CCPR/C/BGR/Q/3/Add.1) to the list of issues which were supplemented by the oral responses provided by the delegation, as well as the additional information provided to it in writing.

**B. Positive aspects**

(3) The Committee welcomes the following legislative and institutional steps taken by the State party:

- (a) The adoption of the Law on Alternate Military Service, in 1999;
- (b) The amendment of the Law on Defense and the Armed Forces of the Republic of Bulgaria, in 2007;
- (c) The abolition of military service as of 1 January 2008;
- (d) The adoption of the Law on Combating Trafficking in Human Beings, in 2003, and the creation of the National Anti-Trafficking Commission;
- (e) The amendment to the Constitution, in 2007, establishing the Supreme Judicial Council and limiting judicial immunity;
- (f) The adoption of an Integrated Strategy for Combating Crime and Corruption, in 2010.

(4) The Committee welcomes the ratification by the State party of the following international instruments:

- (a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, in 1999;
- (b) The United Nations Convention against Transnational Organized Crime, in 2001;
- (c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in 2001;
- (d) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2006;
- (e) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2001;
- (f) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2001.

**C. Principal matters of concern and recommendations**

(5) While taking note of article 5, paragraph 4, of the Constitution, according to which the provisions of the Covenant take precedence over domestic law, and welcoming the existence of mechanisms whereby the victims of violations of the Covenant can access remedies, the Committee is concerned that domestic courts do not systematically consider the Covenant as part of the legal framework to which they should refer, and that the Supreme Judicial Council has no record of cases where the provisions of the Covenant have been directly invoked (art. 2 of the Covenant).

The State party should take all the necessary measures to ensure that judges, prosecutors and lawyers have knowledge of the provisions of the Covenant, so as to enable them to invoke and apply the Covenant in relevant cases. The State party should include in its next periodic report detailed examples of the application of the Covenant by the domestic courts and access to remedies provided for in the legislation by individuals claiming a violation of the rights contained in the Covenant.

(6) While welcoming the implementation of the National Strategy to Encourage Equality between Sexes (2009–2015), the Committee is concerned that discriminatory practices and messages remain widespread, including in the media, and that no specific legislation has been adopted on equal opportunities for women and men (arts. 2, 3 and 26).

**The State party should develop additional policies for effective gender equality and adopt and implement specific legislation on equality between men and women, thereby officially recognizing the particular nature of discrimination against women and adequately addressing it. In addition, the State party should adopt the necessary measures to monitor and put an end to gender-stereotype messages in society.**

(7) While taking note of the Framework Programme for Integration of Roma in Bulgarian Society (2010–2020), the Committee is concerned at the on-going widespread discrimination suffered by the Roma population, especially in terms of access to education, justice, employment, housing and commercial establishments. The Committee is also concerned at the low number of related cases investigated, tried and sanctioned (arts. 2, 25, 26 and 27).

**The State party should pursue its efforts to eradicate stereotypes and widespread discrimination against Roma by, inter alia, increasing awareness-raising campaigns that promote tolerance and respect for diversity. The State party should adopt measures to promote equal access to opportunities and services in all fields and at all levels through appropriate actions in order to address existing inequalities. Finally, the State party should ensure that discrimination cases are systematically investigated, that those responsible are brought to justice and punished, and that adequate compensation is provided to the victims.**

(8) The Committee is concerned at the large number of cases of torture and other inhuman and degrading treatment, including failure to provide lifesaving medical assistance, and racially-motivated discrimination, especially against persons of Roma origin, at the hands of law enforcement officers. The Committee is also concerned that on prosecution, none of these cases has resulted in sanctions against the police officers involved, and that remedies have not been provided to the victims. The Committee is concerned that the present system shows a possible lack of objectivity and credibility, and facilitates impunity for police officers involved in human rights violations (arts. 2, 7, 9 and 14).

**The State party should take the necessary measures to eradicate all forms of harassment by the police and ill-treatment during police investigations, including prompt investigations, the prosecution of perpetrators and the adoption of provisions for effective protection and remedies to the victims. The requisite level of independence of the judicial investigations involving law enforcement officials should be guaranteed. The State party should ensure the creation and implementation of an independent oversight mechanism on prosecution and convictions in the cases of complaints against criminal conduct by members of the police.**

(9) The Committee regrets the recent manifestations of intolerance towards religious minorities and non-traditional religious groups in Bulgaria (110 cases of reported vandalism against mosques in the last two decades, and assault of Muslims praying in front of the Banya Bashi mosque in downtown Sofia on 20 May 2011). Taking note of the existing

legal framework on anti-discrimination and hate speech, the Committee regrets the poor enforcement of the related legislation (arts. 18, 20 and 26).

**The State party should take all necessary measures to promote the prevention, investigation and sanction of acts of hate crime, hate speech and harassment against minorities and religious communities, especially Roma and Muslims, through the full implementation of the existing legislation and nationwide awareness-raising campaigns targeting minorities, religious groups and the population at large.**

(10) The Committee is concerned at information about violent and discriminatory practices against children and adults with disabilities in medical institutional settings, including deprivation of liberty, the use of restraints and the enforced administration of intrusive and irreversible treatments such as neuroleptic drugs. The Committee is also concerned at the difficulties faced by institutionalized persons to reintegrate into society, and at the absence of psychosocial rehabilitation programmes for them (arts. 2, 6, 7, 9, 10 and 26).

**The State party should implement a policy of zero tolerance with regard to violent and discriminatory practices against children and adults with disabilities in medical settings, and take the necessary measures to guarantee effective and thorough investigation of all allegations of torture and ill-treatment, as well as the adequate prosecution and sanction of the alleged perpetrators. The State party should also set up and implement psychosocial rehabilitation programmes for institutionalized persons.**

(11) The Committee is concerned that, as the State party has acknowledged, its legislation relating to the conditions under which law enforcement officials may use potentially lethal force seems to be inconsistent with relevant international standards, which may entail a serious risk to the right to life. The Committee notes that the State party's present rules, adopted through the Ministry of Interior Act (now under review), does not seem to clearly lay down conditions in full compliance with international standards on the use of lethal force (art. 6).

**The State party should ensure, as a matter of urgency, the conformity of its legislation and regulations with the exigencies of the right to life, in particular as reflected in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

(12) The Committee regrets the low number of cases of domestic violence, in particular against women, that are actually brought to justice and sanctioned. In that regard, the Committee regrets that the criminal prosecution of such cases is generally limited to those where the offender violates the administrative order for protection, and that, under article 161(1) of the Penal Code, allegations of domestic violence must be initiated upon a complaint of the aggrieved in cases of light or average bodily harm (arts. 2, 3, 6 and 26).

**The State party should vigorously pursue its efforts to prevent domestic violence, in particular domestic violence against women, and encourage the victims to report the cases to the authorities. The State party should initiate gender-sensitive monitoring of these cases and analyse the reasons why they are rarely reported. The State party should also secure the criminal investigation, prosecution and sanction of all cases of domestic violence.**

(13) While taking note of the amendments made to the Criminal Code since 2004, the Committee regrets that national legislation still does not criminalize torture and inhumane and degrading treatment in accordance with international standards, whereas articles 287 and 143 of the Criminal Code do not comprehensively cover these crimes (art. 7).

**The State party should adopt a definition of torture that fully complies with articles 1 and 4 of the Convention against Torture, and with article 7 of the Covenant.**

(14) While welcoming the fact that corporal punishment is unlawful in the home, schools, penal system, alternative care settings and situations of employment, the Committee is concerned that children are still victims of such practices and that no information is available on the judicial prosecution of such practices (arts. 7 and 24).

**The State party should take practical measures to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment and should continue with public information campaigns to raise awareness about its harmful effects.**

(15) The Committee is concerned about the widespread practice of informal marriage arrangements in the Roma community, especially for girls under the age of 14, despite the minimum age for marriage of 18 years (arts. 7 and 23).

**The State party should adopt and implement a countrywide preventive mechanism for girls under the legal age for marriage through community awareness-raising strategies focusing on the consequences of early and informal marriage arrangements and the rights and duties of the persons involved.**

(16) The Committee is concerned at the insufficient procedural safeguards in the Refugee Status Determination (RSD) procedure, particularly with regard to the delay between the initial registration of the request and access to RSD, and the lack of provisions in the Law on Asylum and Refugees guaranteeing and audio recording of the RSD interviews and access to personal files by the applicants and their legal representatives before a decision is taken (arts. 7, 10 and 13).

**The State party should review the asylum procedure and the decisions on applications for international protection by the State Agency for Refugees (SAR) with a view to ensuring that all asylum-seekers have access to a fair and efficient asylum system.**

(17) The Committee remains concerned that persons with mental disabilities do not have access to adequate procedural and substantive safeguards to protect themselves from disproportionate restrictions in their enjoyment of rights guaranteed under the Covenant. In particular, the Committee is concerned that persons deprived of their legal capacity have no recourse to means to challenge violations of their rights, that there is no independent inspection mechanism of mental health institutions and that the system of guardianship often includes the involvement of officials of the same institution as the confined individual (arts. 2, 9, 10, 25 and 26).

**The State party should:**

(a) **Review its policy of depriving persons with mental disabilities of their legal capacity and establish the necessity and proportionality of any measure on an individual basis with effective procedural safeguards, ensuring in any event that all persons deprived of their legal capacity have prompt access to an effective judicial review of the decisions;**

(b) **Ensure that persons with mental disabilities or their legal representatives are able to exercise the right to effective remedy against violations of their rights, and consider providing less restrictive alternatives to forcible confinement and treatment of persons with mental disabilities;**

(c) **Take appropriate measures to prevent all forms of ill-treatment in psychiatric institutions, including through the establishment of inspection mechanisms that take into account the United Nations Principles for the Protection of Persons with**

**Mental Illness and the Improvement of Mental Health Care (adopted by the General Assembly in resolution 46/119).**

(18) The Committee remains concerned at the overcrowding of prisons and at the sanitary conditions of detention facilities, including the lack of access to drinking water, and regular water and electricity cuts. The Committee is also concerned at the deficient medical services, limited accessibility to specialized assistance and lack of trained penitentiary officers. In addition, the Committee is concerned at alleged practices of corruption within the penitentiary institutions by which some detainees have access to privileges (art. 10).

**The State party should guarantee full respect for the Standard Minimum Rules for the Treatment of Prisoners and implement its projects for the construction of new prisons. The State party should also ensure independent and prompt investigation and the prosecution of State officials and private actors responsible for corruption in the penitentiary. In addition, the State party should enhance its efforts to introduce non-incarceration alternatives in the penal sanction system.**

(19) The Committee notes the adoption of the plan Vision for Children's De-institutionalization in the Republic of Bulgaria on 24 February 2010, which envisages closing down all child-care institutions over the next 15 years and eliminating the institutionalization of children under the age of 3. Nonetheless, the Committee remains concerned at the number of children who will remain in these institutions for the next 15 years. In addition, the Committee regrets the lack of concrete measures, under the plan, to set up a community-based system of care and the absence of a monitoring procedure to assess the implementation and results of the plan (arts. 24 and 10).

**The State party should urgently take action to close all children's institutions and establish practical alternatives to institutionalization with sufficient funds to create and maintain a sustainable system of care compatible with the rights of the Covenant. The State party should also establish a monitoring procedure to assess the implementation and results of the plan of action to close all children's institutions and create new alternatives for child care.**

(20) While noting the recent measures adopted in this regard, the Committee is concerned at the allegations of persistent corruption within the justice system in general and its negative impact on the full enjoyment of the rights guaranteed by the Covenant. In addition, the Committee is concerned at the lack of convincing results in the fight against high-level corruption and the resulting lack of public trust in the administration of justice (art. 14).

**The State party should strengthen its efforts to combat corruption in all spheres of society and guarantee prompt and thorough investigation of all incidents of suspected corruption and, in particular, give full effect to its Integrated Strategy for Combating Crime and Corruption (see. para. 3 (f) above).**

(21) The Committee is concerned that the principle of independence of the judiciary is not fully respected by organs outside the judiciary, nor is it fully applied within the judiciary. The Committee is also concerned that this situation, in turn, leads to a lack of trust in the judiciary by the public at large (art. 14).

**The State party should make sure that the principle of independence of the judiciary is fully respected and understood, and should develop awareness-raising activities on the key values of an independent judiciary aimed at the judicial authorities, law enforcement officials and for the population at large.**

(22) The Committee remains concerned at the widespread practice of telephone tapping under the Special Surveillance Means Act, amounting to interference by a public authority with the right to respect for correspondence and private life. The Committee is also



concerned that individuals who have been subjected to unlawful surveillance are not systematically informed thereof, and therefore are not in a position to access legal remedies (arts. 14 and 17).

**The State party should take all the necessary measures to guarantee that monitored telephone conversations are considered only as complementary evidence in criminal cases and are practised strictly in relation to court proceedings. It should ensure that the persons who were wrongfully monitored are systematically informed thereof and have access to adequate remedies.**

(23) The Committee regrets the State party's delay in reforming the juvenile justice system (see CRC/C/BGR/CO/2, paras. 6–7) (arts. 14 and 24).

**The State party should consider as a matter of priority the adoption and implementation of the reform of the juvenile justice system in compliance with the rights protected under the Covenant.**

(24) The Committee is concerned at the increasing number of forced evictions of Roma from their homes, including through large-scale evictions such as the execution of the eviction order delivered on 23 June 2011 to the Dobri Jeliaskov Roma community in Sofia district. Such practices constitute potential gross violations of a wide range of internationally recognized human rights and may only be carried out under exceptional circumstances and in full accordance with international human rights law (arts. 17 and 26).

**The State party should strictly limit the use of forced eviction through the adoption of all feasible alternatives to eviction, and guarantee alternative housing for affected families.**

(25) While taking note that religious freedom is recognized as a fundamental right under domestic law, the Committee is concerned at the ambiguity in the Religious Denominations Act of 2002 which incorporates a specific registration procedure for the Bulgarian Orthodox Church (arts. 2 and 18).

**The State party should revise the provisions of the Religious Denominations Act of 2002 in order to harmonize the registration procedure and modalities for all religious organizations. The State party should also ensure the training of local authorities and law enforcement officials to avoid unnecessary interference with the right to freedom of religion.**

(26) The Committee is concerned at manifestations of hate speech and intolerance in the public domain, which are echoed by certain media (art. 19).

**The State party should strengthen measures to prevent and prohibit the advocacy of hate speech, intolerance and discrimination, in full compliance with the principles of article 19 of the Covenant.**

(27) The State party should widely disseminate the Covenant, the Optional Protocols to the Covenant, the text of the third periodic report, the written responses it has provided to the list of issues drawn up by the Committee, and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The report and the concluding observations should be translated into the official language of the State party.

(28) In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 8, 11 and 21 above.

(29) The Committee requests the State party to provide, in its fourth periodic report due for submission on 29 July 2015, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its fourth periodic report, to broadly consult with and involve civil society and non-governmental organizations operating in the country.

#### 94. **Kazakhstan**

(1) The Committee considered the initial report submitted by Kazakhstan (CCPR/C/KAZ/1) at its 2810th, 2811th and 2812th meetings (CCPR/C/SR.2810, 2811 and 2812), held on 14 and 15 July 2011, and adopted at its 2826th meeting (CCPR/C/SR.2826), held on 26 July 2011, the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the submission of the initial report of Kazakhstan, albeit somewhat late, and the information presented therein. It expresses appreciation for the opportunity to engage in constructive dialogue with the State party's high-level delegation on the measures that the State party has taken to implement the provisions of the Covenant since the ratification of the Covenant in 2006. The Committee appreciates the written replies (CCPR/C/KAZ/Q/1/Add.1) to the list of issues, which were supplemented by the oral responses provided by the delegation, and the additional information that was provided to it in writing.

##### **B. Positive aspects**

(3) The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) The establishment of the National Commission on Women's Affairs and Family and Demographic Policy;

(b) The enactment of the Act on State Guarantees of Equal Rights and Opportunities for Men and Women, in 2009.

(4) The Committee welcomes the ratification by the State party of the following international instruments:

(a) The International Convention for the Protection of All Persons from Enforced Disappearance, on 27 February 2009;

(b) The Optional Protocol to the International Covenant on Civil and Political Rights, on 30 June 2009;

(c) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 22 October 2008;

(d) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 31 July 2008.

##### **C. Principal matters of concern and recommendations**

(5) The Committee expresses concern at the lack of adequate information in the State party's report on the constitutional framework and political system under which the rights under the Covenant are guaranteed. The Committee is also concerned that the State party has not yet submitted a core document (art. 2 of the Covenant).

**The Committee urges the State party to provide comprehensive information on the constitutional framework within which the rights under the Covenant are guaranteed. In this regard, the Committee invites the State party to submit a core document in**

accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6, chap. I) which were adopted by the inter-committee meeting of the human rights treaty bodies.

(6) While taking note of the provision contained in article 4(3) of the State party's Constitution which states that international treaties shall have precedence over the State party's laws and shall be directly applicable, the Committee is concerned at the lack of clarity on the status of the Covenant in the domestic legal order following the decisions of the Constitutional Council, which has established supremacy of the Constitution over international treaty law and declared unenforceable any treaty provision that is in conflict with the Constitution. In this regard, the Committee is further concerned at the impact that the exercise of the presidential power of veto may have on the implementation of the Covenant. The Committee is also concerned that the provisions of the Covenant are rarely invoked before national courts (art. 2).

**The State party should take all necessary measures to ensure legal clarity on the status and applicability of the Covenant and other international human rights treaties ratified by the State party. The State party should also take appropriate measures to raise awareness of the Covenant among judges, lawyers and prosecutors to ensure that its provisions are taken into account before national courts.**

(7) While noting the State party's intentions to confer on the Commissioner for Human Rights (CHR) the additional mandate to act as a national preventive mechanism on torture under its Ombudsman Plus project, the Committee is concerned that the CHR was established by a presidential decree and has not applied for accreditation to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The Committee is also concerned at the CHR's lack of independence and inadequate budgetary and human resources to undertake its current mandate (art. 2).

**The State party should strengthen its efforts to ensure that the Commissioner for Human Rights enjoys full independence. In this regard, the State party should also provide it with adequate financial and human resources in line with the Paris Principles (General Assembly resolution 48/134, annex). The Committee further recommends that the Commissioner for Human Rights apply for accreditation to the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. Finally, when establishing the national preventive mechanism as provided for under the Optional Protocol to the Convention against Torture, the State party should ensure that it does not compromise, but rather improves the execution of its core functions as a national human rights institution in line with the Paris Principles.**

(8) While the Committee appreciates the State party's need to adopt measures to combat acts of terrorism, including the formulation of appropriate legislation to punish such acts, it regrets reports that law enforcement officials target vulnerable groups such as asylum-seekers and members of Islamic groups in their activities to combat terrorism (arts. 2 and 26).

**The State party should adopt measures to ensure that the activities of its law enforcement officials in the fight against terrorism do not target individuals solely on the basis of their status or religious belief and manifestation. Furthermore, the State party should ensure that any measures to combat terrorism are compatible with the Covenant and international human rights law. In this regard, the State party should compile comprehensive data, to be included in its next periodic report, on the implementation of anti-terrorism legislation and how it affects the enjoyment of rights under the Covenant.**

(9) The Committee expresses concern that women remain underrepresented in both the public and private sectors, particularly in decision-making positions, notwithstanding that women register better outcomes in the acquisition of higher education compared with their male counterparts. The Committee is also concerned at the prevalent negative stereotypes regarding the roles of women in society. The Committee, however, notes the State party's efforts to improve gender equality, such as the adoption of the Gender Equality Strategy, which sets a 30 per cent goal for female representation in all spheres of life (arts. 2, 3 and 26).

**The State party should strengthen its efforts to increase the participation of women in the public and private sectors, and if necessary, through appropriate temporary special measures to give effect to the provisions of the Covenant. The State party should take the necessary measures to eliminate the prevailing negative stereotypes against women and also ensure that female representation in both sectors reflects the progress made in improving their levels of education.**

(10) The Committee expresses concern at the prevalence of violence against women, and that the Domestic Violence Act does not encourage women to report incidents of violence against them. The Committee also expresses concern at the increased number of children who die as a result of domestic violence. However, the Committee notes the enactment of the Domestic Violence Act of 2009 (arts. 3 and 7).

**The State party should adopt a comprehensive approach to prevent and address violence, in particular domestic violence, against women in all its forms and manifestations including through awareness-raising on its harmful effects. In this regard, the State party should review the Domestic Violence Act to ensure that it encourages female victims of violence to report any incidents to law enforcement authorities. The State party should ensure that cases of violence against women are thoroughly investigated, that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and that the victims are provided adequate reparations.**

(11) The Committee expresses concern at the prevalence of teenage pregnancies and clandestine abortions that lead to deaths. The Committee regrets the lack of specific programmes designed to prevent teenage pregnancy and the issues arising from recourse to illegal abortions (arts. 6 and 7).

**The State party should adopt measures to help girls avoid unwanted pregnancies and recourse to illegal abortions that could put their lives at risk. The State party should take appropriate measures to raise awareness and ensure that reproductive health services and facilities are readily available and accessible in the State party.**

(12) The Committee is concerned at the inconsistencies regarding the types of crimes subject to the death penalty as provided in the Constitution and the Criminal Code. In particular it notes that whereas the Constitution prescribes that the death penalty can be established by law only for terrorist crimes entailing loss of life and grave crimes in times of war, the Criminal Code provides for an expanded list of crimes that are subject to the death penalty. The Committee also notes that the State party has only signed, but not yet ratified, the Second Optional Protocol to the Covenant. The Committee notes the moratorium on the death penalty with respect to certain crimes (art. 6).

**The Committee encourages the State party to abolish the death penalty and to accede to the Second Optional Protocol to the Covenant.**

(13) While noting the delegation's acknowledgement that diplomatic assurances made under the Shanghai Cooperation Organisation do not release the State party from monitoring the conduct of the requesting State after the return of an individual, the

Committee notes with concern that the State party may be willing to rely on such diplomatic assurances to return foreign nationals to countries where torture and serious human rights violations might occur. The Committee is also concerned at reports that individuals, particularly Uzbek and Chinese nationals, who might have valid claims for asylum or refugee status have no protection under the principle of non-refoulement due to the State party's obligations under the Minsk Convention on Legal Assistance for Persons from the Commonwealth of Independent States (arts. 7 and 13).

**The State party should exercise utmost care in relying on diplomatic assurances when considering the return of foreign nationals to countries where they are likely to be subjected to torture or serious human rights violations. The State party is encouraged to continue to monitor the treatment of such persons after their return and take appropriate action when the assurances are not fulfilled. Furthermore, the State party should fully comply with the principle of non-refoulement and ensure that all persons in need of international protection receive appropriate and fair treatment at all stages, in compliance with the Covenant.**

(14) While noting the adoption of an action plan for 2010–2012 on the implementation of recommendations of the Committee against Torture, the Committee expresses concern at increased reports of torture and the low rate of investigation of allegations of torture by the Special Procurators. The Committee is also concerned that the maximum penalty (10 years' imprisonment) for torture resulting in death under article 347-1 of the Criminal Code is too low (art. 7).

**The State party should take appropriate measures to put an end to torture by, inter alia, strengthening the mandate of the Special Procurators to carry out independent investigations of alleged misconduct by law enforcement officials. In this connection, the State party should ensure that law enforcement personnel continue to receive training on the prevention of torture and ill-treatment by integrating the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) of 1999 in all training programmes for law enforcement officials. The State party should thus ensure that allegations of torture and ill-treatment are effectively investigated, that perpetrators are prosecuted and punished with appropriate sanctions, and that the victims receive adequate reparation. In this regard, the State party is encouraged to review its Criminal Code to ensure that penalties on torture are commensurate with the nature and gravity of such crimes.**

(15) While taking note of the existence of the Child Rights Law of 2002 and the prohibition of corporal punishment in schools and the penal system, the Committee expresses concern at the permissibility of corporal punishment in the home and foster care establishments where it continues to be accepted and practised as a form of discipline by parents and guardians (arts. 7 and 24).

**The State party should take practical steps to put an end to corporal punishment in schools and institutions. It should also encourage non-violent forms of discipline as alternatives to corporal punishment in family settings and conduct public information campaigns to raise awareness about its harmful effects.**

(16) The Committee regrets the increase in the number of reported crimes related to trafficking in human beings. The Committee also regrets the increase in the number of children employed in cotton and tobacco fields. The Committee notes the State party's efforts to combat trafficking in human beings, such as the establishment of the Interdepartmental Commission against human trafficking (art. 8).

**The State party should strengthen its efforts to combat trafficking in human beings by ensuring that efforts are directed towards establishing and dealing with the root**

causes of trafficking. Furthermore, the State party should ensure that children are protected from the harmful effects of child labour, particularly those employed in cotton and tobacco fields. In this regard, the State party should ensure that all cases of human trafficking and use of child labour are effectively investigated, that perpetrators are prosecuted and punished with appropriate sanctions, and that the victims are adequately compensated.

(17) The Committee is concerned that overcrowding in detention centres and prisons continues to be a problem. The Committee is also concerned at the increased number of reported cases of inter-prisoner violence, self-mutilation and deaths in prisons. The Committee notes the State party's efforts to construct new prison facilities in order to improve prison conditions (arts. 6 and 10).

**The State party should take urgent measures to address overcrowding in detention centres and prisons, including through increased resort to alternative forms of punishment, such as electronic monitoring, parole and community service. The State party should end the practice of tolerating inter-prisoner violence and should take measures to address the underlying causes of self-mutilation by prisoners. In this regard, the State party should ensure that all cases of inter-prisoner violence and deaths are thoroughly investigated and that the perpetrators are prosecuted and punished with appropriate sanctions. Furthermore, public oversight commissions should be granted the ability to conduct unannounced inspections of all prisons and detention facilities.**

(18) The Committee is concerned at the need for individuals to obtain an exit visa in order to be able to travel abroad, a process that is allegedly onerous and bureaucratic. It is also concerned that the State party maintains the compulsory address registration system of individuals in their places of residence, which may interfere with their enjoyment of rights under article 12 of the Covenant (art. 12).

**The State party should abolish the exit visa requirement and ensure that the requirement that individuals register their place of residence is in full compliance with the provisions of article 12 of the Covenant.**

(19) The Committee expresses concern that despite the enactment of a National Refugee Law of 2010, its application does not guarantee the rights protected under Covenant. The Committee also expresses concern at the lack of cooperation with the United Nations High Commissioner for Refugees (UNHCR) in its mandate to conduct refugee status determination, which in effect excludes the protection provided by UNHCR in matters of non-refoulement (arts. 7 and 13).

**The State party should review its legislation on refugees to ensure that it complies with the Covenant and international standards on refugee and asylum law. The State party should also ensure that it provides the necessary cooperation to UNHCR in order to allow it to execute its mandate and functions as provided for under UNHCR Statutes, the 1951 Convention and other international treaties ratified by the State party in order to guarantee the rights provided under the Covenant.**

(20) The Committee is concerned at reports of undue restrictions on access to lawyers by individuals, especially in cases involving State secrets where lawyers are, inter alia, required to seek State clearance before representing their clients. The Committee is also concerned at the lack of legal obligation on the part of police officers to inform accused persons of their right to legal assistance (art. 14).

**The State party should ensure that any measures taken to protect State secrets should not involve undue restrictions on an individual's right to access lawyers of their choice. Furthermore, the State party should ensure that in all cases of arrest, the**

**arresting officers execute the obligation, at the time of arrest, of informing accused persons of their right to a lawyer.**

(21) The Committee expresses concern at reports that corruption is widespread in the judiciary. The Committee also expresses concern at the lack of an independent judiciary in the State party and at the conditions for appointing and dismissing judges, which do not guarantee the proper separation of powers between the executive and the judiciary. The Committee also expresses concern regarding the State party's response about the President's role as "coordinator" of all three branches of government. The Committee is particularly concerned at reports that the Office of the Procurator General has a dominating role in the judicial system, such that it has the power to stay the execution of judgements handed down by courts (arts. 2 and 14).

**The State party should take steps to safeguard, in law and practice, the independence of the judiciary and its role as the sole administrator of justice, and guarantee the competence, independence and tenure of judges. The State party should, in particular, take measures to eradicate all forms of interference with the judiciary and ensure prompt, thorough, independent and impartial investigations into all allegations of interference, including by way of corruption, and prosecute and punish perpetrators, including judges who may be complicit. The State party should review the powers of the Office of the Procurator General to ensure that the office does not interfere with the independence of the judiciary.**

(22) The Committee expresses concern at reports that the prosecution has undue influence on the judiciary, thereby affecting the outcome of judicial decisions, such that acquittals in criminal cases are as low as 1 per cent. The Committee is also concerned at increased reports that judges admit as evidence testimony obtained under torture (arts. 2 and 14).

**The State party should conduct a study to establish the causes of the low acquittals in criminal cases in order to ensure that the rights of accused persons under the Covenant are guaranteed and protected throughout the trial process. Furthermore, the State party should ensure that measures are put in place to guarantee the exclusion by the judiciary of evidence obtained under torture.**

(23) While noting that the Military Duty and Military Service Act provides for citizens to be excused from military service if they have taken a holy order or are permanently employed in a registered religious association, the Committee regrets that the Act does not expressly recognize a person's right to exercise conscientious objection to military service and does not provide for alternative military service (art. 18).

**The Committee encourages the State party to take necessary measures to review its legislation with a view to providing for alternative military service. The State party should also ensure that the law clearly stipulates that individuals have the right to conscientious objection to military service, which they should be able to exercise before the commencement of military service and at any stage during military service.**

(24) The Committee is concerned that the Freedom of Religion and Religious Associations Act and the State Registration of Legal Entities and Registration of Branches and Representative Offices Act provide for the compulsory registration of religious associations and groups. The Committee is also concerned that the practice of a religion and the conduct of any religious activities without registration is subject to administrative penalties (art. 18).

**The State party should ensure that its law relating to the registration of religious organizations respects the rights of persons to freely practise and manifest their religious beliefs as provided for under the Covenant.**

(25) The Committee expresses concern at reports that the State party does not respect the right to freedom of expression. The Committee, in particular, expresses concern at reports that threats, assaults, harassment and intimidation of journalists and human rights defenders have severely reduced the exercise of freedom of expression. The Committee also expresses concern at the existence of provisions under the Criminal Code on defamation of public officials, and recently the enactment of the Law on the Leader of the Nation, which introduces a new article 317-1 to the Criminal Code prohibiting and punishing insults and other offences against the honour of the President (arts. 19).

**The State party should ensure that journalists, human rights defenders and individuals are able to freely exercise the right to freedom of expression in accordance with the Covenant. In this regard, the State party should review its legislation on defamation and insults to ensure that it fully complies with the provisions of the Covenant. Furthermore, the State party should desist from using its law on defamation solely for purposes of harassing or intimidating individuals, journalists and human rights defenders. In this regard, any restrictions on the exercise of freedom of expression should comply with the strict requirements of article 19, paragraph 3, of the Covenant.**

(26) The Committee expresses concern at reports that the right to freedom of assembly is not respected in the State party. The Committee is particularly concerned at reports of undue restrictions on the right to freedom of assembly, such as the designation of areas for holding assemblies, which are routinely located in the outskirts of city centres in order to attract low public attention. The Committee is also concerned at reports that applications for permission to hold assemblies are often declined on the grounds of public order and national security, but that people continue to stage unauthorized assemblies, which put them at risk of being arrested and charged for breaching a number of administrative regulations, thereby severely restricting their right to freedom of assembly (art. 21).

**The State party should re-examine its regulations, policy and practice, and ensure that all individuals under its jurisdiction fully enjoy their rights under article 21 of the Covenant. It should ensure that the exercise of this right is subjected to restrictions which comply with the strict requirements of article 21 of the Covenant.**

(27) The Committee expresses concern at the application of the law on the registration of political parties, which imposes undue restrictions on the registration of political parties and public associations, resulting in major practical obstacles and delays in the registration of opposition parties and groups (arts. 22 and 25).

**The State party should bring its law, regulations and practice governing the registration of political parties in line with the Covenant. It should in particular ensure that the process of registration complies with articles 22, paragraph 2, and 25 of the Covenant. The State party should not use the process of registration to victimize groups that are considered as holding contrary political views to the ruling party.**

(28) While noting that minority groups, including ethnic minorities, are represented in the People's Assembly, the Committee is concerned at their limited participation in other decision-making bodies particularly in the houses of parliament, namely, the *Majilis* and Senate (arts. 26 and 27).

**The State party should strengthen its efforts to promote the participation of minority groups in political life and decision-making bodies by, inter alia, adopting temporary special measures. The State party is requested in its second periodic report to provide data disaggregated by ethnic groups on the representation of minority groups in political bodies and decision-making positions.**



(29) The State party should widely disseminate the Covenant, the Optional Protocols to the Covenant, the text of the initial report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The report and the concluding observations should be translated into the other official language of the State party.

(30) In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 7, 21, 25 and 26 above.

(31) The Committee requests the State party to provide, in its next periodic report due for submission on 29 July 2014, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its next periodic report, to broadly consult civil society and non-governmental organizations operating in the country.

## V. Consideration of communications under the Optional Protocol

95. Individuals who claim that any of their rights under the International Covenant on Civil and Political Rights have been violated by a State party, and who have exhausted all available domestic remedies, may submit written communications to the Human Rights Committee for consideration under the Optional Protocol. No communication can be considered unless it concerns a State party to the Covenant that has recognized the competence of the Committee by becoming a party to the Optional Protocol. Of the 167 States that have ratified, acceded to or succeeded to the Covenant, 113 have accepted the Committee's competence to deal with individual complaints by becoming parties to the Optional Protocol (see annex I, sect. B).

96. Consideration of communications under the Optional Protocol is confidential and takes place in closed meetings (art. 5, para. 3, of the Optional Protocol). Under rule 102 of the Committee's rules of procedure, all working documents issued for the Committee are confidential unless the Committee decides otherwise. However, the author of a communication and the State party concerned may make public any submissions or information bearing on the proceedings, unless the Committee has requested the parties to respect confidentiality. The Committee's final decisions (Views, decisions declaring a communication inadmissible, decisions to discontinue the consideration of a communication) are made public; the names of the authors are disclosed, unless the Committee decides otherwise, at the request of the authors.

97. An overview of the States parties' obligations under the Optional Protocol is contained in the Committee's general comment No. 33 (2008).<sup>19</sup>

### A. Progress of work

98. The Committee started its work under the Optional Protocol at its second session, in 1977. Since then, 2,076 communications concerning 85 States parties have been registered for consideration by the Committee, including 116 registered during the period covered by the present report. At present, the status of the 2,076 communications registered is as follows:

- (a) Consideration concluded by the adoption of Views under article 5, paragraph 4, of the Optional Protocol: 882, including 731 in which violations of the Covenant were found;
- (b) Declared inadmissible: 569;
- (c) Discontinued or withdrawn: 302;
- (d) Not yet concluded: 323.

99. A high number of communications are received per year in respect of which complainants are advised that further information would be needed before their communications could be registered for consideration by the Committee, or that their cases cannot be dealt with by the Committee, for example because they fall clearly outside the

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<sup>19</sup> *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 40, vol. I (A/64/40 (Vol. I)), annex V.*

scope of application of the Covenant or of the Optional Protocol. A record of this correspondence is kept by the secretariat of OHCHR.

100. At its 100th, 101st and 102nd sessions, the Committee adopted Views on 151 cases. These Views are reproduced in annex VI (Vol. II (Part One)).

101. The Committee also concluded the consideration of 12 cases by declaring them inadmissible. These decisions are reproduced in annex VII (Vol. II (Part Two)).

102. Under the Committee's rules of procedure, the Committee will normally decide on the admissibility and merits of a communication together. Only in exceptional circumstances will the Committee address admissibility separately. A State party which has received a request for information on admissibility and merits may, within two months, object to admissibility and apply for separate consideration of admissibility. Such a request will not, however, release the State party from the requirement to submit information on the merits within six months, unless the Committee, its Working Group on Communications or its designated special rapporteur decides to extend the time for submission of information on the merits until after the Committee has ruled on admissibility.

103. The Committee decided to discontinue the consideration of 28 communications for reasons such as withdrawal by the author, or because the author or counsel failed to respond to the Committee despite repeated reminders, or because the authors, who had expulsion orders pending against them, were allowed to stay in the countries concerned.

104. In six cases decided during the period under review, the Committee noted that the State party had failed to cooperate in the examination of the author's allegations. The States parties in question are Belarus (in one communication), Kyrgyzstan (in one communication), the Libyan Arab Jamahiriya (in two communications), South Africa (in one communication) and Tajikistan (in one communication). The Committee deplored that situation and recalled that it was implicit in the Optional Protocol that States parties should transmit to the Committee all information at their disposal. In the absence of a reply, due weight had to be given to the author's allegations, to the extent that they had been properly substantiated.

## B. Committee's caseload under the Optional Protocol

105. The table below sets out the pattern of the Committee's work on communications over the last eight years, to 31 December 2010.

### Communications dealt with from 2003 to 2010

<i>Year</i>	<i>New cases registered</i>	<i>Cases concluded<sup>a</sup></i>	<i>Pending cases at 31 December</i>
2010	96	83	444
2009	68	76	431
2008	87	88	439
2007	206	47	455
2006	96	109	296
2005	106	96	309
2004	100	78	299
2003	88	89	277

<sup>a</sup> Total number of cases decided (by the adoption of Views, inadmissibility decisions and decisions to discontinue consideration).

## C. Approaches to considering communications under the Optional Protocol

### 1. Special Rapporteur on new communications

106. At its thirty-fifth session, in March 1989, the Committee decided to designate a special rapporteur authorized to process new communications and requests for interim measures as they were received, i.e. between sessions of the Committee. At the Committee's 101st session, in March 2011, Sir Nigel Rodley was designated Special Rapporteur. In the period covered by the present report, 116 new communications were transmitted to States parties under rule 97 of the Committee's rules of procedure, requesting information or observations relevant to the questions of admissibility and merits. In 16 cases, the Special Rapporteur issued requests for interim measures pursuant to rule 92 of the Committee's rules of procedure. The competence of the Special Rapporteur to issue and, if necessary, to withdraw requests for interim measures under rule 92 of the rules of procedure is described in the annual report for 1997.<sup>20</sup>

### 2. Competence of the Working Group on Communications

107. At its thirty-sixth session, in July 1989, the Committee decided to authorize the Working Group on Communications to adopt decisions declaring communications admissible when all members of the Group so agreed. Failing such agreement, the Working Group refers the matter to the Committee. It also does so whenever it believes that the Committee itself should decide the question of admissibility. During the period under review, one communication was declared admissible by the Working Group on Communications. The Working Group can also adopt decisions declaring communications inadmissible if all members so agree. However, the decision will be transmitted to the Committee plenary, which may confirm it without formal discussion or examine it at the request of any Committee member.

## D. Individual opinions

108. In its work under the Optional Protocol, the Committee seeks to adopt decisions by consensus. However, pursuant to rule 104 of the Committee's rules of procedure, members can add their individual or dissenting opinions to the Committee's Views. Under this rule, members can also append their individual opinions to the Committee's decisions declaring communications admissible or inadmissible.

109. During the period under review, individual opinions were appended to the Committee's Views or decisions concerning cases No. 1304/2004 (*Khoroshenko v. Russian Federation*), No. 1410/2005 (*Yevdokimov and Rezanov v. Russian Federation*), No. 1470/2006 (*Toktakunov v. Kyrgyzstan*), No. 1478/2006 (*Kungurov v. Uzbekistan*), No. 1503/2006 (*Akhadov v. Kyrgyzstan*), No. 1507/2006 (*Sechremelis et al. v. Greece*), No. 1535/2006 (*Shchetka v. Ukraine*), No. 1545/2007 (*Gunan v. Kyrgyzstan*), No. 1557/2007 (*Nystrom et al. v. Australia*), No. 1564/2007 (*X.H.L. v. Netherlands*), No. 1611/2007 (*Bonilla Lerma v. Colombia*), No. 1621/2007 (*Raihman v. Latvia*), Nos. 1642–1741/2007 (*Jeong et al. v. Republic of Korea*), No. 1760/2008 (*Cochet v. France*), No. 1763/2008 (*Pillai et al. v. Canada*), No. 1780/2008 (*Aouabdia et al. v. Algeria*), No. 1813/2008 (*Akwanga v. Cameroon*), No. 1876/2009 (*Singh v. France*) and No. 1959/2010 (*Warsame v. Canada*).

<sup>20</sup> Official Records of the General Assembly, Fifty-second Session, Supplement No. 40, vol. I (A/52/40 (vol. I)), para. 467.

## E. Issues considered by the Committee

110. A review of the Committee's work under the Optional Protocol from its second session in 1977 to its ninety-ninth session in July 2010 can be found in the Committee's annual reports for 1984 to 2010, which contain summaries of the procedural and substantive issues considered by the Committee and of the decisions taken. The full texts of the Views adopted by the Committee and of its decisions declaring communications inadmissible under the Optional Protocol are reproduced in annexes to the Committee's annual reports to the General Assembly. The texts of the Views and decisions are also available in the treaty body database on the OHCHR website ([www.ohchr.org](http://www.ohchr.org)).

111. Nine volumes of *Selected Decisions of the Human Rights Committee under the Optional Protocol*, from the second to the sixteenth sessions (1977–1982), from the seventeenth to the thirty-second sessions (1982–1988), from the thirty-third to the thirty-ninth sessions (1988–1990), from the fortieth to the forty-sixth sessions (1990–1992), from the forty-seventh to the fifty-fifth sessions (1993–1995), from the fifty-sixth to the sixty-fifth sessions (March 1996 to April 1999), from the sixty-sixth to the seventy-fourth sessions (July 1999 to March 2002), from the seventy-fifth to the eighty-fourth sessions (July 2002 to July 2005) and from the eighty-fifth to ninety-first sessions (October 2005 to October 2007) have been published. Some volumes are available in English, French, Russian and Spanish. The most recent volumes are currently available in only one or two languages, which is most regrettable. As domestic courts increasingly apply the standards contained in the International Covenant on Civil and Political Rights, it is imperative that the Committee's decisions can be consulted worldwide in a properly compiled and indexed volume, available in all the official languages of the United Nations.

112. The following summary reflects developments concerning issues considered during the period covered by the present report.

### 1. Procedural issues

#### (a) *Inadmissibility "ratione temporis" (Optional Protocol, art. 1)*

113. In case No. 1748/2008 (*Bergauer et al. v. Czech Republic*), the authors claimed that the State party, by not passing any restitution law applicable to Sudeten Germans whose property had been confiscated at the end of the Second World War, in contrast to the law which granted compensation to persons whose property was confiscated under the Communist regime, had violated article 26 of the Covenant. The Committee recalled that the Covenant entered into force for the State party on 23 December 1975 and the Optional Protocol on 12 March 1991, that the Covenant cannot be applied retroactively, that the authors' property was confiscated in 1945 and that this was an instantaneous act without continuing effects. Therefore, the Committee considered that, pursuant to article 1 of the Optional Protocol, it was precluded *ratione temporis* from examining the alleged violations that occurred prior to the entry into force of the Covenant and the Optional Protocol for the State party.

#### (b) *Claims not substantiated (Optional Protocol, art. 2)*

114. Article 2 of the Optional Protocol provides that "individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration". Although an author does not need to prove the alleged violation at the admissibility stage, he or she must submit sufficient material substantiating the allegation for purposes of admissibility. A "claim" is, therefore, not just an allegation, but an allegation supported by substantiating material. In cases where the Committee finds that the

author has failed to substantiate a claim for purposes of admissibility, it has held the communication inadmissible, in accordance with rule 96 (b) of its rules of procedure.

115. In case No. 1814/2008 (*P.L. v. Belarus*), the author claimed that the discretionary decision of the State-owned Belpochta company not to retain the *Vitebsky Courier M* newspaper in its list of periodicals available for subscription amounted to an unjustified limitation of his right to receive information, as protected by article 19, paragraph 2, of the Covenant. Although the Committee considered that, even if in some circumstances denial of access to State-owned or State-controlled distribution services may amount to an interference with rights protected by article 19, in the present case, the author had not provided sufficient information that would permit the Committee to evaluate the extent of the interference or to determine whether the denial of such access was discriminatory. The Committee further noted that even if the newspaper in question was not included in the Belpochta subscription list and was not delivered to his home address by mail, the author was able to obtain it by other means. Accordingly, the Committee considered that the author had failed to sufficiently substantiate his claim.

116. Other claims declared inadmissible for lack of substantiation were included in cases No. 1304/2004 (*Khoroshenko v. Russian Federation*), No. 1344/2005 (*Korolko v. Russian Federation*), No. 1346/2005 (*Tofanyuk v. Ukraine*), No. 1383/2005 (*Katsora et al. v. Belarus*), No. 1402/2005 (*Krasnov v. Kyrgyzstan*), No. 1412/2005 (*Butovenko v. Ukraine*), No. 1449/2006 (*Umarov v. Uzbekistan*), No. 1458/2006 (*González v. Argentina*), No. 1470/2006 (*Toktakunov v. Kyrgyzstan*), No. 1503/2006 (*Akhadov v. Kyrgyzstan*), No. 1517/2006 (*Rastorguev v. Poland*), No. 1521/2006 (*Y.D. v. Russian Federation*), No. 1530/2006 (*Bozbey v. Turkmenistan*), No. 1557/2007 (*Nystrom et al. v. Australia*), No. 1611/2007 (*Bonilla Lerma v. Colombia*), No. 1617/2007 (*L.G.M. v. Spain*), No. 1622/2007 (*L.D.L.P. v. Spain*), No. 1636/2007 (*Onoufriou v. Cyprus*), No. 1758/2008 (*Jessop v. New Zealand*), No. 1763/2008 (*Pillai et al. v. Canada*), No. 1769/2008 (*Ismailov v. Uzbekistan*), No. 1812/2008 (*Levinov v. Belarus*), No. 1887/2009 (*Peirano Basso v. Uruguay*) and No. 1994/2010 (*I.S. v. Belarus*).

(c) *Competence of the Committee with respect to the evaluation of facts and evidence*  
(Optional Protocol, art. 2)

117. A specific form of lack of substantiation is represented by cases where the author invites the Committee to re-evaluate issues of fact and evidence addressed by domestic courts. The Committee has repeatedly recalled its jurisprudence that it is not for it to substitute its views for the judgement of the domestic courts on the evaluation of facts and evidence in a case, unless the evaluation is manifestly arbitrary or amounts to a denial of justice. If a jury or court reaches a reasonable conclusion on a particular matter of fact in the light of the evidence available, the decision cannot be held to be manifestly arbitrary or to amount to a denial of justice. Claims involving the re-evaluation of facts and evidence have thus been declared inadmissible under article 2 of the Optional Protocol. This was true for cases No. 1344/2005 (*Korolko v. Russian Federation*), No. 1346/2005 (*Tofanyuk v. Ukraine*), No. 1605/2007 (*Zyuskin v. Russian Federation*), No. 1636/2007 (*Onoufriou v. Cyprus*) and No. 1994/2010 (*I.S. v. Belarus*).

118. In case No. 1404/2005 (*N.Z. v. Ukraine*), the author alleged a violation of article 14, paragraphs 1, 3 (e) and 5, of the Covenant, on the grounds that he was convicted based on a false testimony, that the medical forensic experts' examination did not find incriminating evidence, that the court wrongly assessed the evidence, that he was not allowed to defend himself during the trial, that his requests to obtain an additional experts' examination and questioning of a witness were denied, and that the Supreme Court considered his appeal superficially and upheld the sentence of the Appellate Court of the Lviv Region despite his innocence. The Committee recalled its jurisprudence that it is for the courts of the States

parties to assess the facts in a particular case, and that the Committee will defer to this assessment, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice. Since the author failed to substantiate, for purposes of admissibility, that the conduct of the courts had been arbitrary or amounted to denial of justice, the Committee declared these claims inadmissible under article 2 of the Optional Protocol.

(d) *Inadmissibility because of incompatibility with the provisions of the Covenant (Optional Protocol, art. 3)*

119. In case No. 1521/2006 (*Y.D. v. Russian Federation*), the author claimed to have been the victim of a violation of article 5 of the Covenant, as his right to work and protection from unemployment had been unlawfully restricted. The Committee noted that the right to work is not among those protected under the Covenant and declared the claim inadmissible *ratione materiae* under article 3 of the Optional Protocol.

120. In case No. 1994/2010 (*I.S. v. Belarus*), the author claimed that after having enjoyed his right to free education guaranteed by the constitution, he was forced to work following a mandatory allocation under the threat of a heavy financial penalty. He also claimed that this mandatory allocation was established by a law on education that was applied to him retroactively, in violation of article 14, paragraph 1, of the Covenant. The Committee observed that article 14, paragraph 1, does not contain a prohibition of the retroactive application of laws regulating civil matters and that article 15, paragraph 1, prohibits retroactive application of laws only in relation to criminal law matters. Accordingly, the Committee considered that the author's allegation was incompatible with the provisions of the Covenant and declared it inadmissible under article 3 of the Optional Protocol.

(e) *Inadmissibility for abuse of the right to submit a communication (Optional Protocol, art. 3)*

121. Under article 3 of the Optional Protocol, the Committee can declare inadmissible any communication which it considers to be an abuse of the right to submit communications. During the period under consideration, the question of abuse was raised in connection with a number of cases where several years had elapsed between the exhaustion of domestic remedies and the submission of the communication to the Committee. The Committee recalled that the Optional Protocol establishes no time limit for the submission of communications and that the passage of time, other than in exceptional cases, does not in itself constitute an abuse of the right to submit a communication.

122. In case No. 1583/2007 (*Jahelka v. Czech Republic*), the Committee noted that the authors submitted their communication nine years and 10 days after the last decision issued by a domestic court and that they had not provided any reasonable justification for this delay. The Committee therefore considered the delay to be so unreasonable and excessive as to amount to an abuse of the right of submission and declared the communication inadmissible under article 3 of the Optional Protocol.

123. In case No. 1532/2006 (*Sedljar and Lavrov v. Estonia*), the Committee noted that four and a half years had elapsed since the exhaustion of domestic remedies and two years and seven months since the European Court of Human Rights declared the case inadmissible. In the circumstances of the case, the Committee did not consider the delay to amount to an abuse of the right of submission.

124. At its 100th session, the Committee decided to amend rule 96 of its rules of procedure, which describes the admissibility criteria, in order to define the situations where the delay could constitute an abuse of the right to submit a communication. Rule 96 (c), which simply indicated that the Committee should ascertain "that the communication does not constitute an abuse of the right of submission", was completed as follows:

An abuse of the right of submission is not, in principle, a basis of a decision of inadmissibility *ratione temporis* on grounds of delay in submission. However, a communication may constitute an abuse of the right of submission, when it is submitted after 5 years from the exhaustion of domestic remedies by the author of the communication, or, where applicable, after 3 years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay taking into account all the circumstances of the communication. (CCPR/C/3/Rev.9)

125. This rule, in its amended form, will apply to communications received by the Committee after 1 January 2012.

(f) *The requirement of exhaustion of domestic remedies (Optional Protocol, art. 5, para. 2 (b))*

126. Pursuant to article 5, paragraph 2 (b), of the Optional Protocol, the Committee shall not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies. However, it is the Committee's constant jurisprudence that the rule of exhaustion applies only to the extent that those remedies are effective and available. The State party is required to give details of the remedies which it submitted had been made available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective. Furthermore, the Committee has held that authors must exercise due diligence in the pursuit of available remedies. Mere doubts or assumptions about their effectiveness do not absolve the authors from exhausting them.

127. In case No. 1768/2008 (*Pingault-Parkinson v. France*), the Committee considered, inter alia, that the author's counsel did not apply to the appropriate courts in order to assert the author's rights and that, as a result, domestic remedies had not been exhausted.

128. In case No. 1761/2008 (*Giri et al. v. Nepal*), the Committee took note of the State party's argument that the author failed to avail himself of the relief offered by the Compensation Relating to Torture Act. It observed, however, the strict limitation period provided in the Act, whereby a complaint must be filed within 35 days from the date of the infliction of torture. It would have been materially impossible for the author to avail himself of this mechanism, as he was still being detained incommunicado within this time. The Committee further noted that despite the filing, by the author, of a writ in habeas corpus, no investigation of these allegations was undertaken four years after the violations were brought to the State party's attention. The Committee concluded that this constituted an unreasonably prolonged delay.

129. In case No. 1344/2005 (*Korolko v. Russian Federation*) the Committee recalled its jurisprudence according to which supervisory review procedures against court decisions that have entered into force constitute an extraordinary means of appeal which is dependent on the discretionary power of a judge or prosecutor. When such review takes place, it is limited to issues of law only and does not permit any review of facts and evidence. In such circumstances, the Committee considered that it was not precluded by article 5, paragraph 2 (b), from examining the communication. The Committee reached a similar conclusion in cases No. 1383/2005 (*Katsora et al. v. Belarus*), No. 1449/2006 (*Umarov v. Uzbekistan*), No. 1503/2006 (*Akhadov v. Kyrgyzstan*) and No. 1812/2008 (*Levinov v. Belarus*).

130. In case No. 1633/2007 (*Avadanov v. Azerbaijan*), the Committee observed that the State party had merely stated *in abstracto* that the author's torture allegations had never been raised in the domestic courts, without addressing the alleged threats made against the author and his family. The Committee concluded that, in the circumstances and in the absence of further information from the State party, it could not be held against the author that he had not raised these allegations before the State party authorities for fear that this



might result in his victimization and the victimization of his family. The Committee also considered relevant in this regard that the author had been successful in obtaining refugee status in a third State. Therefore, the Committee accepted the author's argument that, for him, domestic remedies in Azerbaijan were ineffective and unavailable and considered that it was not precluded by article 5, paragraph 2 (b), of the Optional Protocol from examining the communication.

131. In case No. 1813/2008 (*Akwanga v. Cameroon*), the Committee observed that the State party had merely listed *in abstracto* the existence of remedies under the Criminal Procedure Code, without however relating them to the circumstances of the author's case and without showing how they might provide effective redress. With regard to the author's claims on the fairness of the proceedings, the Committee noted that on 10 December 1997, the author filed a motion before the Supreme Court to challenge the jurisdiction of the military court and to request that the trial be heard under the common law jurisdiction in a language he could understand. The Committee noted that this motion remained unanswered, which amounted to an unreasonably prolonged delay. Accordingly, the Committee concluded that article 5, paragraph 2 (b), of the Optional Protocol did not preclude the examination of the communication.

132. In case No. 1959/2010 (*Warsame v. Canada*), concerning the decision to deport the author to Somalia, the Committee noted the arguments by the State party that the author failed to make an application on humanitarian and compassionate grounds and to appeal to the Federal Court the negative decisions of the Immigration Appeal and the pre-removal risk assessment decision of the Minister's Delegate. The Committee observed that, as acknowledged by the State party, an application on humanitarian and compassionate grounds does not operate to stay removal. It considered that the possibility of the author's removal to Somalia, a country in which the human rights and humanitarian situation is particularly precarious, while his application on humanitarian and compassionate grounds was under review would render the remedy ineffective. It therefore concluded that, for purposes of admissibility, the author did not need to make an application on humanitarian and compassionate grounds. With regard to the author's failure to appeal the negative decision by the Immigration Appeal Division, the Committee observed that the decision was based on section 64 of the Immigration Refugee Protection Act, which provides that an author has no right of appeal if he is found to be inadmissible because of serious criminality. The author was found to be inadmissible and on this basis a removal order was issued against him. An appeal would only have been successful if the author could have raised a "fairly arguable case", a "serious question to be determined" or an error in law or jurisdiction. The State party did not explain how the author could have met this threshold considering the clear domestic legislation and jurisprudence. In the specific circumstances of the case, the Committee, therefore, considered that an application for leave to appeal to the Federal Court did not constitute an effective remedy. The Committee further observed that the author failed to seek review of the negative pre-removal risk assessment decision by the Minister's Delegate and that the refusal to grant legal aid to seek judicial review before the Federal Court was upheld by the director of appeals of the Ontario Legal Aid. The Committee noted that the author appeared to have been represented through legal aid in his domestic and international proceedings and that he, in vain, tried to obtain legal aid to pursue judicial review of the negative pre-removal risk assessment decision. It therefore concluded that the author had pursued domestic remedies with the necessary diligence and that article 5, paragraph 2 (b), of the Optional Protocol did not preclude the examination of the communication.

133. During the period under review, other communications or specific claims were declared inadmissible for failure to exhaust domestic remedies, including cases No. 1304/2004 (*Khoroshenko v. Russian Federation*), No. 1532/2006 (*Sedljar and Lavrov v.*

*Estonia*), No. 1546/2007 (*V.H. v. Czech Republic*), and No. 1636/2007 (*Onoufriou v. Cyprus*).

(g) *Interim measures under rule 92 of the Committee's rules of procedure*

134. Under rule 92 of its rules of procedure, the Committee may, after receipt of a communication and before adopting its Views, request a State party to take interim measures in order to avoid irreparable damage to the victim of the alleged violations. The Committee continues to apply this rule on appropriate occasions, mostly in cases submitted by or on behalf of persons who have been sentenced to death and are awaiting execution and who claim that they were denied a fair trial. In view of the urgency of such communications, the Committee has requested the States parties concerned not to carry out the death sentences while the cases are under consideration. Stays of execution have specifically been granted in this connection. Rule 92 has also been applied in other circumstances, for instance in cases of imminent deportation or extradition which may involve or expose the author to a real risk of violation of rights protected under the Covenant. In connection with the communications decided during the period under review, this was true in cases No. 1449/2006 (*Umarov v. Uzbekistan*), No. 1763/2008 (*Pillai et al. v. Canada*) and No. 1959/2010 (*Warsame v. Canada*).

## 2. Substantive issues

(a) *The right to an effective remedy (Covenant, art. 2, para. 3)*

135. At the origin of case No. 1507/2006 (*Sechremelis et al. v. Greece*) was a decision by which the Livadia Court of First Instance ordered Germany to pay compensation to the relatives of the victims of the massacre perpetrated by the German occupation forces in Distomo on 10 June 1944. The issue before the Committee was whether the refusal of the Minister of Justice to authorize enforcement of the decision, on the basis of article 923 of the Code of Civil Procedure, constituted a breach of the right to effective remedy as provided under article 2, paragraph 3, with reference to the right to a fair hearing enshrined in article 14, paragraph 1, of the Covenant. The Committee considered that the protection guaranteed by article 2, paragraph 3, and article 14, paragraph 1, of the Covenant would not be complete if it did not extend to the enforcement of decisions adopted by courts in full respect of the conditions set up in article 14. In the instant case, the Committee noted that article 923 of the Code of Civil Procedure, by requiring the prior consent of the Minister of Justice for the Greek authorities to enforce the decision, imposed a limitation to the rights to a fair hearing and to effective remedy. The question was whether this limitation was justified. The Committee noted the State party's reference to relevant international law on State immunity as well as the Vienna Convention of 1969 on the Law of Treaties. It also noted the State party's statement that the limitation did not impair the very essence of the authors' right to an effective judicial protection; that it could not be ruled out that the national court's decision may be enforced at a later date, for example if the foreign State enjoying immunity from execution gave its consent to the taking of measures of constraint by the Greek authorities, thereby voluntarily waiving the application of the international provisions in its favour; and that this was a possibility expressly provided for by the relevant provisions of international law. The Committee also noted the authors' contention that Germany was not covered by immunity from legal proceedings. In the particular circumstances of the case, without prejudice to future developments of international law as well as those developments that may have occurred since the massacre perpetrated in 1944, the Committee considered that the refusal of the Minister of Justice to give consent to enforcement measures did not constitute a breach of article 2, paragraph 3, read together with article 14, paragraph 1, of the Covenant.

136. In case No. 1556/2007 (*Novaković v. Serbia*), the Committee had to determine whether the State party had failed in its obligations regarding article 6 and article 2 of the Covenant in connection with the death of the author's son as a result of inadequate medical treatment. The Committee found that there was insufficient evidence before it to attribute direct responsibility to the State for failure to meet its obligation under article 6 of the Covenant. Nevertheless, it found that there had been a breach of the State party's obligation under the Covenant to properly investigate the death of the victim and take appropriate action against those responsible, which amounted to a violation of article 2, paragraph 3, in conjunction with article 6 of the Covenant.

137. In case No. 1608/2007 (*L.M.R. v. Argentina*), the Committee observed that the judicial remedies sought at the domestic level to guarantee access by the victim to a termination of pregnancy were resolved favourably for the victim by the Supreme Court. However, to achieve this result, the victim had to appear before three separate courts and the pregnancy was prolonged by several weeks, with attendant consequences for her health that ultimately led her to resort to illegal abortion. For these reasons, the Committee considered that the victim did not have access to an effective remedy, which constituted a violation of article 2, paragraph 3, in relation to articles 3, 7 and 17 of the Covenant.

138. Other communications in which the Committee found violations of article 2, paragraph 3, read together with other provisions of the Covenant, include cases No. 1610/2007 (*L.N.P. v. Argentina*), No. 1761/2008 (*Giri et al. v. Nepal*) and 1776/2008 (*Ali Bashasha and Hussein Bashasha v. Libyan Arab Jamahiriya*).

(b) *Right to life (Covenant, art. 6)*

139. In case No. 1756/2008 (*Moidunov and Zhumbaeva v. Kyrgyzstan*), the Committee concluded that in the circumstances and in the absence of persuasive arguments by the State party rebutting the suggestion by the author that her son was killed in custody, and in the light of the information in the forensic expertise inconsistent with the State party's arguments, the State party was responsible for arbitrary deprivation of the victim's life, in breach of article 6, paragraph 1.

140. In cases No. 1304/2004 (*Khoroshenko v. Russian Federation*) and No. 1503/2006 (*Akhadov v. Kyrgyzstan*), given that the authors had been sentenced to death following a trial held in violation of fair trial guarantees, the Committee concluded that the authors were also victims of violations of their rights under article 6, read in conjunction with article 14 of the Covenant. A similar conclusion was reached in case No. 1545/2007 (*Gunan v. Kyrgyzstan*), where the Committee decided that, in the light of its findings of a violation of article 14, the author was also a victim of a violation of his rights under article 6, paragraph 2, read in conjunction with article 14.

141. In case No. 1458/2006 (*González v. Argentina*), the Committee noted that, although it was not possible to conclude from the information submitted by the author that her son had been detained, the information did confirm the existence of the corpse of a person who apparently died a violent death, along with indications that it may have been the author's son. While the judicial proceedings failed to explain these facts or identify those responsible, the State party had not refuted the version of the facts submitted by the author, notably with respect to State responsibility in her son's disappearance. The Committee referred to its general comment No. 31 (2004), according to which States parties must establish appropriate judicial and administrative mechanisms for addressing claims of rights

violations.<sup>21</sup> A failure by the State party to investigate alleged violations could give rise to a separate violation of the Covenant. In the present case, the information before the Committee indicated that neither the author nor her son had access to such remedies. The Committee also observed that the friendly settlement proceeding initiated between the author and the State was not concluded. Accordingly, the Committee determined that the facts before it revealed a violation of article 6, paragraph 1, of the Covenant in respect of the author's son, and of article 2, paragraph 3, of the Covenant, read in conjunction with article 6, paragraph 1, in respect of the author and her son.

142. In case No. 1776/2008 (*Ali Bashasha and Hussein Bashasha v. Libyan Arab Jamahiriya*), the Committee recalled its general comment No. 6 on the right to life, which states, inter alia, that States parties should take specific and effective measures to prevent the disappearance of individuals and establish facilities and procedures to investigate thoroughly, by an appropriate impartial body, cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.<sup>22</sup> The Committee observed that the victim's family was provided with his death certificate, without any explanation as to the cause or the exact place of his death or any information on any investigations undertaken by the State party. In the circumstances, the Committee found that the right to life enshrined in article 6 had been violated.

143. In case No. 1780/2008 (*Aouabdia et al. v. Algeria*), regarding the disappearance of the author's husband, the Committee reiterated the importance that it attaches to States parties' establishment of appropriate judicial and administrative mechanisms for addressing alleged violations of rights under domestic law. It referred to its general comment No. 31, which states that failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. The information before the Committee indicated that the victim did not have access to an effective remedy, in that the State party failed in its obligation to protect his life, and concluded that the facts before it revealed a violation of article 6 of the Covenant, read in conjunction with article 2, paragraph 3.

144. In case No. 1959/2010 (*Warsame v. Canada*), the Committee noted the author's claim that his removal from Canada to Somalia would expose him to a risk of irreparable harm in violation of articles 6, paragraph 1 and 7, of the Covenant. The Committee recalled its general comment No. 31, in which it referred to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm. The Committee observed that the author, who had never lived in Somalia, did not speak the language, had limited or no clan support and did not have any family in Puntland, would face a real risk of harm under articles 6, paragraph 1, and 7. It therefore concluded that his deportation to Somalia would, if implemented, constitute a violation of these articles.

(c) *Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Covenant, art. 7)*

145. In case No. 1304/2004 (*Khoroshenko v. Russian Federation*), the Committee observed that, according to the State party's submission, the Prosecutor's office issued decisions refusing to open an investigation into the author's torture allegations on three occasions and that these decisions had been confirmed by the courts. The Committee also

<sup>21</sup> *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40, vol. I (A/59/40 (Vol. I)), annex III, para. 15.*

<sup>22</sup> *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V.*

observed that neither the verdict or the decisions of the Prosecutor's office, nor the State party's numerous submissions provided any detail as to the concrete steps taken by the authorities to investigate the author's allegations. Accordingly, the Committee considered that the State party had failed to demonstrate that its authorities did address the torture allegations advanced by the author expeditiously and adequately, in the context of both domestic criminal proceedings and the communication and that due weight had to be given to the author's allegations. The Committee, therefore, concluded that the facts before it disclosed a violation of the rights of Mr. Khoroshenko under articles 7 and 14, paragraph 3 (g), of the Covenant.

146. In case No. 1404/2005 (*N.Z. v. Ukraine*), the Committee noted the author's arguments in relation to articles 7 and 14, paragraph 3 (g), that he was subjected to ill-treatment by police officers to force him to confess guilt. The State party argued that no medical records were submitted in support of his allegations and that, on the contrary, there was a record that he was examined by medical doctors on the day of his arrest, which revealed no bodily injuries. The author, in turn, claimed that he only had a conversation with a psychiatrist in the presence of the police officers but offered no details of the alleged ill-treatment. On the basis of the conflicting information before it, the Committee concluded that the author had failed to sufficiently substantiate his claim of ill-treatment and forced confession and declared the claim inadmissible under article 2 of the Optional Protocol.

147. In case No. 1402/2005 (*Krasnov v. Kyrgyzstan*), the author alleged that her 14-year-old son was beaten and pressured by officers for the purpose of extracting a confession from him. The Committee recalled its jurisprudence that the burden of proof cannot rest alone on the author of the communication, especially considering that the authors and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and to provide to the Committee the information available to it. The State party, however, did not provide any information as to whether any inquiry was undertaken by the authorities to address the detailed and specific allegations advanced by the author. In these circumstances, due weight had to be given to these allegations. The Committee considered, therefore, that the information contained in the file did not demonstrate that the State party's competent authorities gave due consideration to the complaints of the author's son about being subjected to physical pressure, and concluded that the facts amounted to a violation of the rights of the author's son under article 7.

148. In case No. 1608/2007 (*L.M.R. v. Argentina*), the author claimed that by preventing her daughter from obtaining a termination of pregnancy within the terms of the criminal law, the State party had violated her rights under the Covenant. The Committee considered that the State party's omission, in failing to guarantee the right of the author's daughter to a termination of pregnancy, as provided under article 86.2 of the Criminal Code, when her family so requested, caused her physical and mental suffering constituting a violation of article 7 of the Covenant that was made especially serious by the victim's status as a young girl with a disability. The Committee also considered that the facts revealed a violation of article 17, paragraph 1, of the Covenant.

149. In case No. 1633/2007 (*Avadanov v. Azerbaijan*), the Committee held that although it was unable, based on the material before it, to make a positive finding of the ill-treatment of the author and his wife by the State party's law-enforcement officers, it was implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant and to furnish to the Committee the information available to it. The State party, however, did not provide any

information as to whether any inquiry was undertaken by the authorities in the context of the communication to address the detailed and specific allegations advanced by the author in a substantiated way. In these circumstances, due weight had to be given to these allegations. The Committee considered, therefore, that the State party had failed in its duty to adequately investigate the allegations put forward by the author and concluded that the facts as presented disclosed a violation of article 7, read in conjunction with article 2, paragraph 3.

150. In case No. 1751/2008 (*Aboussedra et al. v. Libyan Arab Jamahiriya*), the Committee held that to have exposed the victim to acts of torture, to have kept him in captivity for more than 20 years and to have prevented him from communicating with his family and the outside world constituted a violation of article 7. With respect to the victim's wife and two children, the Committee noted the anguish and distress that they suffered as a result of his disappearance and concluded that this fact constituted a violation of article 7, read in conjunction with article 2, paragraph 3, in respect to them.

151. In case No. 1780/2008 (*Aouabdia et al. v. Algeria*), the Committee concluded that the incommunicado detention of the victim since 1994 and the fact that he was prevented from communicating with his family and the outside world constituted a violation of article 7 of the Covenant in his regard. Regarding his wife and their six children, the Committee acknowledged the suffering and distress caused to them by the disappearance of the victim, of whom they had had no news for almost 17 years. Although they learned indirectly that he had been sentenced to death in absentia, they were never able to obtain official confirmation. The Committee therefore considered that those facts revealed a violation of article 7 of the Covenant, read alone and in conjunction with article 2, paragraph 3, with regard to the wife and children.

152. In case No. 1761/2008 (*Giri et al. v. Nepal*), the Committee recalled its general comment No. 20 (1992), in which it indicated that it did not consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; and that the distinctions depended on the nature, purpose and severity of the treatment applied.<sup>23</sup> Nevertheless, the Committee considered it appropriate to identify treatment as torture if the facts so warrant. In so doing, it was guided by the definition of torture found in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which states in its article 1, paragraph 1, that "torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind ...". The Committee was mindful that this definition differed from that in the prior Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which described torture as "an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment". Accordingly, its general approach was to consider that the critical distinction between torture on the one hand, and other cruel, inhuman or degrading treatment or punishment, on the other, would be the presence or otherwise of a relevant purposive element.

153. In case No. 1818/2008 (*McCallum v. South Africa*), concerning collective punishment in a prison, the Committee noted the allegations that, after the incidents during which the author was tortured, he was held incommunicado for a month without access to a

<sup>23</sup> *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), annex VI, sect. A, para. 4.*

physician, a lawyer or his family. The Committee recalled its jurisprudence that the total isolation of a detained or imprisoned person may amount to an act prohibited by article 7. With regard to the author's allegation that, despite several requests to various authorities, he was not tested for HIV, which he feared to have contracted as a result of the incident, the Committee found that the prevalence of HIV in South African prisons, as attested by the Committee against Torture in its concluding observations on the State party's initial report, which had been brought to the Committee's attention by the author, as well as the particular circumstances of the incident referred to above, warranted the finding of a violation of article 7, of the Covenant.

154. In case No. 1763/2008 (*Pillai et al. v. Canada*), the Committee was of the view that insufficient weight was given to the authors' allegations of torture and the real risk they might face if deported to their country of origin, in the light of the documented prevalence of torture in Sri Lanka. Notwithstanding the deference given to the immigration authorities to appreciate the evidence before them, the Committee considered that further analysis should have been carried out in this case. The Committee therefore considered that the removal order issued against the authors would constitute a violation of article 7 of the Covenant if it were enforced.

155. Other communications in which the Committee found a violation of article 7, on its own or read together with article 2, paragraph 3, include cases No. 1412/2005 (*Butovenko v. Ukraine*), No. 1449/2006 (*Umarov v. Uzbekistan*), No. 1499/2006 (*Iskandarov v. Tajikistan*), No. 1503/2006 (*Akhadov v. Kyrgyzstan*), No. 1605/2007 (*Zyuskin v. Russian Federation*), No. 1610/2007 (*L.N.P. v. Argentina*), No. 1756/2008 (*Moidunov and Zhumbaeva v. Kyrgyzstan*), No. 1776/2008 (*Ali Bashasha and Hussein Bashasha v. Libyan Arab Jamahiriya*) and No. 1813/2008 (*Akwanga v. Cameroon*).

(d) *Liberty and security of person (Covenant, art. 9)*

156. In case No. 1304/2004 (*Khoroshenko v. Russian Federation*), the Committee observed that the State party did not refute the allegations that the author was not informed of his rights upon arrest, that he was not informed of any charges until 25 days later, that the detention was sanctioned by a prosecutor who was not a judicial officer, and that the author did not have the opportunity to challenge the lawfulness of the arrest in front of the prosecutor. Accordingly, the Committee concluded that the author's rights under article 9, paragraphs 2, 3 and 4, of the Covenant had been violated. The Committee also observed that the State party justified the lawfulness of the arrest and the detention without charges, stating that it was in compliance with the Presidential Decree No. 1226 regarding urgent measures for protection of the population from banditry and other organized crime. The Committee, however, observed that the Decree authorized detention for up to 30 days when there is sufficient evidence of the involvement of a person in a gang or other organized criminal group suspected of committing serious crimes. Considering that, according to the State party's own submission, the original search warrant had been issued against another person; that the Presidential Decree did not in itself revoke the general criminal procedure rules regarding the grounds for arrest; that no judicial authority ever reviewed whether there was sufficient evidence that the author belonged to the said category of suspects; and in the absence of further justification by the State party, the Committee concluded that the authors' deprivation of liberty was not in conformity with the State party's relevant laws. Consequently, the Committee found a violation of article 9, paragraph 1, of the Covenant.

157. In case No. 1449/2006 (*Umarov v. Uzbekistan*), the author claimed that her husband was kept in a temporary holding cell for 15 days in violation of the domestic Criminal Rules of Procedure, which require transfer from such a cell within a period of 72 hours. The State party did not refute this allegation and the Committee concluded that the facts revealed a violation of the author's husband's rights under article 9, paragraph 1. The

author also claimed that her husband was held without a real opportunity to speak with his lawyer for 11 days while in pretrial detention, which adversely affected his ability to prepare his legal defence. The State party did not refute these allegations and the Committee concluded that the facts revealed a violation of the author's husband's rights under article 9, paragraph 3. The author also claimed that the State party denied her husband the right to challenge the lawfulness of his detention. The Committee noted that, according to the State party's criminal procedure law, decisions regarding arrest and pretrial detention have to be approved by a prosecutor, are subject to appeal only before a higher prosecutor and cannot be challenged in court. In the Committee's view, this procedure did not satisfy the requirements of article 9 of the Covenant. Furthermore, the author's husband was arrested on 22 October 2005 and there was no subsequent judicial review of the lawfulness of his detention until he was convicted on 6 March 2006. The Committee therefore concluded that these facts constituted a violation of article 9, paragraph 4, of the Covenant.

158. In case No. 1887/2009 (*Peirano Basso v. Uruguay*), the Committee recalled its jurisprudence regarding article 9, paragraph 3, to the effect that pretrial detention should be the exception and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party. The Committee took note of the State party's argument that the author had been a fugitive from Uruguayan justice and that there were therefore substantial grounds for thinking that he might behave in a similar manner in the future. The Committee underscored the nature of the charges against the author, as well as the fact that he left the State party and his return was not voluntary but the result of an extradition process. Consequently, the Committee was of the view that the refusal of the State party's authorities to grant him provisional release was not a violation of article 9, paragraph 3.

159. In case No. 1499/2006 (*Iskandarov v. Tajikistan*), the author claimed that the decision to have his brother officially arrested and placed in custody was taken by a prosecutor, i.e. an official who cannot be seen as having the necessary objectivity and impartiality, for the purposes of article 9, paragraph 3. The Committee recalled that this provision entitles a detained person charged with a criminal offence to judicial control of his/her detention, and that it is inherent in the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. In the circumstances of the present case, the Committee was not satisfied that the public prosecutor could be characterized as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" and concluded that there had been a violation of that provision.

160. In case No. 1751/2008 (*Aboussedra et al. v. Libyan Arab Jamahiriya*), the Committee noted that the victim was arrested by agents of the State without a warrant, then held incommunicado without access to a defence counsel and without being informed of the grounds for his arrest or the charges against him until he was brought before the People's Court in Tripoli, a court with special jurisdiction, for the first time 15 years after his arrest. The Committee recalled that, in accordance with article 9, paragraph 4, judicial review of the lawfulness of detention must provide for the possibility of ordering the release of the detainee if his or her detention is declared incompatible with the provisions of the Covenant, in particular those of article 9, paragraph 1. Furthermore, the victim was held in detention without being able to appoint legal counsel or instigate any form of legal process through which the lawfulness of his detention could be challenged. After being retried in 2005 before an ordinary court, which ordered his release since he had served his sentence in full, the victim was again detained incommunicado until his release on 7 June 2009. In the absence of any appropriate explanation by the State party, the Committee found multiple violations of article 9.



161. Other communications in which the Committee found violations of article 9 include cases No. 1412/2005 (*Butovenko v. Ukraine*), No. 1499/2006 (*Iskandarov v. Tajikistan*), No. 1503/2006 (*Akhadov v. Kyrgyzstan*), No. 1761/2008 (*Giri et al. v. Nepal*), No. 1769/2008 (*Ismailov v. Uzbekistan*), No. 1776/2008 (*Ali Bashasha and Hussein Bashasha v. Libyan Arab Jamahiriya*), No. 1780/2008 (*Aouabdia et al. v. Algeria*) and No. 1813/2008 (*Akwanga v. Cameroon*).

(e) *Treatment during imprisonment (Covenant, art. 10)*

162. In case No. 1390/2005 (*Koreba v. Belarus*), the Committee recalled that accused juvenile persons are to be separated from adults and to enjoy at least the same guarantees and protection as those accorded to adults under article 14 of the Covenant. In addition, juveniles need special protection in criminal proceedings. They should, in particular, be informed directly of the charges against them and, if appropriate, through their parents or legal guardians, be provided with appropriate assistance in the preparation and presentation of their defence. In the present case, the author's son was not separated from adults and did not benefit from the special guarantees prescribed for criminal investigation of juveniles. In the circumstances, and in the absence of any other pertinent information, the Committee concluded that the rights of the author's son under article 10, paragraph 2 (b), and article 14, paragraph 4, of the Covenant had been violated.

163. In case No. 1449/2006 (*Umarov v. Uzbekistan*) the author claimed that her husband had been kept in a holding cell with no clean clothing, no personal hygiene items and no bed for several days. His lawyer's requests for immediate medical attention were delayed without justification by the State party's authorities. Furthermore, he was not allowed to be visited by his family for months after his arrest and throughout the serving of his sentence he was systematically denied visits from family members. The Committee noted that the State party provided information about the author's husband's health almost two years after his initial detention. The information only indicated that his condition was "satisfactory" and that his health was being regularly monitored. In the absence of a more detailed explanation from the State party, the Committee concluded that the author's husband was treated inhumanely and without respect for his inherent dignity, in violation of article 10, paragraph 1.

164. In case No. 1761/2008 (*Giri et al. v. Nepal*), while taking note of the State party's argument that conditions of detention should be assessed in the light of the overall standards of living in Nepal, the Committee recalled that treating persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party. The Committee further recalled its view that while it is not separately mentioned in the list of non-derogable rights in article 4, paragraph 2, this norm of general international law is not subject to derogation. In the light of the information at its disposal, the Committee found a violation of article 10, paragraph 1.

165. Violations of article 10 were also found in cases No. 1412/2005 (*Butovenko v. Ukraine*), No. 1530/2006 (*Bozbey v. Turkmenistan*), No. 1751/2008 (*Aboussedra et al. v. Libyan Arab Jamahiriya*), No. 1776/2008 (*Ali Bashasha and Hussein Bashasha v. Libyan Arab Jamahiriya*), No. 1780/2008 (*Aouabdia et al. v. Algeria*), No. 1813/2008 (*Akwanga v. Cameroon*) and No. 1818/2008 (*McCallum v. South Africa*).

(f) *Right to enter one's own country (Covenant, art. 12, para. 4)*

166. In case No. 1557/2007 (*Nystrom et al. v. Australia*), the author, who was a Swedish citizen but had resided in Australia since he was a few days old, claimed that his expulsion from Australia for having committed crimes would constitute a breach of article 12,

paragraph 4. The Committee examined whether Australia was indeed the author's "own country" and then whether his deprivation of the right to enter that country would be arbitrary. On the first issue, the Committee recalled its general comment No. 27 (1999) on freedom of movement where it considered that the scope of "his own country" was broader than the concept "country of his nationality", that it was not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral, but embraced, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien.<sup>24</sup> There are factors other than nationality which may establish close and enduring connections between a person and a country, connections which may be stronger than those of nationality. The words "his own country" invite consideration of such matters as long-standing residence, close personal and family ties and intentions to remain, as well as to the absence of such ties elsewhere. The author arrived in Australia when he was 27 days old, his nuclear family lived in Australia, he had no ties to Sweden and did not speak Swedish. His ties to the Australian community were so strong that he was considered to be an "absorbed member of the Australian community" by the Australian Full Court in its judgement dated 30 June 2005. He bore many of the duties of a citizen and was treated like one, in several aspects related to his civil and political rights such as the right to vote in local elections or to serve in the army. Furthermore, the author alleged that he never acquired Australian nationality because he thought he was an Australian citizen. He was placed under the guardianship of the State when he was 13 years old and the State party never initiated any citizenship process for all the period it acted on the author's behalf. Given the particular circumstances of the case, the Committee considered that the author had established that Australia was his own country within the meaning of article 12, paragraph 4, of the Covenant, in the light of the strong ties connecting him to Australia, the presence of his family in Australia, the language he spoke, the duration of his stay in the country and the lack of any other ties than nationality with Sweden. As to the alleged arbitrariness of the author's deportation, the Committee considered that there were few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. The Minister's decision to deport him occurred almost 14 years after the conviction for rape and intentionally causing injury and over nine years after his release from prison on those charges, seven years after the armed robbery convictions and a number of years after his release from prison on the latter charges and, more importantly, at a time where the author was in a process of rehabilitation. The Committee noted that the State party had provided no argument justifying the late character of the Minister's decision. In the light of these considerations, the Committee considered that the author's deportation was arbitrary, thus violating article 12, paragraph 4, of the Covenant.

167. In case No. 1959/2010 (*Warsame v. Canada*), concerning the deportation of the author to Somalia, the Committee noted that the author arrived in Canada when he was four years old, his nuclear family lived in Canada, he had no ties to Somalia, had never lived there and had difficulties speaking the language. He received his entire education in Canada and, before coming to Canada, lived in Saudi Arabia and not in Somalia. Furthermore, he did not have any proof of Somali citizenship. On this basis, and in the particular circumstances of the case, the Committee considered that the author had established that Canada was his own country within the meaning of article 12, paragraph 4, of the Covenant, in the light of the strong ties connecting him to Canada, the presence of his family in Canada, the language he spoke, the duration of his stay in the country and the lack of any other ties than at best formal nationality with Somalia. As to the alleged arbitrariness

<sup>24</sup> *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40*, vol. I (A/55/40 (Vol. I)), annex VI, sect. A, para. 20.

of the author's deportation, the Committee recalled its general comment No. 27 on freedom of movement where it stated that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considered that there were few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country. In the present case, a deportation of the author to Somalia would render his return to Canada de facto impossible due to Canadian immigration regulations. The Committee therefore considered that the author's deportation to Somalia impeding his return to his own country would be disproportionate to the legitimate aim of preventing the commission of further crimes and therefore arbitrary. The Committee concluded that the author's deportation, if implemented, would constitute a violation of article 12, paragraph 4, of the Covenant.

(g) *Guarantees of a fair trial (Covenant, art. 14, para. 1)*

168. In case No. 1402/2005 (*Krasnov v. Kyrgyzstan*), the author claimed that the State party's courts were partial in the evaluation of her son's alibi, as well as with respect to the crucial facts and evidence in his case, and that his guilt had not been established. The Committee noted that the author pointed to many circumstances which she claimed demonstrated that her son did not benefit from a right to a fair hearing by a competent, independent and impartial tribunal. The Committee recalled its jurisprudence that it is generally not for itself, but for the courts of States parties, to review or evaluate facts and evidence, or to examine the interpretation of domestic legislation by national courts and tribunals, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice. The State party's authorities had conceded that court decisions in the present case were "numerous and contradictory" and even suggested the establishment of an inter-ministerial commission tasked with handing down a "legal decision" in relation to the author's son. In the light of the above and given the Committee's findings of a violation of article 7, and article 14, paragraphs 3 (b) and 3 (c), of the Covenant, the Committee was of the opinion that the author's son did not benefit from a right to a fair hearing, in violation of article 14, paragraph 1, of the Covenant.

169. A violation of this provision was also found in case No. 1611/2007 (*Bonilla Lerma v. Colombia*), where the Committee concluded that the refusal of various domestic courts to enforce the payment of damages to which the author was entitled under a court decision was arbitrary and amounted to a denial of justice.

170. In case No. 1531/2006 (*Cunillera Arias v. Spain*), the Committee examined whether the requirement in the law of the State party that the author be represented by a lawyer and a *procurador* in criminal proceedings in which he is the complainant contravenes article 14, paragraph 1, of the Covenant. The Committee was of the view that there may be objective and reasonable grounds for the requirement of representation set forth in domestic law owing, for example, to the complexity of criminal proceedings. Consequently, on the basis of the information contained in the case file, the Committee did not find sufficient grounds to conclude that there had been a violation of article 14, paragraph 1, of the Covenant.

171. In case No. 1813/2008 (*Akwanga v. Cameroon*), the author claimed to have been subjected to a violation of his right to a fair trial in view of the fact that, as a civilian, he had been tried by a military court. The Committee recalled its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial in which it considered that the State party must demonstrate, with regard to the specific class of individuals at issue, that the regular civilian courts are unable to undertake the trials, that other alternative

forms of special or high-security civilian courts are inadequate for the task and that recourse to military courts is unavoidable.<sup>25</sup> The State party must further demonstrate how military courts ensure the full protection of the rights of the accused pursuant to article 14. In the present case, the State party had not shown why recourse to a military court was required. In commenting on the gravity of the charges against the author, it had not indicated why the ordinary civilian courts or other alternative forms of civilian court were inadequate for the task of trying him. Nor did the mere invocation of conduct of the military trial in accordance with domestic legal provisions constitute an argument under the Covenant in support of recourse to such tribunals. The State party's failure to demonstrate the need to rely on a military court in this case meant that the Committee did not need to examine whether the military court, as a matter of fact, afforded the full guarantees of article 14. The Committee concluded that the trial and sentence of the author by a military tribunal disclosed a violation of article 14 of the Covenant.

(h) *Right to a public hearing (Covenant, art. 14, para. 1)*

172. In case No. 1304/2004 (*Khoroshenko v. Russian Federation*), the Committee recalled that all trials in criminal matters must in principle be conducted orally and publicly and that the publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. Article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. The Committee observed that no such justifications had been brought forward by the State party in the instant case and, accordingly, found a violation of article 14, paragraph 1, of the Covenant.

173. In case No. 1545/2007 (*Gunan v. Kyrgyzstan*), the Committee held that, from the uncontested information before it, it transpired that the evaluation of evidence against the author by national courts reflected their failure to comply with the guarantees of a fair trial under article 14, paragraph 3 (b), (d) and (g). Accordingly, the Committee was of the view that the author's trial suffered from irregularities which, taken as a whole, amounted to a violation of article 14, paragraph 1.

174. Other cases in which the Committee found violations of article 14, paragraph 1, include cases No. 1499/2006 (*Iskandarov v. Tajikistan*), No. 1503/2006 (*Akhadov v. Kyrgyzstan*) and No. 1535/2006 (*Shchetka v. Ukraine*).

(i) *Right to be presumed innocent until proved guilty (Covenant, art. 14, para. 2)*

175. In case No. 1620/2007 (*J.O. v. France*), the author claimed that he had been unfairly accused of collecting unemployment benefits while engaged in undeclared gainful employment. The Committee considered that, in view of the limited opportunity for defence available to the author during the domestic proceedings, the State party's courts placed a disproportionate burden of proof on the author and did not prove beyond a reasonable doubt that he was guilty of the offences of which he was accused. The Committee therefore concluded that a violation of article 14, paragraph 2, had taken place.

176. A breach of this provision was also found in case No. 1390/2005 (*Koreba v. Belarus*).

<sup>25</sup> *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40, vol. I (A/62/40 (Vol. I)), annex VI, para. 22.*

- (j) *Right to be informed promptly of the nature and cause of the charge (Covenant, art. 14, para. 3 (a))*

177. In case No. 1304/2004 (*Khoroshenko v. Russian Federation*), the Committee noted the author's claim that he was not informed of some of the charges against him until 25 days after his arrest and that he was informed of the rest of the charges only at the end of the pretrial investigation. This information was confirmed by the State party. Accordingly, the Committee found a violation of article 14, paragraph 3 (a), of the Covenant.

- (k) *Right to have adequate time and facilities for the preparation of one's defence and to communicate with counsel (Covenant, art. 14, para. 3 (b))*

178. In case No. 1402/2005 (*Krasnov v. Kyrgyzstan*), the author claimed that her son's rights under article 14, paragraph 3 (b), were violated, as most of the investigative actions in his case, particularly during the time when he was subjected to psychological pressure and when the crucial material evidence of the prosecution had been seized from him, had been carried out in the absence of a lawyer. The Committee noted that these allegations were presented both to the State party's authorities and in the context of the communication under consideration. In the light of the recognition by the State party's own courts that the author's son was not represented by a lawyer during one of the most important investigative actions, and given his particularly vulnerable situation as a minor, the Committee considered that the facts before it revealed a violation of article 14, paragraph 3 (b), of the Covenant.

179. Violations of this provision were also found in cases No. 1304/2004 (*Khoroshenko v. Russian Federation*), No. 1412/2005 (*Butovenko v. Ukraine*) and No. 1545/2007 (*Gunan v. Kyrgyzstan*).

- (l) *Right to be tried without undue delay (Covenant, art. 14, para. 3(c))*

180. In case No. 1402/2005 (*Krasnov v. Kyrgyzstan*), the Committee recalled that the right of the accused to be tried without undue delay is not only designed to avoid keeping persons too long in a state of uncertainty about their fate, but also to serve the interests of justice. What is reasonable has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities. A guarantee of article 14, paragraph 3 (c), relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal. All stages, whether in first instance or on appeal must take place "without undue delay". In the present case, the Committee noted that court proceedings lasted for almost five years, during which the author's minor son was acquitted three times and three times found guilty on the basis of the same evidence, witness statements and testimonies of the co-accused. None of the delays in the case could be attributed to the author or to his lawyers. In the absence of any explanation from the State party justifying a delay of almost five years between the formal charging of the author's minor son and his final conviction by the Supreme Court, the Committee concluded that the delay in his trial was such as to amount to a violation of article 14, paragraph 3 (c), of the Covenant.

181. A violation of this provision was also found in case No. 1887/2009 (*Peirano Basso v. Uruguay*).

- (m) *Right to defend oneself and to have legal assistance (Covenant, art. 14, para. 3 (d))*

182. In case No. 1499/2006 (*Iskandarov v. Tajikistan*), the Committee concluded that by denying the author's brother access to legal counsel for 13 days, and by conducting investigative acts with his participation during this period, including interrogating him as a

person accused of very serious crimes, the State party violated his rights under article 14, paragraph 3 (b) and (d), of the Covenant. A violation of this provision was also found in communication No. 1545/2007 (*Gunan v. Kyrgyzstan*).

(n) *Right to examine or have examined witnesses (Covenant, art. 14, para. 3 (e))*

183. In case No. 1304/2004 (*Khoroshenko v. Russian Federation*), the Committee noted the author's claim that during the first instance trial the court refused to hear several witnesses which could have confirmed his innocence and that the court only accepted and evaluated evidence that supported the prosecution's version of the events. The Committee also noted the State party's objection that neither the accused nor his attorney made requests to question witnesses either prior or during the trial. Furthermore, according to the author's own submission, the Supreme Court ordered the prosecution to reopen the proceedings and question some of these witnesses. The Committee recalled its jurisprudence that, generally speaking, it is for the relevant domestic courts to review or evaluate facts and evidence, unless their evaluation is manifestly arbitrary or amounts to a denial of justice. It concluded that the material before it was insufficient to reach a finding of a violation of article 14, paragraph 3 (e), of the Covenant.

184. In case No. 1390/2005 (*Koreba v. Belarus*), the Committee noted the absence of information in the file as to the reasons for refusing the presence of the author's son in the courtroom during the questioning of the undercover agent Mr. M.T. and not allowing him to question this witness. In the absence of information from the State party in that respect, the Committee concluded that these facts, as reported, amounted to a violation of the right of the author's son under article 14, paragraph 3 (e).

185. In case No. 1532/2006 (*Sedljar and Lavrov v. Estonia*), the Committee recalled its general comment No. 32, according to which paragraph 3 (e) does not provide an unlimited right to obtain the attendance of any witness requested by the accused or their counsel, but only a right to have witnesses admitted that are relevant for the defence. On the basis of the materials before it, the Committee considered that the authors had not shown sufficient grounds to support their claims that the refusal of the courts to hear some experts and witnesses was arbitrary or resulted in denial of justice. Accordingly, the Committee concluded that the facts before it did not disclose a violation of article 14, paragraph 3 (e).

186. In case No. 1535/2006 (*Shchetka v. Ukraine*), the author claimed that the court had ignored her son's request to call and examine witnesses that had testified during the preliminary investigation and confirmed, inter alia, his alibi. The court had also declined her son's motions for the conduct of additional forensic examinations. The Committee recalled that, as an application of the principle of equality of arms, the guarantee of article 14, paragraph 3 (e) was important for ensuring an effective defence by the accused and their counsel and guaranteeing the accused the same legal power of compelling the attendance of witnesses relevant for the defence and of examining or cross-examining any witnesses as are available to the prosecution. The Committee observed that the State party failed to respond to these allegations and to provide any information as to the reasons for refusing to examine the witnesses in question. Accordingly, the Committee concluded that the facts, as reported, amounted to a violation of the victim's rights under article 14, paragraph 3 (e).

(o) *Right to have the free assistance of an interpreter (Covenant, art. 14, para. 3 (f))*

187. In case No. 1530/2006 (*Bozbey v. Turkmenistan*), the Committee took note of the author's claim, not contested by the State party, that all court proceedings were conducted and the verdict was delivered in the Turkmen language, which he did not understand. The Committee considered that not providing the author with an interpreter when he could not

understand and speak the language used in court, constituted a violation of article 14, paragraph 1, read in conjunction with article 14, paragraph 3 (f), of the Covenant.

- (p) *Right not to be compelled to testify against oneself or to confess guilt (Covenant, art. 14, para. 3 (g))*

188. In case No. 1390/2005 (*Koreba v. Belarus*), the Committee recalled its jurisprudence that the wording, in article 14, paragraph 3 (g), that no one shall “be compelled to testify against himself or confess guilt”, must be understood in terms of the absence of any direct or indirect physical or psychological coercion by the investigating authorities on the accused with a view to obtaining a confession of guilt. In cases of forced confessions, the burden is on the State to prove that statements made by the accused have been given of their own free will. In the circumstances, and in the absence of sufficient information in the State party’s response about the measures taken by the authorities to investigate the claims that the author’s son had been subjected to beatings, threats and humiliation, the Committee concluded that the facts amounted to a violation of article 2, paragraph 3, read in conjunction with articles 7 and 14, paragraph 3 (g), of the Covenant. Violations of both articles 7 and 14, paragraph 3 (g), were found in other cases, such as No. 1412/2005 (*Butovenko v. Ukraine*), No. 1535/2006 (*Shchetka v. Ukraine*) and No. 1545/2007 (*Gunan v. Kyrgyzstan*).

- (q) *Right to have one’s conviction and sentence being reviewed by a higher tribunal (Covenant, art. 14, para. 5)*

189. In case No. 1535/2006 (*Shchetka v. Ukraine*), the author claimed that the refusal of the General Prosecutor to reconsider the criminal case of her son based on newly discovered facts, after the Supreme Court decided the cassation appeal, amounted to a violation of article 14, paragraph 5, of the Covenant. The Committee considered that the scope of this provision does not extend to a review of a conviction and sentence based on newly discovered facts, once this sentence has become final. Therefore, the Committee considered that the author’s claim was incompatible *ratione materiae* with the provisions of the Covenant and declared it inadmissible under article 3 of the Optional Protocol.

- (r) *Nullum crimen sine lege (Covenant, art. 15, para.1)*

190. In case No. 1760/2008 (*Cochet v. France*), the Committee held that article 15, paragraph 1, of the Covenant should not be interpreted narrowly. Since the article refers to the principle of the retroactive effect of a lighter penalty, it should be understood to refer *a fortiori* to a law abolishing a penalty for an act that no longer constitutes an offence. On this basis, the Committee found a violation of article 15, paragraph 1, in this case.

191. In case No. 1346/2005 (*Tofanyuk v. Ukraine*), the author, who had been sentenced to death, claimed that from the date the Constitutional Court declared that capital punishment was unconstitutional, the most severe punishment was 15 or 20 years of imprisonment and therefore that was the penalty which should apply to him. However, the Criminal Code was subsequently amended and, as a result, his death sentence was commuted to life imprisonment. He claimed that the retroactive application of the new law constituted a violation of his rights under article 15 of the Covenant. The Committee noted that the penalty of life imprisonment established by the law on amendments to the Criminal Code, the Criminal Procedure Code and the Correctional Labor Code of Ukraine fully respected the purpose of the Constitutional Court’s decision, which was to abolish the death penalty, a penalty which was more severe than life imprisonment. The Court’s decision in itself did not imply commutation of the sentence imposed on the author nor did it establish a new penalty which would replace the death sentence. Furthermore, there were no subsequent provisions made by law for the imposition of any lighter penalty from which the author

could benefit, other than the above-mentioned amendment on life imprisonment. In such circumstances, the Committee was unable to conclude that the State party, by substituting life imprisonment for capital punishment for the crimes committed by the author, had violated the author's rights under article 15, paragraph 1. The Committee reached a similar conclusion in case No. 1412/2005 (*Butovenko v. Ukraine*).

(s) *Right to recognition as a person before the law (Covenant, art. 16)*

192. In case No. 1751/2008 (*Aboussedra et al. v. Libyan Arab Jamahiriya*), the Committee reiterated its jurisprudence according to which intentionally removing a person from the protection of the law for a prolonged period of time may constitute a denial of his or her right to recognition as a person before the law, if the victim was in the hands of the State authorities when last seen and if the efforts of his or her relatives to obtain access to effective remedies, including judicial remedies were systematically impeded. In the case, the author alleged that his brother had been arrested on 19 January 1989 without a warrant and without being informed of the legal grounds for his arrest. He was then taken to various undisclosed places and none of his family's subsequent attempts to obtain news about him produced results until January 2009. The Committee concluded that the enforced disappearance of the victim during the greater part of his detention denied him the protection of the law for the same period and deprived him of his right to recognition as a person before the law, in violation of article 16 of the Covenant.

193. The Committee reached a similar conclusion in respect of the victim's disappearance in case No. 1780/2008 (*Aouabdia et al. v. Algeria*).

(t) *Right not to be subjected to interference with one's privacy, family and home (Covenant, art. 17)*

194. In case No. 1557/2007 (*Nystrom et al. v. Australia*), the Committee recalled its jurisprudence that the separation of a person from his family by means of expulsion could be regarded as an arbitrary interference with the family and a violation of article 17 if, in the circumstances of the case, the separation and its effects were disproportionate to the objectives of the removal. The decision by a State party to deport a person who has lived all his life in the country leaving behind his mother, sister and nephews, to a country where he had no ties apart from his nationality, was to be considered "interference" with the family. The Committee noted that the State party had not refuted the existence of interference in the present case. Such interference was lawful, as it was provided by the State party's Migration Act, according to which the Minister may cancel a visa, if a person has been sentenced to a term of imprisonment of 12 months or more. In the present case, the author had been convicted for a minimum of nine years in prison. The Committee noted the author's claim that he had maintained a close relationship to his mother and sister despite the time he spent either in detention centres or under the care of the State; that he was engaged in reducing his alcohol addiction and was steadily employed when the State party decided to cancel his visa; that he did not have any close family in Sweden and that his deportation led to a complete disruption of his family ties due to the impossibility for his family to travel to Sweden for financial reasons. The Committee further noted the author's argument that his criminal offences arose from alcoholism, which he had partly overcome and that the Minister's decision to deport him occurred a number of years after his conviction and release from prison. In the light of the information made available to it, the Committee considered that the Minister's decision to deport the author had had irreparable consequences on the author, which was disproportionate to the legitimate aim of preventing the commission of further crimes, especially given the important lapse of time between the commission of offences considered by the Minister and the deportation. Given that the author's deportation was of a definite nature and that limited financial means existed for the author's family to visit him in Sweden or even be reunited with him in Sweden, the



Committee concluded that the deportation constituted an arbitrary interference with his family in relation to the author, contrary to articles 17 and 23, paragraph 1, of the Covenant.

195. As to the author's claim in relation to his mother and sister that their rights had been directly violated under articles 17 and 23, paragraph 1, of the Covenant, the Committee noted that most, if not all of the arguments invoked by the author were related to the consequences of the disruption of family life for him. The Committee further noted that the mother and sister were not uprooted from their family life environment, which was established in Australia. In the light of the information before it, the Committee could not therefore conclude that there had been a separate and distinct violation of articles 17 and 23, paragraph 1, in relation to the author's mother and sister.

196. In case No. 1959/2010 (*Warsame v. Canada*), concerning the deportation of the author to Somalia, the Committee noted that the intensity of the author's family ties with his mother and sisters remained disputed between the parties. Nevertheless, the Committee observed that the author's family ties would be irreparably severed if he were to be deported to Somalia, as his family could not visit him there and the means to keep up a regular correspondence between the author and his family in Canada were limited. In addition to that, for a significant lapse of time, it would be impossible for the author to apply for a visitor's visa to Canada to visit his family. The Committee also noted that due to the de facto unavailability of judicial remedies, the author could not raise his claims before the domestic courts. The Committee, therefore, concluded that the interference with the author's family life, which would lead to irreparably severing his ties with his mother and sisters in Canada, would be disproportionate to the legitimate aim of preventing the commission of further crimes. Accordingly, the author's deportation, if implemented, would constitute a violation of articles 17 and 23, paragraph 1, alone and in conjunction with article 2, paragraph 3, of the Covenant.

197. In case No. 1621/2007 (*Raihman v. Latvia*), the Committee noted the author's allegation that the legal requirement imposing a Latvian spelling for his name in official documents, after 40 uninterrupted years of use of his original name, resulted in a number of daily constraints. Relying on previous jurisprudence, where the Committee held that the protection offered by article 17 encompassed the right to choose and change one's own name, the Committee considered that this protection *a fortiori* protected persons from being passively imposed a change of name by the State party. The Committee therefore considered that the State party's unilateral modification of the author's name on official documents was not reasonable and amounted to arbitrary interference with his privacy, in violation of article 17.

198. A violation of article 17 was also found in cases No. 1608/2007 (*L.M.R. v. Argentina*) and No. 1610/2007 (*L.N.P. v. Argentina*).

(u) *Freedom of thought, conscience and religion (Covenant, art. 18)*

199. In cases Nos. 1642–1741/2007 (*Jeong et al. v. Republic of Korea*), the Committee noted the authors' claim that their rights under article 18, paragraph 1, had been violated due to the absence in the State party of an alternative to compulsory military service, as a result of which their failure to perform military service led them to criminal prosecution and imprisonment. The Committee considered that the authors' refusal to be drafted for compulsory military service derived from their religious beliefs which, it was uncontested, were genuinely held, and that the authors' subsequent conviction and sentence amounted to an infringement of their freedom of conscience, in breach of article 18, paragraph 1, of the Covenant. Repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibit the use of arms, was incompatible with article 18, paragraph 1, of the Covenant.

200. In case No. 1876/2009 (*Singh v. France*), the author, an Indian national of Sikh origin, claimed that the requirement that an individual appear bareheaded in the identity photograph used for a residence permit violated his right to freedom of religion. He explained that wearing a turban is a religious obligation and an integral part of Sikhism. The Committee considered that the author's use of a turban was a religiously motivated act and that article 11-1 of Decree No. 46-1574 of 30 June 1946 (as amended in 1994), which deals with the conditions applying to foreign nationals' admission to and residence in France and which requires that people appear bareheaded in the identity photographs used on residence permits, interfered with the exercise of freedom of religion. The Committee had to decide whether that limitation was necessary and proportionate to the end invoked by the State party, i.e. protecting public safety and order. The Committee recognized the State party's need to ensure and verify, for the purposes of public safety and order, that the person appearing in the photograph on a residence permit was in fact the rightful holder of that document. It observed, however, that the State party had not explained why the wearing of a Sikh turban covering the top of the head and a portion of the forehead but leaving the rest of the face clearly visible would make it more difficult to identify the author than if he were to appear bareheaded, since he wore his turban at all times. Nor had the State party explained how, specifically, identity photographs in which people appear bareheaded help to avert the risk of fraud or falsification of residence permits. Consequently, the Committee was of the view that the State party had not demonstrated that the limitation placed on the author was necessary within the meaning of article 18, paragraph 3, of the Covenant. It also observed that, even if the obligation to remove the turban for the identity photograph might be described as a one-time requirement, it would potentially interfere with the author's freedom of religion on a continuing basis, because he would always appear without his religious head covering in the identity photograph and could therefore be compelled to remove his turban during identity checks. The Committee therefore concluded that the regulation requiring persons to appear bareheaded in the identity photographs used on their residence permits was a limitation that infringed the author's freedom of religion and in this case constituted a violation of article 18 of the Covenant.

(v) *Freedom of opinion and expression (Covenant, art. 19)*

201. In case No. 1449/2006 (*Umarov v. Uzbekistan*), the Committee noted the State party's submission that the author's husband had been convicted under the domestic legislation on economic crimes. The Committee, however, observed that Mr. Umarov was one of the leaders of the Sunshine Coalition, a political opposition group, that he was arrested during a police search of the offices of the Coalition and that the State party had failed to explain the purpose of the search. According to the information submitted by the author, other leaders of the Coalition had been arrested on similar charges around the same time and a number of companies belonging to them had been subjected to investigation by different authorities immediately following the establishment of the Coalition. The Committee, as notified by the author, took note of a Statement of the Permanent Council of the European Union and of a Declaration by the Presidency on behalf of the European Union on the human rights situation in Uzbekistan, both of which described Mr. Umarov as an opposition leader and expressed concern regarding his treatment by the authorities. The Committee further noted that the State party had not addressed the allegation that Mr. Umarov had been arrested and imprisoned in order to prevent him, as a member of a political formation, from expressing his political views. Accordingly, the Committee considered that the arrest, trial and conviction of Mr. Umarov resulted in effectively preventing him from expressing his political views and found that the State party had violated Mr. Umarov's rights under article 19, paragraph 2, and article 26 of the Covenant.

202. In case No. 1604/2007 (*Zalesskaya v. Belarus*), the Committee noted the author's allegation that her right to freedom to impart information had been violated since she had been arrested, accused of breaching the procedure on the organization and conduct of street marches, and fined for distributing officially registered newspapers and leaflets. The Committee was of the view that a limitation of the author's rights under article 19, paragraph 2, had taken place. The question was whether this limitation was justified under any of the criteria set out in article 19, paragraph 3. The State party had failed to invoke any specific grounds on which the limitation would be necessary within the meaning of article 19, paragraph 3. It therefore concluded that the author's rights under article 19, paragraph 2, of the Covenant had been violated.

(x) *Right to peaceful assembly (Covenant, art. 21)*

203. In case No. 1604/2007 (*Zalesskaya v. Belarus*), where the author had been fined for distributing officially registered newspapers and leaflets, the Committee held that the State party had failed to demonstrate that the restrictions imposed on the author were necessary in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Accordingly, the Committee concluded that the facts revealed a violation of article 21.

(y) *Freedom of association (Covenant, art. 22)*

204. In case No. 1383/2005 (*Katsora et al. v. Belarus*), the issue before the Committee was whether the refusal of the authorities to register the association entitled "Civil Alternative" unreasonably restricted the author's right to freedom of association. The Committee noted that even though the reasons for the refusal were prescribed by the law, the State party had not advanced any argument as to why they were necessary, in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The Committee also noted that the refusal of registration led directly to the unlawfulness of operation of the unregistered organization on the State party's territory and directly precluded the authors from enjoying their freedom of association. Accordingly, the Committee concluded that the refusal of registration did not meet the requirements of article 22, paragraph 2, and that the authors' rights under this provision had been violated.

205. In case No. 1470/2006 (*Toktakunov v. Kyrgyzstan*), the author claimed that the refusal by the State party's authorities to provide him with information on the number of individuals sentenced to death resulted in a violation of his right to seek and receive information. The Committee recalled its position in relation to press and media freedom that the right of access to information includes a right of the media to have access to information on public affairs and the right of the general public to receive media output. The realization of these functions is not limited to the media or professional journalists, and can also be exercised by public associations or private individuals. The Committee was of the opinion that the State party had an obligation either to provide the author with the requested information or to justify any restrictions of the right to receive State-held information under article 19, paragraph 3, of the Covenant. The Committee noted, *inter alia*, the author's claim that information on the number of individuals sentenced to death could not have had any negative impact on defence capability, safety or economic and political interests of Kyrgyzstan and, therefore, it did not fulfil criteria spelled out in the Law on protection of State secrets for it to be classified as a State secret. The Committee held that the general public had a legitimate interest in having access to information on the use of the death penalty and concluded that, in the absence of any pertinent explanations from the State party, the restrictions to the exercise of the author's right to access information on the application to the death penalty could not be deemed necessary for the protection of national security or of public order (*ordre public*), public health or morals, or

for the respect of the rights or reputations of others. The Committee therefore concluded that the author's rights under article 19, paragraph 2, had been violated.

206. In case No. 1478/2006 (*Kungurov v. Uzbekistan*), the issue before the Committee was whether the refusal of the State party's authorities to register Democracy and Rights, an NGO, amounted to a restriction of the author's right to freedom of association, and whether such restriction was justified. The decision of the Ministry of Justice to return the author's first registration application "without consideration" was based on the perceived non-compliance of the application materials of Democracy and Rights with two substantive requirements of the State party's domestic law, namely, that: (a) Democracy and Rights not engage in any human rights activities that any official body is engaged in; and (b) it be physically present in every region of Uzbekistan. Technical "defects" in the association's application materials were also cited in the rejection. In the Committee's view, given the fact that even a single "shortcoming" would suffice to justify the return of a registration application "without consideration", these substantive and technical requirements constitute *de facto* restrictions and must be assessed in the light of the consequences which arise for the author and Democracy and Rights. The Committee observed that, in accordance with article 22, paragraph 2, any restriction on the right to freedom of association must cumulatively meet the following conditions: (a) it must be provided by law; (b) it may only be imposed for one of the purposes set out in paragraph 2; and (c) it must be "necessary in a democratic society" for achieving one of these purposes. The reference to "a democratic society" in the context of article 22 indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably viewed by the government or the majority of the population, is a cornerstone of a democratic society. As to the substantive requirements, the Committee firstly notes that the State party's authorities did not specify which activities by which State organs might have clashed with the proposed statutory activities of Democracy and Rights in the field of human rights. Secondly, it noted that the author and the State party disagreed on whether domestic law indeed required the demonstration of a physical presence in every region of Uzbekistan in order for a public association to be granted national status, authorizing it to disseminate information in all parts of the country. The Committee considered that even if those and other restrictions were precise and predictable and were indeed prescribed by law, the State party had not advanced any argument as to why it would be necessary, for the purposes of article 22, paragraph 2, to condition the registration of an association on a limitation of a scope of its human rights activities to the undefined issues not covered by state organs or on the existence of regional branches of Democracy and Rights.

207. As to the technical requirements, the Committee noted that the parties disagreed over the interpretation of domestic law and the State party's failure to advance arguments as to which of the numerous "defects" in the association's application materials triggered the application of the restrictions spelled out in article 22, paragraph 2, of the Covenant. Even if the application materials of Democracy and Rights did not fully comply with the requirements of domestic law, the reaction of the State party's authorities in denying the registration of the association was disproportionate. The Committee concluded that the denial of registration did not meet the requirements of article 22, paragraph 2, of the Covenant and, consequently, the author's rights under article 22, paragraph 1, alone and in conjunction with article 19, paragraph 2, of the Covenant, had been violated.

(z) *Right of minors to protection by the State (Covenant, art. 24)*

208. In case No. 1564/2007 (*X.H.L. v. Netherlands*), the author, a Chinese national who entered the Netherlands as an unaccompanied minor, claimed that the decision to return him to China violated article 7 of the Covenant because he would be subjected to inhumane treatment. The Committee noted that, from the deportation decision and from the State

party's submissions, it transpired that the State party had failed to duly consider the extent of the hardship that the author would encounter if returned, especially given his young age at the time of the asylum process. The Committee further noted that the State party failed to identify any family members or friends with whom the author could have been reunited in China. In the light of this, the Committee rejected the State party's statement that it would have been in the best interest of the author as a child to be returned to that country. The Committee concluded that, by deciding to return the author to China without a thorough examination of the potential treatment that he may have been subjected to as a child with no identified relatives and no confirmed registration, the State party failed to provide him with the necessary measures of protection as a minor at that time. The Committee therefore concluded that the State party's decision to return the author to China violated his rights under article 24, in conjunction with article 7 of the Covenant.

(aa) *Right to vote and to be elected at genuine periodic elections (Covenant, art. 25 (b))*

209. In case No. 1354/2005 (*Sudalenko v. Belarus*), the issue before the Committee was whether the author's rights under article 25, paragraphs (a) and (b), of the Covenant had been violated by the refusal to register him as a candidate for the 2004 elections to the House of Representatives. The Committee recalled its general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, according to which the exercise of the rights protected by article 25 may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.<sup>26</sup> In the light of the information before the Committee, and in the absence of any explanations from the State party, it concluded that the refusal to register the author as a candidate was not based on objective and reasonable criteria and was, therefore, incompatible with the State party's obligations under article 25, paragraphs (a) and (b), read in conjunction with article 2, paragraph 1, and article 26 of the Covenant.

210. In case No. 1410/2005 (*Yevdokimov and Rezanov v. Russian Federation*), the authors claimed a violation of article 25 and article 2, paragraphs 1 and 3, of the Covenant, in that section 32, paragraph 3, of the Constitution, which restricts the right to vote of persons deprived of liberty under court sentence, was discriminatory on the grounds of social status and there was no effective domestic remedy to challenge it. The Committee recalled its general comment No. 25, in which it stated, inter alia, that if conviction for an offence is a basis for suspending the right to vote, the period for such suspension should be proportionate to the offence and the sentence. In the present case, the deprivation of the right to vote was coextensive with any prison sentence and the Committee recalled that, according to article 10, paragraph 3, of the Covenant, the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. The Committee also recalled principle 5 of the Basic Principles for the Treatment of Prisoners, according to which except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Civil and Political Rights. In the Committee's view, the State party, whose legislation provides a blanket deprivation of the right to vote to anyone sentenced to a term of imprisonment, did not provide any arguments as to how the restrictions in this particular case would meet the criterion of reasonableness as required by the Covenant. In the circumstances, the Committee concluded there had been a violation of article 25 alone and in conjunction with article 2, paragraph 3, of the Covenant.

<sup>26</sup> *Official Records of the General Assembly, Fifty-first Session, Supplement No. 40*, vol. I (A/51/40 (Vol. I)), annex V, para. 4.

- (bb) *The right to equality before the law and the prohibition of discrimination (Covenant, art. 26)*

211. In case No. 1581/2007 (*Drda v. Czech Republic*), concerning discrimination on the basis of citizenship with respect to restitution of property which had been confiscated during the communist regime, the Committee recalled its Views in similar cases where it held that article 26 had been violated. The Committee considered that it would be incompatible with the Covenant to require the authors to obtain Czech citizenship as a prerequisite for the restitution of their property or, alternatively, for the payment of appropriate compensation. Bearing in mind that the author's original entitlement to their properties had not been predicated on citizenship, it found that the citizenship requirement was unreasonable and concluded that a violation of article 26 had taken place. A similar conclusion was reached in case No. 1586/2007 (*Lange v. Czech Republic*).

212. In case No. 1783/2008 (*Machado Bartolomeu v. Portugal*), the author, a croupier in a casino, claimed to be discriminated against vis-à-vis the members of other professions, because he alone had to pay taxes on the tips he received. The Committee held that it was not in a position to conclude that the taxation regime applied to croupiers was unreasonable in the light of such considerations as the size of tips, how they were distributed, the fact they were closely related to the employment contract and the fact that they were not granted on a personal basis. Accordingly, no violation of article 26 was found.

## F. Remedies called for under the Committee's Views

213. After the Committee has made a finding of a violation of a provision of the Covenant in its Views under article 5, paragraph 4, of the Optional Protocol, it proceeds to ask the State party to take appropriate steps to remedy the violation. Often, it also reminds the State party of its obligation to prevent similar violations in the future. When pronouncing a remedy, the Committee observes that:

“Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.”

214. During the period under review the Committee took the following decisions regarding remedies.

215. In case No. 1458/2006 (*González v. Argentina*), where the Committee found a violation of article 6, paragraph 1 in respect of the author's son, and of article 2, paragraph 3, in connection with article 6, in respect of the author and her son, the State party was requested to provide the author with an effective remedy, including a thorough and diligent investigation of the facts, the prosecution and punishment of the perpetrators and adequate compensation. A similar request was made in case No. 1756/2008 (*Moidunov and Zhumbaeva v. Kyrgyzstan*), where the Committee found violations of article 6, paragraph 1, and article 7 in connection with the author's son, as well as article 2, paragraph 3, read together with articles 6, paragraph 1, and 7.

216. In case No. 1556/2007 (*Novaković v. Serbia*), where the Committee found a violation of article 2, paragraph 3, in conjunction with article 6 of the Covenant, the State party was under an obligation to provide the authors with an effective remedy; to take

appropriate steps to ensure that the criminal proceedings against the persons responsible for the death of Mr. Novaković were speedily concluded and that, if convicted, they were punished; and to provide the authors with appropriate compensation.

217. In case No. 1751/2008 (*Aboussedra et al. v. Libyan Arab Jamahiriya*), the Committee decided that the State party was under an obligation to provide the author with an effective remedy, including a thorough and effective investigation into the disappearance of the victim, adequate information about the results of its inquiries and adequate compensation for the victim, his wife and his children for the violations suffered. The Committee considered the State party duty-bound to conduct thorough investigations into the alleged violations of human rights, particularly enforced disappearances and acts of torture, and also to prosecute, try and punish those held responsible for such violations. A similar remedy was recommended in cases No. 1776/2008 (*Ali Bashasha and Hussein Bashasha v. Libyan Arab Jamahiriya*), where the Committee added a request for the State party to return to the family the victim's remains, and No. 1780/2008 (*Aouabdia et al. v. Algeria*), where the State was requested to free the victim immediately if he was still in incommunicado detention or, if the victim were dead, to hand over his remains to his family.

218. In case No. 1633/2007 (*Avadanov v. Azerbaijan*), where the Committee found a violation of article 7, the State party was requested to provide the author with an effective remedy in the form, inter alia, of an impartial investigation of the author's claim, prosecution of those responsible and appropriate compensation. An effective remedy, including an impartial, effective and thorough investigation of the claims, prosecution of those responsible and full reparation, including appropriate compensation, was requested in case No. 1605/2007 (*Zyuskin v. Russian Federation*), involving a violation of article 7, read in conjunction with article 2, paragraph 3.

219. In case No. 1761/2008 (*Giri et al. v. Nepal*), involving violations of articles 7, 9 and 10, paragraph 1, as well as article 7 read in conjunction with article 2, paragraph 3, in connection with the author's family, the State party was requested to provide the author and his family with an effective remedy, by ensuring a thorough and diligent investigation into the torture and ill-treatment suffered by the author, and the prosecution and punishment of those responsible, and by providing the author and his family with adequate compensation for the violations suffered. In doing so, the State party should ensure that the author and his family are protected from acts of reprisals or intimidation.

220. In case No. 1763/2008 (*Pillai et al. v. Canada*), the State party was requested to provide the authors with an effective remedy, including a full reconsideration of the authors' claim regarding the risk of torture, should they be returned to Sri Lanka, taking into account the State party's obligations under the Covenant.

221. In case No. 1499/2006 (*Iskandarov v. Tajikistan*), involving violations of articles 7, 9 and 14, the Committee requested the State party to provide the author's brother with an effective remedy, including either his immediate release or a retrial with all the guarantees enshrined in the Covenant, as well as compensation. A similar remedy was recommended in case No. 1769/2008 (*Ismailov v. Uzbekistan*), involving the violation of several provisions under articles 9 and 14.

222. In case No. 1449/2006 (*Umarov v. Uzbekistan*), involving violations of articles 7; 9, paragraphs 1, 3 and 4; 10, paragraph 1; 19, paragraph 2; and 26, the Committee requested the State party to provide the author's husband with an effective remedy and to take appropriate steps to (a) institute criminal proceedings for the immediate prosecution and punishment of the persons responsible for the ill-treatment to which Mr. Umarov was subjected, and (b) provide Mr. Umarov with appropriate reparation, including adequate compensation.

223. In case No. 1304/2004 (*Khoroshenko v. Russian Federation*), where the Committee found a breach of articles 14, paragraph 1, 9 and 7, the Committee requested the State party to provide the author with an effective remedy, including a full and thorough investigation into the allegations of torture and ill-treatment and initiating criminal proceedings against those responsible of the acts under article 7 to which the author had been subjected; a retrial in compliance with all guarantees under the Covenant; and adequate reparation including compensation.

224. In case No. 1818/2008 (*McCallum v. South Africa*), involving violations of articles 7 and 10, the State party was requested to provide the author with an effective remedy, including a thorough and effective investigation of the author's claims falling under article 7, prosecution of those responsible and full reparation, including adequate compensation. As long as the author was in prison, he should be treated with humanity and with respect for the inherent dignity of the human person and should benefit from appropriate health care.

225. In case No. 1390/2005 (*Koreba v. Belarus*), involving violations of articles 2, paragraph 3, 7, 14 and 10, the State party was requested to provide the author's son with an effective remedy, including the initiation and pursuit of criminal proceedings to establish responsibility for his ill-treatment, as well as his release and adequate compensation.

226. In case No. 1402/2005 (*Krasnov v. Kyrgyzstan*), involving violations of articles 7, 9 and 14, the State party was requested to provide the author's son with an effective remedy, including a review of his conviction taking into account the provisions of the Covenant, and appropriate compensation.

227. In case No. 1503/2006 (*Akhadov v. Kyrgyzstan*), also involving violations of articles 7, 9 and 14, the State party was requested to provide the author with an effective remedy including: conducting a full and thorough investigation into the allegations of torture and ill-treatment and initiating criminal proceedings against those responsible for the treatment to which the author was subjected; considering his retrial in conformity with all guarantees enshrined in the Covenant or his release; and providing the author with appropriate reparation, including compensation. A similar request was made in cases No. 1412/2005 (*Butovenko v. Ukraine*), No. 1535/2006 (*Shchetka v. Ukraine*), No. 1545/2007 (*Gunan v. Kyrgyzstan*) and No. 1813/2008 (*Akwanga v. Cameroon*), in which various violations of articles 7 and 14, *inter alia*, were found.

228. In case No. 1608/2007 (*L.M.R. v. Argentina*), concerning violations of several articles of the Covenant in connection with the termination of the victim's pregnancy, the Committee requested the State party to provide the victim with avenues of redress that include adequate compensation.

229. In case No. 1530/2006 (*Bozbey v. Turkmenistan*), involving violations of article 14, paragraph 1, read in conjunction with article 14, paragraph 3 (f) and article 10, paragraph 1, the State party was requested to provide the author with an effective remedy and, to that effect, take appropriate steps to institute criminal proceedings for the prosecution and punishment of the persons responsible for the treatment to which the author was subjected. The State party was also requested to provide the author with appropriate reparation, including compensation.

230. In case No. 1620/2007 (*J.O. v. France*), involving violations of article 14, paragraphs 2 and 5, in conjunction with article 2, the Committee considered that the State party was under an obligation to provide the author with an effective remedy, including a review of his criminal conviction and appropriate compensation.



231. In case No. 1887/2009 (*Peirano Basso v. Uruguay*), where the Committee found a violation of article 14, paragraph 3 (c), the State party was requested to provide the author with an effective remedy and take steps to speed up the author's trial.

232. A request to provide the author with an effective remedy, including adequate compensation, was made in case No. 1611/2007 (*Bonilla Lerma v. Colombia*), where the Committee found a violation of article 14, paragraph 1.

233. In case No. 1760/2008 (*Cochet v. France*), in which the Committee found a violation of article 15, paragraph 1, the State party was requested to provide the author with an effective remedy, including appropriate compensation.

234. In case No. 1557/2007 (*Nystrom et al. v. Australia*), the Committee concluded that the expulsion of the author from the State party constituted a violation of articles 12, paragraph 4, 17 and 23, paragraph 1. The Committee requested the State party to provide the author with an effective remedy, including allowing the author to return and materially facilitating his return to Australia. In case No. 1959/2010 (*Warsame v. Canada*), concerning the violation of the author's rights under articles 6, paragraph 1; 7; 12, paragraph 4, 17 and 23, paragraph 1, should his deportation be implemented, the State party was requested to provide the author with an effective remedy, including by refraining from deporting him to Somalia.

235. In case No. 1621/2007 (*Raihman v. Latvia*), concerning the violation of article 17 in connection with the unilateral change of the author's name by the State party, the latter was requested to provide the author with an appropriate remedy and to adopt such measures as may be necessary to ensure that similar violations did not occur in the future, including through the amendment of relevant legislation.

236. In cases Nos. 1642–1741/2007 (*Jeong et al. v. Republic of Korea*), involving a violation of the authors' freedom of conscience under article 18, paragraph 1, the State party was requested to provide the authors with an effective remedy, including expunging their criminal records and providing them with adequate compensation. The State party was also under an obligation to avoid similar violations in the future, which included the adoption of legislative measures guaranteeing the right to conscientious objection.

237. In case No. 1876/2009 (*Singh v. France*), the Committee found that the regulation requiring persons to appear bareheaded in the identity photographs used on their residence permits involved a violation of article 18. The Committee requested the State party to provide the author with an effective remedy, including a reconsideration of his application for a renewal of his residence permit and a review of the relevant legislative framework and its application in practice, in the light of its obligations under the Covenant.

238. In case No. 1604/2007 (*Zalesskaya v. Belarus*), involving violations of articles 19, paragraph 2, and 21 as a result of the author being fined for distributing officially registered newspapers and leaflets, the State party was requested to provide the author with an effective remedy, including reimbursement of the present value of the fine and any legal costs incurred by the author, as well as compensation.

239. In case No. 1470/2006 (*Toktakunov v. Kyrgyzstan*), concerning a violation of the right to receive information under article 19, paragraph 2, the Committee requested the State party to provide the author with an effective remedy. It nevertheless considered that the information already provided by the State party to the Committee constituted such a remedy.

240. In case No. 1383/2005 (*Katsora et al. v. Belarus*), involving violation of article 22, paragraph 1, of the Covenant, the State party was requested to provide the authors with an appropriate remedy, including the reconsideration of the application for registration of their

association, based on criteria compliant with the requirements of article 22, and adequate compensation.

241. In case No. 1478/2006 (*Kungurov v. Uzbekistan*), involving a violation of article 22, paragraph 1, alone and read together with article 19, paragraph 2, the State party was requested to provide the author with an effective remedy, including compensation amounting to a sum not less than the present value of the expenses incurred by him in relation to the registration application of Democracy and Rights as a national NGO and any legal costs paid by him. The State party should reconsider the author's registration application and ensure that the laws and practices that regulate the NGO registration and the restrictions imposed are compatible with the Covenant.

242. In case No. 1564/2007 (*X.H.L. v. Netherlands*), the Committee concluded that the State party's decision to return the author to China violated his rights under article 24 in conjunction with article 7. The State party was requested to provide the author with an effective remedy by reconsidering his claim in the light of the evolution of the circumstances of the case, including the possibility of granting him a residence permit.

243. In case No. 1410/2005 (*Yevdokimov and Rezanov v. Russian Federation*), involving a violation of article 25 alone and in conjunction with article 2, paragraph 3, because of restrictions of the right to vote of persons deprived of liberty under court sentence, the Committee requested the State party to amend its legislation to comply with the Covenant, and provide the authors with an effective remedy.

244. In case No. 1354/2005 (*Sudalenko v. Belarus*), where the Committee found a violation of article 25, paragraphs (a) and (b) of the Covenant, read in conjunction with article 2, paragraph 1, and article 26, the Committee requested the State party to provide the author with an effective remedy, including compensation, as well as to consider any future application for nomination of the author as a candidate for the elections in full compliance with the Covenant.

245. Cases No. 1581/2007 (*Drda v. Czech Republic*) and No. 1586/2007 (*Lange v. Czech Republic*), involved violations of article 26 as a result of discrimination on the basis of citizenship with respect to restitution of property. The State party was requested to provide the authors with an effective remedy, including compensation if the property could not be returned. The Committee also reiterated its position that the State party should review its legislation to ensure that all persons enjoy both equality before the law and equal protection of the law.

246. In case No. 1610/2007 (*L.N.P. v. Argentina*), involving various violations of the rights of an indigenous girl who was a victim of rape, the Committee took note of the compensatory measures agreed between the representatives of the author and the State party. While recognizing the progress made by the State in implementing several of those measures, the Committee requested full implementation of the agreed commitments. The Committee further recalled that the State party has the obligation to ensure that similar violations are not perpetrated in the future, in particular by guaranteeing access for victims, including victims of sexual assault, to the courts in conditions of equality.

## VI. Follow-up on individual communications under the Optional Protocol

247. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up on Views to this effect. Mr. Krister Thelin has been the Special Rapporteur since March 2011 (101st session).

248. As indicated in the Committee's general comment No. 33 (2008) on the obligations of States parties under the Optional Protocol to the International Covenant on Civil And Political Rights,<sup>27</sup> the Special Rapporteur, through written representations, and frequently also through personal meetings with diplomatic representatives of the State party concerned, urges compliance with the Committee's views and discusses factors that may be impeding their implementation.

249. It is to be noted, as also indicated in general comment No. 33 (para. 17), that failure by a State party to implement the Views of the Committee in a given case becomes a matter of public record through the publication of the Committee's decisions *inter alia* in its annual reports to the General Assembly. Some States parties, to which the Views of the Committee have been transmitted in relation to communications concerning them, have failed to accept the Committee's Views, in whole or in part, or have attempted to re-open the case. In a number of those cases these responses have been made where the State party took no part in the procedures, having not carried out its obligation to respond to communications under article 4, paragraph 2, of the Optional Protocol. In other cases, rejection of the Committee's Views, in whole or in part, has come after the State party has participated in the procedure and where its arguments have been fully considered by the Committee. In all such cases, the Committee regards dialogue between the Committee and the State party as ongoing with a view to implementation. The Special Rapporteur for follow-up on Views conducts this dialogue, and regularly reports on progress to the Committee.

250. A total of 587 Views out of the 731 Views adopted since 1979 concluded that there had been a violation of the Covenant. A comprehensive table recapitulating all Views with a conclusion of violation, by State, is included in annex VIII (vol. II) of the present annual report.

251. The present chapter sets out information provided by States parties and authors or their counsel/representative since the last annual report.<sup>28</sup>

State party	Algeria
Case	<i>Bousroual</i> , 992/2001
Views adopted on	30 March 2006
Issues and violations found	Enforced disappearance, arbitrary detention, no access to counsel, failure to bring promptly before a judge, grave suffering – article 6, paragraph 1; article 7 and article 9, paragraphs 1, 3 and 4, in relation to the author's husband, as well as article 7 in relation to the author, violations in

<sup>27</sup> *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 40*, vol. I (A/64/40 (Vol. I)), annex V, para. 16.

<sup>28</sup> *Ibid.*, *Sixty-fifth Session, Supplement No. 40*, vol. I (A/65/40 (Vol. I)), chap. VI.

conjunction with article 2, paragraph 3.

**Remedy recommended**

A thorough and effective investigation into the disappearance and fate of the author's husband, his immediate release if he is still alive, adequate information resulting from its investigation transmitted to the author, and appropriate levels of compensation for the violations suffered by the author's husband, the author and the family. The State party is also under a duty to prosecute criminally, try and punish those held responsible for such violations.

**Due date for State party's response** 1 July 2006

**Date of State party's response** None

**Date of author's comments** 27 July 2010

**Author's comments**

On 27 July 2010, the author informed the Committee that the State party has taken no measures to date to implement the Committee's decision and in general has failed to follow up on any of the Committee's decisions against the State party on the pretext that it cannot do so under the *Charte pour la Paix et la Réconciliation Nationale*.

**Further action taken or required**

During the ninety-seventh session and in the light of the State party's failure to provide follow-up information on any of the Committee's Views, the Secretariat, on behalf of the Special Rapporteur, requested a meeting with a representative of the Permanent Mission during the ninety-third session of the Committee (7 to 25 July 2008). Despite a formal written request for a meeting, the State party did not respond. A meeting was eventually scheduled for the ninety-fourth session but did not take place.

The author's submission was sent to the State party on 9 August 2010 and the State party was reminded to provide comments on the follow-up to this case.

The Committee decided that a further attempt to organize a follow-up meeting with the State party should be arranged. A note verbale was sent to the State party in this connection in July 2011. The Permanent Mission expressed its preference to have the meeting scheduled in October–November 2011. The case should be discussed during the meeting with the State party's representatives during the Committee's 103rd session (October–November 2011).

**Decision of the Committee** The Committee considers the dialogue ongoing.

<b>State party</b>	<b>Algeria</b>
<b>Case</b>	<b><i>Medjnoune, 1297/2004</i></b>
<b>Views adopted on</b>	14 July 2006
<b>Issues and violations found</b>	Arbitrary arrest, failure to inform of reasons for arrest and charges against him, torture, undue pretrial delay – articles 7; 9, paragraphs 1, 2 and 3; and 14, paragraph 3 (a) and (c), of the Covenant.
<b>Remedy recommended</b>	An effective remedy, which includes bringing Mr. Malik Medjnoune immediately before a judge to answer the charges against him or to release him; a full and thorough investigation

into the incommunicado detention and treatment suffered by Mr. Medjnoune since 28 September 1999; and prosecution of those responsible, in particular for the ill-treatment. The State party is also required to provide appropriate compensation to Mr. Medjnoune for the violations.

<b>Due date for State party's response</b>	16 November 2006
<b>Date of State party's response</b>	None
<b>Date of author's comments</b>	9 April 2007, 27 February 2008, 12 February 2009, 28 September 2009, 24 January 2011

#### **Author's comments**

On 9 April 2007, the author informed the Committee that the State party had failed to implement its Views. Since the Committee's Views were adopted, the author's case was brought before the Cour de Tizi-Ouzou on two occasions without being heard. In addition, an individual living in Tizi-Ouzou claims to have been threatened by the judicial police to give false testimony against the author. This individual along with another (his son) claim to have been tortured in February and March 2002 for refusing to give evidence against the author, i.e. to say that they had seen him in the area where the victim was shot. The first individual was later sentenced to three years imprisonment on 21 March 2004 for belonging to a terrorist group and the other acquitted, whereupon he fled to France where he was granted refugee status.

On 27 February 2008, the author submitted that the State party had not implemented the Views. In light of the fact that the author's case had still not been heard, he began a hunger strike on 25 February 2008. The *procureur général* visited him in prison to encourage him to end his strike and stated that although he could not fix a date for a hearing himself he would contact the "appropriate authorities". In the author's view, according to domestic law, the *procureur général* is the only person who can request the president of the criminal court to list a case for hearing.

On 12 February 2009, the author reiterated his allegation that the State party had not implemented the Views and stated that since the Views were adopted 19 other criminal cases had been heard by the court in Tizi-Ouzou. The author again went on hunger strike on 31 January 2009, and the following day the prosecutor of the Tribunal came to the prison to inform him that his case would be heard after the elections. A year ago, during his last hunger strike, the judicial authorities also made the same promise, explaining that his case was "politically sensitive" and that they did not have the power to decide to hear his case.

On 28 September 2009, the author reiterated that he has still not been tried, that his case remains a political matter and that the Government has given instructions to the judiciary not to take any action on this matter.

On 24 January 2011, the author reiterated his previous comments and recalled that the authorities have failed to implement the Committee's Views and that the examination of his case with the Criminal Tribunal of Tizi-Ouzou has remained pending since 2001. He requests the Committee to intervene again with the State party's authorities and seek a solution.

#### **Further action taken or required**

In the light of the State party's failure to provide follow-up information on any of the Committee's Views, the Secretariat, on behalf of the Special Rapporteur, requested a meeting with a representative of the Permanent Mission during the ninety-third session of the Committee (7 to 25 July 2008). Despite a formal written request for a meeting, the State party did not respond. A meeting was eventually scheduled for the ninety-fourth session but it did not take place.

The Committee decided that a further attempt to organize a follow-up meeting should be made. The meeting should be scheduled for July 2011. A note verbale was sent to the State party in this connection in July 2011. The Permanent Mission expressed its preference to have the meeting scheduled in October–November 2011. The case should be discussed during the meeting with the State party's representatives during the Committee's 103rd session (October–November 2011).

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

State party	Algeria
<b>Case</b>	<i>Aber</i> , 1439/2005
<b>Views adopted on</b>	13 July 2007
<b>Issues and violations found</b>	Violation of article 7 and of article 9, paragraphs 1 and 3, read alone and in conjunction with article 2, paragraph 3 (incommunicado detention; torture; arbitrary detention, absence of court control over detention), and of article 10, paragraph 1 (conditions of detention), of the Covenant.
<b>Remedy recommended</b>	An effective remedy for the author. The State party is under an obligation to take appropriate steps to (a) institute criminal proceedings, in view of the facts of the case, for the immediate prosecution and punishment of the persons responsible for the ill-treatment to which the author was subjected, and (b) provide the author with appropriate reparation, including compensation. The State party is, further, required to take measures to prevent similar violations in the future.
<b>Due date for State party's response</b>	None.
<b>Date of author's comments</b>	7 March 2011

#### **Author's comments**

On 7 March 2011, the CFDA ("Committee of families of disappeared in Algeria") explained that three years after the adoption of the Committee's Views in the present case, no measures have been taken by the State party to implement them. Thus, no criminal inquiry was initiated, even if the identity of those responsible for the torture in the present case is known. In addition, no steps have been taken by the State party to avoid the occurrence of similar violations in future.

#### **Further action taken or required**

In the light of the State party's failure to provide follow-up information on any of the Committee's Views, the Secretariat, on behalf of the Special Rapporteur, requested a meeting with a representative of the Permanent Mission during the ninety-third session of the Committee (7 to 25 July 2008). Despite a formal written request for a meeting, the State party did not respond. A meeting was eventually scheduled for the ninety-fourth session but it did not take place.

The Committee decided that a further attempt to organize a follow-up meeting should be made. A note verbale was sent to the State party in this connection in July 2011. The Permanent Mission expressed its preference to have the meeting scheduled in October–November 2011. The case should be discussed during the meeting with the State party's representatives during the Committee's 103rd session (October–November 2011).

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Australia</b>
<b>Case</b>	<b><i>Fardon, 1629/2007</i></b>
<b>Views adopted on</b>	18 March 2010
<b>Issues and violations found</b>	Arbitrary detention, as the author continued to be detained, under the provisions of the Queensland Dangerous Prisoners (Sexual Offenders) Act 2003 (DPSOA), at the conclusion of his term of imprisonment following a conviction in a criminal matter – violation of article 9, paragraph 1.
<b>Remedy recommended</b>	An effective remedy, including termination of the author's detention under the DPSOA.
<b>Due date for State party's response</b>	12 October 2010
<b>Date of State party's response</b>	8 October 2010
<b>Date of author's comments</b>	3 March 2011
<b>State party's submission</b>	<p>The State party informed the Committee that it was unable to present its response within the requested time frame and that it is currently giving careful consideration to the Committee's Views and would provide its reply at a future date.</p>
<b>Author's comments</b>	<p>On 3 March 2011, the author's counsel noted that the State party has not provided any time frame in which it intends to provide its follow-up reply and inquired for how long such a situation can continue.</p>
<b>Further action taken or required</b>	<p>The author's information was sent to the State party in March 2011. A reminder to the State party will be prepared. The Committee decided to await receipt of further comments prior to making a decision on this matter.</p>
<b>Decision of the Committee</b>	The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Australia</b>
<b>Case</b>	<b><i>Tillman, 1635/2007</i></b>
<b>Views adopted on</b>	18 March 2010
<b>Issues and violations found</b>	Arbitrary detention, as the author continued to be detained, under the provisions of the Crimes (Serious Sex Offenders) Act 2006 (New South Wales) (CSSOA), at the conclusion of his term of imprisonment following a conviction in a criminal matter – violation of article 9, paragraph 1.
<b>Remedy recommended</b>	An effective remedy, including termination of the author's detention under the CSSOA.
<b>Due date for State party's response</b>	12 October 2010

**Date of State party's response** 8 October 2010

**State party's submission**

The State party informed the Committee that it was unable to present its response within the requested time frame and that it was currently giving careful consideration to the Committee's Views and would provide its reply at a future date.

**Further action taken or required**

The State party's information was sent to the author on 15 October 2010. A reminder to the State party will be prepared. The Committee decided to await receipt of further comments prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Austria</b>
<b>Case</b>	<i>Pauger, 415/1990 and 716/1996</i>
<b>Views adopted on</b>	26 March 1992 and 25 March 1999, respectively.
<b>Issues and violations found</b>	Discrimination in lump sum (widows') entitlement under the pension act. Violation of article 26.
<b>Remedy recommended</b>	In communication No. 415/1990, the Committee noted with appreciation that the State party had taken steps to remove the discriminatory provisions of the Pension Act as of 1995. Notwithstanding these steps, the Committee expressed the view that the State party should offer Mr. Dietmar Pauger an appropriate remedy.  In communication No. 716/1996, the Committee concluded that "the State party is under the obligation to provide Mr. Pauger with an effective remedy, and in particular to provide him with a lump-sum payment calculated on the basis of full pension benefits, without discrimination. The State party is under an obligation to take measures to prevent similar violations" (para. 12).
<b>Due date for State party's response</b>	12 August 1992 and 25 June 1999
<b>Date of State party's response</b>	11 August 1992, 23 February 2000, 21 January 2002
<b>Date of author's comments</b>	18 December 2001, 23 April 2010, 22 March 2011
<b>State party's submission</b>	

See the committee's annual report for the period 2001/2002.<sup>29</sup>

By note verbale of 20 June 2011, the State party informed the Committee that it had implemented the Committee's Views in communications 415/1990 and 716/1996. It referred to its 2002 submissions, emphasizing that the Austrian legal system made it impossible to provide the author with further payments under the title of a widower's pension or any ex gratia payments. According to the State party,

<sup>29</sup> Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40 (A/57/40 (Vol. I)), para. 233.



the Committee did not contest those reasons in 2002. The State party further noted that the Committee's Views did not contain any specific indication on the specific sum to be provided to the author as a remedy. The State party had, in the meantime, adapted its legislation, and at present men and women are treated equally as regards their widowers' pensions.

#### Author's comments

See the Committee's annual report.<sup>30</sup> On 22 March 2011, the author reported that the State party had amended its discriminatory legislation, but had not implemented the Committee's recommendation to provide him with an effective remedy and had refused to grant him any compensation.

**Decision of the Committee** Given the State party's measures taken so far in order to amend its legislation and ensure that no similar violations would occur in the future, in the light of the time elapsed since the adoption of the Views, and despite the fact that the author received no compensation, the Committee decided to close the examination of the case under the follow-up procedure and to include it in the list of cases closed with partially satisfactory resolution.

State party	Azerbaijan
<b>Case</b>	<i>Avadanov, 1633/2007</i>
<b>Views adopted on</b>	25 October 2010
<b>Issues and violations found</b>	Violation of article 7, read in conjunction with article 2, paragraph 3, of the Covenant (torture, and failure to investigate).
<b>Remedy recommended</b>	Effective remedy in the form, inter alia, of an impartial investigation of the author's claim under article 7, prosecution of those responsible and appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party response</b>	30 May 2011
<b>Date of State party's response</b>	None
<b>Date of author's comments</b>	11 March 2011
<b>Author's comments</b>	

On 11 March 2011, the author reported that the State party had not implemented the Committee's Views and that he was unable to hire a lawyer in order to assist him with the determination of the amount for the damages suffered.

#### Further action taken/required

The author's latest comments were transmitted to the State party, with a request for observations, in April 2011. The Committee decided to await receipt of further information prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<sup>30</sup> *Ibid.*

State party	Belarus
Case	<i>Smantser, 1178/2003</i>
Views adopted on	23 October 2008
Issues and violations found	Detention in custody – article 9, paragraph 3
Remedy recommended	An effective remedy, including compensation
Due date for State party's response	12 November 2009
Date of State party's response	31 August 2009
Date of author's comments	23 April 2010

**State party's submission**

The State party contests the Views and submits inter alia that the Courts acted with respect to the Belarusian Constitution, and Criminal Procedural Code, as well as the Covenant. It denies that the author's rights under the Covenant were violated.

**Author's comments**

On 23 April 2010, the author contested the State party's argument that he was detained in accordance with the Code of Criminal Procedure, that he was convicted for a particularly serious crime and that there was a risk that he might interfere with the investigation or abscond. He claims that the General Prosecutor's Office could not find any lawful grounds for his detention under section 210, part 4, of the Criminal Code. Thus, he was detained from 3 December 2002 to 31 May 2003 unlawfully. He submits that he is unaware of any action by Belarus to implement the Committee's Views on his case, which had not even been published at that point. Furthermore, he submits that he is currently abroad, as on 4 May 2006 the court of the Octyabr district annulled the decision of the same court of 7 June 2005 to replace the rest of his prison term with community service.

**Further action taken or required**

Given the State party's refusal to implement the Committee's Views on this case or indeed to provide any satisfactory response to any of the 16 findings of violations against it, the Committee decided during its ninety-eighth session that a meeting between representatives of the State party and the Special Rapporteur for follow-up to Views should be organized. The meeting took place in July 2011, in the presence of the Committee's Chairperson. The State party was provided with a list of all cases concerning Belarus adopted with a finding of a violation, and was invited to provide information on the measures taken to give effect to the Committee's Views. The Committee decided to await receipt of further information prior to making a decision on this matter.

<b>Decision of the Committee</b>	The Committee considers the dialogue ongoing.
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State party	Belarus
Case	<i>Marinich, 1502/2006</i>
Views adopted on	16 July 2010
Issues and violations found	Conditions of detention, in particular lack of provision of adequate medical care to the author when deprived of liberty – violation of articles 7 and 10; arbitrary detention – article 9; unfair trial and violation of the author's right to be presumed

innocent – article 14, paragraphs 1 and 2.

**Remedy recommended**

An effective remedy including the payment of adequate compensation and initiation of criminal proceedings to establish responsibility for his ill-treatment under article 7 of the Covenant. The State party is also under an obligation to prevent similar violations in the future.

**Due date for State party's response** 11 April 2011

**Date of State party's response** 4 January 2011

**Date of author's comments** 7 April 2011

**State party's submission**

In its response of 4 January 2011, the State party contends that the author's allegations of irregularities during the preliminary investigation do not correspond to the reality. All investigation and procedural acts have been carried out in strict conformity with the law. The author's allegations on the alleged unfair trial, unlawful detention, conditions of detention, and right to privacy are, according to the State party, groundless.

The State party recalls the facts of the case: during a search in the car of the author, the police discovered US\$90,900, out of which 490 of the bills were false. A criminal case was opened in this connection. During another search, the police discovered a firearm in the author's summer house, and he was accused of the illegal possession of said firearm. The author was arrested as a suspect and placed in pretrial detention. The restraint measure was chosen taking into account the fact that the author could abscond by leaving Belarus. Furthermore, the author was also charged for having committed the theft of information technology equipment.

The author had confirmed that he had been offered the services of a lawyer.

The court's conclusion on the guilt of the author was based on the evidence contained in the criminal case file, which was assessed fully and objectively. The trial was public and in conformity with the criminal procedure legislation. A number of journalists and foreign diplomats were present during the trial. At some point, access to the court room had to be limited, but this was due to the lack of space.

The principle of equality of arms was fully respected in this case. All requests made by the author during the trial were properly addressed, and requests to have additional witnesses questioned or to have written evidence adduced to the criminal case file were granted by the court. The court was not subjected to any form of pressure. The regularity of the trial and the objectivity of the conviction are confirmed by the material of the criminal case file, containing a multitude of corroborating evidence of the author's guilt in the incriminated events.

The prosecutors acted in a proper manner. At the end of the trial, neither the author nor his defence lawyers made objections to the content or accuracy of the trial transcript, or that unlawful or incorrect actions of the prosecutors were not reflected thereon.

The appeal court concluded that the conviction of the author was grounded, that his acts were qualified correctly under the law, and that his guilt was fully established. In the light of mitigating circumstances, the appeal court reduced the sentence from five to three-and-a-half years' imprisonment. The case was further examined by the Supreme Court and the sentence was confirmed. Following the general Amnesty Act of 2005, the author's sentence was further reduced by one year, and by decision of a court, he was released on bail.

The author's medical record shows that he had arrived at the penitentiary colony No. 8 on 3 March 2005, and had passed an entry medical check-up there, on 4 March 2005. During the

examination, he had complained about vertigo, pain in the thorax and general weakness. The doctor's medical diagnosis was heart ischemia and cardio-arthrosclerosis with arrhythmia. The author was provided with adequate medication and was monitored.

On 7 March 2005, Mr. Marinich was examined by a doctor of an emergency service who found that he had a severe irregularity in the cerebral blood circulation. In the light of his state, the author was taken to the Medical Unit of the Penitentiary Colony No. 8 in Orsha, as it was decided that he was not fit to travel to Minsk in the circumstances. As his state did not improve, the author was examined by a group of high-level medical doctors (names and titles provided). The group decided, in the light of the stable situation of the author, to take him with a special ambulance accompanied by a reanimation doctor to the Republican Penitentiary Hospital in Minsk. On 15 March 2005, the author arrived in Minsk, with a diagnosis: cerebral infarction, acute phase; atherosclerosis, arrhythmia, etc. He was provided with adequate care and medication. On 18 March 2005, he was examined by a leading cardiologist, and on 21 March 2005, he underwent examinations in the National Institute of Cardiology. The major part of the medical products needed for his treatment was provided by the Penitentiary Hospital, and a smaller part was provided by the author's relatives as they were not available in the hospital.

A verification of the conditions of detention was carried out by the General Prosecutor's Office during the author's stay in the Penitentiary Hospital, and no violations were revealed. On this occasion, the author was questioned by a prosecutor, on 22 March 2005, and he had no complaints against the penitentiary personnel there, and expressed satisfaction with the medical care provided.

The State party further notes that the author does not provide any explanation which might establish a causal link between his conditions of detention and his state of health. In addition, he suffered from heart ischemia and arrhythmia prior to his detention.

In reaction to Mr. Marinich's claims, the General Prosecutor's Office asked the Department of Execution of Penalties of the Ministry of Internal Affairs to inquire on the circumstances of his stroke on 7 March 2005, and also to ensure that he was kept in the Penitentiary Hospital and that his health status was monitored. The conclusions of the verification carried out by the Department of Execution of Penalties revealed no irregularities in the acts of the medical personnel.

The State party further notes the author's claims of inhuman treatment and of his conditions of detention, as the cells were small, the food inadequate ("lack of fruits and vegetables"), the fact that the content of parcels was checked, the absence of smoking areas, or transportation in unheated train wagons. It contends that the conditions of detention of Mr. Marinich were equal to the ones of all other detainees and in strict compliance with the pertinent legislation and regulations.

In the light of the above information, the State party considers that the author's allegations with regard to violations of his rights under the Covenant are unsubstantiated.

#### **Author's comments**

On 7 April 2011, the author explained that the State party's observations do not correspond to the reality, and constitute an attempt to avoid giving effect to the Committee's Views. He notes the State party's explanation that the conditions of detention were similar to those of the rest of the prisoners but claims that this does not mean that the conditions were not inhumane. He explains that he remained imprisoned for one year after having had a stroke. He had a second stroke in 2010, and believes that it was a consequence of the treatment he was subjected to, and the lack of medication, in prison.

According to the author, the State party has not made any effort to publicly disseminate the text of the Committee's Views. Finally, he notes that the State party has implemented none of the Committee's Views adopted against it so far.

### Further action taken or required

The author's comments were sent to the State party in April 2011. The case was also mentioned during a meeting between representatives of the State party and the Committee's Special Rapporteur on follow-up to Views (the Committee Chairperson was also present), in July 2011. The State party was provided with a list of all cases concerning Belarus adopted with a finding of a violation, and was invited to provide information on the measures taken to give effect to the Committee's Views. The Committee decided to await receipt of further information prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

State party	Cameroon
<b>Case</b>	<i>Engo, 1397/2005</i>
<b>Views adopted on</b>	22 July 2009
<b>Issues and violations found</b>	Right to challenge lawfulness of detention, arbitrary detention, inhuman treatment, right to counsel of own choosing, right to trial without delay, presumption of innocence – article 9, paragraphs 2 and 3, article 10, paragraph 1, and article 14, paragraphs 2 and 3 (a)–(d).
<b>Remedy recommended</b>	Effective remedy leading to the author's immediate release and the provision of adequate ophthalmological treatment.
<b>Due date for State party's response</b>	1 February 2010
<b>Date of State party's response</b>	No response received
<b>Date of author's comments</b>	20 July 2010, 25 July 2011
<b>Author's submission</b>	

On 20 July 2010, the author informed the Committee that the State party had taken no action to implement the Committee's Views; rather, he had been continually summoned before the Tribunal de Grande Instance relating to issues arising from the facts of his case considered by the Committee.

On 25 January 2011, the author explained that no action had been taken by the State party in 2010 to give effect to the Committee's Views in his case. He further provides an update of the situation in a number of criminal proceedings pending against him, claiming that the authorities have targeted him and harass him. He adds that in recent years, several individuals seen as important personalities have spent time in prison and the public remains indifferent. Finally, the author claims that his health status is deteriorating continuously and irremediably in prison.

### Further action taken or required

The author's latest submission was sent to the State party in February 2011 with a reminder for comments.

Given that the State party has failed to provide information relating to the follow-up in five of the six cases in which the Committee found violations against it (namely, communications No. 458/1991, *Mukong*, No. 1134/2002, *Gorji-Dinka*, No. 1186/2003, *Titiahonjo* and No. 1353/2005, *Afuson Njaru*, as well as the present case), the Committee decided to invite the representatives of the State party to a meeting, which should take place during the 103rd session of the Committee (October–November 2011).

**Decision of the Committee** The Committee considers the dialogue ongoing.

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**State party** **Canada**

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**Case** ***Kaba, 1465/2006***

**Views adopted on** 25 March 2010

**Issues and violations found** The State party would breach its obligations under articles 7 and article 24, paragraph 1, of the Covenant, read in conjunction, in case of forcible return of the author's daughter to Guinea, where she would face a risk of genital mutilation.

**Remedy recommended** In accordance with article 2, paragraph 3 (a), of the Covenant, the State must refrain from removing Fatoumata Kaba to a country where she runs a real risk of being excised. The State party was also asked to publicize the Committee's Views.

**Due date for State party's response** 8 November 2010

**Date of State party's response** 13 April 2011

**State party's submission**

On 13 April 2011, the State party reported that, following the adoption of the Committee's Views, Ms. Kaba and her daughter had submitted a second request for a residence permit on humanitarian grounds. Their request was approved on 29 September 2010. On 5 October 2010, they were granted, in principle, the status of permanent residents, subject to a number of conditions and formalities. Thus, the author and her daughter must, inter alia, present a valid passport and a police record attesting that they have not been charged and sentenced for crimes in Canada.

**Further action taken or required**

The State party's observations were sent to the author in April 2011. The Committee decided to await receipt of further information prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

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**State party** **Canada**

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**Case** ***Dumont, 1467/2006***

**Views adopted on** 16 March 2010

**Issues and violations found** A violation of article 2, paragraph 3, read in conjunction with article 14, paragraph 6, of the Covenant.

**Remedy recommended** An effective remedy in the form of adequate compensation. The State party is also required to ensure that similar violations do not occur in the future.

**Due date for State party's response** 17 November 2010

**Date of State party's response** 17 December 2010, 6 July 2011

**Date of author's comments** 8 February 2011, 14 April 2011

### **State party's submission**

The State party, firstly, explains that an out-of-court settlement has been reached between the author and two of the four of the defendants in the civil case (i.e. the City of Boisbriand and the author's insurers) initiated by the author before the Superior Court of Québec. Thus, the author received a monetary compensation, the exact amount constituting confidential information. Canada has inquired about the amount of the compensation paid, and it finds it to be appropriate and constituting an effective remedy in the present case. Canada is trying to convince the City and the insurers to waive the confidentiality clause in the agreement with the author, so as to provide the Committee with information in relation to the amount paid. The State party has requested the Committee to invite the author to agree to waive the confidentiality agreement, vis-à-vis the Committee, if all parties agree to do so.

The State party further contends that during the trial before the Superior Court of Québec, the Prosecutor General of Québec affirmed that the amount of the compensation paid compensates fully and entirely the damages allegedly caused to the author because of his conviction and deprivation of liberty.

Secondly, the State party recalls that on 17 July 2009, the Superior Court of Québec rejected the author's request for additional compensation against the Prosecutor Generals of Québec and Canada, respectively. An appeal against this decision was filed with the Appeal Court of Québec, and the case is to be examined in 2011. The State party informed the Committee that it would execute the final decision of the Court.

As to the measures taken to ensure that no similar violation would occur in the future, the State party explains that the 1998 Guidelines on compensation of wrongfully convicted and imprisoned persons are currently being revised by a working group composed of representatives of the federal, provincial, and territorial authorities of Canada. The Committee's Views in the present case are duly being taken into account in the revision. As the Guidelines were adopted by the federal Minister in charge of criminal justice, and the competent provincial and territorial Ministers, any change in their provisions should first be accepted by the federal, the provincial, and the territorial governments.

Finally, on the publicity of the Committee's Views in the present case, the State party explains that the English and the French versions of the Views were placed on the Internet site of "Canadian Heritage" (Federal Ministry) at: [www.pch.gc.ca/pgm/pdp-hrp/inter/decisions-fra.cfm](http://www.pch.gc.ca/pgm/pdp-hrp/inter/decisions-fra.cfm), and are thus accessible to everyone.

### **Author's comments**

In his comments of 8 February 2011, the author notes the State party's explanations that an extrajudicial agreement has been reached with two of the four defendants in the civil suit initiated by him with the Supreme Court of Canada. According to him, however, the defendants are in fact five – the Prosecutor General of Québec, the Prosecutor General of Canada, the City of Boisbriand and the two insurance companies. The out-of-court settlement was concluded between the author and three (not two) parties – the City of Boisbriand and its two insurers. The confidentiality of the agreement is common in such cases. According to the author, the out-of-court settlement does not constitute, directly or indirectly, a measure aimed at providing him with an effective remedy in the form of compensation. To the contrary, the State party continues to challenge the judicial action initiated by him before the Appeal Court of Québec.

On 14 April 2011, counsel informed the Committee about the compensation paid by the authorities to an individual in a similar case, concerning a judicial error, for an amount of 4.5 million Canadian dollars.

### **Additional information from the State party**

On 6 July 2011, the State party provided additional observations. It explained that it considers that the compensation received already by Mr. Dumont by the City of Boisbriand and its insurers cannot

be dissociated from the author's claims against Quebec and Canada in connection to the present communication. The State party explains that the indemnity paid compensates fully the author's damages, including concerning his deprivation of liberty, and constitutes an effective remedy, and an adequate compensation, for the purposes of the present communication.

The State party adds that it has obtained the agreement of the City of Boisbriand and the two insurers to have the confidentiality clause concerning the amount of compensation paid to the author lifted vis-à-vis the Committee only. It notes that the author has not agreed to waive the confidentiality clause.

The State party also notes that the guidelines on compensation of wrongfully convicted and imprisoned persons are currently being revised, and that it will inform the Committee of any development. Finally, the State party objects to the information provided by the author in the submission of 14 April 2011, and claims that the facts and circumstances of the case quoted are different from and irrelevant to the present case.

#### **Further action taken or required**

The State party's latest observations were transmitted to the author in July 2011, with a request to inform the Committee whether he would agree to waive the confidentiality clause, vis-à-vis the Committee only. The Committee decided to await receipt of further information prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Canada</b>
<b>Case</b>	<i>Hamida, 1544/2007</i>
<b>Views adopted on</b>	18 March 2010
<b>Issues and violations found</b>	The forcible return of the author to Tunisia would amount to a violation of his rights under article 7 in conjunction with article 2, of the Covenant.
<b>Remedy recommended</b>	An effective remedy, including a full reconsideration of the author's expulsion order, taking into account the State party's obligations under the Covenant. The State party is also under an obligation to avoid exposing others to similar risks of a violation.
<b>Due date for State party's response</b>	3 January 2011
<b>Date of State party's response</b>	29 October 2010

#### **State party's submission**

The State party informs the Committee that following the adoption of the Committee's Views, its authorities have resumed the examination of the author's second request, introduced in December 2006, for a Pre-Removal Risk Assessment — PRRA — which was postponed because of the registration of the communication by the Committee. A new PRRA agent was designated and, on 6 August 2010, the author was invited in writing to provide the authorities, by 20 August 2010, with an authorization for his lawyer to act on his behalf as well as to present additional evidence on the potential risks in case of his return to Tunisia. A copy of the letter was sent by fax to the lawyer in question. The letter to the author was returned by the postal service and the lawyer did not respond. On 24 August 2010, the authorities contacted the lawyer by telephone. The lawyer's office affirmed that a power of attorney would be sent



by 27 August 2010, but this never happened.

The State party contends that, nevertheless, the author's request for a PRRA is under way, and the Committee will be informed of its outcome. The order to have the author removed to Tunisia has not been executed, and, to the authorities' knowledge, the author is still in Canada.

Finally, the State party informs that the Committee's Views would soon be placed on the Canadian Heritage (Federal Ministry) website ([www.pch.gc.ca/pgm/pdp-hrp/inter/decisions-fra.cfm](http://www.pch.gc.ca/pgm/pdp-hrp/inter/decisions-fra.cfm)).

#### **Further action taken or required**

The State party's submission was sent to the author on 2 November 2010. As the mail was returned since the lawyer has changed address, the submission was faxed to the author's lawyer's new office on 10 February 2011. A reminder to the author will be sent. The Committee decided to await the receipt of comments prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Croatia</b>
<b>Case</b>	<b><i>Vojnović, 1510/2006</i></b>
<b>Views adopted on</b>	30 March 2009
<b>Issues and violations found</b>	Unreasonable delay in proceedings for the determination of the author's specially protected tenancy, arbitrary decision not to hear witnesses, interference with the home – article 14, paragraph 1, in conjunction with article 2, paragraph 1; and article 17 also in conjunction with article 2, paragraph 1.
<b>Remedy recommended</b>	An effective remedy, including adequate compensation.
<b>Due date for State party's response</b>	7 October 2009
<b>Date of State party's response</b>	8 February 2010
<b>Date of author's comments</b>	15 March and 27 August 2010

#### **State party's submission**

In its submission of February 2010, and with respect to the violation of article 17, the State party informed the Committee that, by decision of 23 April 2009, the competent Ministry had allocated an apartment in Zagreb to the author which was fully comparable to his pre-war accommodation, thus restoring de facto his pre-war position in respect of his housing situation. According to the State party, his newly granted status as a protected lessee and the rights arising therefrom were in essence identical to the status he had as a former holder of specially protected tenancy rights, including the rights of his family members. The State party thereby submitted that it had provided appropriate compensation as recommended by the Committee.

While respecting the Committee's decision, the State party made several remarks on the findings therein. It objected to the statement that the mere fact that the author is a member of the Serb minority is an argument in favour of a conclusion that the process undertaken by the relevant Croatian authorities was arbitrary. This assumption has neither been supported nor proven and is outside the scope of the Optional Protocol. Despite the fact that the Committee considered the author's claims on behalf of her son inadmissible, it took precisely the same facts relating to the son's dismissal from work as decisive for establishing that the author and his wife left Croatia under duress. On the conclusion that the author's non-participation in one stage of the national proceedings was arbitrary, the State party

submitted that this fact was remedied in the national review proceedings where the author, his wife and witnesses were heard before the court and were represented by an attorney of their choice. It submitted that the Committee incorrectly took the view that the author had informed the State party of the reasons why he left while it is obvious from the author's comments and the Committee's wording in previous paragraphs that the author did not inform the Government of Croatia but the Government of the Socialist Federal Republic of Yugoslavia about the reasons for his departure. On the issue of the failure to hear witnesses, the State party submitted that they were not heard as they were not accessible to the court and their appearance would have involved additional unnecessary costs. It acknowledged that the proceedings were excessive and refers to the remedy of a constitutional complaint system which has been approved as effective by the European Court of Human Rights.

#### **Author's comments**

In his submissions of 15 March and 27 August, the author expresses his dissatisfaction with the State party's efforts at providing a remedy for the violations found. He also reiterates detailed arguments on the admissibility and merits of the case. As to the remedy, he argues that, contrary to what the State party claims to be his new status as protected lessee, it is not identical to that which he had as a holder of specially protected tenancy rights: the Government of Croatia will remain the owner of the property; he cannot acquire a right of possession; and he and his family may only sublet the apartment from the State for the rest of their lives. In addition, he states that the new apartment is in no way comparable to the old one, which was in the centre of town, rather than the outskirts, and which is worth almost double the market value. In the author's view, the appropriate remedy would be restitution of the property in question and compensation in the amount of 318,673 euro for pecuniary damage and 100,000 euro for non-pecuniary damage.

#### **Decision of the Committee**

Despite the author's dissatisfaction with the remedy provided by the State party, the Committee considers the efforts made by the State party to compensate the author as satisfactory and does not intend to consider this case any further under the follow-up procedure.

<b>State party</b>	<b>Czech Republic</b>
<b>Case</b>	<b><i>Kohoutek, 1448/2006</i></b>
<b>Views adopted on</b>	17 July 2008
<b>Issues and violations found</b>	The application by the domestic courts of a citizenship requirement in a property restitution/compensation case violated the author's rights under article 26 of the Covenant.
<b>Remedy recommended</b>	An effective remedy, including compensation if the property cannot be returned. The State party should review its legislation to ensure that all persons enjoy both equality before the law and equal protection of the law.
<b>Due date for State party's response</b>	27 February 2009
<b>Date of State party's response</b>	16 February 2011
<b>Date of author's comments</b>	11 October 2010, 28 February 2011
<b>Author's comments</b>	

By letter of 11 October 2010, the author's counsel informed the Committee that he had contacted the Ministry of Justice and asked when the State party intended to present a reply concerning the

compensation of the author. He received a reply (a copy was provided) according to which the position of the Czech Republic, as already notified to the Committee on previous occasions, including during the presentation of the State party's second periodic report under the Covenant in 2007, remains unchanged. The Ministry of Justice contends that in the light of this, it does not see the need to act on the Committee's Views.

Counsel requested the Committee to initiate United Nations sanctions mechanisms against the State party, as the breach of its international obligations, being a State Member of the United Nations, should, according to him, not be tolerated. Counsel requested an explanation on the steps the Committee intended to undertake in the matter, and stated that at the national level, it was useless to seek further compensation for the author.

#### **State party's submission**

By note verbale of 16 February 2011, the State party reiterated "its long-term position concerning conditions prescribed by law for submitting property restitution claims", as shared with the Committee during the consideration of the second periodic report of the Czech Republic. It ensured the Committee that it would inform it, if its position changed, of any changes in its legislation or practice.

#### **Author's comments**

On 28 February 2011, the author's counsel reported that on 27 October 2010, he had sent a letter to the Department of Human Rights of the Government of the Czech Republic, asking what steps were envisaged to comply with the Committee's Views in the present case. He submitted a copy of the reply dated 30 December 2010, by which the Director of the Department of Human Rights explained the Government's position on the nature of the Committee's Views and the obligations resulting from the State party's participation in the Covenant and its Optional Protocol. The Director also explained that the issue of citizenship requirements concerning property restitution would be discussed again with the Committee, during the examination of the third periodic report in connection with the Covenant, to be submitted in 2011.

#### **Further action taken or required**

The author's latest submission was transmitted to the State party in March 2011. The Committee decided to await receipt of further comments prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Democratic Republic of the Congo</b>
<b>Case</b>	<i>Mundyo Busyo et al. ("68 magistrates")</i> , 933/2000
<b>Views adopted on</b>	31 July 2003
<b>Issues and violations found</b>	Dismissal of 68 judges, right to liberty, independence of the judiciary – article 25 (c), article 14, paragraph 1, article 9 and article 2, paragraph 1.
<b>Remedy recommended</b>	An appropriate remedy, which should include, inter alia: (a) in the absence of a properly established disciplinary procedure against the authors, reinstatement in the public service and in their posts, with all the consequences that that implies, or, if necessary, in similar posts; and (b) compensation calculated on the basis of an amount equivalent to the salary they would have received during the period of non-reinstatement. The State party is also under an obligation to ensure that similar

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violations do not occur in future and, in particular, that a dismissal measure can be taken only in accordance with the provisions of the Covenant.

<b>Due date for State party's response</b>	17 November 2003
<b>Date of State party's response</b>	The State party has not responded to any of the Committee's Views to date.
<b>Date of author's comments</b>	23 June 2009, 30 September 2010

**Committee's consideration under the reporting procedure (art. 40 of the Covenant)**

During its eighty-sixth session in March–April 2006, the Committee considered the third periodic report of the State party. In its concluding observations (CCPR/C/COD/CO/3) it stated:

“While welcoming the delegation's assertion that the judges who wrote communication No. 933/2000 (*Busyo et al.*) can once again practice their profession freely and have been compensated for being arbitrarily suspended, the Committee remains concerned that the State party failed to follow up on its recommendations contained in many Views adopted under the Optional Protocol to the Covenant (such as the Views in cases Nos. 366/1989 (*Kanana*), 542/1993 (*N'Goya*), 641/1995 (*Gedumbe*) and 962/2001 (*Mulezi*).

“The State party should follow up on the Committee's recommendations in the above-mentioned cases and submit a report thereon to the Committee as soon as possible. The State party should also accept a mission by the Committee's special rapporteur to follow up to the Views and discuss possible ways and means of implementing the Committee's recommendations, with a view to ensuring more effective cooperation with the Committee.”

**Author's comments**

On 23 June 2009, Mr. Ntenda Didi Mutuala, one of the authors of the communication,<sup>31</sup> submitted that the original decree No. 144 of 6 November 1998, which had related to the authors' dismissal, was repealed by a subsequent decree (following the Committee's decision), No. 03/37 of 23 November 2003. On the basis of this decree, the Minister of Justice took his decision of 12 February 2004, to reassign three judges, including the author of the letter, to their functions. The names of the other two judges are not provided by the author. The author submits however that he was reassigned to the same functions and grade, which he had been carrying out in 1998 at the time of the original decree, and which he had assumed in 1992. Thus, the author had around 12 years in total at the same grade by the time he was reassigned to his position by the Minister's decision of 12 February 2004. According to the author, a promotion is normally foreseen after three years in each grade, assuming a judge's functions are carried out well. The author believes that he has so carried out his functions. In addition, he submits that despite the fact that he has requested compensation pursuant to the Committee's decision, none has been forthcoming.

**Additional information from the author**

By letter of 30 September 2010, the author reported that no measures have been taken so far by the State party's authorities to give full effect to the Committee's Views since its 2009 letter. The author invites the Committee to find a solution in the matter.

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<sup>31</sup> As stated in paragraph 1 of the Views: “The authors are Adrien Mundy Busyo, Thomas Osthudi Wongodi and René Sibú Matubuka, citizens of the Democratic Republic of the Congo, acting on their own behalf and on behalf of 68 judges who were subjected to a dismissal measure.”

**Further action taken or required**

The author's submission, together with a copy of his 2009 submission, was transmitted to the State party on 26 January 2011. The State party was invited to provide its reply by the 26 February 2011. No reply has been received. The Committee has sought a meeting with the Permanent Representatives of the State party, and a note verbale was sent to the Permanent Mission in this connection in July 2011. The meeting should take place at the Committee's 103rd session, in October–November 2011.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Denmark</b>
<b>Case</b>	<i>El-Hichou, 1554/2007</i>
<b>Views adopted on</b>	22 July 2010
<b>Issues and violations found</b>	The Committee considered that that the decisions not to allow the reunification of the author and his father in the State party's territory and the order to leave the State party would, if implemented, entail a violation of articles 23 and 24 of the Covenant.
<b>Remedy recommended</b>	The State party is under an obligation to take appropriate action to protect the right of the author to effective reunification with his father, and to avoid similar situations in the future.
<b>Due date for State party response</b>	2 February 2011
<b>Date of State party's response</b>	14 April, 13 July 2011
<b>Date of author's comments</b>	29 June 2011

**State party's response**

By note verbale dated 14 April 2011, the State party reported that after careful consideration of the author's case, and in the light of the particular circumstances of the present case, and in order to comply with the recommendations of the Committee in its Views, the Danish Ministry of Refugee, Immigration and Integration Affairs decided that the author's continued stay in Denmark should be based on a residence permit issued under the Danish Aliens Act, section 9 (c), subsection 1, paragraph 1 (stating that "upon application, a residence permit may be issued to an alien if exceptional reasons make it appropriate, including with regard for family unity"). In taking its decision, the Ministry took into consideration the very specific circumstances of this case.

The State party explained that the Danish Immigration Service is competent of the issuance of the author's residence permit. The permit shall be issued if no alert concerning the author has been entered in the Schengen Information System, if the author is not under an entry prohibition and if no similar circumstances prevent the author from being granted a residence permit. Lastly, the State party explains that the author was informed that nothing indicates that he does not satisfy these basic conditions for obtaining of residence permit in Denmark, and that he is allowed to stay in the country during the Immigration Service's current processing of his permit.

**Author's comments**

On 29 June 2011, the author's counsel confirmed that steps had been taken to have the author issued a residence permit. Counsel also believes that the State party should not interpret the

Committee's recommendation in the present case restrictively.

#### **State party supplementary submission**

On 13 July 2011, the State party reported that it had taken note of the counsel's latest submission.

#### **Further action taken/required**

In the light of the measures taken so far by the State party to give effect to the Committee's Views, the Committee decided not to consider this case any further under the follow-up procedure.

**Decision of the Committee** The Committee considers the follow-up dialogue closed.

<b>State party</b>	<b>France</b>
<b>Case</b>	<b><i>Cochet, 1760/2008</i></b>
<b>Views adopted on</b>	21 October 2010
<b>Issues and violations found</b>	Retroactive effect of a law on the existence of an offence, monitoring of compliance and the penalties incurred; the principle of the retroactive effect of the lighter penalty and the non-existence of a penalty was found to be applicable and, consequently, article 110 of the State party's Act of 17 July 1992 violated the principle of the retroactive effect of the less severe criminal statute under article 15 of the Covenant.
<b>Remedy recommended</b>	The State party is under an obligation to provide the author with an effective remedy, including appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party's response</b>	25 April 2011
<b>Date of State party's response</b>	None
<b>Date of author's comments</b>	16 February 2011, 20 April 2011

#### **Author's comments**

On 16 February 2011, the author's counsel reported that on 6 December 2010 he had submitted a request for a revision of his case to the National Customs Intelligence and Investigations Directorate (Direction Nationale du Renseignement et des Enquêtes Douanières), which remained unanswered. In addition, he was not contacted by the authorities and no offer for payment of an adequate compensation to Mr. Cochet was made.

On 20 April 2011, the author's counsel added that he still had not received an answer to the request for a revision sent to the National Customs Intelligence and Investigations Directorate on 6 December 2010, and informed the Committee that to date he had not been contacted by the authorities. He invited the Committee to intervene.

#### **Further action taken or required**

The author's submissions were transmitted to the State party in March 2011. A reminder to the State party was sent on 12 July 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Greece</b>
<b>Case</b>	<b><i>Georgopoulos et al.</i>, 1799/2008</b>
<b>Views adopted on</b>	29 July 2010
<b>Issues and violations found</b>	The demolition of the authors' shed and the prevention of the construction of a new home in a Roma settlement amounted to a violation of articles 17, 23 and 27, alone and read in conjunction with article 2, paragraph 3, of the Covenant.
<b>Remedy recommended</b>	An effective remedy, as well as reparations to include compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.
<b>Due date for State party response</b>	14 March 2011
<b>Date of State party's response</b>	9 March 2011
<b>Date of author's comments</b>	14 April 2011

#### **State party's response**

The State party presented its observations on the Committee's Views by note verbale of 9 March 2011. It reported on the progress of the criminal investigation opened in 2006 on the authors' complaint to the Patras Prosecutor's Office concerning their forced eviction. The case had been closed under article 47 of the Criminal Procedure Code by order 12/2009 of the Patras first-instance Prosecutor. Following further complaints, the investigation was re-opened, and closed, through orders 44/2009 and 56/2009, by the second-instance prosecutor of Patras.

The State party explains that its obligation to provide the authors with an effective remedy is an obligation of means and not an obligation of a result. The criminal investigation concerning the eviction of the authors has been conducted by two prosecutors. The case was examined thoroughly and independently and the investigation was concluded in due time between 2006 and 2009. Therefore, according to the State party, it has already provided the authors with an effective remedy – the conduct of an independent investigation on their allegations on forced unlawful eviction and the demolition of their shed. As to the Committee's recommendation to provide the authors with reparation, including compensation, the State party draws the Committee's attention to the existence of a domestic remedy for the recognition of the civil liability of the State when damages have occurred due to unlawful actions or omissions of State agents. Section 105 of the Introductory Law to the Civil Code provides that "the State shall be under a duty [to] make good any damage made caused by the unlawful acts or omissions of its organs in the exercise of public authority, except where the unlawful act or omission is intended to serve the public interest. The person responsible shall be jointly and severally liable, without prejudice to the special provisions on ministerial responsibility".

Thus, according to the State party, the authors can claim pecuniary and moral damages from the Greek Administrative Courts, suffered due to their unlawful eviction and the demolition of their homes, as indicated in paragraph 7.3 of the Committee's Views. The judicial award determined in such cases also includes costs and expenses.

Finally, the Committee was informed that the translated text of the Committee's Views would be placed on the website [www.nsk.gr](http://www.nsk.gr), and the information would be made available to the relevant services, including the police, in order to ensure that similar violations would not occur in the future.

#### **Author's comments**

On 14 April 2011, author's counsel reported that the State party had failed to implement the

Committee's Views. Counsel is not satisfied with the State party's explanation that its obligation in the investigation concerning the demolition of the Roma settlement is an obligation of means and not of a result, and with the explanation that the State party cannot provide the authors with a remedy, given that investigation was closed by Patras prosecutors. He refers to another case, which according to him is similar to the present one. In that case, *Petropoulou-Tsakiris v. Greece*, following a judgment of the European Court of Human Rights (ECHR), the State party's Supreme Court Prosecutor ordered that the case be re-examined at the national level, on the basis of the ECHR decision, seen as constituting new evidence. The State party, according to the counsel, should have adopted a similar approach in the present case.

As to the State party's suggestion that the authors could have submitted a civil case for compensation of damages, counsel notes that the administration of justice is slow in Greece, as recognized on **several** occasions by the ECHR. In addition, the State party has taken no measures to ensure that similar violations do not occur in the future; in the meantime, according to the counsel, one of "the worst Roma evictions" in Greece took place in Aspropyrgos, in August 2010. Counsel finally refers to the concluding observations concerning Greece adopted by the Committee on the Elimination of Racial Discrimination in August 2009, in which the latter Committee expressed concern at obstacles encountered by Roma, including with regard to access to housing.

#### **Further action taken/required**

The author's latest comments were transmitted to the State party in April 2011. The Committee may wish to await receipt of further information prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Kyrgyzstan</b>
<b>Case</b>	<b><i>Latifulin</i>, 1312/2004</b>
<b>Views adopted on</b>	10 March 2010
<b>Issues and violations found</b>	Unlawful detention and failure to inform the author on the charges against him (art. 9, paras. 1 and 2).
<b>Remedy recommended</b>	An effective remedy, in the form of appropriate compensation; the State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party's response</b>	22 October 2010
<b>Date of State party's response</b>	20 October 2010

#### **State party's submission**

The State party contends that the lawfulness and the grounds for the author's conviction were verified and confirmed by the appeal court as well as under the supervisory procedure. The law does not require the obligatory presence of a party during the examination of a case under the supervisory proceedings.

Pursuant to changes in the legislation in 2007, article 169 (theft of others' property in a particularly large amount) was excluded from the Criminal Code. On this basis, the author can request, under section 387 of the Criminal Procedure Code, to have his case re-examined in the light of the new circumstances. Thus, the author has the right to request the Supreme Court to re-examine his criminal case, given the legislative changes.



**Further action taken or required**

The State party submission was transmitted to the author, for comments, on 20 October 2010. A reminder to the author was sent on 21 February 2011. A further reminder to the author will be prepared. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Kyrgyzstan</b>
<b>Case</b>	<b><i>Kaldarov, 1338/2005</i></b>
<b>Views adopted on</b>	18 March 2010
<b>Issues and violations found</b>	Lack of court control of the decision to have the author placed in custody – violation of article 9, paragraph 3, of the Covenant.
<b>Remedy recommended</b>	An effective remedy, in the form of appropriate compensation, and to make such legislative changes as are necessary to avoid similar violations in the future.
<b>Due date for State party's response</b>	22 October 2010
<b>Date of State party's response</b>	5 October 2010
<b>State party's submission</b>	

The State party recalls the facts of the case in extenso, repeating its previous submissions on the admissibility and the merits of the communication. The information submitted was prepared jointly by the Ministry of Internal Affairs and the Supreme Court of Kyrgyzstan.

The State party also contends that the 1998 Criminal Procedure Code provided no judicial control over decisions to arrest individuals, but that this was attributed the prosecutors. In order to align its legislation to the provisions of the Covenant, the State party amended its legislation in 2004, 2007 and 2009.

**Further action taken or required**

The State party submission was transmitted to the author, for comments, on 18 October 2010. A reminder to the author was sent on 21 February 2011. A further reminder to the author will be prepared. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Kyrgyzstan</b>
<b>Case</b>	<b><i>Kulov, 1369/2005</i></b>
<b>Views adopted on</b>	26 July 2010
<b>Issues and violations found</b>	Cruel, inhuman, and degrading treatment (art. 7 of the Covenant); right to liberty/habeas corpus (art. 9, paras. 1, 3 and 4; unfair trial, presumption of innocence (art. 14, paras. 1, 2, 3 (b), (c), (d), and (e), of the Covenant.
<b>Remedy recommended</b>	An effective remedy, including the payment of adequate

compensation and initiation of criminal proceedings to establish responsibility for the author's ill-treatment under article 7 of the Covenant. The State party is also under an obligation to prevent similar violations in the future.

**Due date for State party's response** 4 April 2011

**Date of State party's response** 15 November 2010

**State party's submission**

The State party contends that on 11 April 2005, on the basis of a submission by the General Prosecutor's Office, the Supreme Court of Kyrgyzstan annulled the author's sentences pronounced by the Pervomai District Court of Bishkek of 8 May 2002 and by the Bishkek City Court of 11 October 2002, and the Ruling of the Supreme Court of Kyrgyzstan of 15 August 2003, based on the absence of the elements of *corpus delicti* in the author's acts. This, according to the State party, means that the author is innocent, and entitles him to be granted full rehabilitation and includes a right to compensation for the damages resulting from his criminal prosecution.

The State party further explains that pursuant to article 378 of the Criminal Procedure Code, courts are entitled to decide whether they need to invite a party to be present when a supervisory review of a case is conducted, but there is no obligation for the presence of the parties.

The State party also contends that the 1998 Criminal Procedure Code provided no judicial control over decisions to arrest individuals, but that this was attributed the prosecutors. In order to align its legislation to the provisions of the Covenant, the State party amended its legislation in 2004, 2007 and 2009.

**Further action taken or required**

The State party submission was transmitted to the author, for comments, on 24 November 2010. A reminder to the author was sent on 21 February 2011. A further reminder to the author will be prepared. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

State party	Kyrgyzstan
<b>Case</b>	<i>Krasnov, 1402/2005</i>
<b>Views adopted on</b>	29 March 2011
<b>Issues and violations found</b>	Violation of article 7; article 9, paragraph 2; and article 14, paragraphs 1, and 3 (b) and 3 (c), of the Covenant
<b>Remedy recommended</b>	Effective remedy, including a review of his conviction taking into account the provisions of the Covenant, and appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party response</b>	12 October 2011
<b>Date of State party's response</b>	31 May 2011
<b>State party's response</b>	

The State party presented its observations by note verbale of 31 May 2011. It provides

information on the case, prepared by different authorities (Ministry of Internal Affairs, State Security Committee, Supreme Court, State Service on the execution of penalties, General Prosecutor's Office). The State party recalls the facts of the case and explains that Mr. Krasnov has been sentenced to 12 years of imprisonment for murder, pursuant to a sentence of the Sverdlovsk District Court of Bishkek of 10 June 2002, confirmed by a decision of the Supreme Court of 26 August 2004. These decisions have been re-examined, on appeal on the basis of newly discovered circumstances, and on 25 December 2007, the Supreme Court determined a new sentence in respect to Mr. Krasnov – 10 years of imprisonment. At present, Mr. Krasnov is subject to an arrest warrant, as he has not served his sentence and his location is unknown. The State party does not address the Committee's Views in its submission.

#### **Further action taken/required**

The State party's observations were transmitted to the author in June 2011. The Committee may wish to await receipt of further information prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Nepal</b>
<b>Case</b>	<i>Sharma, 1469/2006</i>
<b>Views adopted on</b>	28 October 2008
<b>Issues and violations found</b>	Disappearance, failure to investigate – articles 7, 9, 10 and 2, paragraph 3, read together with articles 7, 9 and 10 with regard to the author's husband; and article 7, alone and read together with article 2, paragraph 3, with regard to the author herself.
<b>Remedy recommended</b>	An effective remedy, including a thorough and effective investigation into the disappearance and fate of the author's husband, his immediate release if he is still alive, adequate information resulting from the State party's investigation, and adequate compensation for the author and her family for the violations suffered by the author's husband and by themselves. While the Covenant does not give individuals the right to demand of a State the criminal prosecution of another person, the Committee nevertheless considers the State party duty-bound not only to conduct thorough investigations into alleged violations of human rights, particularly enforced disappearances and acts of torture, but also to prosecute, try and punish those held responsible for such violations.
<b>Due date for State party's response</b>	28 April 2009
<b>Date of State party's response</b>	27 April 2009, 28 July 2010, 9 March 2011
<b>Date of author's comments</b>	30 June 2009, 11 March and 30 November 2010, 20 June 2011
<b>State party's comments</b>	

In its response of 27 April 2009, the State party submitted that Ms. Yeshoda Sharma would be provided with the sum of 200,000 Nepalese rupees (approximately 1,896.67 euro) as an immediate remedy. With respect to an investigation, the case would be referred to the Independent Disappearance Commission to be constituted by the Government. A bill had already been submitted to Parliament and once legislation had been enacted, the Commission would be constituted as a matter of priority.

**Author's comments**

On 30 June 2009, the author commented on the State party's submission. She highlighted that it had been more than seven years since Mr. Sharma disappeared and that the State party is under an obligation to conduct a prompt investigation into his disappearance and to promptly prosecute all those suspected of being involved. As to the Independent Disappearances Commission, she argued that there was no clear timeline for the passing of the relevant legislation or for the establishment of the proposed Commission. Neither was it clear whether this Commission, if established, will actually examine the Sharma case specifically. In addition, such a Commission is by definition not a judicial body and does not therefore have the powers to impose the appropriate punishment on those found responsible for Mr. Sharma's disappearance. Even if it did have the power to refer cases of disappearances for prosecution, there is no guarantee that a prosecution process would be initiated or that it would be prompt. Thus, in the author's view, the said Commission could not be considered an adequate avenue for investigation and prosecution in this case. The criminal justice system is the most appropriate avenue.

As to the prosecution, the author highlighted the State party's obligation to prosecute violations of human rights without undue delay. This obligation is clear when considering its contribution to deterring and preventing the recurrence of enforced disappearances in Nepal. In the author's view, in order to prevent such recurrences, the Government should immediately suspend from duty any suspects involved in this case. If they remain in their official capacity, there is a risk that they will be able to intimidate witnesses in any criminal investigation. The author also suggested that an investigation to identify the whereabouts of Mr. Sharma's remains should also be initiated immediately.

On the issue of compensation and the State party's submission that the Government has provided the author with "immediate relief" of 200,000 Nepalese rupees, the author stated that it would not amount to the "adequate" compensation required by the Committee. She argued that she is entitled to a substantial amount to cover all pecuniary and non-pecuniary damage suffered.

**Author's supplementary comments**

On 11 March 2010, the author provided the following supplementary information. She stated that she had finally received the full amount of 200,000 Nepalese rupees but that despite having been promised in a meeting with the Prime Minister's Secretary on 30 June 2009 that an investigation into her husband's death would be initiated, this had still not been undertaken. In mid-December 2009, she received information from the Prime Minister's Secretary that the army officials were objecting (no specific names provided) to a separate investigation, insisting that this case should be examined by the Independent Disappearances Commission, yet to be established.

**State party's supplementary submission**

On 28 July 2010, the State party provided a supplementary submission stating that although Government policy contained a provision to distribute 100,000 Nepalese rupees to the family of the deceased or disappeared during the conflict, the Government had made a special decision in this case, in consideration of the Committee's Views, to give the author twice that amount. However, it underscores its view that this amount cannot compensate the family and is only considered to be interim relief. The State party informs the Committee that the Truth and Reconciliation Commission Bill and Disappearance of Persons (Crime and Punishment) Bill have been submitted to the Legislature Parliament. According to the State party, these Commissions shall in no way "substitute" or supersede the administration of any legal proceedings within the existing legal system as outlined in the author's submission. The Disappearance Bill has been designed to establish enforced disappearance as a crime punishable by law; to establish truth by investigating the incidents that happened during the armed conflict; to end impunity by paving the way for appropriate action to be taken against the perpetrators and to provide appropriate compensation and justice for the victims. The Truth and Reconciliation Bill stipulates that the individuals involved in acts of enforced disappearance shall not be granted amnesty under any circumstances. Due action shall be taken, in accordance with the existing law, against

individuals found guilty after the investigations of the two future commissions.

The State party denies that the Prime Minister's Secretary recommended that a separate investigation team be set up to investigate the case at issue as well as the claim that the army had "objected" to such a recommendation. According to the State party, it would not be feasible or practical from a financial, technical and managerial perspective to set up a separate commission to investigate the case at issue alone.

The State party's submission of 28 July 2010 was sent to the author on 9 August 2010.

#### **Additional information from the author**

On 30 November 2010, the author responded to the State party's additional comments. She notes first, that even if the Truth and Reconciliation Commission Bill and Disappearance of Persons (Crime and Punishment) Bill have been submitted to the Legislature Parliament, there is no indication as to when the bills would be adopted, in particular in the light of the current political situation. Thus, the Committee's recommendation to establish an investigative body to carry out prompt investigations and prosecutions of human rights violations, in particular enforced disappearances and acts of torture, was not implemented by the State party. In addition, the two Commissions, as they are envisaged in the bills, are not judicial bodies, and they could not impose appropriate penalties to perpetrators of human rights violations. The process thus would not guarantee the promptness required by the Committee. In addition, Nepalese law does not contain crimes such as torture, enforced disappearance, incommunicado detention, or ill-treatment.

The author recalls that she has received a total of 200,000 Nepalese rupees, as "immediate relief". According to her, the amount in question, as pointed out by the State party itself, cannot be seen as commensurate to the pain and anguish befallen upon the family, nor can it, according to the author, compensate the pecuniary and non-pecuniary damages inflicted upon her and her children by the enforced disappearance of her husband.

Even if the State party has committed itself to provide her with an additional relief package under the transitional justice system to be established, the author contends that neither the immediate relief nor any future additional relief could absolve the State party of its obligation to provide an effective remedy and full and adequate reparation — including compensation — for the violations suffered.

On the State party's denial that the Prime Minister's Secretary recommended that a separate investigation team be set up to investigate the case at issue as well as the claim that the army had "objected" to such a recommendation, the author reiterates her previous statements, but regrets that she has no material evidence to refute the State party's affirmation. As to the State party's contention that it would not be feasible or practical from a financial, technical and managerial perspective to set up a separate commission to investigate the case at issue alone, the author explains that she has not asked to have a specific commission to deal with her case, but she expects to have her case investigated within the existing criminal law framework.

Finally, the author regrets that the authorities have not contacted her to inform her on the developments in her case.

The author's submission was sent to the State party on 2 December 2010.

#### **Additional information from the State party**

By note verbale of 9 March 2011, the State party provided additional observations concerning the counsel's comments of 30 November 2010. The State party notes, first, that article 33 (s) of the Interim Constitution of Nepal provides for the establishment of a Truth and Reconciliation Commission to investigate facts about those involved in serious human rights violations and crimes against humanity during the conflict, and to create an atmosphere of reconciliation in the society. Article 33 (q) of the

Constitution stipulates the provision of relief to families of the victims, on the basis of the conclusions made by the Investigation Commission empowered to investigate cases of enforced disappearance during the conflict. Clause 5.25 of the Comprehensive Peace Agreement concluded between the Government and the Communist Party of Nepal (Maoist) states that both sides agree to constitute a high-level truth and reconciliation commission to investigate truth about human rights abuses and create an environment for reconciliation in the society. The Government has already presented two bills in the Legislature-Parliament for the formation of the said commissions. The current Prime Minister, in his first address to Parliament, stated that the Government would take further initiative in having these bills passed promptly.

On the issue of the provision of adequate compensation in the present case, the State party recalls that the family was provided with 200,000 Nepalese rupees as an interim relief. The State party remains committed to provide an additional relief package on the basis of future recommendations of the mechanisms of transitional justice.

As to the author's comments on reports concerning the lack of cooperation by the Nepalese Army in the context of criminal investigations, the State party explains that under the Constitution and the Army Act (2006), the Army is directed and controlled by the Government. The Army acts in accordance with the laws in force, and always cooperates.

#### **Author's additional comments**

The author presented her comments on the State party's observations on 20 June 2011. She notes that the State party has failed to implement the Committee's Views in the case related to the disappearance of her husband. She recalls that the only concrete action undertaken by the State party is the payment of 200,000 Nepalese rupees (US\$ 2,790 at the time of writing), as an interim relief; the author welcomes the State party's commitment to provide her with further compensation. No further investigation has been carried out into the disappearance of her husband. The author reiterates her comments of the irrelevance of the transitional justice proceedings (which are not in place yet) to her husband's case and asks to have the case dealt with promptly under the ordinary criminal proceedings. With reference to a recent legal opinion issued by the OHCHR office in Nepal, the author notes that truth commissions should be viewed as complementary to judicial action, and that the regular judicial system cannot be held in abeyance because a commitment to establish transitional justice mechanisms has been made or even if such mechanisms are established and function.

The author reiterates that in this case, the army officials have not cooperated satisfactorily in connection to her husband's disappearance, in particular by failing to provide information which could help identify her husband's whereabouts. Lastly, she expresses concern at the recent calls of high-level State party's officials to have a number of criminal cases relating to the conflict period, including alleged serious human rights violations, withdrawn.

#### **Further action taken or required**

On 28 October 2009, the Special Rapporteur met with Mr. Bhattarai, the Ambassador, and Mr. Paudyal, First Secretary, of the Permanent Mission. The Special Rapporteur referred to the State party's response in this case, including the information that the Disappearance Commission would be set up, and asked the representatives whether, given the limitations of such a commission, "a factual investigation" could not be conducted immediately. The representatives responded that there were still reservations that the author had not exhausted domestic remedies and that this was just one of many similar cases which, for the sake of equity, would all have to be considered in the same way, i.e. through the Disappearance Commission and the Truth and Reconciliation Commission which would be set up shortly. They stated that the legislation was before Parliament, the functioning of which was currently being obstructed, but that the enactment of legislation in this regard was assured. They could give no deadline for its enactment. The representatives noted the Special Rapporteur's concerns and would report back to their headquarters. They highlighted throughout the discussion the fact that the State party

was recovering from a civil war and that the path to democracy is a very slow one.

The author's latest submission was sent to the State party in June 2011. The Committee decided to organize a further meeting with the Permanent Mission of Nepal, to take place during the 103rd session (October –November 2011).

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Nepal</b>
<b>Case</b>	<b><i>Sobhraj, 1870/2009</i></b>
<b>Views adopted on</b>	27 July 2010
<b>Issues and violations found</b>	Conditions of detention (art. 10, para. 1); lack of defence lawyer and interpreter (violation of art. 14, para. 3 (a), (b), (d), (e) and (f), of the Covenant); failure to prove charges beyond reasonable doubts; shift of the burden of proof to the author (art. 14, para. 2); excessive length of court trial (art. 14, para. 3 (c)); lack of impartiality of tribunals; impossibility to have the author's sentence reviewed by a higher tribunal due to the length of the proceedings (arts. 14, paras. 1 and 5); conviction for acts which did not constitute a crime when they were committed (arts. 15, para. 1, and 14, para. 7).
<b>Remedy recommended</b>	An effective remedy, including the speedy conclusion of the proceedings and compensation. The State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party's response</b>	31 January 2011
<b>Date of State party's response</b>	19 January 2011
<b>Date of author's comments</b>	5 January 2011, 23 February 2011, 27 June 2011
<b>Author's comments</b>	

The author's counsel (based in France) informed the Committee, on 5 January 2011, that following the adoption of the Committee's Views, the author was placed in isolation, for an undetermined period of time, in isolated and insalubrious premises, with a clay floor, slits in the brick walls and no protection from the winter cold. The author has been prohibited from communicating with visitors, he is prevented from making phone calls and cannot communicate with his lawyer. The lawyer also informs the Committee that the author's Nepalese lawyers do not represent her client any longer, pursuant to an action undertaken by the Supreme Court, and thus, as a result of this, he faces a situation where he no longer has legal representation.

Finally, the lawyer reports that the Chief of the detention facility in question has prevented the author from signing his review petition to the Supreme Court, which he had to prepare on his own, so as to hand it to a representative of the French Embassy in Nepal. Counsel provides a copy of the unsigned review petition. The Committee's support is sought.

The lawyer's submission was transmitted to the State party on 7 January 2011.

#### **State party's submission**

The State party presented its comments on 19 January 2011. Firstly, it regrets that the Committee's Views have "undermined the independence, impartiality and competence of the Judiciary"

of Nepal, and that the Committee has “failed to recognize that an administration of justice has its own procedures which need to be recognized and respected”.

The State party recalls that it had submitted its observations, on 29 July 2010, challenging both the admissibility and the merits of the author’s allegations, but, as it subsequently transpired, the Committee’s Views had already been adopted, on 27 July 2010.

It states also that the Supreme Court of Nepal has already rendered its verdict in the case of Mr. Sobhraj, “almost concurrent in timing with the adoption of the Views by the Committee”.

On the issue of independence and competence of the judiciary, the State party notes that the Interim Constitution of Nepal (2007) enshrines the principle of the separation of power. The executive, the legislative and the judiciary have been established in the Constitution and their jurisdictions have been clearly defined so as to maintain the spirit of the separation of power, and they act independently, avoiding the interference of one organ into the function of another. The Constitution encompasses the concept of independent judiciary and the prevailing law has ensured the respect of the same in the administration of justice. It is explicit in the Constitution that the people’s right to justice is to be served, in accordance with the prevailing provisions of the Constitution and the fundamental principles of law and justice, through competent courts and other relevant judicial institutions. The Constitution has established the Supreme Court, the Appellate Court and the District Court for independent and fair administration of justice at three levels. The prerogative of the final interpretation of laws and constitutional provisions remains with the Supreme Court. The supremacy of the Supreme Court has been asserted by the constitutional provisions that all mechanisms of the Government and the public are required to respect the verdict and decisions of the court; the government machineries have to assist in the smooth functioning of the courts, and they have to respect and abide by the interpretation of law and establishment of the principles of law and justice by the courts.

The State party explains that the courts in Nepal are competent and independent in reaching a decision, on the basis of facts and evidence before them and the relevant provisions of prevailing law, on the cases brought to their attention and are immune, in doing so, from external pressure, influence, threat and interference of any kind. Every individual has been guaranteed the right to fair trial in a case against him in the competent court of law and this universal right has been fully respected in Nepal. Established judiciary procedures have been impartially observed in the rendering of justice and rights of the defendant and the plaintiff have been duly honoured. The Nepalese judiciary has been commended for its contribution to promotion and protection of justice, human rights and fundamental freedom of people even in adverse times.

As per the stipulation of Administration of Justice Act (1991) that the preliminary hearing of the cases related to murder and fake passports should begin at a district court level, the hearing of the case of Mr. Shobhraj was initiated in the District Court of Kathmandu. As required by law, reviews of verdicts are undertaken by higher courts, and the first verdict of the district court was reviewed by the Appellate Court and the review of the decision of the latter has now been concluded by the Supreme Court, reaffirming the decision of the lower courts.

The State party continues by explaining that Nepal is a democracy, and as a party to the Covenant, the Government takes the Covenant seriously and it is committed to abide by all its provisions. The Constitution and the laws have accordingly incorporated the fundamental rights guaranteed by the Covenant. Thus, anyone accused of a crime is entitled to the rights of fair trial, a trial at an independent and impartial court, presumption of innocence until proven guilty and punishment only as decided by the competent court. According to the State party, these fundamental rights have been fully honoured in the case related to Mr. Shobhraj.

Mr. Sobhraj’s conditions of detention do not undermine “the inherent dignity of human persons”. Every provision of the Prison Act (1962) and the Prison Regulations (1963) applies to him without distinction and discrimination. He has been provided with healthy food, appropriate medication and has



been allowed to receive visits and to communicate as per the terms of the Prison Act and Regulations. The allegation that Mr. Sobhraj has been placed in “solitary confinement” is, according to the State party, untrue.

The peremptory norm of international law vests unquestionably upon a sovereign State an authority to investigate and sanction offenders as determined by the competent court of law. This is not simply a State prerogative, but also an indispensable task expected of the State for the general well-being of the public and protection of their life and property from criminal behaviour. Mr. Sobhraj has been serving incarceration as per the verdict of two lower courts on the charges of murder and the use of a fake passport and his appeal for the review of the verdict has been repealed by the Supreme Court.

The State party explains that it rejects the author’s claim that the documents submitted by the police authority to the court are “fake” and that the Appellate Court reached its decision in the absence of strong “material evidence”. It is the competent and independent court, not the parties in the case, that is mandated to decide whether evidence is admissible. In the case of Mr. Sobhraj, the Appellate Court issued the verdict on the basis of the factual report prepared by the relevant experts who examined thoroughly the documents and evidence to verify their reliability and authenticity. All the processes observed during investigation of the case have been in full compliance with general principles of law and existing laws.

The State party adds that every legal case follows certain procedure and every hearing in the court is regulated by relevant rules. In Nepal, the hearing procedures in the Supreme Court, the Appellate Court and the District Court have been regulated by the Supreme Court Regulations (1992); Appellate Court Regulations (1991); and District Court Regulations (1995), respectively. The hearing of every case is conducted as guided by these instruments and this was the situation in Mr. Sobhraj’s case. He has been incarcerated as he was found guilty by the two lower courts and finally by the Supreme Court on the basis of substantive evidence. The case of Mr. Sobhraj was accorded priority and all hearings were held in his presence. The State party further draws the Committee’s attention to the fact that Mr. Sobhraj’s lawyers have expressed gratitude to the Court for according priority to the case of their client.

The State party contends that the Supreme Court has full authority to decide on the admissibility of all evidence submitted, in accordance with law, at the time of prosecution. In the case of Mr. Sobhraj, the Supreme Court reached its decision on the basis of standard values of universally recognized evidence law, upon examination of relevant decisions of courts of other countries and as provided in the criminal law and the Evidence Act of Nepal 2031 BS. The Court admitted only evidence that did not go against the principle of fair trial and all investigations with respect to the case were carried out in accordance with the standard principles of law and relevant national law. No retroactive application of law and no application of controversial procedures have occurred in this case. The State party also notes that the Act Related to Foreigners 2015 BS and its Regulations 2031 BS deemed the use of a fake passport as a crime punishable by law and the Immigration Act 2049 BS that annulled the 2015 Act incorporated those offences. Mr. Sobhraj used a fake passport to enter Nepal in 1975 and he was convicted for this as per the Act Related to Foreigners 2015 BS and its Regulations 2032 BS and no penalty in excess of that prescribed by the law has been applied to him.

According to the State party, the allegation that the burden of proof has been shifted to the “detriment of the author” is a complete misrepresentation of facts. The evidence law of Nepal places on the prosecution the responsibility to provide evidence to prove the claim. The principle of burden of proof assumes that while it is the responsibility of the prosecutor to substantiate his claim, the responsibility to substantiate a special plea made with a view to reduce the penalty for an acquittal from the charge falls upon the party that makes the plea. Clause 27 (1) of the Nepal Evidence Act 2031 BS states that if the defendant makes a counter claim regarding remission of the penalty or acquittal from the charge (penalty) pursuant to existing law, the burden of proof of proving such a fact shall lie with the defendant him/herself. Pursuant to clause 28 of the same Act, the burden of proof as to any particular fact falls on the person who wishes the court to believe in its existence, unless it is provided by law that

the proof of that fact shall lie on any other particular person. This is a universal law of evidence. In the case of Mr. Sobhraj, while the prosecutor submitted with evidence that Mr. Sobhraj was in Nepal at the time when the crime was committed, the latter submitted a plea of alibi and consequently was asked to substantiate his claim, which he could not do.

The State party explains further that under the Constitution, every individual arrested retains the right to consult a lawyer of his choice right from the time of the arrest and Mr. Sobhraj was no exception to this provision. At the time he testified in the Court, he was assisted by a lawyer (name provided), who also served as his interpreter. He was allowed to speak in English, which he did, and the questions in Nepali were translated to him by his lawyer. A French lawyer (name provided) also took part in the process as Mr. Sobhraj's legal counsel.

The State party explains that it has taken note of the concerns expressed by the Committee over the alleged infringement of human rights that Mr. Sobhraj is entitled to under the national law and the international human rights commitments. It expresses assurances to the Committee that it is committed to ensure that even convicted prisoners enjoy the rights that are accorded to them by national and international law.

Finally, the State party reiterates its wish to remain constructively engaged with the Human Rights Committee and other United Nations international human rights mechanisms.

#### **Additional comments from the author**

On 23 February 2011, the counsel provided further comments. She refers to her previous correspondence and affirms that no change had occurred in the situation of Mr. Sobhraj. The counsel also notes that the State party has not made any proposal in its submission as to the measures it intends to take in order to comply with the Committee's Views. On the contrary, the State party denies having breached the author's rights under the Covenant, thus disregarding the Covenant's and the Optional Protocol's provisions, the Committee's rules of procedure, and the Committee's Views. The lawyer recalls that the author is entitled to an effective remedy, including compensation, for the violations he had suffered and is still suffering.

As to the independence of the judiciary in Nepal, the counsel contends that the conduct of numerous enquiries about corruption and different reports from human rights organizations show that the State party's arguments are incorrect.

The counsel requests the Committee to intervene and ensure that the author receives an effective remedy.

On 27 June 2011, the author's counsel informed the Committee that State party has failed to implement the Committee's Views. The State party still denies Mr. Sobhraj the right to have his review petition examined by the Supreme Court. The letters sent by the counsel, on 23 February 2011, to the State party's President and the Prime Minister also remained unanswered.

#### **Further action taken or required**

The counsel's latest comments were transmitted to the State party in July 2011. The case should be discussed during a meeting with the State party's representatives at the Committee's 103rd session (October–November 2011).

#### **Decision of the Committee**

The Committee considers the follow-up dialogue ongoing.

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#### **State party**

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#### **Paraguay**

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#### **Case**

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*Asensi, 1407/2005*

<b>Views adopted on</b>	27 March 2009
<b>Issues and violations found</b>	Protection of the family, including minor children – violation of articles 23 and 24, paragraph 1.
<b>Remedy recommended</b>	Effective remedy, including the facilitation of contact between the author and his daughters.
<b>Due date for State party's response</b>	6 October 2009
<b>Date of State party's response</b>	2 October 2009, 21 May 2010, 11 January 2011
<b>Date of author's comments</b>	30 November 2009, 16 August 2010, 18 February 2011

#### **State party's comments**

On 2 October 2009, the State party denied that it had violated the Covenant. It submitted that the dismissal of three international mandates from Spain, requiring the children to be returned to their father, was done in accordance with Paraguayan legal provisions, which comply with international law. The conclusion has always been that the girls should remain in Paraguay with their mother. In the light of the complex situation faced by illegal immigrants in Europe, including the refusal to grant a Spanish visa to Ms. Mendoza, Paraguayan authorities consider it logical for the girls to remain in Paraguay.

The State party submits that the girls were born in Asunción, have Paraguayan citizenship and have lived most of their lives in Paraguay. Thus, their transfer to Spain would mean uprooting them from their natural environment. Regarding the pending trial in Spain against Ms. Mendoza for fleeing the country, due process guarantees have not been respected.

Regarding the Committee's observations on access, the State party submits that Mr. Asensi has not filed a complaint under the Paraguayan jurisdiction yet, which would constitute the only legal way to establish direct contact with his daughters. Thus, it is inferred that legal remedies have not been exhausted. The author's claims on the poverty conditions in which the girls live have to be understood in the context of Paraguay's history and its place in the region. Comparing Spain and Paraguay's living standards would be an unfair exercise. Economic conditions cannot constitute obstacles to the girls remaining in the State party. The State party submitted that following Mr. Asensi's failure to comply with maintenance/alimony for his daughters, an arrest mandate has been issued against him. The girls are currently attending school. Following several assessments from local social workers, it is reported that the girls live in good conditions and have expressed their wish to remain with their mother, as several of the documents attached will prove.

#### **Author's comments**

On 30 November 2009, the author refuted the information provided by the State party in its response to the Committee's Views. He claimed that it was untrue that his ex-wife was denied a visa and residence permit in Spain. Being his wife, she was entitled to live in Spain legally. However, due to her lack of interest, and even if it was a mere formality, she never completed the necessary paperwork in order to obtain such a permit.

His ex-wife had always refused to participate in any proceedings regarding the divorce and custody conducted in Spain. She also refused to comply with the decision of 27 March 2002 issued by a Paraguayan judge ordering that the children spend some time with their father. Furthermore, in 2002, the author and his ex-wife came before Judge J. Augusto Saldivar to agree on visiting arrangements. The author proposed to provide his daughters with all the necessary material support in kind and to be allowed to maintain regular contact with them. However, this proposal was rejected by his ex-wife.

As to the State party's claim that the author was summoned to appear before a Paraguayan judge as a result of the proceedings initiated by his ex-wife for not paying alimony/maintenance, he claims that

he never received any notification and that no letters in that respect were sent to his domicile in Spain, where he lives permanently.

The Paraguayan authorities have constantly refused to implement the decisions of the Spanish courts regarding custody of the children. On the question of alimony raised in the State party's response, the divorce decision does not oblige the author to pay any, in view of the fact that he obtained the custody of his daughters. Despite that, he regularly sends money and parcels to them through his ex-wife's family or the Spanish Embassy in Paraguay. Medical and school fees were paid by the Spanish Consulate, in view of the fact that they have Spanish nationality and are registered with the Spanish social security scheme.

#### **State party's supplementary submission**

On 21 May 2010, the State party provided new updated information to the Committee, following a note verbale from the Committee requesting it to respond to the following: "Since the State party claims that its legislation allows the author to obtain visiting rights, the Committee requests the State party to provide detailed information on effective remedies still available to the author under such legislation."

Regarding the obligation to provide effective remedies to the author that could allow him to see his daughters, the State party reiterates that nothing stops the author from exhausting the legal avenues available in cases of this nature. However, it claims that the author's proceedings have been held up due to his unwillingness to pursue the procedure. As a result of his inaction (more than six months) and in accordance with article 172 of the Code of legal procedure, the legal processes initially undertaken have now expired. The State party then summarizes the proceedings initiated by the author in Paraguay (see the Committee's decision) and reiterates that the lack of rulings and decisions on the issues raised by Mr. Asensi have been due to his own negligence throughout the proceedings. Following sentence No. 120 by the Supreme Court confirming the decision not to grant Mr. Asensi custody, there is no record of further legal proceedings, petitions or appeals having taken place.

The State party reiterates its suggestion of the establishment of a regime under which the author will have access to his daughters. In accordance with national legislation (Law 1680/2001, art. 95): legal arrangements will enforce the right of the child to remain in contact with and see the members of his family with whom he does not live. Thus, the State party suggests that:

- (a) It act as a mediator between the parties, in concordance with national legislation. Indeed, the Office of Mediation of the Judiciary Branch is available at no cost for the parties to resolve their dispute;
- (b) Upon reaching an agreement, it can be confirmed by the Children's Judge. The State party notes that preliminary talks have already begun with Mrs. Mendoza's lawyer, who will make this suggestion to his client;
- (c) In the event one of the parties fails to show up at the mediation meetings, there is still the possibility of Mr. Asensi requesting the initiation of new proceedings, for which he could be represented by someone of his choice from the Paraguayan consulate in Madrid or Barcelona.

The State party also notes that the author has all the legal remedies available to him, such as those concerning his visitation rights (art. 95), or the proceedings to suspend home custody (art. 70 to 81), among others.

The State party clarifies its position on several issues:

- Although it is committed to addressing the violations established by the Committee in regard to articles 23 and 24, it claims that Mr. Asensi's lawyer lacks the will to find a compromise that would allow the complainant to see his daughters as

prescribed by law.

- Regarding the legal proceedings against Ms. Mendoza in Spain, on the grounds of removal of minors, it notes that there is an extradition request from Spain against her. In this regard, the Supreme Court ruled on 7 April 2010 that, “having not complied with the prerequisite of “double incrimination” according to both Spanish and Paraguayan Law, and in accordance with the extradition treaty, the request was denied”. The most likely equivalent piece of Paraguayan legislation that would allow for the Spanish request to be considered is not acceptable because Ms. Mendoza is the mother and has custody over the girls.
- Regarding custody claims, the State party asserts that the decision has been made and that the complainant should understand that the Committee is not a fourth instance of appeal nor is it within its mandate to review the facts and evidence.
- As to the claim for compensation, the State party refuses to comply with the author’s demands, as there was never any mention of financial reparation in the Committee’s Views.

Finally, the State party confirms its commitment to raise awareness in workshops organized by the Supreme Court to future judges on the importance of abiding by the Committee’s rulings.

#### **Author’s response**

In a letter dated 16 August 2010, the author rejected the arguments of the State party and reiterated that he did everything he could in Paraguay to obtain visiting rights, but to no avail. He recalls that there is a judgment of the Spanish courts on the matter and that this judgment has never been implemented by Paraguay. In these circumstances, he is not willing to engage in any new procedure that might be proposed by Paraguay. He insists that he should be paid compensation.

#### **State party’s additional submission**

On 11 January 2011, the State party reiterated that in order to provide the author with an effective remedy which would grant him visiting rights, as requested in the Committee’s Views, he should follow the procedure defined in article 95 of the Code on Children and Adolescents. It also reiterates that, instead of initiating legal proceedings, both parties can come to an agreement through a mediation process. If Mr. Asensi refuses to follow any of these remedies, there would be nothing the State party could do in order to implement the Views and the Committee would have to declare the case closed. Concerning the payment of compensation and the implementation of the judgments of the Spanish Courts, the State party indicates that these issues were not included among the Committee’s recommendations and, therefore, Mr. Asensi’s requests in that regard are unfounded.

#### **Additional information from the author**

In a letter dated 18 February 2011, the author reiterates his previous claims, states that at the time he tried all possible legal remedies and insists that the State party should provide him with compensation.

#### **Further action taken or required**

The author’s most recent submission was sent to the State party on 24 February 2011. A reminder for observations was sent to the State party in July 2011. The Committee may wish to await receipt of comments prior to making a decision on this matter.

#### **Decision of the Committee**

The Committee considers the follow-up dialogue ongoing.

State party	Peru
<b>Case</b>	<i>Poma Poma, 1457/2006</i>
<b>Views adopted on</b>	27 March 2009
<b>Issues and violations found</b>	Right to enjoy own culture and lack of remedy – article 27 and article 2, paragraph 3 (a), read in conjunction with article 27.
<b>Remedy recommended</b>	An effective remedy and reparation measures that are commensurate with the harm sustained.
<b>Due date for State party's response</b>	6 January 2010
<b>Date of State party's response</b>	22 January 2010
<b>Date of author's comments</b>	2 July 2010, 30 April 2011

#### State party's submission

On 22 January 2010, the State party provided general information on the running of the wells in question. It stated that, as a result of the dry season, characterized by intermittent rains, it was becoming mandatory to exploit the underground waters of the Ayro aquifer in order to satisfy the demands of the population in Tacna. Five wells were being exploited simultaneously to avoid shortages in water supply. Measures were taken to preserve the Community bogs, and to distribute water evenly among the Peasant Community of Ancomarca. The State party submitted that a Commission had visited the highest part of the basin where the wells are located, and verified the proper hydraulic allocations of each well to ensure its conformity with administrative resolutions issued recently.

On 31 March 2009, a Law on Water Resources was adopted with the aim of regulating the use and exploitation of water resources in a sustainable way. This new legal framework was explained across the country in several workshops, prioritizing peasant communities. Further complementary provisions of this law were being drafted to take into account feedback from civil society and rural communities. According to this law, access to water resources is a fundamental right and remains a priority even in times of shortage. The State shall take all measures necessary to apply this principle, and will do so by taking into account feedback from civil society. The State party shall respect the traditions of indigenous communities and their right to exploit the water resources in their lands. The State party thereby submits that further problems similar to those featured in this case will not arise.

#### Author's submissions

On 2 July 2010, the author informed the Committee that the State party had not taken any measures to implement the Committee's Views. On the contrary, it had approved a budget of 17 million Peruvian nuevos soles to drill 17 new wells to draw the groundwater from the Ayro region. To implement this project, the Special Tacna Project (PET – Proyecto Especial Tacna) launched a public tender on 23 March 2010. The State party persists in drilling the territory of the Aymara community, to which the author belongs, despite the fact that the National Water Authority has not given permission to explore or exploit the groundwater of this region.

On 2 and 3 July 2010, the "Alto Perú" rural community, to which the author belongs, situated in the District of Palca, convened a meeting to ascertain the advancement of these new drilling projects. The community requested the attorney of the Ministry of Justice to supervise the implementation of the Committee's Views. However, no measures have been taken to prosecute those who took the decision to drill the new wells.

On 30 April 2011, the author informed the Committee that the State party is still failing in implementing the Committee's Views. He requested the Committee to prompt the State party to establish a law that allows the indigenous population to have the violation of their rights under article 27 of the Covenant addressed at national level. Moreover, the author requested to derogate the resolution NRO. 091-91-AG.PCM, of 18 October 1991, in order to stop the degradation of his land.

#### Further action taken/required

The author's submissions were sent to the State party in September 2010 and June 2011, for comments. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

**Decision of the Committee** The follow-up dialogue is ongoing.

State party	Philippines
<b>Case</b>	<i>Pimentel et al.</i> , 1320/2004
<b>Views adopted on</b>	19 March 2007
<b>Issues and violations found</b>	Unreasonable length of time in civil proceedings, equality before the Courts – article 14, paragraph 1, in conjunction with article 2, paragraph 3.
<b>Remedy recommended</b>	Adequate remedy, including compensation and a prompt resolution of their case on the enforcement of the United States of America judgement in the State party.
<b>Due date for State party response</b>	3 July 2007
<b>Date of State party's response</b>	24 July 2008, 8 March 2011
<b>Date of author's comments</b>	1 October 2007, 22 August 2008, 21 August 2009, 4 February and 7 June 2011

#### Authors' comments

On 1 October 2007, the authors informed the Committee that the State party had failed to provide them with compensation and that the action to enforce the class judgement remained in the Regional Trial Court of Makati following remittal of the case in March 2005. It was not until September 2007 that the court determined, per motion for consideration, that service of the complaint on the defendant estate in 1997 was proper. The authors requested the Committee to demand of the State party prompt resolution of the enforcement action and compensation. Following the jurisprudence of the European Court of Human Rights (inter alia *Triggiani v. Italy*, (1991) 197 Eur.Ct.H.R. (ser.A)) and other reasoning, including the fact that the class action is made up of 7,504 individuals, they suggest a figure of 413,512,296 dollars in compensation.

#### State party response

On 24 July 2008, the State party informed the Committee that on 26 February 2008, the presiding judge of the Regional Trial Court issued an order setting the case for Judicial Dispute Resolution (JDR). Three JDR conferences have already taken place, however due to the confidentiality of the process no further information on the status of the process may be divulged.

#### Authors' further comments

On 22 August 2008, the authors responded to the State party's submission of 24 July 2008. They

confirmed that they met with the presiding judge on several occasions to discuss settlement and that although they made earnest proposals the Marcos Estate showed no interest in doing so. By order of 4 August 2008, the JDR phase was terminated. According to the authors, the State party's delay in the enforcement proceedings, at the time of their submission extending 11 years, is part of a pattern and practice by the State party to ensure that the class never realizes any collection on its United States judgement, and provides other examples of this practice. The authors required the Committee to quantify the amount of compensation (and other relief), to which they claim the Committee has already held the class to be entitled. (The Order of 4 August 2008 states: "Considering that this case has been pending in the courts for 11 years already, it is imperative that trial on the merits commence without further delay." The records of the case have been sent back to the Regional Trial Court for "proper disposition"). On 21 August 2009, the authors renewed their plea to the Committee to quantify the amount of compensation (and other relief) to which the Committee held that they were entitled. They highlight their views, inter alia, that: the State party has done nothing to advance this case; it has collected tens of millions of dollars in Marcos assets but has failed to distribute any to the victims; the provision of compensation is consistent with General Assembly resolution 60/147 on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Law; and that the delay in rendering relief to the 9,539 victims who benefit from the Committee's decision encourages the State party to continue to violate human rights.

On 4 February 2011, the author reiterated that the State party has not taken any measures to implement the Committee's Views.

#### **Additional information by the parties**

By note verbale of 8 March 2011, the State party contests the author's allegations regarding the order of 8 July 2010 of the Makati City Regional Trial Court (RTC), dismissing their complaint of unreasonable delay. The State party points out that the authors did not avail themselves of the possibility to appeal against this order. In addition, the State party notes that the RTC decided on the matter promptly and expeditiously, in around two months.

On 7 June 2011, the author's counsel informed the Committee that its Views have not been implemented by the State party. Counsel contests the decision of the RTC, explaining that the presiding judge dismissed the case, because of a change in the name of the representatives of the 10,000 victims of various human rights violations, disregarding that the designation of the new representative was duly made and validated before a United States judge, thus preventing the individuals in question of obtaining redress by having their judgement enforced. Counsel explains that a motion for the reconsideration of the TCR order of 8 June 2010 was submitted but not acted upon.

#### **Further action taken/required**

The authors' most recent submission was sent to the State party in June 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Philippines</b>
<b>Case</b>	<i>Lumanog and Santos, 1466/2006</i>
<b>Views adopted on</b>	20 March 2008
<b>Issues and violations found</b>	Undue delay – article 14, paragraph 3 (c)



<b>Remedy recommended</b>	An effective remedy, including the prompt review of their appeal before the Court of Appeals and compensation for the undue delay.
<b>Due date for State party response</b>	1 October 2008
<b>Date of State party's response</b>	11 May 2009, 24 November 2009, 29 July 2010
<b>Date of author's comments</b>	2 July 2009, 16 November 2009

#### **State party's submission**

On 11 May 2009 the State party explained what action had been taken since the case in question was brought before the Supreme Court. On 13 August 2008, following a request by the petitioners to declare unconstitutional the penalty of “*reclusion perpetua* without the benefit of parole”, the third division of the court transferred this case to the Court En Banc. On 19 January 2009, this Court requested the parties to submit their respective memoranda and has been waiting for compliance with this resolution since then.

#### **Authors' comments**

On 2 July 2009, the author submitted that the State party had failed to publish the Views and had failed to address the issue of undue delay in the proceedings. It had given no indication so far of any review, refinement or improvement of those procedural rules for automatic intermediate review by the Court of Appeal of cases where the penalty imposed is *reclusion perpetua*, life imprisonment to death as embodied in the 2004 ruling in *People vs. Mateo*. With regard to the remedy, the State party had provided no information as to any measures it intends to take to prevent similar violations in the future with respect to undue delay at the appeal stage and there has been no compensation paid for the undue delay. This case remains before the Supreme Court.

On 16 November 2009, the authors submitted that their case, which had been ready for consideration by the Supreme Court since 5 May 2008, had now been delayed due to the same court's decision on 23 June 2009 to consider this case jointly with several others. As a result of this decision, upon which the authors had no opportunity to comment, the hearing of this case will be further delayed.

#### **State party's further submission**

On 24 November 2009, the State party informed the Committee that this case had been joined with other cases. With respect to the issue of compensation, the case will be reviewed and decided upon by the Court of Appeal, after which it may be appealed to the Supreme Court for a final judgement. The State party submits that it will comply with the final judgement of the Supreme Court.

On 29 July 2010, following a request by the Committee to respond specifically to the authors' arguments, in particular on the issue of the continued delay in their appeal, the State party submitted that the consolidation of the authors' appeals with other accused whose criminal liability arose from the same event might bring about delays but was a logical step. In this way, the High Court would have to render only one decision with respect to five accused. In addition, according to the State party, the authors have in fact waived their objection to consolidation.

#### **Further action taken/required**

The State party's most recent submission was sent to the authors for comments. A reminder was prepared in July 2011. The Committee may wish to await receipt of further information prior to making a decision on this matter.

<b>Decision of the Committee</b>	The Committee considers the dialogue ongoing.
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State party	Philippines
<b>Case</b>	<i>Pestaño, 1619/2007</i>
<b>Views adopted on</b>	23 March 2010
<b>Issues and violations found</b>	The State party has breached its obligation, under article 6, read in conjunction with article 2, paragraph 3, to properly investigate the death of the authors' son, prosecute the perpetrators, and ensure redress.
<b>Remedy recommended</b>	An effective remedy in the form, inter alia, of an impartial, effective and timely investigation into the circumstances of the death of the authors' son, prosecution of perpetrators, and adequate compensation. The State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party response</b>	25 October 2010
<b>Date of State party's response</b>	11 February 2011
<b>Date of authors comments</b>	15 April 2011

**State party's submission**

On 11 February 2011, the State party informed the Committee on the steps taken in connection to the Committee's Views. It explains, first, that the Committee's Views were made public on 11 May 2010. Further, on 6 October 2010, the Justice Secretary instructed the Director of the National Bureau of Investigation (NBI) to conduct an investigation on the exact circumstances surrounding the death of the authors' son. On 9 November 2010, the Office of the Justice Secretary issued another memorandum, reiterating its directive to the NBI to conduct an investigation and to provide its conclusions before December 2010. On 14 November 2010, the Office of the Ombudsman informed the Presidential Human Rights Committee that a "Motion for Reconsideration" has been filed by the authors and is pending resolution. The State party explains that, in the meantime, it has transpired that on 17 May 2010, the Office of the Ombudsman approved a Joint Resolution dated 15 June 2009, dismissing the authors' complaints filed against several Navy and police officers, and other individuals, for lack of evidence.

**Authors comments**

On 15 April 2011, the authors' counsel expressed satisfaction on the steps taken so far by the State party in connection to the present case and explained, in particular, that the Ombudsman will face a trial in the Philippines, for betrayal of public trust and violations of the Constitution, to start in May 2011. Counsel further asks the Committee to consider the possibility to send some of its members, who participated in the adoption of the Views, to testify in court.

**Further action taken/required**

The author's most recent submission was sent to the State party. The State party should be requested to provide an update on the developments in the case. The Committee may wish to await receipt of further information prior to making a decision on the matter.

<b>Decision of the Committee</b>	The Committee considers the dialogue ongoing.
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State party	Portugal
<b>Case</b>	<b><i>Correia de Matos, 1123/2002</i></b>
<b>Views adopted on</b>	28 March 2006
<b>Issues and violations found</b>	Right to defend oneself – article 14, paragraph 3 (d).
<b>Remedy recommended</b>	Effective remedy under article 2, paragraph 3 (a), of the Covenant. The State party should amend its laws to ensure their conformity with article 14, paragraph 3 (d), of the Covenant.
<b>Due date for State party response</b>	4 July 2006
<b>Date of State party's response</b>	12 July 2006
<b>Date of author's comments</b>	23 November 2006, 28 February 2011

#### State party's reply

On 12 July 2006, the State party submitted that Portuguese laws assign great importance to guaranteeing an equitable procedural system, particularly in criminal procedures. It provided a detailed description of its legislation, its history and existing procedural guarantees, referring to the relevant provisions of the Constitution and the Code of Criminal Procedure, which establish that only a lawyer who is a full member of the bar can assist those accused in criminal procedures.

The State party explained that in the light of Portuguese law, as the author had been suspended from the bar and refused to appoint a lawyer to assist him, the judge in his case had no choice but to appoint one. Had he not done so, the procedure would have been declared null and void. The State party highlighted that under Portuguese law the accused has the right throughout the whole criminal procedure and independently of the arguments made by his/her legal counsel, to express themselves and to be heard, which is not to be confused with the right to defend oneself. The State party further submitted that the text of article 14, paragraph 3 (d), of the Covenant contains the word "or" which would seem to indicate that the right to defend oneself and the right to legal assistance of one's choosing are alternative options. Additionally, the State party referred to the jurisprudence of the European Court of Human Rights on this issue. It concluded that its legislation is already in compliance with article 14, paragraph 3 (d), that it is therefore not necessary to amend it, and that it is not necessary to extend any new rights to the author in addition to those he has already exercised or to allow him to appeal a decision that has already been appealed in the domestic courts.

#### Author's comments

On 23 November 2006, the author commented that the State party, in refusing to implement the Committee's Views, displays (a) its lack of respect for the International Covenant on Civil and Political Rights and the Optional Protocol thereto, in particular article 2, paragraph 2, of the former and (b) a lack of respect for the author's civil rights and failure to comply with article 2, paragraph 3, of the Covenant. He is of the view that he should be compensated by *inter alia* at least 500,000 euro as well as recognition that he should have the right to defend himself at any stage of a criminal procedure.

On 28 February 2011, the author informed the Committee that the State party had not implemented the Committee's Views in the present case. He adds that, without specifying a particular date, he has been ordered by a District Court to provide information on the "base and value for sale" of the entire house where he lived until 1991 (and half of which he still owns) "for the payment of the penalty" following his conviction in the trial where the Committee found that his rights had been violated. The author has complained in this respect to the President of the Supreme Court of Justice and to the Prosecutor General.

**Further action taken/required**

The author's latest submission was sent to the State party in March 2011. The Committee may wish to await receipt of further information prior to making a decision on this matter.

**Decision of the Committee** The follow-up dialogue is ongoing.

<b>State party</b>	<b>Republic of Korea</b>
<b>Cases</b>	<i>Jung et al.</i> , 1593-1603/2007
<b>Views adopted on</b>	23 March 2010
<b>Issues and violations found</b>	Criminal prosecution and imprisonment of conscientious objectors, due to the lack, in the State party, of an alternative to the compulsory military service (art. 18, para. 1, of the Covenant).
<b>Remedy recommended</b>	An effective remedy, including compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future.
<b>Due date for State party's response</b>	15 October 2010
<b>Date of State party's response</b>	9 December 2010

**State party's submission**

The State party explains, first, that it has published the Committee's Views, including their Korean translation, in the *Official Gazette* on 4 October 2010. In addition, summaries of the Views were disseminated via newspapers and broadcasting networks.

On the issue of the authors' compensation, the State party submits that the authors have been irrevocably convicted by courts. In addition, no illegal acts were committed against them by State agents during their investigation or trials. According to the State party, the establishment of illegal acts or torts by State agents is a prerequisite for the provision of State compensation. In the absence of such prerequisite in the present case, the State party affirms it is inconceivable to recognize the legal grounds for providing the convicted authors with compensation or reparations.

On the issue of introducing an alternative to the compulsory military service, the State party explains that the security situation on the Korean peninsula differs from the one in countries which have introduced alternatives to compulsory military service. In addition, there is no consensus on the issue – a poll by the Ministry of National Defence showed that the rate of those who object to the introduction of alternative service for conscientious objectors grew from 60.7 per cent in 2006, to 68.1 per cent in 2008.

Finally, the State party informs the Committee that in consideration of the Committee's Views in the domestic context, the Government transmitted, in September 2010, the Views to the National Human Rights Policy Council, composed of 15 ministries. The Council decided to continue to review the matter and consider the possibility of establishing an alternative service for conscientious objectors.

**Further action taken or required**

The State party submission was transmitted to the author, for comments, on 26 January 2011. A reminder to the author was sent in July 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Russian Federation</b>
<b>Case</b>	<b><i>Pustovalov, 1232/2003</i></b>
<b>Views adopted on</b>	23 March 2010
<b>Issues and violations found</b>	Forced confessions obtained under duress – violation of articles 7 and 14, paragraph 3 (g); absence of the author’s lawyer during investigation acts, refusal of the trial court to allow the author to retain a new lawyer as well as his requests to invite additional experts and witnesses – violation of article 14, paragraph 3 (b), (d), and (e), of the Covenant.
<b>Remedy recommended</b>	An effective remedy, including the payment of adequate compensation, the initiation and pursuit of criminal proceedings to establish responsibility for Mr. Pustovalov’s ill-treatment, and a retrial with the guarantees enshrined in the Covenant. The State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party’s response</b>	28 January 2011
<b>Date of State party’s response</b>	20 October 2010
<b>Date of author’s comments</b>	21 September and 3 December 2010
<b>Author’s comments</b>	

By letter of 21 September 2010, the author explained that no measures had been taken so far by the State party’s authorities to implement the Committee’s Views.

#### **State party’s submission**

By note verbale of 20 October 2010, the State party contended that it finds the Committee’s conclusions of a violation of the author’s rights under articles 7 and 14, paragraph 3 (b), (d), (e), and (g), of the Covenant, groundless. The author’s contention that he was subjected to violence by the police and was forced to confess guilt have been examined on several occasions by the investigation organs and by the courts but were not confirmed, and therefore no criminal case in this connection could be opened. The courts have established that the author injured one policeman with a firearm during his arrest and also violently resisted his apprehension. Because of this, the police used physical force to arrest him. The courts thus concluded that the author’s injuries had resulted from the lawful use of force by the police during the arrest. In the circumstances, the State party’s authorities have no lawful grounds to initiate a criminal case against the police officers in question, as recommended in the Committee’s Views.

As to the alleged violation of the author’s rights under article 14 of the Covenant, the State party explains that the author’s allegations that he had an alibi which could be confirmed by numerous witnesses were duly examined and verified by the courts but they were accurately refuted and this was reflected in the courts’ rulings and decisions. The court decisions (copy is provided), reflect the grounds for refuting the author’s allegations about procedural violations. In the light of the above, the State party sees no reason to initiate a retrial, as recommended in the Committee’s Views.

The State party further explains that copies of the Committee’s Views in the present case were sent to the different courts of the Russian Federation (Supreme Courts, regional courts, appeal courts, etc.), for information and in order to be used in the courts’ practical activities.

**Author's comments**

On 3 December 2010, the author explained that he had sought the assistance of the Office of the Constitutional Court, the Administration of the President, the Parliamentary Ombudsman, the Human Rights Commission for the implementation of the Committee's Views, without success, and provided the replies received.

**Further action taken or required**

The author's submission was transmitted to the State party in February 2011. No reply has been received. The Committee decided to call for a meeting with the State party's representatives at its 103rd session (October–November 2011).

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Russian Federation</b>
<b>Case</b>	<b><i>Babkin</i>, 1310/2004</b>
<b>Views adopted on</b>	3 April 2008
<b>Issues and violations found</b>	Tried and punished twice for the same crime, unfair trial – violation of article 14, paragraph 1, read in conjunction with article 14, paragraph 7, of the Covenant.
<b>Remedy recommended</b>	Such appropriate forms of remedy as compensation and a retrial in relation to the author's murder charges.
<b>Due date for State party response</b>	17 October 2008
<b>Date of State party's response</b>	October 2008, 29 January 2009
<b>Date of author's comments</b>	1 March 2009, 6 September 2010, 29 January 2011
<b>State party's submission</b>	

In October 2008, the State party reported that the Committee's Views had been forwarded by the Supreme Court to the Supreme Courts of the Republics to ensure that this type of violation would not occur again. The Views had been widely published and the author had lodged another "petition" in the Supreme Court.

**Author's comments**

On 1 March 2009, the author submitted that the Views of the Committee should have determined that annulment of his acquittal was unfair and unfounded and contradicted the legislation. He requested the Committee to include this additional information in its Views. The author submitted that his supervisory review complaint had been rejected on 3 March 2009, which demonstrated that the Supreme Court was not aware of the Views of the Committee on his case, thus contradicting the State party's submission.

**Additional information from the author**

On 6 September 2010, the author explained that he is still in prison, serving a sentence for a crime he did not commit. He requests the Committee to take action in the matter.

On 29 January 2011, the author reiterated his previous explanations and provided the Committee with a copy of a reply to his claim to the Supreme Court of the Russian Federation to have his criminal case re-examined on the basis of new circumstances, i.e. the Committee's Views. The Supreme Court

has rejected his claim, stating that the legislation does not provide for re-examination of cases on the basis of treaty bodies' decisions. He requests the Committee to ask for assistance in the matter.

#### **Further action taken/required**

The author's most recent submissions were sent to the State party on 19 November 2010 and 23 February 2011, respectively. No reply has been received. The case should be discussed during a meeting with the State party's representatives at the Committee's 103rd session (October–November 2011).

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Russian Federation</b>
<b>Case</b>	<i>Amirov, 1447/2006</i>
<b>Views adopted on</b>	2 April 2009
<b>Issues and violations found</b>	Ill-treatment and failure to investigate – articles 6 and 7, read in conjunction with article 2, paragraph 3, of the Covenant, and a violation in respect of the author of article 7.
<b>Remedy recommended</b>	An effective remedy in the form, inter alia, of an impartial investigation into the circumstances of his wife's death, prosecution of those responsible, and adequate compensation.
<b>Due date for State party response</b>	19 November 2009
<b>Date of State party's response</b>	10 September 2009, 20 May 2010
<b>Date of author's comments</b>	24 November 2009, 26 November 2010

#### **State party's response**

On 10 September 2009, the State party submitted that, following the Committee's decision, the author's case was re-opened. The court considered that the decision to close the investigation had been unlawful, as the statement of the victim's husband indicating where the victim was buried had not been verified and other acts which to determine how the victim had died had not been carried out. On 13 July 2009, the Prosecutor of the Chechen Republic was instructed to take the Committee's decision into account and the General Prosecutor of the Federal Republic would ensure that the investigation would be reopened. In addition, it stated that a claim made by the victim's husband that he had been ill-treated in 2004 while trying to establish the status of the investigation was sent to a district prosecutor in the Grozny district.

#### **Author's comments**

On 24 November 2009, the author deplored the fact that the State party had not submitted copies of any documents it referred to in its submission, notably the decision of July 2009 to reopen the case. He was never informed of this decision despite the State's obligation to do so under article 46 of the Code of Criminal Procedure. On the issue of the exhumation of his wife's body, he submitted that he was contacted around May/June 2009, but was merely asked if he objected to the exhumation. It remains unclear whether the authorities have in fact exhumed her body and thus he is critical about the investigative attempts to establish the exact cause of death. The author also referred to shortcomings pointed out by the Committee in its Views, which were not addressed in the decision of 8 July 2009. He expressed doubts about the extent to which, if at all, any of the shortcomings of the domestic investigation, established in the decision of 8 July 2009, were remedied in the course of the new investigation. The author deplored the State party's failure to specify what kind of control the General Prosecutor's Office of the Russian Federation exercised in this case and the fact that it had also failed to

indicate what specific measures had been taken to prevent similar violations in the future and whether the Views had been made public. The author had received no information on the verifications that were supposed to have taken place with respect to his allegations of ill-treatment in 2004 and had never been contacted in this regard.

For all these reasons, the author submitted that he has not been provided with an effective remedy.

#### **State party supplementary submission**

On 20 May 2010, the State party submitted, inter alia, that on 29 April 2010, the investigation was resumed upon the request of the Prosecutor's Office of the Chechen Republic, because of the need to establish the location of Ms. Amirova's grave and to exhume her body for forensic medical examination. However, according to the State party, Mr. Abubakar Amirov refused to indicate the location of Ms. Amirova's body. The State party recalled that in the past Mr. Amirov had also failed to communicate the location of her grave and that Ms. Amirova's sister, who was recognized as an injured party in the proceedings, stated that she was also unaware of the grave's location and objected to the exhumation.

On 4 May 2010, the Prosecutor's Office of the Chechen Republic examined the investigation materials and decided to inspect the cemetery where they believe her body could have been buried.

The State party submits that the allegations about the authorities' failure to take necessary measures to identify the perpetrators are unfounded, as the examination of witnesses and other investigative actions are still ongoing. Due to the time that has passed since the crime in question was committed, it has not yet been possible to identify the perpetrators.

#### **Additional submission from the author**

On 26 November 2010, the author commented on the State party's submission of 20 May 2010. Firstly, the author requests the Committee to invite the State party to provide evidence and detailed information on any action taken to implement the Committee's Views.

With regard to the State party's contention that the criminal investigation into Ms. Amirova's death was resumed, the author deplores the State party's failure to submit any documentary evidence, in particular a copy of the decision of the Chechen Prosecutor's Office thereon of 29 April 2010. The author explains that he never received an official written notification on the above decision, even though, under article 42 of the Criminal Procedure Code, he is entitled to be acquainted with all records and investigation acts and to make comments thereon, and to receive a copy of the decision to initiate a criminal case. On 22 November 2010, the author introduced a motion requesting access to all case materials in the criminal case with the Investigation Directorate of the Chechen Republic; he will inform the Committee of the response in due course.

On the investigation actions into Ms. Amirova's death, the author deplores that the Chechen Prosecutor's Office has only asked for a forensic medical examination to be performed on his wife's body. He expresses doubts about the extent to which the exhumation of his wife's body would be of relevance, as the cause of her death has already been established and a death certificate was issued in 2001. According to him, the State party's authorities have enough information to proceed with an investigation into the exact circumstances of his wife's death. Therefore, the author invites the Committee to call upon the State party that the investigation in question goes beyond the exhumation of the body of his wife.

The author further deplores the State party's failure to refer to the allegations of torture and ill-treatment to which Ms. Amirova had been subjected prior to her killing. He invites the Committee to request the State party to also investigate these allegations, as ruled in the Committee's Views, to bring to justice those responsible, to pay compensation to the surviving family, and to ensure that no similar



violations occur in the future.

On the investigation into the misconduct and omissions committed during the preliminary investigation, the author regrets that the State party has not submitted a copy of the decision of 4 May 2010, and informs the Committee that he has not received any notification of such investigations. He further expresses doubts about the extent to which any measures have been taken to prevent similar violations in the future by the Head of Police of the Department Of Internal Affairs No.4 in Grozny. The author also regrets that the State party has not addressed a number of concerns expressed in the Committee's Views, such as the "failure of the State party even to secure the testimony of the agents of the Ministry of Emergency Situations and of the Staropromyslovsky Temporary Department of Internal Affairs in Grozny who were present at the crime scene on 7 May 2000".

The author further deplores that the State party has not addressed the allegations on his own ill-treatment in 2004. He informs the Committee that he has received no information on the Prosecutor's inquiries into his ill-treatment case, nor was he ever questioned in this respect. He invites the Committee to intervene with the State party on this matter as well.

In conclusion, the author reiterates that he has not been provided with an effective remedy, because of the State party's "continued refusal" to carry out a proper and effective investigation in his wife's death and ill-treatment, to punish those responsible, or to pay compensation.

#### **Further action taken/required**

The author's latest comments were transmitted to the State party on 1 December 2010. No reply has been received. The case should be discussed during a meeting with the State party's representatives at the Committee's 103rd session (October–November 2011).

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Russian Federation</b>
<b>Case</b>	<i>Usaev, 1577/2007</i>
<b>Views adopted on</b>	19 July 2010
<b>Issues and violations found</b>	Violation of article 7 and article 14, paragraph 3 (g), of the Covenant (forced confession of guilt in a crime).
<b>Remedy recommended</b>	Effective remedy, including the payment of appropriate compensation, the initiation and pursuit of criminal proceedings to establish responsibility for Mr. Usaev's ill-treatment, and consideration of the author's immediate release. The State party is also under an obligation to prevent similar violations from occurring in the future.
<b>Due date for State party response</b>	5 April 2011
<b>Date of State party's response</b>	21 February 2011
<b>Date of author's comments</b>	18 April 2011
<b>State party's response</b>	

On 21 February 2011, the State party affirmed that the Committee's conclusion of a violation of Mr. Usaev's rights under articles 7 and 14, paragraph 3 (g), is not based on objective evidence and argumentation. It notes that in paragraph 9.3 of its Views, the Committee stated that the State party had adduced no specific explanation or substantive refutation of the allegations, such as, in particular,

explanations on how and when, in practice, the author's allegations of torture and ill-treatment had been investigated, including by which specific authority. On this basis, the Committee concluded that Mr. Usaev's rights under article 7 of the Covenant had been violated. The State party points out that in its replies, it has explained that the author's allegations thereon were examined, on a number of occasions, by the competent authorities, including by the Supreme Court of the Russian Federation and the Prosecutor's Office, and were found to be groundless. Thus, the Committee's conclusion with respect to article 7 cannot be considered to be grounded. The State party further contends that the conclusion of a violation of article 14, paragraph 3 (g), is based only on the alleged torture suffered by the author.

The State party reiterates that Mr. Usaev had confessed guilt during the preliminary investigation, on a number of occasions, and had freely provided information on the circumstances of the crimes committed, in the presence of his lawyers, official witnesses, experts, and other individuals. The courts have examined the videotapes of these interrogations, and concluded that Mr. Usaev had confessed guilt in the absence of any form of coercion. The courts have provided grounded refutation of allegations on violations of criminal procedure in the case.

The State party explains that the text of the Committee's Views has been drawn to the attention of the Supreme Court and its staff during seminars of the Criminal Chamber of the Supreme Court. The text was also disseminated to the Supreme Courts of the different republics of the Russian Federation, Region Courts, Moscow and St. Petersburg City Courts, as well as the courts of the autonomous region and districts, district courts and military courts, for information and use in practice.

The State party explains that the author can complain under article 17 (Rights of suspects and accused of crimes) of the Federal Law on the detention of suspects and accused of 15 July 1997. Pursuant to this provision, suspects or accused persons can request a private meeting with the supervisor of the detention centre and the persons empowered to control the functioning of the detention facilities, and have the right to make suggestions, requests and claims, including to the courts, concerning the legality and the grounds for their detention and the violation of their rights and lawful interests. The author can also complain to the Ombudsman. Courts of general jurisdiction, pursuant to chapter 25 of the Civil Code, can examine complaints relating to disciplinary measures taken by the penitentiary officials against persons deprived of liberty. All penitentiary facilities disclose the contact details (mail addresses and phone numbers) of the State organs empowered to protect human rights and freedoms in the Russian Federation. Finally, the State party explains that the administration of the penitentiary institution where the author is detained does not prevent him from sending letters and complaints. During his stay there, the author has sent 30 letters to different national institutions, and to a regional body of human rights protection; he has received 32 answers.

#### **Author's comments**

On 18 April 2011, the author submitted that the State party in fact rejects all his allegations and the Committee's conclusions, without providing specific facts in support. According to the author, by refuting the Committee's conclusions, the State party ignores the human rights of its nationals and its international obligations. As to the issue of availability of further remedies to exhaust, the author refers to the numerous instances he has complained to, up to the Supreme Court, the General Prosecutor's Office, and the President of the Russian Federation, and explains that he sees no sense in continuing writing further complaints, as the result would be the same. The author invites the Committee to continue the dialogue with the State party.

#### **Further action taken/required**

The author's latest comments were transmitted to the State party in April 2011. No reply has been received. The case should be discussed during a meeting with the State party's representatives at the Committee's 103rd session (October–November 2011).

#### **Decision of the Committee**

The Committee considers the follow-up dialogue ongoing.

State party	Serbia
<b>Case</b>	<i>Novaković, 1556/2007</i>
<b>Views adopted on</b>	21 October 2010
<b>Issues and violations found</b>	Violation of article 2, paragraph 3, in conjunction with article 6 of the Covenant, failure to protect Mr. Novaković's right to life; failure to conduct an appropriate investigation in a case of alleged medical malpractice leading to the death of Mr. Novaković, the authors' son and husband, respectively.
<b>Remedy recommended</b>	Effective remedy. The State party is under an obligation to take appropriate steps (a) to ensure that the criminal proceedings against the persons responsible for the death of Mr. Novaković are speedily concluded and that, if convicted, they are punished, and (b) to provide the authors with appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party response</b>	27 April 2011
<b>Date of State party's response</b>	6 May 2011
<b>Date of authors comments</b>	28 April and 30 May 2011

#### State party's response

On 6 May 2011, the State party informed the Committee on recent developments in the case. It explains that four individuals were charged in connection to the death of Mr. Novaković by the Second Municipal Prosecutor's Office in Belgrade, on 21 January 2008. The charges were made under article 251, paragraph 4, of the Penal Code (serious acts against human health). According to the State party, the main hearings, scheduled for 7 April, 26 May, and 16 June 2009, were not held, as the defence lawyers submitted a request to have a medical expert recused. On 25 June 2009, the Second Municipal Court in Belgrade accepted the request. In addition, the presiding judge ordered further medical forensic expert examination, to be conducted by the Clinical Centre of Vojvodina, in order to ascertain facts about the death of Mr. Novaković. The conclusions of an expert committee from the Clinical Centre were delivered to the court on 2 June 2010. On 14 June 2010, the presiding judge ordered further forensic expert examination. On 26 October 2010, the court received additional findings and the opinion of the expert committee from the Clinical Centre (Maxillofacial Surgery). At the main hearing, on 23 December 2010, the four defendants were questioned. A fifth defendant was interrogated on 21 February 2011. On the same day, the court heard Ms. Marija and Ms. Dragana Novaković (as injured parties). Another hearing, scheduled for 17 March 2011, was postponed to 21 April 2011, when three additional witnesses were questioned. A subsequent hearing was scheduled for 1 June 2011.

#### Authors' comments

On 28 April 2011, the authors informed the Committee that they had contacted the Ministry of Human Rights and Minority Rights about the implementation of the Committee's recommendations in the present case and provided it with a copy of the Committee's Views on 27 November 2010. No reply had been received so far, and the authors were not contacted by the authorities. The text of the Committee's Views was placed on the website of the Ministry on 24 December 2010 (at [www.ljudskaprava.gov.rs/cir.html?start=16](http://www.ljudskaprava.gov.rs/cir.html?start=16)). The authors note, however, that the text of the Views was not published in the *Official Gazette*.

The authors further inform the Committee that the trial in connection to the death of Mr. Novaković continued on 23 December 2010 and 21 February 2011. According to her, however, the court was not aware of the existence of the Committee's Views and it was the author who provided it with a copy.

Finally, the author quotes an answer, dated 31 January 2011, of the State party to a questionnaire prepared to the attention of the European Commission (European Union) in the State party's pre-adhesion process to the European Union. One reply concerns the Committee's Views in the present case. The State party reports that "the Committee drew a conclusion on 21 October 2010 that there was a violation of article 2 read in conjunction with article 6 [of the Covenant] requesting the completion of criminal proceedings and ensuring an adequate compensation in case the defendant is pronounced guilty". According to the author, she is entitled to compensation in any event, for the violations occurred, irrespective of the outcome of the trial concerning Mr. Novaković's death.

On 30 May 2011, the author provided comments on the State party's observations. She notes that the State party has referred to court proceedings initiated prior to the adoption of the Committee's Views, presenting them as measures taken to give effect to the Views. In addition, she provides examples of irregularities and delays in the proceedings. Thus, on 25 June 2009, a judge ordered additional medical-forensic examination and asked to receive the results in a three-month period. The Vojvodina Clinical Centre, however, submitted its conclusions after almost one year. In addition, a further medical-forensic expert examination was needed, which created a delay until 26 October 2010. Thus, the criminal case concerning the death of Mr. Novaković, which occurred eight years ago, was still not closed. The author further reports that the Ministry of Human and Minority Rights has still not provided a reply to her lawyer's letter of 24 December 2010. The Committee's Views were not published in the *Official Gazette*, the author has not been approached by the authorities in connection with the Committee's Views and the authors have been granted no compensation.

#### **Further action taken/required**

The author's submission was sent to the State party in May 2011. The Committee may wish to await receipt of further information prior to making a decision on this matter.

**Decision of the Committee**                      The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Spain</b>
<b>Case</b>	<b><i>Gayoso Martínez, 1363/2005</i></b>
<b>Views adopted on</b>	19 October 2009
<b>Issues and violations found</b>	No review by higher court – article 14, paragraph 5.
<b>Remedy recommended</b>	Effective remedy that will permit the author's conviction and sentence to be reviewed by a higher court.
<b>Due date for State party response</b>	1 May 2009
<b>Date of State party's response</b>	18 November 2010
<b>Date of author's comments</b>	19 July 2010
<b>Author's comments</b>	

On 19 July 2010, counsel informed the Committee that, on the basis of the Views, he had asked the Supreme Court for leave to review the judgment by which the author was sentenced for various crimes without having benefitted from the guarantees contained in article 14, paragraph 5, of the

Covenant. However, on 29 January 2010, the Court refused the leave.

#### **State party's reply**

On 18 November 2010, the State party stated that the appeal for review and the appeal for annulment filed by the author cannot provide a full revision of the sentence, in the meaning of article 14, paragraph 5 of the Covenant. According to the State party, neither the appeal for review, nor the appeal for annulment is intended to provide a remedy to review the sentence in the meaning of article 14, paragraph 5. Based on the aforementioned, the State party requests the author to specify the concrete measures he deemed necessary to be taken to give effect to the Committee's Views.

#### **Further action taken/required**

The State party's reply was sent to the author in December 2010, for comments. A reminder was sent to the author in July 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter.

#### **Decision of the Committee**

The follow-up dialogue is ongoing.

<b>State party</b>	<b>Spain</b>
<b>Case</b>	<i>Morales Tornel, 1473/2006</i>
<b>Views adopted on</b>	20 March 2009
<b>Issues and violations found</b>	Article 17, paragraph 1.
<b>Remedy recommended</b>	Effective remedy, including appropriate compensation.
<b>Due date for State party response</b>	1 October 2009
<b>Date of State party's response</b>	22 November 2010
<b>Date of author's comments</b>	28 June 2010

#### **Author's comments**

On 28 June 2010, counsel informed the Committee that, on the basis of the Views, he had filed an administrative claim for compensation on behalf of the authors in connection with the victim's death in prison. On 29 April 2010, the Council of State issued a Decision indicating, inter alia, that the National Court (Audiencia Nacional), the Supreme Court and the Constitutional Court had dealt with the case at the time and found no misconduct by the prison authorities. Since there were no new facts, the administrative claim was submitted outside the deadline prescribed by law. The Council also indicated that, according to the jurisprudence of the highest courts in the country, the Views of the Committee were not binding and that the existence of moral damage caused to the authors by the prison authorities had not been proven. As a result, the claim was considered inadmissible. This decision can be appealed to the National Court. Counsel does not indicate whether an appeal has been filed.

#### **State party's reply**

On 22 November 2010, the State party informed the Committee that an appeal was pending before the National Court (Audiencia Nacional) on the question of compensation. The Court should take a decision in the following months.

**Further action taken/required**

The State party's submission of 22 November 2010 was sent to the author, for comments, in July 2011. The Committee may wish to await receipt of further information prior to making a decision on this matter.

**Decision of the Committee**

The follow-up dialogue is ongoing.

<b>State party</b>	<b>Spain</b>
<b>Case</b>	<b><i>Williams Lecraft, 1493/2006</i></b>
<b>Views adopted on</b>	27 July 2009
<b>Issues and violations found</b>	Discrimination on the basis of racial profiling – article 26, read in conjunction with article 2, paragraph 3.
<b>Remedy recommended</b>	An effective remedy, including a public apology.
<b>Due date for State party's response</b>	1 February 2010
<b>Date of State party's response</b>	27 January 2010
<b>Date of author's comments</b>	23 April 2010

**State party's response**

In January 2010, the State party reported that the text of the Views had been included in the Information Bulletin of the Ministry of Justice dated 15 September 2009. This is a public journal for general distribution that can be consulted by anybody. The Views were sent to all main judicial bodies and organs related to them, including the General Council of the Judicature, the Constitutional Court, the Supreme Court, the General Attorney's Office and the Ministry of Interior. On 11 November 2009, the Minister of Foreign Affairs and other high officials at his Ministry met Ms. Williams Lecraft and offered her apologies for the acts of which she was a victim. On 27 December 2009, the Deputy Minister of Justice wrote to Ms. Williams Lecraft's representatives and explained the Ministry's policy regarding human rights training of police officers.

On 15 January 2010, the Deputy Interior Minister for Security Affairs met Ms. Williams Lecraft and offered her oral and written apologies on behalf of the Minister. He also explained the measures taken by the Ministry in order to ensure that police officers do not commit acts of racial discrimination.

**Author's comments**

On 23 April 2010, the author commented upon the State party's submission. She commended the limited action taken by the State party in its attempts to implement the Views but expressed the view that its actions are insufficient. She submits that the State party should take the following steps.

(a) Issue the public apology that was specifically recommended by the Committee. She sets out the reasoning behind a public apology as opposed to one given behind closed doors, and suggests that this may be carried out by posting Minister Rubalcaba's letter of apology on the website of the Ministry of the Interior, by making a public statement in an appropriate forum and by issuing a press release to newspapers and media outlets with a wide circulation;

(b) Implement steps to prevent repetition, such as detailed instructions for stop-and-search, specific training of police, and non-discrimination standards for immigration checks; the author has provided detailed suggestions for such measures. The author has communicated on several occasions on such issues and received responses from the Ministry of the Interior on training courses that are being

undertaken but is of the view that they are too general in nature;

(c) The State party should properly consider the payment of damages as an appropriate remedy that demonstrates the vigorous reaction required where race discrimination has occurred. In a letter to the State party dated 6 November 2009, the author requested 30,000 euro for moral and psychological injury and a further 30,000 euro towards the legal costs she incurred in the proceedings before the national tribunals. Her request was subsequently rejected on the basis that she had lost her case before the Spanish courts. She now urges the State party to consider alternative ways of effecting redress, such as a discretionary payment of compensation.

#### **Further action taken or required**

The author's submission was sent to the State party on 27 April 2010.

<b>Decision of the Committee</b>	During its ninety-ninth session, the Committee decided that, given the measures taken by the State party in the form of apologies and wide distribution of the Committee's Views to implement the recommended remedies, the Committee does not find it necessary to consider this matter any further under the follow-up procedure.
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<b>State party</b>	<b>Tajikistan</b>
<b>Case</b>	<b><i>Dunaev, 1195/2003</i></b>
<b>Views adopted on</b>	30 March 2009
<b>Issues and violations found</b>	Death sentence after an unfair trial; forced confession obtained under duress – article 7 read together with article 14, paragraph 3 (g), and article 6.
<b>Remedy recommended</b>	An effective remedy, including the payment of adequate compensation, initiation and pursuit of criminal proceedings to establish responsibility for the author son's ill-treatment, and a retrial, with the guarantees enshrined in the Covenant or release, of the author's son. The State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party response</b>	6 October 2009
<b>Date of State party's response</b>	None
<b>Date of author's comments</b>	22 October 2010
<b>Author's comments</b>	

On 22 October 2010, the author inquired whether the State party had provided any information on the measures taken to give effect to the Committee's Views, and invited the Committee to remind the State party about its international obligations under the Covenant.

#### **Further action taken/required**

The author's submission was sent to the State party for comments on 22 November 2010. The State party was also reminded to present its comments on the Committee's Views. The Committee decided to call for a meeting with the Permanent Mission of the State party at its 103rd session (October–November 2011).

<b>Decision of the Committee</b>	The Committee considers the follow-up dialogue ongoing.
<b>State party</b>	<b>Tajikistan</b>
<b>Case</b>	<b><i>Kirpo, 1401/2005</i></b>
<b>Views adopted on</b>	27 October 2009
<b>Issues and violations found</b>	Ill-treatment for purposes of a confession, arbitrary arrest and detention, informed at time of arrest of reasons for arrest – article 7, article 9, paragraphs 1–3; and article 14, paragraph 3 (g).
<b>Remedy recommended</b>	An effective remedy, including initiation and pursuit of criminal proceedings to establish responsibility for ill-treatment of the author's son, appropriate reparation including compensation, and consideration of a retrial in conformity with all the guarantees enshrined in the Covenant or his release.
<b>Due date for State party response</b>	24 May 2010
<b>Date of State party's response</b>	21 April 2010, 8 June 2011
<b>Date of author's comments</b>	7 February 2011
<b>State party's response</b>	

In its submission of 21 April 2010, the State party disputes the view that it has violated the author's rights under the Covenant. It disputes the Committee's decision on admissibility and merits, and claims that it had no official contact with the Committee. It claims that it had not received any of the notes verbales referred to in the Committee's Views.

It disputes the admissibility of the communication on the grounds of non-exhaustion and non-substantiation and with regard to the latter highlights the lack of medical certificates confirming the allegations that the author was ill-treated. On the merits, with respect to the allegation that the author was arbitrarily detained, the State party submits that the detention was aimed at establishing who the members of the criminal group were in which he participated, as well as to ensure his personal safety. According to the State party, he had expressed fear for his life and for the lives of his relatives. However, the court, upon review of his case, established that there had been a violation of the criminal procedure in relation to his detention and notified the Prosecutor's Office, after which the officers responsible were subjected to disciplinary proceedings and subsequently dismissed. The court also included this period of pretrial detention when calculating the duration of the prison sentence. It further established that the illegal detention did not influence the objective investigation of the guilt of the author's son.

According to the State party, the criminal case against the author's son was initiated on 20 May 2000 and on 22 May 2000 he was provided with a lawyer. Regarding torture allegations, neither the author's son nor his lawyer submitted any complaints during the investigation or during the trial. On 8 May 2000, he freely confessed to the crime. The State party questions why the Committee did not seek the opinion of the United Nations representative who allegedly met with the author's son (Views, para. 2.3).

On the violation of article 9, paragraph 3, the State party submits that, according to the domestic law at the time, the official body responsible for reviewing the legality of the detention was the Prosecutor's Office. However, with the adoption of the new Criminal Procedure Code on 1 April 2010,



the review of detentions is now in the jurisdiction of the court.

#### **Author's comments**

On 7 February 2011, the author presented her comments on the State party's observations. On the issue of exhaustion of domestic remedies, she notes that in the period 2001–2005 she had submitted six different complaints to the Prosecutor General's Office and to the Supreme Court of Tajikistan. She also filed 11 complaints to the Judicial Council, the Office of the President, the Parliament and the Constitutional Court. The author further claims that the State party's contention that she did not complain about her son's tortures is groundless. She explains that in her complaint to the Ministry of Justice and the Office of the Prosecutor she made such allegations, but those authorities did not respond to her claims. The author notes that the Committee has concluded that her son is entitled to an effective remedy, including the conduct of an investigation and the prosecution of those responsible for his torture, the payment of an appropriate compensation, and a retrial or a release. The only measure taken, however, as indicated by the State party, was the disciplining and subsequent dismissal of one law-enforcement official. The author has complained about this to the Supreme Court, the General Prosecutor's Office, the Ombudsman, and to the Office of the President. The Supreme Court and the General Prosecutor's Office addressed her claims under the supervisory proceedings, and replied that her son's guilt was established correctly and his sentence was lawful, without addressing the Committee's Views. The author submitted additional complaints to the Constitutional Court, the Ombudsman, the General Prosecutor's Office and to the Office of the President, invoking the Committee's Views, but received similar replies.

#### **Additional information from the State party**

By note verbale of 8 June 2011, the State party informed the Committee that it had provided it already with a reply, in April 2010, following an examination of the case by the Supreme Court and the General Prosecutor's Office. The author's submission does not contain, according to the State party, any new elements which would require a re-examination of the case.

#### **Further action taken/required**

The State party's submission was sent to the author in June 2011 for comments. The case should be discussed during a meeting with the State party's representatives at the Committee's 103rd session (October–November 2011).

**Decision of the Committee** The follow-up dialogue is ongoing.

<b>State party</b>	<b>Tajikistan</b>
<b>Case</b>	<b><i>Khostikoev, 1519/2006</i></b>
<b>Views adopted on</b>	22 October 2009
<b>Issues and violations found</b>	Unfair trial – article 14, paragraph 1.
<b>Remedy recommended</b>	Effective remedy, including the payment of appropriate compensation.
<b>Due date for State party response</b>	5 July 2010
<b>Date of State party's response</b>	16 April 2010
<b>Date of author's comments</b>	12 November 2010
<b>State party's response</b>	

In April 2010, the State party contested the Views and submitted that they did not take into

account the State party's observations of 20 March 2007. It refers to the Committee's statement that the State party "did not refute these specific allegations, but limited itself to contending that all court decisions in the case were substantiated and that no procedural violations had occurred", and that "the facts as presented, and not refuted by the State party, tend to reveal that the author's trial suffered from a number of irregularities". However, the State party argues that, as set out in paragraphs 4.2, 4.3 and 4.4 of the Views, the State party justified the lawfulness of the court process.

No other evidence was submitted during the preparation of the court hearing and the parties were given equal rights, which were explained to them. The State party argues that the statement in paragraph 7.2 of the Committee's Views that the author was not allowed to present additional evidence is false and unfounded. In its Views, the Committee stated that despite the Prosecutor's request to annul 48 per cent of the shares the court annulled all 100 per cent of the company's shares. It claims that such a statement is false as the General Prosecutor asked for 100 per cent annulment in three stages.

The State party argues that the author had one month to hire a lawyer prior to the hearing, but only did so on the second day of the hearing. The State party thus submits that it was the author's own fault that his lawyer was not able to study the case materials. It argues that the author did not deny receiving the copy of the lawsuit and the documents attached to it, which demonstrates that he had enough time prior to the court proceedings to study the case materials.

#### **Author's comments**

The author presented his comments on 12 November 2010. He contests the State party's submission as incomplete, and reiterates that his trial suffered from numerous procedural irregularities; the court ignored the violation, by the Prosecutor's Office, of the regulations on statutory delays; the presiding judge acted in a biased manner; the author's lawyer was not given the necessary time to study the case file; the author was prevented from submitting additional evidence.

#### **Further action taken/required**

The author's comments were transmitted to the State party on 25 November 2010. A reminder to the State party was sent in July 2011. The Committee may wish to await receipt of further comments prior to making a decision on this matter. The case should be discussed during a meeting with the State party's representatives at the Committee's 103rd session (October–November 2011).

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Trinidad and Tobago</b>
<b>Case</b>	<i>Smart, 672/1995</i>
<b>Views adopted on</b>	29 July 1998
<b>Issues and violations found</b>	Violation of article 9, paragraph 3; and article 14, paragraph 3 (c), read together with article 6, of the Covenant.
<b>Remedy recommended</b>	The State party is under an obligation to provide Mr. Smart with an effective remedy, including commutation and compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.
<b>Due date for State party's response</b>	5 November 1999
<b>Date of State party's response</b>	None

### Additional information

On 22 February 2011, a third party inquired about the implementation of the Committee's Views and expressed concern at the continuing imprisonment of Mr. Clive Smart and seven other individuals, whose individual cases were also examined by the Committee with a conclusion of a violation of their rights by the State party: communications No. 434/1990 (*Seerattan*), No. 908/2000 (*Evans*), No. 752/1997 (*Henry*), No. 938/2000 (*Siewpersaud, Sukhram and Persaud*) and No. 594/1992 (*Phillip*).<sup>32</sup> The eight persons are aged between 43 and 74 at present. Enclosed with the letter was a letter signed by all eight prisoners, detained in the Maximum Security Prison in Golden Grove, Arouca. The victims inform the Committee that no measures to give effect to the Committees' Views have been taken by the State party. They explain that a number of them are foreign nationals or stateless and they face particular difficulties in prison, having no relatives in the State party.

### Further action

The third party's information was sent to the State party in March 2011. The Committee may wish to await receipt of further information prior to make a decision on these cases. The Committee may wish to consider having a follow-up meeting with the State party's representatives during its 104th session (March 2012).

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

State party	Uzbekistan
<b>Case</b>	<i>Eshonov</i> , 1225/2003
<b>Views adopted on</b>	22 July 2010
<b>Issues and violations found</b>	Violation of article 6, paragraph 1, and article 7, read in conjunction with article 2, as the author's son died in custody, allegedly as a result of torture acts, and the authorities failed to conduct an adequate investigation thereon. Article 7, and article 7 read together with article 2, of the Covenant, concerning the author himself, because of the authorities' acts/omissions.
<b>Remedy recommended</b>	Effective remedy in the form of, inter alia, an impartial investigation into the circumstances of the author's son's death, prosecution of those responsible, and adequate compensation. The State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party's response</b>	28 January 2011
<b>Date of State party's response</b>	21 January 2011
<b>State party's submission</b>	

The State party informs the Committee that on 27 December 2010, the Committee's Views in the present case were examined by the Inter-Institutional Working Group monitoring the respect of human

<sup>32</sup> In communications Nos. 434/1990 and 908/2000, the Committee asked for the early release of the authors; in communication No. 938/2000, the release of the authors; in communication No. 594/1992, the immediate release of the author; and in communication No. 752/1997, it requested that the author be provided with an effective remedy, including compensation.

rights by law-enforcement authorities (created by decision of the Committee of Ministers of 24 February 2004). The Working Group concluded that the author's allegations that his son had died as a consequence of torture inflicted by the law-enforcement authorities, and that the inquiry conducted by the authorities had been inadequate, to conceal these crimes, are groundless.

The State party recalls that the author's son and four other individuals were arrested by the Ministry of Security on 6 May 2003, when they were distributing forbidden extremist religious literature calling to overthrow the existing constitutional system. The author's son was examined by a medical doctor immediately after his arrest, and no injuries were revealed on his body. The author's son was placed in the Temporary Detention Centre of the Ministry of Interior, and was never subjected to unlawful acts by the authorities there. On 9 May, the author's son was placed in custody. The author's allegations on the ill-treatment of his son are groundless because: (a) from the moment of his arrest, he was represented by a lawyer, and this lawyer never complained about unlawful acts of the officials; (b) the accomplices of the author's son also confirmed that the law-enforcement authorities did not commit unlawful acts during their arrest; (c) during an interrogation, on 9 May 2003, in the presence of his lawyer, the author's son also confirmed that he had not been subjected to unlawful acts; (d) the cellmates of the author's son also confirmed, in writing, that no such acts were inflicted on Mr. Eshonov.

The State party further rejects the author's allegation that he was not informed about the arrest of his son for 24 hours, as the case file contains evidence to the effect that the author had been notified by mail of the arrest of his son by the regional head of the Ministry of Security, as required by law.

The State party refutes the author's claim that his son died on 10 May 2003 and that his body was kept for four days in a medical centre, based on, inter alia, the depositions of one of Mr. Eshonov's cellmates who confirmed that they were detained together from 6 to 13 May 2003. The cellmate has also affirmed that on 11 May 2003, Mr. Eshonov was the victim of a crisis similar to those experienced by individuals suffering from epilepsy. The cellmate called the officer on duty, who contacted the medical service. Mr. Eshonov was brought to the medical service. Upon return, on 12 May 2003, he explained to his cellmate that he had received medical assistance and was feeling better. However, the following day he had another crisis, and was hospitalized. All this was confirmed by the officials of the detention centre, as well as by other detainees. The detention centre's registry contains a record of the call for emergency medical assistance of 11 May 2003. Two other officers have confirmed that they accompanied the ambulance transporting Mr. Eshonov to the medical centre on 11 May 2003, to be treated in the resuscitation ward, and he had spent the night there.

Four medical doctors have confirmed having provided care to Mr. Eshonov at the medical centre. The author's son had high blood pressure and complained about headaches. His body disclosed no injuries whatsoever. His diagnosis was hypertonic disease of second degree and hypertonic crisis. He was administered the necessary treatment. Mr. Eshonov's medical examinations took place in the absence of the law-enforcement officials, and he did not complain about ill-treatment.

Mr. Eshonov's medical record established in the Kashkadara Office of the Republican Centre for Emergency Medical Assistance confirms his presence there on 11 May 2003. In addition, Mr. Eshonov had undergone a number of tests, and an X-ray examination of his thorax. The X-rays confirm, according to the State party, not only Mr. Eshonov's presence in the medical centre on this date, but also show that he did not suffer from broken ribs at that time. The State party notes also that no diagnosis of "hydrophobia" was recorded on Mr. Eshonov's record.

According to the State party, the state of the author's son deteriorated on 15 May 2003, and he suffered a heart attack. The medical doctor in the reanimation ward reacted by performing a cardiac chest-massage. As a result, some of Mr. Eshonov's ribs were broken, without causing other injuries. This was confirmed by three other medical doctors present. Mr. Eshonov could not be reanimated.

An official medical-forensic examination on 15 May 2003 (No. 45) did not reveal corporal

injuries on Mr. Eshonov's body. The conclusion of the experts' examination was that Mr. Eshonov's death was due to a brain haemorrhage as a consequence of a hypertonic crisis. The medical assistance provided was adequate, but Mr. Eshonov's life could not be saved. This was also confirmed in a medical experts' examination (No. 17), carried out by several highly qualified experts, who examined thoroughly and exhaustively Mr. Eshonov's medical history and conducted laboratory tests, and who concluded that an exhumation was not necessary. In this connection, the State party explains that an exhumation can only be ordered if a criminal case is opened.

The State party further refutes as groundless the allegations that its authorities have failed, for a long time, to proceed with an inquiry on the circumstances of Mr. Eshonov's death. The Department of National Security and the Department of Internal Affairs of Kashkadarynsk Region had conducted internal inquiries, and the Prosecutor's Office has carried out an independent preliminary inquiry under art. 329 of the Criminal Procedure Code. According to the law, the Prosecutor's Office had 10 days to conduct an examination, to order expert examinations, to collect explanations and to request to be provided with additional documents. The case file material was examined on 11 June 2003 by the Prosecutor's Office of the Kashkadarynsk Region, and, on 3 September 2003, by the General Prosecutor's Office of Uzbekistan. On 30 September 2003, the Karshi Prosecutor's Office refused to open a criminal case in connection with Mr. Eshonov's death.

The State party concludes by stating that the above elements demonstrate that Uzbekistan has not violated the author's and Mr. Eshonov's rights under articles 2, 6 and 7 of the Covenant.

#### **Further action taken or required**

The State party's information was sent to the author on 31 January 2011. A reminder to the author was sent in July 2011. The Committee decided to call for a meeting with the State party's representatives to be held at its 103rd session (October –November 2011).

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Uzbekistan</b>
<b>Case</b>	<b><i>Tolipkhudzaev, 1280/2004</i></b>
<b>Views adopted on</b>	22 July 2009
<b>Issues and violations found</b>	Imposition of a death penalty following an unfair trial, with use of confessions obtained under duress – violation of article 6; article 7; and article 14, paragraphs 1 and 3 (g), of the Covenant.
<b>Remedy recommended</b>	Effective remedy, including the payment of adequate compensation and initiation of criminal proceedings to establish responsibility for Mr. Tolipkhudzaev's ill-treatment. The State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party's response</b>	28 January 2011
<b>Date of State party's response</b>	21 January 2011
<b>State party's submission</b>	

The State party reports that on 27 December 2010, the Committee's Views in the present case were examined by the Inter-Institutional Working Group monitoring the respect of human rights by law enforcement authorities (created by decision of the Committee of Ministers of 24 February 2004). The Working Group concluded that the author's allegations that her son's right to defence have been violated

were groundless.

The State party informs the Committee, first, that Mr. Tolipkhudzaev's death penalty had in fact already been carried out when the Supreme Court of Uzbekistan was notified of the Committee's request for a stay of execution.

The State party further contends that neither during the preliminary investigation, nor at the initial stage of the court trial, had Mr. Tolipkhudzaev or his four lawyers ever claimed to have been subjected to torture or unlawful methods of investigation. To the contrary, he was replying to the questions voluntarily, in the presence of his lawyers. The claims formulated at the latest stage of the trial were found by the court to constitute an attempt to avoid the engagement of his criminal liability.

During the examination of the appeal, on 29 October 2004, the officials conducting the investigation were questioned, and they confirmed that all investigation acts in the case were conducted systematically in the presence of Mr. Tolipkhudzaev's lawyers. The medical personnel of the detention centre where the author's son was kept also confirmed in court that his body disclosed no marks of beatings. According to the information in his medical records, he had contacted the medical centre on a number of occasions, but never in connection to corporal injuries.

Two of Mr. Tolipkhudzaev's lawyers were also questioned in court, and they confirmed that during the preliminary investigation, their client had not complained about torture or of unlawful methods of investigation, and that he had confessed guilt freely. According to these lawyers, later on, Mr. Tolipkhudzaev retracted his initial confessions and decided to be represented by other lawyers.

According to the State party, the courts' decisions were correct in the present case, the guilt of the author's son was fully established by the existing evidence, and the sanction determined was adequate to the gravity of the crimes committed.

In the light of this information, the State party concludes that no violation of the author's son's rights under articles 6, 7, and 14, of the Covenant, occurred in the present case. The Committee's conclusions are based on the author's allegations, which are not corroborated by any other evidence.

#### **Further action taken or required**

The State party's information was sent to the author on 31 January 2011. A reminder to the author will be sent. The case should be discussed during a meeting with the State party's representatives at the Committee's 103rd session (October–November 2011).

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Uzbekistan</b>
<b>Case</b>	<i>Kodirov, 1284/2008</i>
<b>Views adopted on</b>	20 October 2009
<b>Issues and violations found</b>	Torture and ill-treatment to obtain confessions – article 7, read together with article 14, paragraph 3(g); failure to ensure effective investigation thereon – article 7 of the Covenant.
<b>Remedy recommended</b>	Effective remedy, which should include a new trial that would comply with fair trial guarantees of article 14 of the Covenant, impartial investigation of the author's claims falling under article 7, prosecution of those responsible, and full reparation, including adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

**Due date for State party's response** 31 May 2010

**Date of State party's response** 21 January 2011

**State party's submission**

The State party informs the Committee that on 27 December 2010, the Committee's Views in the present case were examined by the Inter-Institutional Working Group monitoring the respect of human rights by law enforcement authorities (created by decision of the Committee of Ministers of 24 February 2004). The Working Group concluded that the author's allegations that her son's right to defence had been violated were groundless.

The State party repeats its observations on the merits of the communication. It recalls that Mr. Kodirov has been found guilty of robberies and assaults against 16 women, and of the murder, committed with grave violence, of five of his victims.

The State party rejects as groundless the author's allegations on the use of unlawful methods of investigation against her son. It declares that a pre-investigation verification established that on 13 June 2003, Mr. Kodirov was placed in the medical unit of the penitentiary centre UYa – 64/IZ-1. This was due to the fact that the author's son had inflicted a wound on himself. No other injuries were discovered on his body. The same day the author's son underwent an examination by a psychiatric doctor and his wound was treated by a nurse – he had to have stitches. Once the wound healed, the stitches were removed on 23 June 2003 and Mr. Kodirov was released from the medical unit. The author's allegations that her son had a broken arm or injuries on the head do not correspond to the reality and do not appear in his medical records and they would have required a longer stay in the medical unit. In addition, Mr. Kodirov met his lawyer shortly after his release from the medical service and neither he nor his lawyer complained about unlawful treatment.

As to the Committee's contention that the State party has not provided information on whether any inquiries into the author's ill-treatment allegations in the present case have been conducted, the State party explains that such verifications had taken place and they did not confirm any such treatment by the officials or cellmates of the author's son. Thus, on 28 June 2003, the Prosecutor's Office of the Yunusabadsk District of Tashkent decided not to open a criminal case on these allegations, due to the absence of a crime. Therefore, the author's allegations on torture/rape and violations of her son's criminal procedure rights are unsubstantiated and are false. The criminal case file does not contain any information on Mr. Kodirov's physical or psychological violence during the preliminary investigation or the court trial.

In addition, Mr. Kodirov was systematically represented by a lawyer, including during his first interrogation. At the end of the pretrial investigation, he and his lawyer were given the opportunity to acquaint themselves with the content of the criminal case file, from 5 to 11 September 2003. As per the lawyer's request, the court trial was scheduled on 3 October 2003 instead of 2 October, in order to give him additional time to study the case file. Neither at this point nor during the examination of the case in court did Mr. Kodirov or his lawyer complain about cruel treatment against the author's son. Mr. Kodirov's lawyer never raised the issue, orally or in writing, of the alleged ill-treatment of the author's son when the case was examined on appeal, by the Tashkent City Court, on 6 February 2004.

According to the State party, the author's allegations to the effect that a judge resorted to pressure against her during the trial are imaginary. The author was also present in the court room, and she never formulated any claims, including in this respect, either orally or in writing.

The State party also explains that the pretrial investigation and the court trial have been carried out in strict conformity to the criminal procedure law. All charges and evidence were examined thoroughly in court, and Mr. Kodirov's guilt has been duly established. In determining the sentence, the court took into account the past three convictions of the author's son, the fact that he constituted a

danger for the society and the gravity of the crimes committed, which included five murders.

In the light of this information, the State party concludes that no violation of the author's son's rights under articles 2, 7, and 14, of the Covenant, took place in the present case. The Committee's conclusions are based on the author's allegations, which are not corroborated by other documented evidence.

#### **Further action taken or required**

The State party's information was sent to the author on 31 January 2011. A reminder to the author will be sent. The case should be discussed during a meeting with the State party's representatives at the Committee's 103rd session (October–November 2011).

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Uzbekistan</b>
<b>Case</b>	<b><i>Umarov, 1449/2006</i></b>
<b>Views adopted on</b>	19 October 2010
<b>Issues and violations found</b>	Violation of article 7, article 9, article 10, paragraph 1, article 19, paragraph 2, and article 26 of the Covenant (torture, inhumane treatment, habeas corpus, freedom of expression; discrimination on political grounds).
<b>Remedy recommended</b>	An effective remedy. The State party is under an obligation to take appropriate steps to (a) institute criminal proceedings, in view of the facts of the case, for the immediate prosecution and punishment of the persons responsible for the ill-treatment to which Mr. Umarov was subjected, and (b) provide Mr. Umarov with appropriate reparation, including adequate compensation. The State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party response</b>	6 July 2011
<b>Date of State party's response</b>	27 April 2011
<b>Date of author's comments</b>	5 July 2011
<b>State party's response</b>	

On 27 April 2007, the State party explained that the Committee's Views had been examined by the Inter-Institutional Working Group monitoring the respect of human rights by law-enforcement authorities (created by decision of the Committee of Ministers on 24 February 2004). The Working Group concluded that the author's allegations that her husband was a victim of violation of his rights under articles 7, 9, 10, 19 and 26 of the Covenant, were groundless.

The State party recalls that the author's husband had been sentenced to 10 years and 6 months of imprisonment and prohibited from conducting economic activities for five years, by decision of the Tashkent City Court, partly modified by the appeal body of the same court on 13 April 2006, under several provisions of the Criminal Code. Following the application of several General Amnesty Acts to his case, Mr. Umarov was released on 7 November 2009. He remains, however, accountable, together with other persons, for damages amounting to 581.3 million sum and eight and a half million United States dollars.



The State party rejects the author's allegations in the communication to the Committee, and claims that they are groundless and do not correspond to the reality. In substantiation, the State party recalls extensively the facts and proceedings related to the author's prosecution concerning a number of serious crimes. All criminal proceedings concerned economic and corruption-related crimes, and, contrary to the Committee's conclusions, Mr. Umarov was never persecuted on political grounds.

Mr. Umarov was examined by medical doctors shortly after his arrest, on 23 October 2005, and no corporal injuries were disclosed. The day after his arrest, he was provided with a lawyer. Subsequently, Mr. Umarov hired privately another lawyer. As per the new lawyer's request, two days after his arrest, Mr. Umarov was examined in order to check whether he had been given psychotropic drugs, and the test was negative. No corporal injuries were revealed on that occasion either.

During an interrogation on 2 November 2005, held in the presence of his lawyer, and in response to a question from the lawyer, Mr. Umarov had declared that he had not been given drugs and had not been subjected to unlawful methods of investigation. An official record on the interrogation was prepared, and it was signed both by the lawyer and Mr. Umarov. Subsequently, on a number of occasions, the investigation had to be interrupted, as Mr. Umarov was reporting health problems. For this reason, the investigation ordered a comprehensive examination, which was conducted on 7 November 2005 by medical experts. The group of medical experts concluded that Mr. Umarov was able to participate in the criminal proceedings, and that his psychiatric status was satisfactory. No use of psychotropic drugs was revealed. Both the lawyer and Mr. Umarov were provided with the experts' conclusions. Neither he nor his lawyer complained further about the use of coercion or psychotropic substances by the investigators.

Mr. Umarov challenged the legality of his detention through complaints lodged on 23, 24 and 25 October 2005, and he was not prevented from meeting with his lawyer. Thus, his allegations in this connection in the communication do not correspond to the reality.

In detention, he was provided with the personal items provided for under the law, and neither he nor his lawyers ever complained about the conditions of detention or of non-respect for his dignity. In the light of the absence of evidence of inhumane treatment or acts of torture, no reason to initiate a criminal prosecution exists. As Mr. Umarov has been convicted for serious economic crimes and his sentence was enforced, and there are no grounds on which to provide him with remedies or to compensate him or his family.

#### **Author's comments**

On 5 July 2011, Mr. Umarov, who has left the territory of the State party, reiterated his claims contained in the communication and emphasized that he is a victim of politically and corruption-motivated criminal prosecution, that he was a victim of torture and moral persecution, that his trial was held in violation of the basic fair trial guarantees, that his guilt in the incriminated events was not established, and that he and his family have been deprived of properties arbitrarily. The author recalls that pursuant to the Committee's Views, the State party is under an obligation to provide him with an effective remedy.

#### **Further action taken/required**

The author's latest comments were transmitted to the State party in July 2011. The case should be discussed during a meeting with the State party's representatives at the Committee's 103rd session (October–November 2011).

#### **Decision of the Committee**

The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Uzbekistan</b>
<b>Case</b>	<b><i>Lyashkevich, 1552/2007</i></b>
<b>Views adopted on</b>	23 March 2010
<b>Issues and violations found</b>	Denial of access of the author's son to the legal counsel of his choice for one day and conducting investigation acts with him during that time – violation of article 14, paragraph 3 (b), of the Covenant.
<b>Remedy recommended</b>	Effective remedy, in the form of an appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party's response</b>	28 January 2011
<b>Date of State party's response</b>	21 January 2011
<b>State party's submission</b>	

The State party informs the Committee that on 27 December 2010, the Committee's Views in the present case were examined by the Inter-Institutional Working Group monitoring the respect of human rights by law-enforcement authorities (created by the decision of the Committee of Ministers of 24 February 2004). The Working Group concluded that the author's allegations that her son's right to defence had been violated were groundless.

The State party recalls that Mr. Lyashkevich has been convicted for serious crimes, including murder. He was sentenced to a 20-year prison term by the Tashkent City Court on 2 March 2004. The case was examined on appeal, on 29 June 2004, and the sentence was confirmed. Mr. Lyashkevich's guilt has been established not only on the basis of his own confessions, but also on the basis of a multitude of other corroborating evidence, including the confessions of his accomplice, witnesses' depositions, material evidence, etc.

The State party contests the author's allegations in her communication to the Committee. It explains that the criminal case file material has permitted to establish that Mr. Lyashkevich was apprehended on 10 August 2003. He was interrogated upon arrest as a suspect, in the presence of a lawyer, which is certified both by the lawyer's official order contained in the case file, and also by the signatures of the lawyer in question on all documents prepared that day. Mr. Lyashkevich was officially arrested on 11 August 2003. A confrontation of Mr. Lyashkevich and his accomplice on that day was held in the presence of a lawyer, as duly recorded in the case file, and the author's son was interrogated, again in the lawyer's presence.

On 12 August 2003, Mr. Lyashkevich's depositions were verified at the crime scene, in the presence of a new lawyer, retained privately that same day by Mr. Lyashkevich to represent him. Thus, Mr. Lyashkevich was always represented by a lawyer when he was questioned as a suspect or interrogated as an accused, as well when investigation acts had been carried out. He had confessed guilt and provided information freely, and on the basis of this information, the authorities discovered the body of the victim of the murder. The author's son never complained in court about limitations on his access to his lawyers.

The State party further explains that the author's allegations that on 11 August 2003 her son could not be represented by his privately retained lawyer have been verified. It transpired that on 11 August 2003, during the conduct of investigation acts, Mr. Lyashkevich was represented by his ex officio lawyer. The existence of a record in the criminal case file concerning the privately retained lawyer signed on 11 August 2003 does not permit to establish when exactly the agreement for Mr. Lyashkevich's representation was signed with this lawyer. Thus, it cannot be established whether this

agreement was made prior to the conduct of the investigation acts carried on that day. The Law on Advocacy does not require the indication of the hour of the day when agreements for representation between a client and his/her lawyer is made. The State party concludes by informing the Committee that the courts have correctly assessed the circumstances of the criminal case, have correctly found Mr. Lyashkevich guilty, and have determined a sanction which is proportionate to the gravity of the crimes committed. No violations of his procedural rights occurred, including no violation of his rights under the Covenant.

#### **Further action taken or required**

The State party's information was sent to the author on 31 January 2011. A reminder to the author will be sent. The case should be discussed during a meeting with the State party's representatives at the Committee's 103rd session (October–November 2011).

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Uzbekistan</b>
<b>Case</b>	<i>Batyrov, 1585/2007</i>
<b>Views adopted on</b>	30 July 2009
<b>Issues and violations found</b>	Violation of article 12, paragraphs 2 and 3, of the Covenant: unjustified restriction of the right to freedom of movement of the father of the author.
<b>Remedy recommended</b>	Effective remedy, including compensation, as well as the amendment of the State party's legislation concerning exit from the country to comply with the provisions of the Covenant. The State party is also under an obligation to prevent similar violations in the future.
<b>Due date for State party's response</b>	29 March 2010
<b>Date of State party's response</b>	21 January 2011

#### **State party's submission**

The State party informs the Committee that on 27 December 2010, the Committee's Views in the present case were examined by the Inter-Institutional Working Group monitoring the respect of human rights by law-enforcement authorities (created by decision of the Committee of Ministers of 24 February 2004). The Working Group concluded that the author's allegations that her father's freedom of movement was unreasonably restricted were groundless.

The State party recalls that in September 2006, the District Court of the Khorzems Region convicted Mr. Batyrov for abuse of official situation as the Head of the firm Uztransgaz firm, and for the illegal crossing of the State border with Turkmenistan in 2006, and sentenced him to a term of five years in prison and a fine equal to 400 minimum monthly wages. The case was reviewed by the appeal body of the Court of the Khorzems Region and the sentence confirmed. In addition, on 20 August 2007, the Tashkent City Court convicted Mr. Batyrov, head of the Uztransgaz firm, for having entered into a criminal association, having created a criminal group composed of high-level officials in the firm, having committed acts of embezzlement/misappropriation and caused losses of public funds and goods and having bought low-quality products at higher prices, as well as for bribe-taking, forgery of documents and signing agreements to the detriment of the firm, which resulted in gross damages to the State and the public firm. The court sentenced him to 12 years and 6 months of imprisonment. The State party submits that by linking and combining the sentence, issued on 25 December 2006 and 20 August

2007, the author was sentenced to 13 years' imprisonment. According to the General Amnesty Act of 30 November 2006, the length of the sentence was reduced by one quarter.

As to the Committee's conclusion of the violation of Mr. Batyrov's right to freedom of movement, the State party explains that pursuant to a ruling of the Cabinet of Ministers of 6 January 1995 on the exit of Uzbek citizens and diplomatic passports, Uzbek citizens wishing to travel abroad must fill in a special application form with the relevant departments of the Ministry of Internal Affairs at their place of residence, and bring their passport. The Ministry of Internal Affairs' officials examine such applications, and insert a special authorization (sticker) in the passport, valid for two years, allowing the concerned individuals to travel abroad. The above-mentioned ruling also lists certain categories of officials who must in addition request explicit authorization from the local (municipal) authorities prior to any official travel. Given that Mr. Batyrov was a member of the council of people's deputies in the Khorezm region, he had thus to coordinate his travel, prior to his official trip to Turkmenistan in 2006, with the local council of the Khorezm region, but he failed to do so, as he failed to fill in the special application with the local representatives of the Ministry of Internal Affairs.

According to the State party, the courts have qualified Mr. Batyrov's acts correctly under the criminal law, and the sanction determined corresponded to the gravity of the crimes committed. In addition, according to the State party, Mr. Batyrov has not exhausted the available domestic remedies in connection to his conviction of 25 September 2006.

In the light of the above, the State party concludes that, in the present case, its authorities have not violated Mr. Batyrov's rights under article 12 of the Covenant.

#### **Further action taken or required**

The State party's information was sent to the author on 31 January 2011. A reminder to the author will be sent. The case should be discussed during a meeting with the State party's representatives at the Committee's 103rd session (October–November 2011).

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Uzbekistan</b>
<b>Case</b>	<b><i>Gapirjanov, 1589/2007</i></b>
<b>Views adopted on</b>	18 March 2010
<b>Issues and violations found</b>	Failure of the authorities to address adequately the author's son's complaints about torture and ill-treatment – article 7 of the Covenant; violation of article 9, paragraph 3, of the Covenant, as the author's son was never brought before a court or an officer authorized by law to exercise judicial power to verify the lawfulness of his detention and placement in custody.
<b>Remedy recommended</b>	Effective remedy, including appropriate compensation and initiation and pursuit of criminal proceedings to establish responsibility for Mr. Gapirjanov's ill-treatment. The State party is also under an obligation to avoid similar violations in the future.
<b>Due date for State party's response</b>	28 January 2011
<b>Date of State party's response</b>	21 January 2011

### State party's submission

The State party informs the Committee that on 27 December 2010, the Committee's Views in the present case were examined by the Inter-Institutional Working Group monitoring the respect of human rights by law-enforcement authorities (created by decision of the Committee of Ministers of 24 February 2004). The Working Group concluded that the author's allegations that her son's right to defence had been violated were groundless.

The State party recalls that on 10 February 2005, Mr. Gapiirjanov was convicted, by the Khamzinsk District Court of Tashkent, for illegal sale of drugs and was sentenced to a 10-year prison term, as a particularly dangerous recidivist. The sentence was confirmed by the appeal body of the same court, on 19 April 2005. Given that the examination of Mr. Gapiirjanov's appeal took place in his absence, the Supreme Court ordered a new appeal examination. On 11 March 2008, the appeal body of the Tashkent City Court re-examined the appeal of Mr. Gapiirjanov, in his presence. The sentence was confirmed.

The State party contends that the author's allegations to the effect that her son's trial was unfair and his sentence unfounded as her son was not arrested in the process of committing a crime and that the court took into consideration depositions of interested witnesses are groundless. On 11 August 2004, the son of the author had been arrested in possession of heroin. During a search of his home, carried out in the absence of an order by the Prosecutor's Office in the light of the urgent circumstances but as permitted by law, the investigators discovered another 0.11 grams of heroin.

These investigation acts were carried out in the presence of official witnesses, who confirmed that no procedural violation had taken place on these occasions. On 12 August 2004, Mr. Gapiirjanov was interrogated in the presence of his lawyer; the author's son did not complain about unlawful treatment. Mr. Gapiirjanov was represented by a number of different lawyers during the preliminary investigation, but they were changed as per his own requests, and the changes did not result in a violation of his rights to defence.

According to the State party, neither the author nor her son had ever complained during the preliminary investigation or in court about pain in Mr. Gapiirjanov's left ear, allegedly resulting from beatings. According to a diagnosis of 7 October 2004, Mr. Gapiirjanov suffered from chronic otitis.

The author's allegations that a police officer had requested a bribe in order to put an end to the preliminary investigation were duly reviewed, were not confirmed, and the opening of a criminal case thereon was refused on 6 November 2004.

Mr. Gapiirjanov's guilt was established not only on the basis of depositions of witnesses and accomplices, but also on the basis of a significant amount of other corroborating evidence.

As to the finding of a violation of article 9, paragraph 3, of the Covenant, the State party recalls that the Prosecutor's Office was in charge of decisions on arrests and remand into custody until 1 January 2008. Prosecutors took such decisions after examination of the materials contained in the case files and of the lawfulness of the evidence collected. This was the process followed in Mr. Gapiirjanov's case, and a prosecutor authorized his placement in pretrial detention on the basis of the materials against the author's son on file.

The State party reports that until 1 January 2008, decisions to arrest individuals and place them in custody could not be challenged in court but before a higher prosecutor. Court control was possible only after the beginning of a court trial, pursuant to article 240 of the Criminal Procedure Code.

In the light of this information, the State party concludes that no violation of the author's son's rights under articles 7 and 9, paragraph 3, of the Covenant, took place in the present case. The Committee's conclusions are based on the author's allegations, which are not corroborated by other documented evidence.

**Further action taken or required**

The State party's information was sent to the author on 31 January 2011. A reminder to the author will be sent. The case should be discussed during a meeting with the State party's representatives at the Committee's 103rd session (October–November 2011).

**Decision of the Committee** The Committee considers the follow-up dialogue ongoing.

<b>State party</b>	<b>Zambia</b>
<b>Case</b>	<b><i>Chongwe, 821/1998</i></b>
<b>Views adopted on</b>	25 October 2000
<b>Issues and violations found</b>	Articles 6, paragraph 1, and 9, paragraph 1 – attempted murder of the chairman of the opposition alliance.
<b>Remedy recommended</b>	Adequate measures to protect the author's personal security and life from threats of any kind. The Committee urged the State party to carry out independent investigations of the shooting incident, and to expedite criminal proceedings against the persons responsible for the shooting. If the outcome of the criminal proceedings reveals that persons acting in an official capacity were responsible for the shooting and injuring of the author, the remedy should include damages to Mr. Chongwe.
<b>Due date for State party response</b>	8 February 2001
<b>Date of State party's response</b>	10 October and 14 November 2001, 28 February and 13 June 2002, 28 December 2005, 2 January 2009, 21 April 2011
<b>Date of author's comments</b>	5 and 13 November 2001, March 2006, 9 February 2009, 29 September 2010

**State party's response**

The State party responded on 10 October and 14 November 2001. It contended that the Committee had not indicated the quantum of damages payable and provided copies of correspondence between its Attorney-General and the author, in which the author was provided assurances that the State party would respect his right to life and invited him to return to its territory. As to the issue of compensation, the Attorney-General indicated to the author that this would be dealt with at the conclusion of further investigations into the incident, which had been hindered by the author's earlier refusal to cooperate.

By letter of 28 February 2002, the State party noted that the domestic courts could not have awarded the quantum of damages sought by the author, that he had fled the country for reasons unrelated to the incident in question, and that, while the Government saw no merit in launching a prosecution, it was open to the author to do so.

By note verbale of 13 June 2002, the State party reiterated its position that it was not bound by the Committee's decision as domestic remedies had not been exhausted. The author chose to leave the country of his own will, but remained at liberty to commence proceedings even in his absence. In any event, the new President had confirmed to the author that he was free to return. Indeed, the State hoped that he would do so and then apply for legal redress. Mr. Kaunda, who was attacked at the same time as the author, is said to be a free citizen carrying on his life without any threat to his liberties. On 28 December 2005, the State party stated that it had offered the author US\$ 60,000 on a without-prejudice

basis. The author had rejected the offer, which is more than adequate under Zambian law, particularly in the light of the fact that Zambia is one of the 49 countries classified by the United Nations as least developed. In spite of the offer, the author is still at liberty to commence legal proceedings in the Zambian Courts over this matter. As an act of good faith, the Government of Zambia will waive the statute of limitations of his case and allow this matter to be heard in courts of law.

On 2 January 2009, the State party denied that there was any deliberate policy of discrimination against the author and submitted that the Attorney-General's Chambers was working towards an agreed sum with lawyers appointed by the author.

#### **Author's comments**

The author had referred to the State party's failure to provide him with a remedy on 5 and 13 November 2001. In March 2006 (letter undated), the author responded to the State party's submission. It appeared from this letter that he had returned to Zambia in 2003. He submitted that he did not intend to make any new claims in the Zambian courts, as he would have no confidence that a claim would be handled appropriately. To begin such a complaint nearly 10 years after the incident would be useless. It would be impossible to conduct such an investigation on his own and he would fear for his safety in doing so. In any event, he was not interested in finding the particular "minion of the Zambian Government" who tried to kill him. He submitted that the Government had made no effort to help him and his family resettle from Australia back to Zambia and refers to the offer of compensation as "petty cash" which he is obliged to receive on a "like it or lump it basis". He says that he has no intention of negotiating with the Government of Zambia on the basis of the State party's response of 28 December 2005.

On 9 February 2009, the author submitted that he filed a complaint before the Judicial Complaints Authority regarding discrimination against him by the Supreme Court. This relates to a hearing in 2008 and is unrelated to the case in question. He also submits that he did indeed meet with the Attorney-General in April 2008 on the issue of compensation and subsequently followed up with a letter to the Attorney-General indicating how much he would be prepared to settle for in this regard. The receipt of this letter was not confirmed by the Attorney-General and no correspondence has been received from him by the author. However, a friend who assists the author received a letter from the Attorney-General on 27 November 2008 requesting him to provide a figure of how much compensation the author would settle for. According to the author, the Attorney-General is already aware of the amount requested, and the author implies that the Attorney-General is just attempting to delay the finalization of this matter.

#### **Additional submission from the author**

On 29 September 2010, the author informed the Committee that the State party has still not implemented the Committee's Views. On 31 January 2011, he submitted a copy of a letter he wrote to attention of the State party's Minister of Justice, claiming that the State party has not paid him any compensation for the damages suffered, in spite of a settlement concluded in October 2009.

#### **State party supplementary submission**

On 21 April 2011, the State party reported that the author's letter of 31 January 2011 was transmitted to the competent authorities in the capital.

#### **Further action taken/required**

The Committee may wish to await receipt of further information prior to making a decision on this matter.

#### **Decision of the Committee**

The Committee considers the follow-up dialogue ongoing.

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## VII. Follow-up to concluding observations

252. In chapter VII of its annual report for 2003,<sup>33</sup> the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report,<sup>34</sup> an updated account of the Committee's experience in this regard over the previous year was provided. The current chapter again updates the Committee's experience to 29 July 2011.

253. Over the period covered by the present annual report, Mr. Abdelfattah Amor acted as the Committee's Special Rapporteur for follow-up on concluding observations during the 100th session and Ms. Christine Chanet from the 101st and 102nd sessions. At the Committee's 100th, 101st and 102nd sessions, the Special Rapporteurs presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

254. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. Over the reporting period, since 1 August 2010, 25 States parties have submitted information to the Committee under the follow-up procedure (Argentina, Australia, Azerbaijan, Bosnia and Herzegovina, Czech Republic, Croatia, China, Denmark, Guatemala, Ireland, Libyan Arab Jamahiriya, Madagascar, Mexico, New Zealand, Republic of Moldova, Russian Federation, Rwanda, San Marino, Spain, Sudan, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland and Zambia) and six States parties (Botswana, Chad, the Netherlands, Nicaragua, Panama, Tanzania) failed to provide any information in relation to follow-up to concluding observations. Seven States parties (Chile, France, Georgia, Tunisia, Rwanda, Uzbekistan and Ukraine) as well as the United Interim Administration Mission in Kosovo (UNMIK), did not provide additional information required by the Committee to clarify their follow-up responses. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the preparation of the next periodic report by the State party.

255. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, the report does not cover those States parties with respect to which the Committee has completed its follow-up activities, including all States parties which were considered from the seventy-first session (March 2001) to the eighty-sixth session (March 2006).

<sup>33</sup> *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40*, vol. I (A/58/40 (vol. I)).

<sup>34</sup> *Ibid.*, *Sixty-Fifth Session, Supplement No. 40*, vol. I (A/65/40 (vol. I)).



## Eighty-seventh session (July 2006)

### United Nations Interim Administration in Kosovo (UNMIK)

**Report considered:** Report by UNMIK on the human rights situation in Kosovo, submitted on 2 February 2006.

**Follow-up action concerning concluding observations set forth in:**

Paras. 12, 13, 18.

**Date information due:** 1 January 2007

**Date information received:**

*11 March 2008* Partial reply (responses incomplete with regard to paras. 13 and 18).

*7 November 2008* Partial reply (responses incomplete with regard to paras 13 and 18).

*12 November 2009* Information received (recommendations partially implemented).

*30 June 2011* Letter from UNMIK indicating that a representative of the Secretary-General to UNMIK will arrive in Geneva on 20 July 2011 to attend the requested meeting.

**Action taken:**

*Between April and September 2007* Three reminders were sent.

*10 December 2007* The Special Rapporteur requested a meeting with the Special Representative of the Secretary-General or a representative designated by the Special Representative, to be convened during the ninety-second session.

*11 June 2008* The Special Rapporteur requested a meeting with a representative of UNMIK.

*22 July 2008* During the ninety-third session, the Special Rapporteur met with Mr. Roque C. Raymundo, Senior Human Rights Adviser to UNMIK, who provided additional written and oral information on paragraphs 12, 13 and 18 and undertook to submit further information on (a) cases where perpetrators of disappearances and abductions were tried and sentenced, access by relatives to information about the fate of victims, and measures taken to secure adequate resources for victim compensation schemes (para. 13); and (b) measures taken to implement the strategies and policies to ensure safe and sustainable returns, in particular for minority returnees, as well as to ensure that minority returnees benefit from the special rental scheme of the Kosovo Property Agency (para. 18). The meeting was also attended by a representative of the OHCHR Pristina Office.

*3 June 2009* A letter was sent to request additional information.

*27 August 2009* A reminder was sent.

*28 September 2010* While taking note of the cooperativeness of UNMIK, the Committee sent a letter in which it noted the measures taken but indicated that none of the recommendations has been fully implemented.

*10 May 2011* The Committee sent a letter requesting a meeting with the Special Representative of the Secretary-General at UNMIK.

*20 July 2011* The Special Rapporteur met with the Director of the UNMIK Office of Legal Affairs (Mr. Tschoepke), who indicated that the supplementary information that had been requested would be forwarded before the October 2011 session.

**Recommended action:** None.

## **Eighty-eighth session (October 2006)**

### **State party: Ukraine**

**Report considered:** Sixth periodic report, submitted (on time) on 1 November 2005.

**Follow-up action concerning concluding observations set forth in:**

Paras. 7, 11, 14, 16.

**Date information due:** 1 December 2007

**Date information received:**

*19 May 2008* Partial reply.

*28 August 2009* Supplementary follow-up report received (para. 7: some recommendations not implemented, some replies incomplete; para. 11: replies satisfactory in parts, incomplete in others; para. 14: replies incomplete; para. 16: replies satisfactory in parts, incomplete in others).

**Action taken:**

*17 January 2008* A reminder was sent.

*16 December 2008* Additional information was requested.

*6 May 2009* A reminder was sent to the State party.

*26 April 2010* A letter was sent indicating that the procedure was complete with regard to the issues concerning which the replies supplied by the State party were considered to be largely satisfactory: provision of hygienic facilities and adequate food in detention facilities (para. 11); and claims for restitution of Muslim property (para. 16). The letter also included a request for additional information on certain questions: investigation of deaths in detention (para. 7); relieving prison overcrowding (para. 11); use of alternative sanctions to reduce the prison population (para. 11); protection of freedom of opinion and expression (para. 14); and availability of remedies for discrimination based on the victim's ethnic, linguistic or religious identity (para. 16). Lastly, the letter highlighted a number of points concerning which the Committee considered that its recommendations had not been implemented: establishment of an independent police complaints mechanism (para. 7); and the introduction of a system for videotaping the interrogation of criminal suspects as a safeguard (para. 7).

*28 September 2010* A reminder was sent.

*19 April 2011* A further reminder was sent.

**Recommended action:** A letter should be sent requesting a meeting between the Special Rapporteur for follow-up on concluding observations and a representative of the State party.

**Next report due:** 2 November 2011

## Eighty-ninth session (March 2007)

### State party: Chile

**Report considered:** Fifth periodic report (due in 2002), submitted on 8 February 2006.

### Follow-up action concerning concluding observations set forth in:

Paras. 9, 19.

**Date information due:** 1 April 2008

### Date information received:

*21 and 31 October 2008* Partial reply.

*28 May 2010* Supplementary follow-up report received (incomplete response).

*31 January 2011* Letter from the Permanent Mission of Chile requesting clarification on the additional information requested by the Committee.

### Action taken:

*11 June 2008* A reminder was sent.

*22 September 2008* A further reminder was sent.

*10 December 2008* A request for additional information was sent.

*22 June 2009* The Special Rapporteur requested a meeting with a representative of the State party.

*28 July 2009* The Special Rapporteur held a meeting with representatives of the State party in order to discuss some issues relating to paragraphs 9 and 19. The Ambassador informed the Special Rapporteur that the State party's replies to the Committee's request for additional follow-up information are currently being prepared and will be submitted as soon as possible.

*11 December 2009* A reminder was sent.

*23 April 2010* A further reminder was sent.

*16 December 2010* While taking note of the cooperativeness of the State party, a letter was sent requesting additional information on: the steps taken to ascertain the suitability of persons who have served sentences for committing human rights violations to hold public office (para. 9); and the publication of all documentation collected by the Truth and Reconciliation Commission and the National Commission on Political Prisoners and Torture (CNPPT) that may help identify those responsible for extrajudicial executions (para. 9). The letter also indicated that implementation of the recommendations was considered to be incomplete with regard to: the statute of limitations for serious human rights violations (para. 9); the steps taken to ensure respect for and recognition of the land rights of indigenous communities (para. 19); and the application of antiterrorist legislation (Act No. 18314) in place of the Criminal Code (para. 19).

*20 April 2011* The Committee sent a letter clarifying what information had been requested in its letters of 23 April 2010 and 31 January 2011.

**Recommended action:** A letter should be sent in which the request for supplementary information is repeated and the State party is reminded that its periodic report will be due on 27 March 2012.

**Next report due:** 27 March 2012

**State party:** Madagascar

**Report considered:** Third periodic report (due in 1992) submitted on 24 May 2005.

**Follow-up action concerning concluding observations set forth in:**

Paras. 7, 24, 25.

**Date information due:** 1 April 2008

**Date information received:**

*3 March 2009* Partial reply.

*17 May 2011* Follow-up reply of 29 September 2010.

**Action taken:**

*11 June 2008* A reminder was sent.

*22 September 2008* A further reminder was sent.

*16 December 2008* The Special Rapporteur requested a meeting with a representative of the State party.

*29 May 2009* Additional information was requested.

*3 September 2009* A reminder was sent.

*11 December 2009* A reminder was sent.

*25 June 2010* The Special Rapporteur requested a meeting with a representative of the State party.

*28 September 2010* A reminder was sent.

*10 May 2011* A further reminder was sent.

**Recommended action:** The contents of the follow-up reply should be taken into account during the consideration of the periodic report.

**Next report due:** 23 March 2011

## Ninetieth session (July 2007)

**State party:** Czech Republic

**Report considered:** Second periodic report (due on 1 August 2005), submitted on 24 May 2006.

**Follow-up action concerning concluding observations set forth in:**

Paras. 9, 14, 16.

**Date information due:** 1 August 2008

**Date information received:**

*18 August 2008* Partial reply (response incomplete with regard to paras. 9, 14 and 16).

*22 March 2010 and 1 July 2010* Supplementary follow-up report received (partial reply).

**Action taken:**

*11 June 2008* A reminder was sent.

*10 December 2008* Additional information was requested.

*6 May 2009* A reminder was sent to the State party.

*6 October 2009* A further reminder was sent.

*February 2010* The Special Rapporteur requested a meeting with a representative of the State party.

*20 April 2011* A letter was sent in which the Committee took note of the cooperativeness of the State party and indicated that the information provided was considered as being on the whole satisfactory with regard to the following points: the need for adequate training of police personnel (para. 9 (c)); the evaluation of a person's mental condition as a basis for confinement (para. 14 (a)); the judicial review procedure for placement in a medical facility (para. 14 (c)); the institution of mechanisms for surveillance of discrimination (para. 16 (c)); training for the Roma population and their access to employment (para. 16 (d)); and measures taken to combat prejudice against Roma (para. 16 (f)).

The letter also indicated that the information provided on certain questions was considered to be incomplete or inadequate: the institution of an independent investigative mechanism (para. 9 (a)); compensation for the victims of police violence (para. 9 (b)); and the practice of abusive expulsions in the private sector (para. 16 (e)).

Lastly, the letter indicated that, since no information had been provided about the establishment of a guardianship arrangement in order to protect the interests of interned patients (para. 14 (b)), the recommendation has not been implemented.

**Recommended action:** None

**Next report due:** 1 August 2011

**State party: Zambia**

**Report considered:** Third periodic report (due on 30 June 1998), submitted on 16 December 2005.

**Follow-up action concerning concluding observations set forth in:**

Paras. 10, 12, 13, 23.

**Date information due:** 1 August 2008

**Date information received:**

*9 December 2009* Follow-up report received (para. 10: no reply; paras. 12, 13 and 23: replies incomplete).

*28 January 2011* Implementation begun (paras. 10 (a) and 23 (b)) but not completed (para. 10 (a), (c) and (d); paras. 12 and 13; and para. 23 (a), (b) and (c)).

**Action taken:**

*Between September 2008 and May 2009* Three reminders were sent.

*7 October 2009* The Special Rapporteur requested a meeting with a representative of Zambia.

*28 October 2009* The Special Rapporteur met with a representative of the State party. The representative of the State party informed the Special Rapporteur that the replies of the State party to the Committee's questions will be submitted as soon as possible (November 2009).

*26 April 2010* A letter was sent requesting more specific information on certain questions.

*28 September 2010* A reminder was sent.

*20 April 2011* A letter was sent in which the Committee took note of the cooperativeness of the State party and invited it to address all the concluding observations in its next periodic report, which was due on 20 July 2010.

The Committee also invited the State party to include information on the points to which the replies given in the follow-up report were considered inadequate: the mandate of the Zambian Human Rights Commission (para. 10 (c)); the adequacy of the funds allocated to the Commission to meet its needs (para. 10 (a)); the proportion of cases in which alternatives to imprisonment are used (para. 23 (a)); the actual impact of the measures introduced to reduce pretrial custody (para. 23 (b)); the measures taken to ensure that prisoners have access to health care and nutritious food in prisons (para. 23 (c)); the impact of the constitutional reform on the mandate and functions of the Zambian Human Rights Commission (para. 10 (c)); the outcome of the review of the Commission's status, due in 2011 (para. 10 (d)); and the measures taken to achieve progress with the review of part III and in particular of article 23 of the Constitution and to set in motion the process for the submission of the draft to a referendum, pursuant to the Act on the National Constitutional Conference (para. 12).

Finally, the Committee indicated that it considered that the recommendation concerning the compliance of customary laws and practices with the rights provided for in the Covenant, particularly with regard to the rights of women and their participation in the ongoing review and codification process of customary laws and practices (para. 13), had not been implemented.

**Recommended action:** None

**Next report due:** 20 July 2011

## Ninety-first session (October 2007)

### State party: Georgia

**Report considered:** Third periodic report (due on 1 April 2006), submitted on 1 August 2006.

#### **Follow-up action concerning concluding observations set forth in:**

Paras. 8, 9, 11.

**Date information due:** 1 November 2008

#### **Date information received:**

*13 January 2009* Partial reply (response incomplete with regard to paras 8, 9 and 11).

*28 October 2009* Additional information submitted (some portions are satisfactory; others are incomplete).

**Action taken:**

*16 December 2008* A reminder was sent.

*29 May 2009* Additional information was requested.

*27 August 2009* A reminder was sent.

*28 September 2010* While taking note of the cooperativeness of the State party, the Committee sent a letter requesting additional, more specific information on a number of questions: investigations into complaints related to domestic violence and other acts of violence against women (para. 8); protection of victims of domestic violence, including by establishing a sufficient number of shelters (para. 8); impartial investigations into complaints about the excessive use of force by law enforcement officials (para. 9); prosecution of the perpetrators of such acts (para. 9); and steps to end prison overcrowding (para. 11).

*20 April 2011* A reminder was sent.

**Recommended action:** Another reminder should be sent.

**Next report due:** 1 November 2011

**State party: Libyan Arab Jamahiriya**

**Report considered:** Fourth periodic report (due on 1 October 2002), submitted on 6 December 2005.

**Follow-up action concerning concluding observations set forth in:**

Paras. 10, 21, 23.

**Date information due:** 30 October 2008

**Date information received:**

*24 July 2009* Partial reply.

*5 November 2010* Hard copy of follow-up report received.

**Action taken:**

*16 December 2008* A reminder was sent.

*9 June 2009* A reminder was sent to the State party.

*4 January 2010* Additional information was requested.

*23 April 2010* A reminder was sent along with a request to meet with a representative of the State party.

*28 September 2010* The Special Rapporteur requested a meeting with a representative of the State party.

*12 October 2010* Consultations were held during the 100th session. The delegation agreed to transmit to the Government the request made by the Special Rapporteur and the Committee. This was confirmed in a letter dated 18 October 2010.

*18 November 2010* The State party was asked to provide a Word version of the document to facilitate translation.

*10 May 2011* The Committee sent a letter in which it informed the State party that, bearing in mind that its periodic report was already five months overdue, it would have a further six-month extension for preparing and transmitting its report to the Committee.

**Recommended action:** None.

**Next report due:** 30 October 2010

**State party:** Costa Rica

**Report considered:** Fifth periodic report (due on 30 April 2004), submitted on 30 May 2006.

**Follow-up action concerning concluding observations set forth in:**

Paras. 9, 12.

**Date information due:** 1 November 2008

**Date information received:**

*17 March 2009* Partial reply received.

*17 November 2009* Incomplete response received regarding para. 9; largely satisfactory response received regarding para. 12.

**Action taken:**

*16 December 2008* A reminder was sent.

*30 July 2009* A letter was sent to request more specific information.

*28 September 2010* A letter was sent indicating that the follow-up procedure had been completed with respect to those questions to which the answers provided by the State party were considered to be generally satisfactory: efforts to combat trafficking in women and children and sexual exploitation (para. 12). While taking note of the cooperativeness of the State party, the letter included a request for additional information on certain questions: improving conditions in detention centres and measures to solve the problem of prison overcrowding (para. 9).

*20 April 2011* A reminder was sent.

**Recommended action:** None, pending a reply from the State party.

**Next report due:** 1 November 2012

## Ninety-second session (March 2008)

**State party:** Tunisia

**Report considered:** Fifth periodic report (due on 4 February 1998), submitted on 14 December 2006.

**Follow-up action concerning concluding observations set forth in:**

Paras. 11, 14, 20, 21.

**Date information due:** 1 April 2009

**Date information received:**

*16 March 2009* Partial reply.

*2 March 2010* Supplementary follow-up report received.



**Action taken:**

*30 July 2009* A letter was sent to request additional information and to state that the follow-up procedure with respect to certain issues is considered completed due to non-implementation and to ask the State party to report on these issues in its next periodic report.

*4 October 2010* While taking note of the cooperativeness of the State party, the Committee sent a letter indicating that the follow-up procedure had been completed in respect of those questions to which the answers provided by the State party were considered to be generally satisfactory: training of law enforcement officials (para. 11). The letter also included a request for additional information on certain questions: complaints alleging torture submitted to, and registered by, the authorities; number of compensation awards (para. 11); steps taken to protect the peaceful activities of human rights organizations and defenders, and information on investigations into allegations of intimidation (para. 20); and information on the registration of human rights associations (para. 21).

*20 April 2011* A reminder was sent.

**Recommended action:** Another letter should be sent to remind the State party that its next periodic report will be due on 31 March 2012.

**Next report due:** 31 March 2012

**State party: Botswana**

**Report considered:** Initial report (due on 8 December 2001), submitted on 13 October 2006.

**Follow-up action concerning concluding observations set forth in:**

Paras. 12, 13, 14, 17.

**Date information due:** 1 April 2009

**No information received.**

**Action taken:**

*8 September 2009* A reminder was sent.

*11 December 2009* A reminder was sent.

*28 September 2010* The Special Rapporteur requested a meeting with a representative of the State party.

*6 July 2011* Positive response received from the State party (by telephone).

*27 July 2011* The Special Rapporteur met with the Ambassador of Botswana, who indicated that the supplementary information that had been requested would be sent to the Committee prior to the October 2011 session.

*19 April 2011* A reminder was sent requesting a meeting with a representative of the State party.

**Recommended action:** None.

**Next report due:** 31 March 2012

**State party: The former Yugoslav Republic of Macedonia**

**Report considered:** Second periodic report (due on 1 June 2000), submitted on 12 October 2006.

**Follow-up action concerning concluding observations set forth in:**

Paras. 12, 14, 15.

**Date information due:** 1 April 2009

**Date information received:**

*31 August 2009* Follow-up report received (paras. 12 and 15: replies incomplete; para. 14: recommendation not implemented in part; reply lacking in part).

*24 June 2011* Reply from the State party.

**Action taken:**

*27 August 2009* A reminder was sent.

*26 April 2010* A letter was sent in which the Committee requested additional information on certain questions: measures taken to ensure that the most serious human rights violations, crimes against humanity and war crimes are thoroughly investigated (para. 12); review of practices and procedures with a view to preventing the illegal rendition of prisoners (para. 14). The letter also highlighted the points concerning which the Committee considered that its recommendations had not been implemented: a new and comprehensive investigation into the allegations made by Mr. Khaled al-Masri. In addition, the State party was invited to keep the Committee apprised of any new development in respect of displaced persons.

*28 September 2010* A reminder was sent.

*20 April 2011* A further reminder was sent.

**Recommended action:** A letter should be sent in which the Committee takes note of the cooperativeness of the State party and urges the State party to:

- Include additional information in its next periodic report on the implementation of measures for the development of “a modern and professional structure capable of handling the modern security risks and threats while at the same time diligently observing the human rights and freedoms of the citizens” (para. 14)
- Furnish updated information on the measures adopted to provide internally displaced persons with support and on the steps taken to ensure their continuity (para. 15)
- Provide information on the outcome of the cases mentioned by the State party in its follow-up reply concerning the application of its amnesty law (para. 12)

In its letter, the Committee should also note that no information has been received regarding any steps to fully investigate human rights violations, to prosecute those responsible or to make reparations to the victims of the most serious human rights violations and their families and that this recommendation has therefore not been acted upon (para. 12).

**Next report due:** 1 April 2012

**State party: Panama**

**Report considered:** Third periodic report (due on 31 March 1992), submitted on 9 February 2007.

**Follow-up action concerning concluding observations set forth in:**

Paras. 11, 14, 18.

**Date information due:** 1 April 2009

**No information received.**

**Action taken:**

*Reminders were sent on 27 August 2009, 11 December 2009 and 23 April 2010.*

*28 September 2010* The Special Rapporteur requested a meeting with a representative of the State party.

*19 April 2011* A reminder that a meeting with a representative of the State party had been requested was sent.

*June–July 2011* Calls have been made to the permanent mission on four occasions, but no meeting with a representative of the State party has yet been confirmed.

**Recommended action:** In the absence of a response to requests for information and for a meeting with the Special Rapporteur, the Committee considers that the State party is not cooperating with it in the implementation of the follow-up procedure.

**Next report due:** 31 March 2012

## Ninety-third session (July 2008)

### State party: France

**Report considered:** Fourth periodic report (due on 31 December 2000), submitted on 13 February 2007.

**Follow-up action concerning concluding observations set forth in:**

Paras. 12, 18, 20.

**Date information due:** 31 July 2009

**Date information received:**

*20 July 2009* Follow-up report (generally satisfactory, para. 12; responses partially incomplete, paras. 18 and 20).

*9 July 2010* Additional follow-up report received (partially incomplete, paras. 18 and 20).

*17 January 2011* The Permanent Mission of France requested clarification on the additional information requested by the Committee.

**Action taken:**

*11 January 2010* A letter was sent requesting additional information and stating that the follow-up procedure with respect to certain issues is considered completed.

*16 December 2010* A letter was sent to the State party indicating that the follow-up procedure has been completed in respect of those questions for which the information provided by the State party was considered to be generally satisfactory (para. 12 of the concluding observations). The letter also included a request for additional information on certain questions (more specific and precise information on the situation in detention centres in the Overseas Departments and Territories, para. 18; and on the automatic suspension of deportation proceedings in “national security” removals and implementation of the law with regard to undocumented adults and asylum-seekers, para. 20).

*20 April 2011* In light of the request in the State party's letter of 17 January 2011, a letter was sent to clarify the information requested by the Committee in its letters of 23 April 2010 and 31 January 2011.

**Recommended action:** A reminder should be sent.

**Next report due:** 1 August 2012

**State party: San Marino**

**Report considered:** Second periodic report, submitted on 31 October 2006.

**Follow-up action concerning concluding observations set forth in:**

Paras. 6, 7.

**Date information due:** 1 August 2009

**Date information received:**

*5 November 2010* (generally satisfactory)

**Action taken:**

*14 December 2009* A reminder was sent.

*23 April 2010* A reminder was sent.

*28 September 2010* A further reminder was sent.

*9 May 2011* A letter was sent to the State party indicating that the replies to the Committee's recommendations in its letter of 5 November 2010 appear to be sufficiently satisfactory for the Committee to declare that the follow-up procedure concerning them has been completed.

**Recommended action:** None

**Next report due:** 31 July 2013

**State party: Ireland**

**Report considered:** Third periodic report (due 31 July 2005), submitted on 23 February 2008.

**Follow-up action concerning concluding observations set forth in:**

Paras. 11, 15, 22.

**Date information due:** 1 August 2009

**Date information received:**

*31 July 2009* Request for additional information (paras. 11, 15 and 22); recommendation not implemented (para. 15).

*21 December 2010* Follow-up report (replies partly satisfactory, but incomplete (para. 11)).

**Action taken:**

*4 January 2010* A letter was sent asking for additional information on how and how often terrorist acts have been investigated and prosecuted, requesting the State party to exercise the utmost care in relying on official assurances; and asking for information concerning the mandate of the Committee on Aspects of International Human Rights, which is to examine the legal framework and determine how systems of monitoring traffic through Irish airports might be improved. Information was also requested on prison overcrowding. In addition, the letter stated that the follow-up procedure is considered to have been completed with

respect to the issues of the improvement of the conditions of all persons deprived of liberty and the availability of non-denominational primary education (para. 11).

*28 September 2010* A reminder was sent.

*25 April 2011* A letter was sent to the State party informing it that the procedure has come to an end as regards questions on which the information submitted by the State party is considered to be on the whole satisfactory (description of the mandate of the subcommittee on the promotion and protection of human rights during control of Irish airports and human rights training initiatives (para. 11)). However, further information was requested on the outcome of the work of the subcommittee on the promotion and protection of human rights during control of Irish airports (para. 11).

The letter also pointed out that the reply to some questions was incomplete: methods used and frequency of investigations into and prosecution of terrorist acts (para. 11); the possibility of detainees communicating with a lawyer – the information provided merely presents the relevant legislative norms, with no reference to actual practice (para. 11); and the actual precautionary measures implemented systematically to ensure compliance with official assurances (para. 11).

Finally, the letter indicated that the Committee considers that its recommendation with respect to the length of pretrial detention (more than four months) has not been implemented (para. 11).

**Recommended action:** A reminder should be sent.

**Next report due:** 31 July 2012

**State party:** United Kingdom of Great Britain and Northern Ireland

**Report considered:** Sixth periodic report (due on 1 November 2006), submitted on 1 November 2006.

**Follow-up action concerning concluding observations set forth in:**

Paras. 9, 12, 14, 15.

**Date information due:** 1 August 2009

**Date information received:**

*7 August 2009* Follow-up report received (para. 9: replies incomplete; para. 12: no replies to some questions; recommendations partly not implemented; para. 14 and para. 15: replies satisfactory in part and incomplete in part).

*10 November 2010* Follow-up report (paras. 9 and 14: incomplete replies).

**Action taken:**

*26 April 2010* A letter was sent indicating that the procedure was complete with regard to the issues concerning which the information supplied by the State party was considered to be largely satisfactory: application of the Covenant to all individuals who are subject to its jurisdiction or control (para. 14). The letter included a request for additional information on certain questions: destruction of documents and delays in the “Billy Wright” inquiry (para. 9); independence of inquiries (para. 9); investigations into allegations concerning suspicious deaths, torture or cruel, inhuman or degrading treatment or punishment in detention facilities in Afghanistan and Iraq (para. 14); and measures taken to ensure respect for victims’ right to reparation. In addition, the Committee invited the State party to keep it informed of any news on the appeals before the Belfast courts on the use of extended periods of detention (para. 15).

*28 September 2010* A reminder was sent which included a request for additional information on certain questions: diplomatic assurances (para. 12).

*20 April 2011* While taking note of the cooperativeness of the State party, the Committee sent a letter requesting additional information on certain points: why precisely the State party considers that the application of the 2005 law to cases of violations of the right to life in Northern Ireland poses no problem (para. 9); progress made towards establishing and making operational the Iraq Historic Allegations Team (para. 14); measures taken to compensate victims of violations committed by members of the British Armed Forces and the criteria for awarding compensation to victims (para. 14); and decisions by the Belfast courts on the legality of the use of extended detention without charge against terrorist suspects (para. 15).

**Recommended action:** A reminder should be sent.

**Next report due:** 31 July 2012

## Ninety-fourth session (October 2008)

### State party: Nicaragua

**Report considered:** Third periodic report (due on 11 June 1997), submitted on 20 June 2007.

#### Follow-up action concerning concluding observations set forth in:

Paras. 12, 13, 17, 19.

**Date information due:** 31 October 2009

**No information received.**

#### Action taken:

*23 April 2010* A reminder was sent.

*8 October 2010* A further reminder was sent.

*20 April 2011* A letter was sent requesting a meeting with a representative of the State party.

*4 May 2011* Positive reply received from the State party. A meeting was scheduled for 18 July, but no representative of the State party appeared. The permanent mission has not returned subsequent calls.

**Recommended action:** A reminder should be sent in which the Committee expresses its regret that no representative of the State party attended the meeting scheduled for 18 July and requests that another meeting be arranged.

**Next report due:** 29 October 2012

### State party: Denmark

**Report considered:** Fifth periodic report (due on 31 October 2005), submitted on 23 July 2007.

#### Follow-up action concerning concluding observations set forth in:

Paras. 8, 11.

**Date information due:** 31 October 2009

**Date information received:**

*4 November 2009* Follow-up report received (para. 8: replies incomplete; para. 11: replies largely satisfactory).

**Action taken:**

*26 April 2010* A letter was sent indicating that the procedure was complete with regard to the issues concerning which the information supplied by the State party was considered to be largely satisfactory: review of legislation on solitary confinement during pretrial detention (para. 11). The letter included a request for additional information on certain questions: measures aimed at eliminating violence against women.

*28 September 2010* A reminder was sent.

*20 April 2011* A further reminder was sent.

**Recommended action:** A letter should be sent requesting a meeting between a representative of the State party and the Special Rapporteur for follow-up on concluding observations.

**Next report due:** 31 October 2013

**State party: Japan**

**Report considered:** Fifth periodic report (due in October 2002), submitted on 20 December 2006.

**Follow-up action concerning concluding observations set forth in:**

Paras. 17, 18, 19, 21.

**Date information due:** 31 October 2009

**Date information received:**

*21 December 2009* Follow-up report received (para. 17: recommendations partly not implemented, replies partly incomplete; para. 18: replies incomplete; paras. 19 and 21: recommendations partly implemented).

**Action taken:**

*28 September 2010* A letter was sent in which the Committee took note of the cooperativeness of the State party and requested additional information on certain questions: confidentiality of meetings between death row inmates and their lawyers (para. 17); the substitute detention system (para. 18); the right of confidential access to a lawyer and the right of access to legal aid/the evidence against them (para. 18); the pre-indictment bail system (para. 18); and the role of the police (para. 19). The letter also highlighted the points concerning which the Committee considers that its recommendations have not been implemented: mandatory system of review and the suspensive effect of requests for retrial or pardon (para. 17); legislation prescribing strict time limits for the interrogation of suspects (para. 19); and the rule under which death row inmates are placed in solitary confinement (para. 21). In addition, with regard to “accommodating blocks”, the letter invited the State party to keep the Committee apprised of any efforts to improve the treatment of prisoners.

**Recommended action:** None.

**Next report due:** 29 October 2011

**State party: Spain**

**Report considered:** Fifth periodic report (due on 28 April 1999), submitted on 11 December 2007.

**Follow-up action concerning concluding observations set forth in:**

Paras. 13, 15, 16.

**Date information due:** 31 October 2009

**Date information received:**

*16 June 2010* Follow-up report received (implementation begun (para. 16) but not completed (paras. 13 and 15)).

*29 June 2011* Response to the request for additional information.

**Action taken:**

*23 April 2010* A reminder was sent.

*25 April 2011* A letter was sent in which the Committee took note of the cooperativeness of the State party and indicated that implementation of the recommendation had begun (lawfulness of the procedures for detention and expulsion of foreigners, para. 16). The letter also contained a request for additional information on the prevailing practice in this respect and on the action plan of the national mechanism for the prevention of torture (para. 13). The Committee also indicated that certain recommendations have not been implemented (maximum duration of custody and of pretrial detention, para. 15).

**Recommended action:** A letter should be sent in which the Committee takes note of the cooperativeness of the State party and of the detailed nature of the information that it has provided and requests that the State party include information on the following points in its next periodic report:

- The establishment of a national preventive mechanism: human and financial resources, actions taken, mode of operation and operational context, difficulties encountered (para. 13)
- Changes in legislation and practice with regard to the length of time that a person may be held in police custody and that a person may be held in pretrial detention (para. 15)
- The number of people who apply for free legal aid each year and the number of people who have received such assistance over the past five years; the number of expulsions that were initiated over the past five years and the percentage of those cases in which the procedure was suspended owing to the application of the principle of non-refoulement; the number of persons granted asylum and the number of persons granted subsidiary protection each year since 2009 (para. 16)

**Next report due:** 1 November 2012

**Ninety-fifth session (March 2009)****State party: Sweden**

**Report considered:** Sixth periodic report (due 1 April 2007), submitted on 20 July 2007.



**Follow-up action concerning concluding observations set forth in:**

Paras. 10, 13, 16, 17.

**Date information due:** 1 April 2010

**Date information received:**

*18 March 2010* Follow-up report received (paras. 10–13: response largely satisfactory; para. 16: response incomplete; para. 17: responses incomplete in parts, recommendations not implemented in parts, no response on certain points).

*5 August 2011* Response to the request for additional information received.

**Action taken:**

*28 September 2010* A letter was sent indicating that the follow-up procedure had been completed with regard to those questions to which the responses supplied by the State party were considered to be largely satisfactory: rights of persons with disabilities (para. 10) and fundamental legal safeguards for persons held in custody (para. 13). The letter included a request for additional information on certain issues: diplomatic assurances (para. 16); detention and placement of asylum-seekers, and access to information (para. 17). It also highlighted the points concerning which the Committee considers that its recommendations have not been implemented: limit the length of detention of asylum-seekers (para. 17).

*20 April 2011* A reminder was sent.

**Recommended action:** The replies received from the State party should be examined at the next session.

**Next report due:** 1 April 2014

**State party: Rwanda**

**Report considered:** Third periodic report (due in 1992), submitted on 12 September 2007.

**Follow-up action concerning concluding observations set forth in:**

Paras. 12, 13, 14, 17.

**Date information due:** 1 April 2010

**Date information received:**

*21 December 2010* Follow-up report.

**Action taken:**

*28 September 2010* A reminder was sent.

*25 April 2011* A letter was sent in which the Committee took note of the cooperativeness of the State party and requested additional information on the following points:

- Para. 12: Number of enforced disappearances and summary or arbitrary executions reported to the courts since 2005; outcome of investigations, decisions handed down and penalties applied in this connection and status of the proceedings in the cases of Mr. Cyiza and Mr. Hitimana; procedures and conditions of access to compensation and types of remedy for the victims and their families
- Para. 13: Total number of civilians murdered in the course of operations by the Rwandan Patriotic Army for whatever reason, including non-revenge killings; specifically, the proportion of cases resulting in prosecution; steps taken to ensure victims participate in the proceedings and to guarantee respect for their rights;

grounds for any acquittals in these cases

- Para 14: Measures taken to ensure respect for the rights of prisoners as set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners but not mentioned by the State party with regard to enforcement of the penalty of solitary confinement, such as the right to regular, nutritious meals and the right to regular contact with the outside world
- Para. 17: State party's reply concerning reports received by the Committee that the *gacaca* courts are still operating despite having been officially closed down at the end of 2009 and that they hear cases of sexual violence without always guaranteeing respect for victims' rights

In its letter, the Committee also requested additional information on the number of prisoners currently held in solitary confinement under the new system and on the grounds for punishing them in this way.

**Recommended action:** A reminder should be sent.

**Next report due:** 1 April 2013

**State party:** Australia

**Report considered:** Fifth periodic report (due on 31 July 2005), submitted on 7 August 2007.

**Follow-up action concerning concluding observations set forth in:**

Paras. 11, 14, 17, 23.

**Date information due:** 1 April 2010

**Date information received:**

*17 December 2010* Follow-up report (implementation begun but not completed).

**Action taken:**

*28 September 2010* A reminder was sent.

*January 2011* Follow-up report sent for translation.

**Recommended action:** A letter should be sent in which the Committee takes note of the cooperativeness of the State party and requests additional information on the progress of the discussion and adoption of the reform of counter-terrorism legislation. The Committee should also request information on the interpretation and application of the expression "for the avoidance of doubt" of section 34ZP of the Australian Security Intelligence Organisation (ASIO) Act, under which a person may be questioned without the presence of a lawyer (para. 11).

Additional information should be requested on the steps taken to ensure that the restrictions, compulsory land acquisition powers and law enforcement powers provided for under the Northern Territory Emergency Response (NTER) measures are not applied in a discriminatory or culturally inappropriate manner (para. 14).

While taking note that the action plans that have been developed at national and regional levels demonstrate a strong commitment on the part of the State party to implementing its "zero tolerance position" on sexual assault and domestic and family violence, in its letter the Committee should request additional information on the results, on the success of this effort and on the lessons learned (para. 17).

Finally, the Committee should indicate that its recommendations have not been implemented regarding the vagueness of the definition of terrorist act, the possibility of detaining a person (for up to eight days) without charges and the review of the powers of the Australian Security Intelligence Organization (ASIO) (para. 11).

**Next report due:** 1 April 2013

## Ninety-sixth session (July 2009)

### State party: Azerbaijan

**Report considered:** Third periodic report (due 1 November 2005), submitted on 4 October 2007.

#### Follow-up action concerning concluding observations set forth in:

Paras. 9, 11, 15, 18.

**Date information due:** 30 July 2010

#### Date information received:

6 July 2010 Follow-up report received (implementation, a priori, satisfactory; request for additional information).

#### Recommended action:

A letter should be sent in which the Committee takes note of the cooperativeness of the State party and the detailed nature of the information supplied and in which it indicates that the follow-up procedure has been completed with respect to the issues concerning which the responses supplied by the State party were considered to be largely satisfactory:

- Compulsory training for newly recruited prison officials (para. 11)
- Recognition of the right of foreign radio stations to broadcast directly on Azerbaijani territory (para. 15)

#### Additional information will be requested in the letter on the following points:

Para. 9: Number of extradition requests submitted to the State party during the last five years, the States making those requests and the number of refusals.

Para. 11: (a) Number of cases in which reparations have been awarded to victims of torture or ill-treatment over the last five years and the nature of those reparations; (b) progress made in the implementation of the 2009–2013 programme for the development of the Azerbaijani justice system and of the bill designed to safeguard the rights and freedoms of pretrial detainees.

Para. 15: Action taken by the State party to provide effective protection for media workers against attacks on their integrity or life.

Para. 18: (a) Measures taken to ensure that temporary identity documents and registration of the Ministry of Internal Affairs as the address for homeless Azerbaijani citizens do not become factors of discrimination; (b) number of cases involving address registration for aliens or displaced persons over the last five years.

**The State party has not supplied any information on the following points, and the corresponding recommendations have therefore not been implemented:**

- Existence or establishment of a mechanism allowing aliens who claim that their

forced removal would put them at risk of torture or ill-treatment to file an appeal with suspensive effect; content of diplomatic assurances in cases of extradition to countries where persons would be at risk of torture or ill-treatment (para. 9)

- Action taken to guarantee the independence of bodies responsible for the receipt and examination of cases and for monitoring the enforcement of sentences (para. 11)

Finally, the systematic use of audio and video equipment in police stations and detention facilities is not guaranteed, and the recommendation has therefore not been implemented (para. 11)

**Next report due:** 1 August 2013

### **State party: Chad**

**Report considered:** Initial report (due 8 September 1996), submitted on 18 September 2007.

#### **Follow-up action concerning concluding observations set forth in:**

Paras. 10, 13, 20, 32.

**Date information due:** 29 July 2010

**No information received.**

#### **Action taken:**

*16 December 2010* A reminder was sent.

*20 April 2011* A further reminder was sent.

**Recommended action:** A letter should be sent requesting a meeting between a representative of the State party and the Special Rapporteur for follow-up on concluding observations.

**Next report due:** 31 July 2012

### **State party: Netherlands**

**Report considered:** Fourth periodic report (due 1 August 2006), submitted on 9 May 2007.

#### **Follow-up action concerning concluding observations set forth in:**

Paras. 7, 9, 23.

**Date information due:** 28 July 2010

**No information received:** *20 July 2011* A telephone call was received from the permanent mission, which indicated that the response was being reviewed and would be forwarded to the Committee before the October 2011 session.

#### **Action taken:**

*16 December 2010* A reminder was sent.

*20 April 2011* A further reminder was sent.

**Recommended action:** None.

**Next report due:** 31 July 2014

### **State party: United Republic of Tanzania**

**Report considered:** Fourth periodic report (due in June 2002), submitted on 16 October 2007.

**Follow-up action concerning concluding observations set forth in:**

Paras. 11, 16, 20.

**Date information due:** 28 July 2010

**No information received.**

**Action taken:**

*16 December 2010* A reminder was sent.

*20 April 2011* A further reminder was sent.

**Recommended action:** A letter should be sent requesting a meeting between a representative of the State party and the Special Rapporteur for follow-up on concluding observations.

**Next report due:** 1 August 2013

**Ninety-seventh session (October 2009)****State party: Russian Federation**

**Report considered:** Sixth periodic report (due on 1 November 2007) submitted on 5 December 2007.

**Follow-up action concerning concluding observations set forth in:**

Paras. 13, 14, 16, 17.

**Date information received:** *22 October 2010* (report due on 24 November 2010) (recommendations not implemented).

**Recommended action:** A letter should be sent in which the Committee takes note of the cooperativeness of the State party and indicates that no information has been supplied on the following points and the relevant recommendations have therefore not been implemented:

- Measures taken to conduct a thorough and independent investigation into all allegations of involvement of members of Russian forces and other armed groups in violations of human rights in South Ossetia (para. 13)
- Measures taken to put an end to enforced disappearances, extrajudicial killings, torture, and other forms of ill-treatment and abuse committed or instigated by law enforcement officials in Chechnya and other parts of the Caucasus (para. 14 (a))
- Suspend or reassign State agents during the process of investigation into human rights violations allegedly committed or instigated by them (para. 14 (b))
- Penalties for the perpetrators of crimes, and remedies and redress for the victims (para. 14 (c))
- Measures to protect victims and their families, as well as their lawyers and judges, whose lives are under threat on account of their professional activities (para. 14 (d))
- Types of violations committed by State agents against the civilian population in Chechnya and other parts of the North Caucasus, investigations launched, convictions and penalties in these cases (para. 14 (e))
- Action taken to provide effective protection for journalists and human rights

defenders in the Russian Federation (para. 16 (a)) and to ensure the independence and impartiality of investigations into these cases (para. 16 (b))

**Additional information should be requested on the following points:**

- The total number of cases of threats, violent assaults and murders of journalists and human rights defenders over the last five years and criminal prosecutions relating to them (para. 16 (c))
- The proceedings instituted to identify those who ordered the murder of Anna Politkovskaya further to the arrest of the perpetrators in October 2007 (para. 16)
- Action taken to verify information contained in diplomatic assurances and: (a) the number of cases in which a review of the deportation decision has been requested; (b) the decisions taken in this respect (para. 17)

Finally, the Committee should express its concern about the fact that, in the three cases mentioned, the persons suspected of having committed criminal offences were killed during special operations conducted by law enforcement officers (para. 16 (c)).

**Next report due:** 11 November 2012

**State party: Croatia**

**Report considered:** Second periodic report (due on 1 April 2005) submitted on 27 November 2007.

**Follow-up action concerning concluding observations set forth in:**

Paras. 5, 10, 16, 17.

**Date information received:**

*17 January 2011* (report due 4 November 2010): Reply partly satisfactory (para. 5), but incomplete (paras. 5, 10 and 17).

**Action taken:**

*9 May 2011* The Committee sent a letter in which it acknowledged the cooperativeness of the State party but indicated that the implementation of the recommendation had begun but was not yet completed.

In that letter, the Committee requested further information on: the actual impact of the legislation and plans adopted for the development of the poorest regions of Croatia (para. 5); the total number and range of war crimes committed (para. 10 (a)); the strategy for dealing with war crimes where the alleged perpetrator has not been identified, due to be announced in November 2010 by the State party (para. 10 (b)); and support services for witnesses in courts with special war crimes chambers (para. 10 (c)).

Finally, it pointed out that the State party had not provided any information on the exact number of journalists who had been attacked or intimidated and had made no mention of a public condemnation of all instances of intimidation and attacks on freedom of the press (para. 17) and that the recommendation had therefore not been implemented.

**Recommended action:** The State party's reply should be examined during the next session.

**Next report due:** 30 October 2013

**State party: Switzerland**

**Report considered:** Third periodic report (due on 1 November 2006) submitted on 1 December 2007.

**Follow-up action concerning concluding observations set forth in:**

Paras. 10, 14, 18.

**Date information received:**

*1 November 2010* (report due on 1 November 2010).

*23 June 2011* Response to the request for additional information (but the questions asked were not answered).

**NGO report received:**

*22 February 2011* Reports from the non-governmental organizations Humanrights.ch/MERS and Schweizerische Flüchtlingshilfe.

**Action taken:**

*25 April 2011* While acknowledging the cooperativeness of the State party, the Committee sent a letter indicating that the follow-up procedure has come to an end for a range of issues in respect of which the information provided by the State party is considered to be satisfactory (establishment of an appropriate appeal and complaints mechanism and compensation for victims of the abuse of force and authority by the police (para. 14); and free legal assistance to asylum-seekers during all asylum procedures (para. 18)).

The information provided by the State party in respect of certain questions is, however, considered to be incomplete (representation of foreign minorities in the police force (para. 14)) or totally lacking (creation of a national statistical database on police violence and complaints lodged against the police (para. 14)) and the recommendation has therefore not been implemented.

The State party was asked to provide further information on the following: (a) status of the pilot project and decisions regarding the mandate of the Federal Commission against Racism; (b) financial resources for the prevention of racism and the promotion of tolerance in society; and (c) legal protection and remedies available to victims of discrimination, particularly at work and in access to housing and services (para. 10).

**Recommended action:** A letter should be sent in which the Committee takes note of the cooperativeness of the State party but indicates that it finds the replies to be unsatisfactory.

**Next report due:** 1 November 2015

**State party: Republic of Moldova**

**Report considered:** Second periodic report (due on 17 January 1992) submitted on 26 October 2006.

**Follow-up action concerning concluding observations set forth in:**

Paras. 8, 9, 16, 18.

**Date information received:**

*3 December 2010* (report due 4 November 2010) (implementation has begun but has not been completed).

*5 March 2011* Reports from the non-governmental organizations Legal Resources Centre (LCR), La Strada and Promo Lex and from human rights lawyer Doina Ioana Straistenau.

6 June 2011 United Nations Country Team.

**Recommended action:**

A letter should be sent in which the Committee acknowledges the cooperativeness of the State party and requests further information on the following points:

- Action taken to establish an official register of the exact number of victims of the events of April 2009 (para. 8 (a))
- Implementation of decisions on compensation and medical and psychological rehabilitation measures adopted by the Special Commission established in April 2010 and by the Commission established in April 2011 (para. 8 (c))
- Reasons for, and action taken with regard to, decisions taken by the authorities in recent months to prohibit peaceful rallies, particularly in respect of lesbian, gay, bisexual and transgender persons (para. 8 (d))
- Number of cases in which victims of torture or other forms of ill-treatment had access to medical care and compensation was awarded to victims (para. 9 (a))
- The specific impact of training programmes for police and prison officials on the fundamental principles applicable to the investigation of cases of torture (Istanbul Protocol) (para. 9 (a))
- Implementation of the National Human Rights Action Plan 2011–2014 as regards access for victims of torture to legal assistance services and medical and social rehabilitation services (para. 9 (b))
- Evaluation of the impact of training programmes for police and prison officials as regards the fundamental principles applicable to the investigation of cases of torture (Istanbul Protocol), and action taken to ensure the independence of the investigating authorities (para. 9)
- Capacity of the police to implement protection orders for victims of domestic violence, particularly in rural areas (para. 16)
- Action taken to promote the rehabilitation and protection of victims, including children, and to establish new shelters for victims of trafficking and domestic violence (para. 18 (b))

Finally, the State party should be invited to report on the action taken on the issues concerning which it has not provided any information and in respect of which the Committee therefore considers its recommendations not to have been implemented. These issues are as follows: Measures taken against officers with command responsibility and information on their suspension from duty during the conduct of the investigation (para. 8 (b)); enforcement of the law prohibiting the admission of evidence obtained through torture; establishment of an independent authority for detailed investigation of complaints of torture and other forms of ill-treatment (para. 8 (b)); broadening the implementation of measures to protect victims of trafficking (para. 18).

**Next report due:** 31 October 2013



## Ninety-eighth session (March 2010)

### State party: Ecuador

**Report considered:** Fifth and sixth periodic reports (due in 2001 and 2006 respectively) submitted as a single document on 22 January 2008.

**Follow-up action concerning concluding observations set forth in:**

Paras. 9, 13, 19.

**Date information due:** 4 November 2010

**Information received:** 2 August 2011

**Action taken:**

*10 May 2011* A reminder was sent.

**Recommended action:** The State party's replies should be analysed during the next session.

**Next report due:** 31 October 2013

### State party: New Zealand

**Report considered:** Fifth periodic report (expected on 31 October 2003, given in 25 November 2008).

**Follow-up action concerning concluding observations set forth in:**

Paras. 12, 14, 19.

**Date information due:** 26 March 2010

**Date information received:** 19 April 2011

**Recommended action:** The State party's replies should be examined at the next session.

**Next report due:** 30 March 2015

### State party: Uzbekistan

**Report considered:** Third periodic report (submitted on time).

**Follow-up action concerning concluding observations set forth in:**

Paras. 8, 11, 14, 24.

**Date information due:** 26 March 2010

**Date information received:** None received.

**Recommended action:** A reminder should be sent.

**Next report due:** 30 March 2013

### State party: Argentina

**Report considered:** Fourth periodic report.

**Follow-up action concerning concluding observations set forth in:**

Paras. 17, 18, 25.

**Date information due:** 4 November 2010

**Date information received:** 24 May 2011 (incomplete)

*29 June 2011* Report received from non-governmental organizations.

*18 July 2011* Information received from the Ministry of Justice and Human Rights of Mendoza Province.

**Recommended action:** A letter should be sent in which the Committee takes note of the cooperativeness of the State party and the detailed nature of the information supplied by the Office of the Secretary for Human Rights of Argentina and the Ministries of Justice and Human Rights of Buenos Aires and Mendoza and in which it requests the State party to provide up-to-date information on any developments relating to prison overcrowding and to steps to ensure compliance with article 10 of the Covenant and with the Standard Minimum Rules for the Treatment of Prisoners. In particular, the State party should be invited to apprise the Committee of the number of cells in each federal and provincial prison, their size and the exact number of persons held in each cell.

In its letter, the Committee should also request additional information on the following points:

Para. 17: (a) enforcement of court orders mandating the closure of some prisons and detention centres; (b) legal obligations concerning prisoners' access to the services of lawyers and doctors; (c) mandatory audio-visual recording of the period during which a person is held in police custody; and (d) the enforcement of these requirements;

Para. 18: (a) The State party should be requested to provide a copy of Decree 168 together with information on the "political authority" referred to therein, which, according to the information sent in the follow-up report, centralizes the powers of investigation and disciplinary action with respect to cases of violent death, torture, cruel or inhuman treatment, or any other form of abuse. What are the powers of this authority? In how many cases has it taken action? What were the results of its intervention?

(b) The Committee should request the State party to provide a summary of the information held in the databases of the Supreme Court of the Province of Buenos Aires, the Public Prosecutor's Office and the Defensoría Pública (Public Defender's Office), on cases of torture and other cruel, inhuman or degrading treatment or punishment;

(c) The Committee should request information on progress made with respect to the adoption of draft legislation for the establishment of an independent national mechanism for the prevention of torture, as provided for in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee should also request the State party to provide information on progress made on the corresponding regional bills.

Para. 25: (a) Existing plans concerning the eviction of indigenous communities at the end of the scheduled four-year suspension of such measures under Act No. 26/160;

(b) Measures taken against government officials who have acted in violation of Act No. 26/160 during the past five years.

No information has been received about efforts to implement the programme under which a legal cadastral survey of indigenous communities' lands is to be conducted or about the investigation of acts of violence or the punishment of those responsible for them. The relevant recommendation has therefore not been implemented (para. 25).

Finally, in its letter the Committee should thank the State party for the information supplied with respect to paragraph 16 of the concluding observations concerning pretrial detention and indicate that this information, which was not requested as part of the follow-up procedure, will be taken into account during the consideration of the next periodic report.

**Next report due:** 30 March 2014

**State party: Mexico**

**Report considered:** Fourth periodic report (due on 31 July 2002, sent on 17 July 2008).

**Follow-up action concerning concluding observations set forth in:**

Paras. 8, 9, 15, 20.

**Date information due:** 26 March 2011

**Date information received:**

21 March 2011 Reply satisfactory on the whole (paras. 8 and 9) and request for additional information (paras. 15 and 20).

**Recommended action:** A letter should be sent in which the Committee acknowledges the cooperativeness of the State party and the detailed nature of the information provided and in which it indicates that the follow-up procedure has been completed with respect to the issue concerning which the replies provided by the State party were considered to be largely satisfactory (paras. 8 and 9). In order to ensure proper follow-up, the State party should be requested to include information in its next periodic report on progress made on the prevention of violence against women and the protection of women, the impact of such progress on the number of women victims of violence and the processing of cases by the federal and state authorities (para. 8), as well as on the authority and the human and financial resources made available to the institutions established to investigate violence against women in Ciudad Juárez and the impact that this has had on the number of women victims of violence and the processing of cases (para. 9).

The letter should also include a request for additional information on the following points:

- Para. 15: (a) The number of cases in which *arraigo* detention has been employed in the last five years; (b) the crimes in respect of which such detention has been imposed; (c) the length of *arraigo* detention in such cases; (d) the measures taken to guarantee defence rights in all cases where *arraigo* detention has been imposed; (e) the conditions for referring cases to the judge responsible for monitoring *arraigo* detention, particularly the periods of time governing action by the judge and the means of redress should the request for such action be rejected
- Para. 20: The measures taken at federal level to encourage the decriminalization of defamation in states where it is still a criminal offence

**Next report due:** 30 March 2014

## Annexes

### Annex I

#### **States parties to the International Covenant on Civil and Political Rights and to the Optional Protocols, and States which have made the declaration under article 41 of the Covenant as at 29 July 2011**

##### **A. States parties to the International Covenant on Civil and Political Rights (167)**

<i>State party</i>	<i>Date of receipt of the instrument of ratification</i>	<i>Date of entry into force</i>
Afghanistan	24 January 1983 <sup>a</sup>	24 April 1983
Albania	4 October 1991 <sup>a</sup>	4 January 1992
Algeria	12 September 1989	12 December 1989
Andorra	22 September 2006	22 December 2006
Angola	10 January 1992 <sup>a</sup>	10 April 1992
Argentina	8 August 1986	8 November 1986
Armenia	23 June 1993 <sup>a</sup>	23 September 1993
Australia	13 August 1980	13 November 1980
Austria	10 September 1978	10 December 1978
Azerbaijan	13 August 1992 <sup>a</sup>	<sup>b</sup>
Bahamas	23 December 2008	23 March 2009
Bahrain	20 September 2006 <sup>a</sup>	20 December 2006
Bangladesh	6 September 2000 <sup>a</sup>	6 December 2000
Barbados	5 January 1973 <sup>a</sup>	23 March 1976
Belarus	12 November 1973	23 March 1976
Belgium	21 April 1983	21 July 1983
Belize	10 June 1996 <sup>a</sup>	10 September 1996
Benin	12 March 1992 <sup>a</sup>	12 June 1992
Bolivia (Plurinational State of)	12 August 1982 <sup>a</sup>	12 November 1982
Bosnia and Herzegovina	1 September 1993 <sup>c</sup>	6 March 1992
Botswana	8 September 2000	8 December 2000

<i>State party</i>	<i>Date of receipt of the instrument of ratification</i>	<i>Date of entry into force</i>
Brazil	24 January 1992 <sup>a</sup>	24 April 1992
Bulgaria	21 September 1970	23 March 1976
Burkina Faso	4 January 1999 <sup>a</sup>	4 April 1999
Burundi	9 May 1990 <sup>a</sup>	9 August 1990
Cambodia	26 May 1992 <sup>a</sup>	26 August 1992
Cameroon	27 June 1984 <sup>a</sup>	27 September 1984
Canada	19 May 1976 <sup>a</sup>	19 August 1976
Cape Verde	6 August 1993 <sup>a</sup>	6 November 1993
Central African Republic	8 May 1981 <sup>a</sup>	8 August 1981
Chad	9 June 1995 <sup>a</sup>	9 September 1995
Chile	10 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 <sup>a</sup>	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Côte d'Ivoire	26 March 1992 <sup>a</sup>	26 June 1992
Croatia	12 October 1992 <sup>d</sup>	8 October 1991 <sup>c</sup>
Cyprus	2 April 1969	23 March 1976
Czech Republic	22 February 1993 <sup>c</sup>	1 January 1993
Democratic People's Republic of Korea	14 September 1981 <sup>a</sup>	14 December 1981
Democratic Republic of the Congo	1 November 1976 <sup>a</sup>	1 February 1977
Denmark	6 January 1972	23 March 1976
Djibouti	5 November 2002 <sup>a</sup>	5 February 2003
Dominica	17 June 1993 <sup>a</sup>	17 September 1993
Dominican Republic	4 January 1978 <sup>a</sup>	4 April 1978
Ecuador	6 March 1969	23 March 1976
Egypt	14 January 1982	14 April 1982
El Salvador	30 November 1979	29 February 1980
Equatorial Guinea	25 September 1987 <sup>a</sup>	25 December 1987
Eritrea	22 January 2002 <sup>a</sup>	22 April 2002
Estonia	21 October 1991 <sup>a</sup>	21 January 1992
Ethiopia	11 June 1993 <sup>a</sup>	11 September 1993

<i>State party</i>	<i>Date of receipt of the instrument of ratification</i>	<i>Date of entry into force</i>
Finland	19 August 1975	23 March 1976
France	4 November 1980 <sup>a</sup>	4 February 1981
Gabon	21 January 1983 <sup>a</sup>	21 April 1983
Gambia	22 March 1979 <sup>a</sup>	22 June 1979
Georgia	3 May 1994 <sup>a</sup>	<sup>b</sup>
Germany	17 December 1973	23 March 1976
Ghana	7 September 2000	7 December 2000
Greece	5 May 1997 <sup>a</sup>	5 August 1997
Grenada	6 September 1991 <sup>a</sup>	6 December 1991
Guatemala	5 May 1992 <sup>a</sup>	5 August 1992
Guinea	24 January 1978	24 April 1978
Guinea-Bissau	1 November 2010	1 February 2011
Guyana	15 February 1977	15 May 1977
Haiti	6 February 1991 <sup>a</sup>	6 May 1991
Honduras	25 August 1997	25 November 1997
Hungary	17 January 1974	23 March 1976
Iceland	22 August 1979	22 November 1979
India	10 April 1979 <sup>a</sup>	10 July 1979
Indonesia	23 February 2006 <sup>a</sup>	23 May 2006
Iran (Islamic Republic of)	24 June 1975	23 March 1976
Iraq	25 January 1971	23 March 1976
Ireland	8 December 1989	8 March 1990
Israel	3 October 1991	3 January 1992
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Japan	21 June 1979	21 September 1979
Jordan	28 May 1975	23 March 1976
Kazakhstan <sup>e</sup>	24 January 2006	
Kenya	1 May 1972 <sup>a</sup>	23 March 1976
Kuwait	21 May 1996 <sup>a</sup>	21 August 1996
Kyrgyzstan	7 October 1994 <sup>a</sup>	<sup>b</sup>

<i>State party</i>	<i>Date of receipt of the instrument of ratification</i>	<i>Date of entry into force</i>
Lao People's Democratic Republic	25 September 2009	25 December 2009
Latvia	14 April 1992 <sup>a</sup>	14 July 1992
Lebanon	3 November 1972 <sup>a</sup>	23 March 1976
Lesotho	9 September 1992 <sup>a</sup>	9 December 1992
Liberia	22 September 2004	22 December 2004
Libyan Arab Jamahiriya	15 May 1970 <sup>a</sup>	23 March 1976
Liechtenstein	10 December 1998 <sup>a</sup>	10 March 1999
Lithuania	20 November 1991 <sup>a</sup>	20 February 1992
Luxembourg	18 August 1983	18 November 1983
Madagascar	21 June 1971	23 March 1976
Malawi	22 December 1993 <sup>a</sup>	22 March 1994
Maldives	19 September 2006 <sup>a</sup>	19 December 2006
Mali	16 July 1974 <sup>a</sup>	23 March 1976
Malta	13 September 1990 <sup>a</sup>	13 December 1990
Mauritania	17 November 2004 <sup>a</sup>	17 February 2005
Mauritius	12 December 1973 <sup>a</sup>	23 March 1976
Mexico	23 March 1981 <sup>a</sup>	23 June 1981
Monaco	28 August 1997	28 November 1997
Mongolia	18 November 1974	23 March 1976
Montenegro <sup>f</sup>		3 June 2006
Morocco	3 May 1979	3 August 1979
Mozambique	21 July 1993 <sup>a</sup>	21 October 1993
Namibia	28 November 1994 <sup>a</sup>	28 February 1995
Nepal	14 May 1991 <sup>a</sup>	14 August 1991
Netherlands	11 December 1978	11 March 1979
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980 <sup>a</sup>	12 June 1980
Niger	7 March 1986 <sup>a</sup>	7 June 1986
Nigeria	29 July 1993 <sup>a</sup>	29 October 1993
Norway	13 September 1972	23 March 1976
Pakistan	23 June 2010	23 September 2010

<i>State party</i>	<i>Date of receipt of the instrument of ratification</i>	<i>Date of entry into force</i>
Panama	8 March 1977	8 June 1977
Papua New Guinea	21 July 2008 <sup>a</sup>	21 October 2008
Paraguay	10 June 1992 <sup>a</sup>	10 September 1992
Peru	28 April 1978	28 July 1978
Philippines	23 October 1986	23 January 1987
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	15 September 1978
Republic of Korea	10 April 1990 <sup>a</sup>	10 July 1990
Republic of Moldova	26 January 1993 <sup>a</sup>	<sup>b</sup>
Romania	9 December 1974	23 March 1976
Russian Federation	16 October 1973	23 March 1976
Rwanda	16 April 1975 <sup>a</sup>	23 March 1976
Saint Vincent and the Grenadines	9 November 1981 <sup>a</sup>	9 February 1982
Samoa	15 February 2008 <sup>a</sup>	15 May 2008
San Marino	18 October 1985 <sup>a</sup>	18 January 1986
Senegal	13 February 1978	13 May 1978
Serbia <sup>g</sup>	12 March 2001	<sup>c</sup>
Seychelles	5 May 1992 <sup>a</sup>	5 August 1992
Sierra Leone	23 August 1996 <sup>a</sup>	23 November 1996
Slovakia	28 May 1993 <sup>c</sup>	1 January 1993
Slovenia	6 July 1992 <sup>c</sup>	25 June 1991
Somalia	24 January 1990 <sup>a</sup>	24 April 1990
South Africa	10 December 1998	10 March 1999
Spain	27 April 1977	27 July 1977
Sri Lanka	11 June 1980 <sup>a</sup>	11 September 1980
Sudan	18 March 1986 <sup>a</sup>	18 June 1986
Suriname	28 December 1976 <sup>a</sup>	28 March 1977
Swaziland	26 March 2004 <sup>a</sup>	26 June 2004
Sweden	6 December 1971	23 March 1976
Switzerland	18 June 1992 <sup>a</sup>	18 September 1992
Syrian Arab Republic	21 April 1969 <sup>a</sup>	23 March 1976



<i>State party</i>	<i>Date of receipt of the instrument of ratification</i>	<i>Date of entry into force</i>
Tajikistan	4 January 1999 <sup>a</sup>	<sup>b</sup>
Thailand	29 October 1996 <sup>a</sup>	29 January 1997
The former Yugoslav Republic of Macedonia	18 January 1994 <sup>c</sup>	18 September 1991
Timor-Leste	18 September 2003 <sup>a</sup>	18 December 2003
Togo	24 May 1984 <sup>a</sup>	24 August 1984
Trinidad and Tobago	21 December 1978 <sup>a</sup>	21 March 1979
Tunisia	18 March 1969	23 March 1976
Turkey	23 September 2003	23 December 2003
Turkmenistan	1 May 1997 <sup>a</sup>	<sup>b</sup>
Uganda	21 June 1995 <sup>a</sup>	21 September 1995
Ukraine	12 November 1973	23 March 1976
United Kingdom of Great Britain and Northern Ireland	20 May 1976	20 August 1976
United Republic of Tanzania	11 June 1976 <sup>a</sup>	11 September 1976
United States of America	8 June 1992	8 September 1992
Uruguay	1 April 1970	23 March 1976
Uzbekistan	28 September 1995 <sup>a</sup>	<sup>b</sup>
Vanuatu	21 November 2008	21 February 2009
Venezuela (Bolivarian Republic of)	10 May 1978	10 August 1978
Viet Nam	24 September 1982 <sup>a</sup>	24 December 1982
Yemen	9 February 1987 <sup>a</sup>	9 May 1987
Zambia	10 April 1984 <sup>a</sup>	10 July 1984
Zimbabwe	13 May 1991 <sup>a</sup>	13 August 1991

*Note:* In addition to the States parties listed above, the Covenant continues to apply in Hong Kong, China and Macao, China.<sup>h</sup>

## B. States parties to the Optional Protocol (113\*)

<i>State party</i>	<i>Date of receipt of the instrument of ratification</i>	<i>Date of entry into force</i>
Albania	4 October 2007 <sup>a</sup>	4 January 2008
Algeria	12 September 1989 <sup>a</sup>	12 December 1989

<i>State party</i>	<i>Date of receipt of the instrument of ratification</i>	<i>Date of entry into force</i>
Andorra	22 September 2006	22 December 2006
Angola	10 January 1992 <sup>a</sup>	10 April 1992
Argentina	8 August 1986 <sup>a</sup>	8 November 1986
Armenia	23 June 1993 <sup>a</sup>	23 September 1993
Australia	25 September 1991 <sup>a</sup>	25 December 1991
Austria	10 December 1987	10 March 1988
Azerbaijan	27 November 2001 <sup>a</sup>	27 February 2002
Barbados	5 January 1973 <sup>a</sup>	23 March 1976
Belarus	30 September 1992 <sup>a</sup>	30 December 1992
Belgium	17 May 1994 <sup>a</sup>	17 August 1994
Benin	12 March 1992 <sup>a</sup>	12 June 1992
Bolivia (Plurinational State of)	12 August 1982 <sup>a</sup>	12 November 1982
Bosnia and Herzegovina	1 March 1995	1 June 1995
Brazil	25 September 2009 <sup>a</sup>	25 December 2009
Bulgaria	26 March 1992 <sup>a</sup>	26 June 1992
Burkina Faso	4 January 1999 <sup>a</sup>	4 April 1999
Cameroon	27 June 1984 <sup>a</sup>	27 September 1984
Canada	19 May 1976 <sup>a</sup>	19 August 1976
Cape Verde	19 May 2000 <sup>a</sup>	19 August 2000
Central African Republic	8 May 1981 <sup>a</sup>	8 August 1981
Chad	9 June 1995 <sup>a</sup>	9 September 1995
Chile	27 May 1992 <sup>a</sup>	28 August 1992
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983 <sup>a</sup>	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Côte d'Ivoire	5 March 1997	5 June 1997
Croatia	12 October 1995 <sup>a</sup>	
Cyprus	15 April 1992	15 July 1992
Czech Republic	22 February 1993 <sup>c</sup>	1 January 1993
Democratic Republic of the Congo	1 November 1976 <sup>a</sup>	1 February 1977
Denmark	6 January 1972	23 March 1976

<i>State party</i>	<i>Date of receipt of the instrument of ratification</i>	<i>Date of entry into force</i>
Djibouti	5 November 2002 <sup>a</sup>	5 February 2003
Dominican Republic	4 January 1978 <sup>a</sup>	4 April 1978
Ecuador	6 March 1969	23 March 1976
El Salvador	6 June 1995	6 September 1995
Equatorial Guinea	25 September 1987 <sup>a</sup>	25 December 1987
Estonia	21 October 1991 <sup>a</sup>	21 January 1992
Finland	19 August 1975	23 March 1976
France	17 February 1984 <sup>a</sup>	17 May 1984
Gambia	9 June 1988 <sup>a</sup>	9 September 1988
Georgia	3 May 1994 <sup>a</sup>	3 August 1994
Germany	25 August 1993 <sup>a</sup>	25 November 1993
Ghana	7 September 2000	7 December 2000
Greece	5 May 1997 <sup>a</sup>	5 August 1997
Guatemala	28 November 2000 <sup>a</sup>	28 February 2001
Guinea	17 June 1993	17 September 1993
Guyana <sup>i</sup>	10 May 1993 <sup>a</sup>	10 August 1993
Honduras	7 June 2005	7 September 2005
Hungary	7 September 1988 <sup>a</sup>	7 December 1988
Iceland	22 August 1979 <sup>a</sup>	22 November 1979
Ireland	8 December 1989 <sup>a</sup>	8 March 1990
Italy	15 September 1978	15 December 1978
Kazakhstan	30 June 2009	30 September 2009
Kyrgyzstan	7 October 1994 <sup>a</sup>	7 January 1995
Latvia	22 June 1994 <sup>a</sup>	22 September 1994
Lesotho	6 September 2000 <sup>a</sup>	6 December 2000
Libyan Arab Jamahiriya	16 May 1989 <sup>a</sup>	16 August 1989
Liechtenstein	10 December 1998 <sup>a</sup>	10 March 1999
Lithuania	20 November 1991 <sup>a</sup>	20 February 1992
Luxembourg	18 August 1983 <sup>a</sup>	18 November 1983
Madagascar	21 June 1971	23 March 1976
Malawi	11 June 1996 <sup>a</sup>	11 September 1996

<i>State party</i>	<i>Date of receipt of the instrument of ratification</i>	<i>Date of entry into force</i>
Maldives	19 September 2006 <sup>a</sup>	19 December 2006
Mali	24 October 2001 <sup>a</sup>	24 January 2002
Malta	13 September 1990 <sup>a</sup>	13 December 1990
Mauritius	12 December 1973 <sup>a</sup>	23 March 1976
Mexico	15 March 2002 <sup>a</sup>	15 June 2002
Mongolia	16 April 1991 <sup>a</sup>	16 July 1991
Montenegro <sup>e</sup>		23 October 2006
Namibia	28 November 1994 <sup>a</sup>	28 February 1995
Nepal	14 May 1991 <sup>a</sup>	14 August 1991
Netherlands	11 December 1978	11 March 1979
New Zealand	26 May 1989 <sup>a</sup>	26 August 1989
Nicaragua	12 March 1980 <sup>a</sup>	12 June 1980
Niger	7 March 1986 <sup>a</sup>	7 June 1986
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Paraguay	10 January 1995 <sup>a</sup>	10 April 1995
Peru	3 October 1980	3 January 1981
Philippines	22 August 1989	22 November 1989
Poland	7 November 1991 <sup>a</sup>	7 February 1992
Portugal	3 May 1983	3 August 1983
Republic of Korea	10 April 1990 <sup>a</sup>	10 July 1990
Republic of Moldova	23 January 2008	23 April 2008
Romania	20 July 1993 <sup>a</sup>	20 October 1993
Russian Federation	1 October 1991 <sup>a</sup>	1 January 1992
Saint Vincent and the Grenadines	9 November 1981 <sup>a</sup>	9 February 1982
San Marino	18 October 1985 <sup>a</sup>	18 January 1986
Senegal	13 February 1978	13 May 1978
Serbia <sup>g</sup>	6 September 2001	6 December 2001
Seychelles	5 May 1992 <sup>a</sup>	5 August 1992
Sierra Leone	23 August 1996 <sup>a</sup>	23 November 1996
Slovakia	28 May 1993 <sup>c</sup>	1 January 1993

<i>State party</i>	<i>Date of receipt of the instrument of ratification</i>	<i>Date of entry into force</i>
Slovenia	16 July 1993 <sup>a</sup>	16 October 1993
Somalia	24 January 1990 <sup>a</sup>	24 April 1990
South Africa	28 August 2002 <sup>a</sup>	28 November 2002
Spain	25 January 1985 <sup>a</sup>	25 April 1985
Sri Lanka	3 October 1997 <sup>a</sup>	3 January 1998
Suriname	28 December 1976 <sup>a</sup>	28 March 1977
Sweden	6 December 1971	23 March 1976
Tajikistan	4 January 1999 <sup>a</sup>	4 April 1999
The former Yugoslav Republic of Macedonia	12 December 1994 <sup>c</sup>	12 March 1995
Togo	30 March 1988 <sup>a</sup>	30 June 1988
Tunisia	29 June 2011 <sup>a</sup>	29 September 2011
Turkey	24 November 2006	24 February 2007
Turkmenistan	1 May 1997 <sup>a</sup>	1 August 1997 <sup>b</sup>
Uganda	14 November 1995 <sup>a</sup>	14 February 1996
Ukraine	25 July 1991 <sup>a</sup>	25 October 1991
Uruguay	1 April 1970	23 March 1976
Uzbekistan	28 September 1995 <sup>a</sup>	28 December 1995
Venezuela (Bolivarian Republic of)	10 May 1978	10 August 1978
Zambia	10 April 1984 <sup>a</sup>	10 July 1984

*Note:* Jamaica denounced the Optional Protocol on 23 October 1997, with effect from 23 January 1998. Trinidad and Tobago denounced the Optional Protocol on 26 May 1998 and re-acceded on the same day, subject to a reservation, with effect from 26 August 1998. Following the Committee's decision in case No. 845/1999 (*Kennedy v. Trinidad and Tobago*) of 2 November 1999, declaring the reservation invalid, Trinidad and Tobago again denounced the Optional Protocol on 27 March 2000, with effect from 27 June 2000.

\* The number of States parties will become 114 by 29 September 2011 following the entry into force of the Optional Protocol for Tunisia, which deposited its instrument of ratification on 29 June 2010. (According to article 9, paragraph 2 of the Optional Protocol: For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.)

**C. States parties to the Second Optional Protocol, aiming at the abolition of the death penalty (73)**

<i>State party</i>	<i>Date of receipt of the instrument of ratification</i>	<i>Date of entry into force</i>
Albania	17 October 2007 <sup>a</sup>	17 December 2007
Andorra	22 September 2006	22 December 2006
Argentina	2 September 2008	2 December 2008
Australia	2 October 1990 <sup>a</sup>	11 July 1991
Austria	2 March 1993	2 June 1993
Azerbaijan	22 January 1999 <sup>a</sup>	22 April 1999
Belgium	8 December 1998	8 March 1999
Bosnia and Herzegovina	16 March 2001	16 June 2001
Brazil	25 September 2009 <sup>a</sup>	25 December 2009
Bulgaria	10 August 1999	10 November 1999
Canada	25 November 2005 <sup>a</sup>	25 February 2006
Cape Verde	19 May 2000 <sup>a</sup>	19 August 2000
Chile	26 September 2008	26 December 2008
Colombia	5 August 1997 <sup>a</sup>	5 November 1997
Costa Rica	5 June 1998	5 September 1998
Croatia	12 October 1995 <sup>a</sup>	12 January 1996
Cyprus	10 September 1999 <sup>a</sup>	10 December 1999
Czech Republic	15 June 2004 <sup>a</sup>	15 September 2004
Denmark	24 February 1994	24 May 1994
Djibouti	5 November 2002 <sup>a</sup>	5 February 2003
Ecuador	23 February 1993 <sup>a</sup>	23 May 1993
Estonia	30 January 2004 <sup>a</sup>	30 April 2004
Finland	4 April 1991	11 July 1991
France	2 October 2007 <sup>a</sup>	2 January 2008
Georgia	22 March 1999 <sup>a</sup>	22 June 1999
Germany	18 August 1992	18 November 1992
Greece	5 May 1997 <sup>a</sup>	5 August 1997
Honduras	1 April 2008	1 July 2008
Hungary	24 February 1994 <sup>a</sup>	24 May 1994

<i>State party</i>	<i>Date of receipt of the instrument of ratification</i>	<i>Date of entry into force</i>
Iceland	2 April 1991	2 July 1991
Ireland	18 June 1993 <sup>a</sup>	18 September 1993
Italy	14 February 1995	14 May 1995
Kyrgyzstan	6 December 2010	6 March 2011
Liberia	16 September 2005 <sup>a</sup>	16 December 2005
Liechtenstein	10 December 1998 <sup>a</sup>	10 March 1999
Lithuania	27 March 2002	26 June 2002
Luxembourg	12 February 1992	12 May 1992
Malta	29 December 1994 <sup>a</sup>	29 March 1995
Mexico	26 September 2007 <sup>a</sup>	26 December 2007
Monaco	28 March 2000 <sup>a</sup>	28 June 2000
Montenegro <sup>e</sup>		23 October 2006
Mozambique	21 July 1993 <sup>a</sup>	21 October 1993
Namibia	28 November 1994 <sup>a</sup>	28 February 1995
Nepal	4 March 1998 <sup>a</sup>	4 June 1998
Netherlands	26 March 1991	26 June 1991
New Zealand	22 February 1990	22 May 1990
Nicaragua	21 February 2009	21 May 2009
Norway	5 September 1991	5 December 1991
Panama	21 January 1993 <sup>a</sup>	21 April 1993
Paraguay	18 August 2003	18 November 2003
Philippines	20 November 2007	20 February 2008
Portugal	17 October 1990	17 January 1990
Republic of Moldova	20 September 2006 <sup>a</sup>	20 December 2006
Romania	27 February 1991	27 May 1991
Rwanda	15 December 2008 <sup>a</sup>	15 March 2009
San Marino	17 August 2004	17 November 2004
Serbia <sup>g</sup>	6 September 2001 <sup>a</sup>	6 December 2001
Seychelles	15 December 1994 <sup>a</sup>	15 March 1995
Slovakia	22 June 1999	22 September 1999
Slovenia	10 March 1994	10 June 1994

<i>State party</i>	<i>Date of receipt of the instrument of ratification</i>	<i>Date of entry into force</i>
South Africa	28 August 2002 <sup>a</sup>	28 November 2002
Spain	11 April 1991	11 July 1991
Sweden	11 May 1990	11 July 1991
Switzerland	16 June 1994 <sup>a</sup>	16 September 1994
The former Yugoslav Republic of Macedonia	26 January 1995 <sup>a</sup>	26 April 1995
Timor-Leste	18 September 2003 <sup>a</sup>	18 December 2003
Turkey	2 March 2006	2 June 2006
Turkmenistan	11 January 2000 <sup>a</sup>	11 April 2000
Ukraine	25 July 2007 <sup>a</sup>	25 October 2007
United Kingdom of Great Britain and Northern Ireland	10 December 1999	10 March 2000
Uruguay	21 January 1993	21 April 1993
Uzbekistan	23 December 2008 <sup>a</sup>	23 March 2009
Venezuela (Bolivarian Republic of)	22 February 1993	22 May 1993

**D. States which have made the declaration under article 41 of the Covenant (48)**

<i>State party</i>	<i>Valid from</i>	<i>Valid until</i>
Algeria	12 September 1989	Indefinitely
Argentina	8 August 1986	Indefinitely
Australia	28 January 1993	Indefinitely
Austria	10 September 1978	Indefinitely
Belarus	30 September 1992	Indefinitely
Belgium	5 March 1987	Indefinitely
Bosnia and Herzegovina	6 March 1992	Indefinitely
Bulgaria	12 May 1993	Indefinitely
Canada	29 October 1979	Indefinitely
Chile	11 March 1990	Indefinitely
Congo	7 July 1989	Indefinitely
Croatia	12 October 1995	Indefinitely
Czech Republic	1 January 1993	Indefinitely



<i>State party</i>	<i>Valid from</i>	<i>Valid until</i>
Denmark	19 April 1983	Indefinitely
Ecuador	24 August 1984	Indefinitely
Finland	19 August 1975	Indefinitely
Gambia	9 June 1988	Indefinitely
Germany	27 December 2001	Indefinitely
Ghana	7 September 2000	Indefinitely
Guyana	10 May 1992	Indefinitely
Hungary	7 September 1988	Indefinitely
Iceland	22 August 1979	Indefinitely
Ireland	8 December 1989	Indefinitely
Italy	15 September 1978	Indefinitely
Liechtenstein	10 March 1999	Indefinitely
Luxembourg	18 August 1983	Indefinitely
Malta	13 September 1990	Indefinitely
Netherlands	11 December 1978	Indefinitely
New Zealand	28 December 1978	Indefinitely
Norway	31 August 1972	Indefinitely
Peru	9 April 1984	Indefinitely
Philippines	23 October 1986	Indefinitely
Poland	25 September 1990	Indefinitely
Republic of Korea	10 April 1990	Indefinitely
Russian Federation	1 October 1991	Indefinitely
Senegal	5 January 1981	Indefinitely
Slovakia	1 January 1993	Indefinitely
Slovenia	6 July 1992	Indefinitely
South Africa	10 March 1999	Indefinitely
Spain	11 March 1998	Indefinitely
Sri Lanka	11 June 1980	Indefinitely
Sweden	26 November 1971	Indefinitely
Switzerland	16 April 2010	16 April 2015
Tunisia	24 June 1993	Indefinitely
Ukraine	28 July 1992	Indefinitely

<i>State party</i>	<i>Valid from</i>	<i>Valid until</i>
United Kingdom of Great Britain and Northern Ireland	20 May 1976	Indefinitely
United States of America	8 September 1992	Indefinitely
Zimbabwe	20 August 1991	Indefinitely

#### *Notes*

<sup>a</sup> Accession.

<sup>b</sup> In the opinion of the committee, the date of entry into force is that on which the State became independent.

<sup>c</sup> Succession.

<sup>d</sup> In a letter dated 27 July 1992, received by the Secretary-General on 4 August 1992 and accompanied by a list of multilateral treaties deposited with the Secretary-General, the Government of Croatia notified that:

“[The Government of] ... the Republic of Croatia has decided, based on the Constitutional Decision on Sovereignty and Independence of the Republic of Croatia of 25 June, 1991 and the Decision of the Croatian Parliament in respect of the territory of the Republic of Croatia, by virtue of succession of the Socialist Federal Republic of Yugoslavia of 8 October, 1991, to be considered a party to the conventions that Socialist Federal Republic of Yugoslavia and its predecessor states (the Kingdom of Yugoslavia, Federal People’s Republic of Yugoslavia) were parties, according to the enclosed list. In conformity with the international practice, [the Government of the Republic of Croatia] would like to suggest that this take effect from 8 October, 1991, the date on which the Republic of Croatia became independent.”

<sup>e</sup> Prior to the receipt by the Secretary-General of the instrument of ratification, the Committee’s position was the following: although a declaration of succession had not been received, persons within the territory of the State which constituted a part of a former State party to the Covenant continued to be entitled to the guarantees provided in the Covenant, in accordance with the Committee’s established jurisprudence (see *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40 (A/49/40)*, vol. I, paras. 48 and 49).

<sup>f</sup> Montenegro was admitted to membership in the United Nations by General Assembly resolution 60/264 of 28 June 2006. On 23 October 2006, the Secretary-General received a letter dated 10 October 2006 from the Government of Montenegro, together with a list of multilateral treaties deposited with the Secretary-General, informing the Secretary-General that:

- The Government of the Republic of Montenegro had decided to succeed to the treaties to which the State Union of Serbia and Montenegro had been a party or signatory
- The Government of the Republic of Montenegro was succeeding to the treaties listed in the attached annex and formally undertook to fulfil the conditions set out therein as from 3 June 2006, the date on which the Republic of Montenegro had assumed responsibility for its international relations and the Parliament of Montenegro had adopted the Declaration of Independence
- The Government of the Republic of Montenegro maintained the reservations, declarations and objections, as set out in the annex to the instrument, that had been made by Serbia and Montenegro before the Republic of Montenegro assumed responsibility for its international relations

<sup>g</sup> The Socialist Federal Republic of Yugoslavia ratified the Covenant on 2 June 1971, which entered into force for that State on 23 March 1976. The successor State (the Federal Republic of Yugoslavia) was admitted to membership in the United Nations by General Assembly resolution 55/12 of 1 November 2000. By virtue of a subsequent declaration by the Yugoslav Government, the Federal Republic of Yugoslavia acceded to the Covenant with effect from 12 March 2001. In accordance with the established practice of the Committee, persons subject to the jurisdiction of a

State which had been part of a former State party to the Covenant continue to be entitled to the guarantees set out in the Covenant. Following the adoption of the Constitutional Charter of Serbia and Montenegro by the Assembly of the Federal Republic of Yugoslavia on 4 February 2003, the name of the Federal Republic of Yugoslavia became “Serbia and Montenegro”. The Republic of Serbia succeeded the State Union of Serbia and Montenegro as a Member of the United Nations, including all organs and bodies of the United Nations system, on the basis of article 60 of the Constitutional Charter of Serbia and Montenegro, to which the Declaration of Independence adopted by the National Assembly of Montenegro on 3 June 2006 gave effect. On 19 June 2006, the Secretary-General received a communication dated 16 June 2006 from the Minister for Foreign Affairs of the Republic of Serbia informing him that: (a) the Republic of Serbia would continue to exercise its rights and honour its commitments under international treaties concluded by Serbia and Montenegro; (b) the Republic of Serbia should be considered a party to all international agreements in force, instead of Serbia and Montenegro; and (c) the Government of the Republic of Serbia would henceforth perform the functions formerly performed by the Council of Ministers of Serbia and Montenegro as a depositary for the corresponding multilateral treaties. The Republic of Montenegro was admitted to membership in the United Nations by General Assembly resolution 60/264 of 28 June 2006.

<sup>h</sup> For information on the application of the Covenant in Hong Kong, China, see *Official Records of the General Assembly, Fifty-first Session, Supplement No. 40 (A/51/40)*, chap. V, sect. B, paras. 78–85. For information on the application of the Covenant in Macao, China, see *ibid.*, *Fifty-fifth Session, Supplement No. 40 (A/55/40)*, chap. IV.

<sup>i</sup> Guyana denounced the Optional Protocol on 5 January 1999 and re-acceded on the same day, subject to a reservation, with effect from 5 April 1999. Guyana’s reservation elicited objections from six States parties to the Optional Protocol.

## Annex II

### Membership and officers of the Human Rights Committee, 2010–2011

#### A. Membership of the Human Rights Committee

100th session	Nationality <sup>a</sup>
Mr. Abdelfattah <b>Amor</b> ***	Tunisia
Mr. Prafullachandra Natwarlal <b>Bhagwati</b> *	India
Mr. Lazahri <b>Bouid</b> **	Algeria
Ms. Christine <b>Chanet</b> ***	France
Mr. Mahjoub <b>El Haiba</b> ****	Morocco
Mr. Ahmed Amin <b>Fathalla</b> **	Egypt
Mr. Yuji <b>Iwasawa</b> ***	Japan
Ms. Helen <b>Keller</b> *****	Switzerland
Mr. Rajsoomer <b>Lallah</b> **	Mauritius
Ms. Zonke Zanele <b>Majodina</b> ***	South Africa
Ms. Iulia Antoanella <b>Motoc</b> ***	Romania
Mr. Michael <b>O'Flaherty</b> **	Ireland
Mr. José Luis <b>Pérez Sanchez-Cerro</b> *	Peru
Mr. Rafael <b>Rivas Posada</b> **	Colombia
Sir Nigel <b>Rodley</b> **	United Kingdom of Great Britain and Northern Ireland
Mr. Fabián Omar <b>Salvioli</b> **	Argentina
Mr. Krister <b>Thelin</b> **	Sweden
Ms. Ruth <b>Wedgwood</b> *	United States of America
<b>101st and 102nd sessions</b>	
Mr. Abdelfattah <b>Amor</b> ***	Tunisia

\* Term expired on 31 December 2010.

\*\* Term expires on 31 December 2012.

\*\*\* Term expires on 31 December 2014.

\*\*\*\* Mr. El Haiba resigned from the Committee effective 30 September 2011. His term was due to expire on 31 December 2012.

\*\*\*\*\* Ms. Keller resigned from the Committee effective 30 September 2011. Her term was due to expire on 31 December 2014.

<sup>a</sup> In accordance with article 28, paragraph 3, of the International Covenant on Civil and Political Rights, "The members of the Committee shall be elected in their personal capacity."

Mr. Lazahri <b>Bouزيد</b> **	Algeria
Ms. Christine <b>Chanet</b> ***	France
Mr. Mahjoub <b>El Haiba</b> ****	Morocco
Mr. Ahmed Amin <b>Fathalla</b> **	Egypt
Mr. Cornelis <b>Flinterman</b> ***	The Netherlands
Mr. Yuji <b>Iwasawa</b> ***	Japan
Ms. Helen <b>Keller</b> *****	Switzerland
Mr. Rajsoomer <b>Lallah</b> **	Mauritius
Ms. Zonke Zanele <b>Majodina</b> ***	South Africa
Ms. Iulia Antoanella <b>Motoc</b> ***	Romania
Mr. Gerald L. <b>Neuman</b> ***	United States of America
Mr. Michael <b>O'Flaherty</b> **	Ireland
Mr. Rafael <b>Rivas Posada</b> **	Colombia
Sir Nigel <b>Rodley</b> **	United Kingdom of Great Britain and Northern Ireland
Mr. Fabián Omar <b>Salvioli</b> **	Argentina
Mr. Krister <b>Thelin</b> **	Sweden
Ms. Margo <b>Waterval</b> ***	Suriname

## B. Officers

The officers of the Committee, elected for a term of two years at the 2773rd meeting, on 14 March 2011 (101st session), are the following:

Chairperson:	Ms. Zonke Zanele Majodina
Vice-Chairpersons:	Mr. Yuji Iwasawa
	Mr. Michael O'Flaherty
	Mr. Fabián Salvioli
Rapporteur:	Ms. Helen Keller

## Annex III

**Submission of reports and additional information by States parties under article 40 of the Covenant (as of 29 July 2011)**

<i>State party</i>	<i>Type of report</i>	<i>Date due</i>	<i>Date of submission</i>
Afghanistan	Second	23 April 1989	25 October 1991 <sup>a</sup>
Albania	Second	1 November 2008	Not yet received
Algeria	Fourth	1 November 2011	Not yet due
Andorra	Initial	22 December 2007	Not yet received
Angola	Initial/Special	9 April 1993/ 31 January 1994	22 February 2010
Argentina	Fifth	30 March 2014	Not yet due
Armenia	Second	1 October 2001	27 April 2010
Australia	Sixth	1 April 2013	Not yet due
Austria	Fifth	30 October 2012	Not yet due
Azerbaijan	Fourth	1 August 2013	Not yet due
Bahamas	Initial	23 March 2010	Not yet received
Bahrain	Initial	20 December 2007	Not yet received
Bangladesh	Initial	6 December 2001	Not yet received
Barbados	Fourth	29 March 2011	Not yet received
Belarus	Fifth	7 November 2001	Not yet received
Belgium	Sixth	29 October 2015	Not yet due
Belize	Initial	9 September 1997	Not yet received
Benin	Second	1 November 2008	Not yet received
Bolivia (Plurinational State of)	Third	31 December 1999	Not yet received
Bosnia and Herzegovina	Second	1 November 2010	17 November 2010
Botswana	Second	31 March 2012	Not yet due
Brazil	Third	31 October 2009	Not yet received
Bulgaria	Fourth	29 July 2015	Not yet due
Burkina Faso	Initial	3 April 2000	Not yet received
Burundi	Second	8 August 1996	Not yet received
Cambodia	Second	31 July 2002	Not yet received
Cameroon	Fifth	30 July 2013	Not yet due

<i>State party</i>	<i>Type of report</i>	<i>Date due</i>	<i>Date of submission</i>
Canada	Sixth	31 October 2010	Not yet received
Cape Verde	Initial	5 November 1994	Not yet received
Central African Republic	Third	1 August 2010	Not yet received
Chad	Second	31 July 2012	Not yet due
Chile	Sixth	27 March 2012	Not yet due
Colombia	Seventh	1 April 2014	Not yet due
Congo	Third	31 March 2003	Not yet received
Costa Rica	Sixth	1 November 2012	Not yet due
Côte d'Ivoire	Initial	25 June 1993	Not yet received
Croatia	Third	30 October 2013	Not yet due
Cyprus	Fourth	1 June 2002	Not yet received
Czech Republic	Third	1 August 2011	Not yet due
Democratic People's Republic of Korea	Third	1 January 2004	Not yet received
Democratic Republic of the Congo	Fourth	1 April 2009	Not yet received
Denmark	Sixth	31 October 2013	Not yet due
Djibouti	Initial	5 February 2004	Not yet received
Dominica	Initial	16 September 1994	Not yet received <sup>b</sup>
Dominican Republic	Fifth	1 April 2005	12 November 2009
Ecuador	Sixth	30 October 2013	Not yet due
Egypt	Fourth	1 November 2004	Not yet received
El Salvador	Seventh	29 October 2014	Not yet due
Equatorial Guinea	Initial	24 December 1988	Not yet received <sup>c</sup>
Eritrea	Initial	22 April 2003	Not yet received
Estonia	Fourth	30 July 2015	Not yet due
Ethiopia	Second	29 July 2014	Not yet due
Finland	Sixth	1 November 2009	Not yet received
France	Fifth	31 July 2012	Not yet due
Gabon	Third	31 October 2003	Not yet received
Gambia	Second	21 June 1985	Not yet received <sup>d</sup>
Georgia	Fourth	1 November 2011	Not yet due
Germany	Sixth	1 April 2009	18 April 2011

<i>State party</i>	<i>Type of report</i>	<i>Date due</i>	<i>Date of submission</i>
Ghana	Initial	8 February 2001	Not yet received
Greece	Second	1 April 2009	Not yet received
Grenada	Initial	6 September 1991	Not yet received <sup>e,b</sup>
Guatemala	Third	1 August 2005	20 October 2009
Guinea	Third	30 September 1994	Not yet received
Guinea-Bissau	Initial	1 February 2012	Not yet due
Guyana	Third	31 March 2003	Not yet received
Haiti	Initial	30 December 1996	Not yet received
Honduras	Second	31 October 2010	Not yet received
Hong Kong, China <sup>f</sup>	Third (China)	1 January 2010	31 May 2011
Hungary	Sixth	29 October 2014	Not yet due
Iceland	Fifth	1 April 2010	30 April 2010
India	Fourth	31 December 2001	Not yet received
Indonesia	Initial	23 May 2007	Not yet received
Iran (Islamic Republic of)	Third	31 December 1994	27 October 2009
Iraq	Fifth	4 April 2000	Not yet received
Ireland	Fourth	31 July 2012	Not yet due
Israel	Fourth	30 July 2013	Not yet due
Italy	Sixth	31 October 2009	Not yet received
Jamaica	Third	7 November 2001	20 July 2009
Japan	Sixth	29 October 2011	Not yet due
Jordan	Fifth	29 October 2014	Not yet due
Kazakhstan	Second	29 July 2014	Not yet due
Kenya	Third	1 April 2008	19 August 2010
Kuwait	Second	31 July 2004	18 August 2009
Kyrgyzstan	Second	31 July 2004	Not yet received
Lao People's Democratic Republic	Initial	25 December 2010	Not yet received
Latvia	Third	1 November 2008	Not yet received
Lebanon	Third	31 December 1999	Not yet received
Lesotho	Second	30 April 2002	Not yet received
Liberia	Initial	22 December 2005	Not yet received



<i>State party</i>	<i>Type of report</i>	<i>Date due</i>	<i>Date of submission</i>
Libyan Arab Jamahiriya	Fifth	30 October 2010	Not yet received <sup>g</sup>
Liechtenstein	Second	1 September 2009	Not yet received
Lithuania	Third	1 April 2009	31 August 2010
Luxembourg	Fourth	1 April 2008	Not yet received
Macao, China <sup>c</sup>	Initial (China)	31 October 2001	11 May 2011
Madagascar	Fourth	23 March 2011	Not yet received
Malawi	Initial	21 March 1995	Not yet received
Maldives	Initial	19 December 2007	17 February 2010
Mali	Third	1 April 2005	Not yet received
Malta	Second	12 December 1996	Not yet received
Mauritania	Initial	17 February 2006	Not yet received
Mauritius	Fifth	1 April 2010	Not yet received
Mexico	Sixth	30 March 2014	Not yet due
Monaco	Third	28 October 2013	Not yet due
Mongolia	Sixth	1 April 2015	Not yet due
Montenegro <sup>h</sup>	Initial	23 October 2007	Not yet received
Morocco	Sixth	1 November 2008	Not yet received
Mozambique	Initial	20 October 1994	Not yet received
Namibia	Second	1 August 2008	Not yet received
Nepal	Second	13 August 1997	Not yet received
Netherlands (including Antilles and Aruba)	Fifth	31 July 2014	Not yet due
New Zealand	Sixth	30 March 2015	Not yet due
Nicaragua	Fourth	29 October 2012	Not yet due
Niger	Second	31 March 1994	Not yet received
Nigeria	Second	28 October 1999	Not yet received
Norway	Sixth	1 October 2009	25 November 2009
Pakistan	Initial	23 September 2011	Not yet due
Panama	Fourth	31 March 2012	Not yet due
Papua New Guinea	Initial	21 October 2009	Not yet received
Paraguay	Third	31 October 2008	31 December 2010
Peru	Fifth	31 October 2003	29 June 2011

<i>State party</i>	<i>Type of report</i>	<i>Date due</i>	<i>Date of submission</i>
Philippines	Fourth	1 November 2006	21 June 2010
Poland	Seventh	29 October 2015	Not yet due
Portugal	Fourth	1 August 2008	10 January 2011
Republic of Korea	Fourth	2 November 2010	Not yet received
Republic of Moldova	Third	30 October 2013	Not yet due
Romania	Fifth	28 April 1999	Not yet received
Russian Federation	Seventh	1 November 2012	Not yet due
Rwanda	Fourth	10 April 2013	Not yet due
Saint Vincent and the Grenadines	Second	31 October 1991	Not yet received <sup>i,b</sup>
Samoa	Initial	15 May 2009	Not yet received
San Marino	Third	31 July 2013	Not yet due
Senegal	Fifth	4 April 2000	Not yet received
Serbia	Third	1 April 2015	Not yet due
Seychelles	Initial	4 August 1993	Not yet received <sup>i</sup>
Sierra Leone	Initial	22 November 1997	Not yet received
Slovakia	Fourth	1 April 2015	Not yet due
Slovenia	Third	1 August 2010	Not yet received
Somalia	Initial	23 April 1991	Not yet received
South Africa	Initial	9 March 2000	Not yet received
Spain	Sixth	1 November 2012	Not yet due
Sri Lanka	Fifth	1 November 2007	Not yet received
Sudan	Fourth	26 July 2010	Not yet received
Suriname	Third	1 April 2008	Not yet received
Swaziland	Initial	27 June 2005	Not yet received
Sweden	Seventh	1 April 2014	Not yet due
Switzerland	Fourth	1 November 2015	Not yet due
Syrian Arab Republic	Fourth	1 August 2009	Not yet received <sup>g</sup>
Tajikistan	Second	31 July 2008	Not yet received
Thailand	Second	1 August 2009	Not yet received
The former Yugoslav Republic of Macedonia	Third	1 April 2012	Not yet due
Timor-Leste	Initial	19 December 2004	Not yet received

<i>State party</i>	<i>Type of report</i>	<i>Date due</i>	<i>Date of submission</i>
Togo	Fifth	1 April 2015	Not yet due
Trinidad and Tobago	Fifth	31 October 2003	Not yet received
Tunisia	Sixth	31 March 2012	Not yet due
Turkey	Initial	16 December 2004	17 March 2011
Turkmenistan	Initial	31 July 1998	4 January 2010
Uganda	Second	1 April 2008	Not yet received
Ukraine	Seventh	2 November 2011	5 July 2011
United Kingdom of Great Britain and Northern Ireland	Seventh	31 July 2012	Not yet due
United Kingdom of Great Britain and Northern Ireland (Overseas territories)	Seventh	31 July 2012	Not yet due
United Republic of Tanzania	Fifth	1 August 2013	Not yet due
United States of America	Fourth	1 August 2010	Not yet received
Uruguay	Fifth	21 March 2003	Not yet received
Uzbekistan	Fourth	30 March 2013	Not yet due
Vanuatu	Initial	21 February 2010	Not yet received
Venezuela (Bolivarian Republic of)	Fourth	1 April 2005	Not yet received
Viet Nam	Third	1 August 2004	Not yet received
Yemen	Fifth	1 July 2009	14 December 2009
Zambia	Fourth	20 July 2011	Not yet received
Zimbabwe	Second	1 June 2002	Not yet received

<sup>a</sup> At its fifty-fifth session, the Committee requested the Government of Afghanistan to submit information updating its report before 15 May 1996 for consideration at the fifty-seventh session. No additional information was received. At its sixty-seventh session (October, 1999), the Committee invited Afghanistan to present its report at the sixty-eighth session (March, 2000). The State party asked that the consideration of its report be postponed. At its seventy-third session (July, 1998), the Committee decided to postpone consideration of the situation in Afghanistan, pending consolidation of the new Government. On 12 May 2011, Afghanistan accepted to be considered in a future session under the optional procedure of focused reports based on replies to list of issues prior to reporting.

<sup>b</sup> The Committee scheduled Dominica for examination under article 70 of its rules of procedure in the absence of a report during its 102nd session in July 2011. Prior to the session, the State party requested a postponement indicating that it was in the process of drafting its report and would do so by 30 January 2012. The Committee agreed to a postponement and decided to await the report before taking matters any further.

<sup>c</sup> The Committee considered the situation of civil and political rights in Equatorial Guinea at its seventy-ninth session (October, 2003), in the absence of a report (rule 70 of its rules of procedure) and a State party delegation. Provisional concluding observations were sent to the State party. At the

end of the eighty-first session (July, 2004), the Committee decided that the observations would be made public.

<sup>d</sup> The Committee considered the situation of civil and political rights in the Gambia at its seventy-fifth session (July, 2002), in the absence of a report (rule 70 of its rules of procedure) and a delegation. Provisional concluding observations were sent to the State party. At the end of the eighty-first session (July, 2004), the Committee decided that the observations would be made public.

<sup>e</sup> The Committee considered the situation of civil and political rights in Grenada, at its ninetyeth session (July, 2007), in the absence of a report (rule 70 of its rules of procedure) and a State party delegation. Provisional concluding observations were sent to the State party, with a request to submit its initial report by 31 December 2008.

<sup>f</sup> Although China is not itself a party to the Covenant, the Government of China has honoured the obligations under article 40 with respect to Hong Kong, China and Macao, China, which were previously under British and Portuguese administration, respectively.

<sup>g</sup> During its 101st and 102nd sessions, the Committee decided to send letters of reminder to the Libyan Arab Jamahiriya, and to the Syrian Arab Republic, respectively, for their periodic reports.

<sup>h</sup> Montenegro was admitted to membership in the United Nations by General Assembly resolution 60/264 of 28 June 2006. On 23 October 2006, the Secretary-General received a letter, dated 10 October 2006, from the Government of Montenegro, together with a list of multilateral treaties deposited with the Secretary-General, informing him that:

- The Government of the Republic of Montenegro had decided to succeed to the treaties to which the State Union of Serbia and Montenegro had been a party or a signatory
- The Government of the Republic of Montenegro was succeeding to the treaties listed in the attached annex and formally undertook to fulfil the conditions set out therein as from 3 June 2006, the date on which the Republic of Montenegro had assumed responsibility for its international relations and the Parliament of Montenegro had adopted the Declaration of Independence
- The Government of the Republic of Montenegro maintained the reservations, declarations and objections, as set out in the annex to the instrument, which had been made by Serbia and Montenegro before the Republic of Montenegro assumed responsibility for its international relations

<sup>i</sup> The Committee considered the situation of civil and political rights in Saint Vincent and the Grenadines, at its eighty-sixth session (March, 2006), in the absence of a report (rule 70 of its rules of procedure) but in the presence of a delegation. Provisional concluding observations were sent to the State party, with a request that it submit its second periodic report by 1 April 2007. A reminder was sent on 12 April 2007. Saint Vincent and the Grenadines undertook, by letter dated 5 July 2007, to submit a report within one month. At the end of the ninety-second session (March, 2008) and in view of the non-submission of a report from the State party, the Committee decided that the concluding observations would be made public.

<sup>j</sup> The Committee considered the situation of civil and political rights in the Seychelles at its 101st session in the absence of a report (March, 2011), a delegation and absent replies to the list of issues. Provisional concluding observations were sent to the State party, with a request to submit its initial report by 1 April 2012 and to comment on the concluding observations within one month from the date of transmission of the concluding observations. On 26 April 2011, the State party requested an extension of time until the end of May 2011 to respond to the concluding observations. On 27 April 2011, the Committee granted the State party this request. On 13 May 2011, the State party submitted comments on the provisional concluding observations and indicated that it would submit a report by April 2012. In July 2011, during the 102nd session, the Committee decided to await the State party's report before taking matters any further.

## Annex IV

### Status of reports and situations considered during the period under review, and of reports still pending before the Committee

#### A. Initial reports

<i>State party</i>	<i>Date due</i>	<i>Date of submission</i>	<i>Status</i>	<i>Reference documents</i>
Ethiopia	10 September 1994	28 July 2009	Considered at the 102nd session	CCPR/C/ETH/1 CCPR/C/ETH/Q/1 CCPR/C/ETH/Q/1/Add.1 CCPR/C/ETH/CO/1
Kazakhstan	24 April 2007	27 July 2009	Considered at the 102nd session	CCPR/C/KAZ/1 CCPR/C/KAZ/Q/1 CCPR/C/KAZ/Q/1/Add.1 CCPR/C/KAZ/CO/1
Turkmenistan	31 July 1998	4 January 2010	In translation.  Scheduled for consideration at a later session.	CCPR/C/TKM/1
Maldives	19 December 2007	17 February 2010	In translation.  Scheduled for consideration at a later session.	CCPR/C/MDV/1
Angola	9 April 1993	22 February 2010	In translation.  Scheduled for consideration at a later session.	CCPR/C/AGO/1
Turkey	16 December 2004	17 March 2011	In translation.  Scheduled for consideration at a later session.	CCPR/C/TUR/1
Macao, China	31 October 2001	11 May 2011	In translation  Scheduled for consideration at a later session.	CCPR/C/CHN-MAC/1

**B. Second periodic reports**

<i>State party</i>	<i>Date due</i>	<i>Date of submission</i>	<i>Status</i>	<i>Reference documents</i>
Serbia	1 August 2008	30 April 2009	Considered at the 101st session.	CCPR/C/SRB/2 CCPR/C/SRB/Q/2 CCPR/C/SRB/Q/2/Add.1 CCPR/C/SRB/CO/2
Armenia	1 October 2001	27 April 2010	In translation.  Scheduled for consideration at a later session.	CCPR/C/ARM/2
Kuwait	31 July 2004	18 August 2009	In translation.  Scheduled for consideration at a later session.	CCPR/C/KWT/2
Bosnia and Herzegovina	1 November 2010	17 November 2010	In translation.  Scheduled for consideration at a later session.	CCPR/C/BIH/2

**C. Third periodic reports**

<i>State party</i>	<i>Date due</i>	<i>Date of submission</i>	<i>Status</i>	<i>Reference documents</i>
Slovakia	1 August 2007	26 June 2009	Considered at the 101st session.	CCPR/C/SVK/3 CCPR/C/SVK/Q/3 CCPR/C/SVK/Q/2/Add.1 CCPR/C/SVK/CO/3
Jamaica	7 November 2001	20 July 2009	In translation.  Scheduled for consideration at a later session.	CCPR/C/JAM/3
Bulgaria	31 December 2004	31 July 2009	Considered at the 102nd session.	CCPR/C/BGR/3 CCPR/C/BGR/Q/3 CCPR/C/BGR/Q/3/Add.1 CCPR/C/BGR/CO/3
Guatemala	1 August 2005	20 October 2009	In translation.  Scheduled for consideration at a later session.	CCPR/C/GTM/3

<i>State party</i>	<i>Date due</i>	<i>Date of submission</i>	<i>Status</i>	<i>Reference documents</i>
Lithuania	1 April 2009	31 August 2010	In translation. Scheduled for consideration at a later session.	CCPR/C/LTU/3
Iran (Islamic Republic of)	31 December 2004	27 October 2009	In translation. Scheduled for consideration at a later session.	CCPR/C/IRN/3
Kenya	1 April 2008	19 August 2010	In translation. Scheduled for consideration at a later session.	CCPR/C/KEN/3
Paraguay	31 October 2008	31 December 2010	In translation. Scheduled for consideration at a later session.	CCPR/C/PRY/3
Hong Kong, China	1 January 2010	31 May 2011	In translation. Scheduled for consideration at a later session.	CCPR/C/CHN-HKG/3

#### **D. Fourth periodic reports**

<i>State party</i>	<i>Date due</i>	<i>Date of submission</i>	<i>Status</i>	<i>Reference documents</i>
Jordan	21 January 1997	12 March 2009	Considered at the 100th session.	CCPR/C/JOR/3 and Corr.1 CCPR/C/JOR/Q/4 CCPR/C/JOR/Q/4/Add.1 CCPR/C/JOR/CO/4
Togo	1 November 2004	10 July 2009	Considered at the 101st session.	CCPR/C/TGO/4 CCPR/C/TGO/Q/4 CCPR/C/TGO/Q/4/Add.1 CCPR/C/TGO/CO/4
Philippines	1 November 2006	21 June 2010	In translation. Scheduled for consideration at a later session.	CCPR/C/PHL/4
Portugal	1 August 2008	12 January 2011	In translation. Scheduled for consideration at a later session.	CCPR/C/PRT/4

**E. Fifth periodic reports**

<i>State party</i>	<i>Date due</i>	<i>Date of submission</i>	<i>Status</i>	<i>Reference documents</i>
Belgium	1 August 2008	28 January 2009	Considered at the 100th session.	CCPR/C/BEL/5 CCPR/C/BEL/Q/5 CCPR/C/BEL/Q/5/Add.1 CCPR/C/BEL/CO/5
Hungary	1 April 2007	15 March 2009	Considered at the 100th session.	CCPR/C/HUN/5 CCPR/C/HUN/Q/5 CCPR/C/HUN/Q/5/Add.1 CCPR/C/HUN/CO/5
Mongolia	31 March 2003	22 June 2009	Considered at the 101st session.	CCPR/C/MNG/5 and Corr.1 CCPR/C/MNG/Q/5 and Corr.1 CCPR/C/MNG/Q/Add.1 CCPR/C/MNG/CO/5
Dominican Republic	1 April 2005	12 November 2009	In translation.  Scheduled for consideration at a later session.	CCPR/C/DOM/5
Yemen	1 July 2009	14 December 2009	In translation.  Scheduled for consideration at a later session.	CCPR/C/YEM/5
Iceland	1 April 2010	30 April 2010	In translation.  Scheduled for consideration at a later session.	CCPR/C/ICE/5
Peru	31 October 2003	29 June 2011	In translation.  Scheduled for consideration at a later session.	CCPR/C/PER/5

**F. Sixth periodic reports**

<i>State party</i>	<i>Date due</i>	<i>Date of submission</i>	<i>Status</i>	<i>Reference documents</i>
El Salvador	1 August 2007	13 January 2009	Considered at the 100th session.	CCPR/C/SLV/6 CCPR/C/SLV/Q/6 CCPR/C/SLV/Q/6/Add.1 CCPR/C/SLV/CO/6



<i>State party</i>	<i>Date due</i>	<i>Date of submission</i>	<i>Status</i>	<i>Reference documents</i>
Poland	1 November 2008	15 January 2009	Considered at the 100th session.	CCPR/C/POL/6 CCPR/C/POL/Q/6 CCPR/C/POL/Q/6/Add.1 CCPR/C/POL/CO/6
Norway	1 October 2009	25 November 2009	In translation.  Scheduled for consideration at a later session.	CCPR/C/NOR/6
Germany	1 April 2009	18 April 2011	In translation.  Scheduled for consideration at a later session.	CCPR/C/DEU/6

## G. Seventh periodic reports

<i>State party</i>	<i>Date due</i>	<i>Date of submission</i>	<i>Status</i>	<i>Reference documents</i>
Ukraine	2 November 2011	5 July 2011	In translation.  Scheduled for consideration at a later session.	CCPR/C/UKR/7

## V. General comment No. 34 on article 19 (freedoms of opinion and expression) of the International Covenant on Civil and Political Rights

### General remarks

1. This general comment replaces general comment No. 10 (nineteenth session, 1983).
2. Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society.<sup>1</sup> They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions.
3. Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.
4. Among the other articles that contain guarantees for freedom of opinion and/or expression, are articles 18, 17, 25 and 27. The freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights. For instance, freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote.
5. Taking account of the specific terms of article 19, paragraph 1, as well as the relationship of opinion and thought (article 18), a reservation to paragraph 1 would be incompatible with the object and purpose of the Covenant.<sup>2</sup> Furthermore, although freedom of opinion is not listed among those rights that may not be derogated from pursuant to the provisions of article 4 of the Covenant, it is recalled that, “in those provisions of the Covenant that are not listed in article 4, paragraph 2, there are elements that in the Committee’s opinion cannot be made subject to lawful derogation under article 4”.<sup>3</sup> Freedom of opinion is one such element, since it can never become necessary to derogate from it during a state of emergency.<sup>4</sup>
6. Taking account of the relationship of freedom of expression to the other rights in the Covenant, while reservations to particular elements of article 19, paragraph 2, may be acceptable, a general reservation to the rights set out in paragraph 2 would be incompatible with the object and purpose of the Covenant.<sup>5</sup>
7. The obligation to respect freedoms of opinion and expression is binding on every State party as a whole. All branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level — national, regional or local —

<sup>1</sup> See communication No. 1173/2003, *Benhadj v. Algeria*, Views adopted on 20 July 2007; No. 628/1995, *Park v. Republic of Korea*, Views adopted on 5 July 1996.

<sup>2</sup> See the Committee’s general comment No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to the declarations under article 41 of the Covenant, *Official Records of the General Assembly, Fiftieth Session, Supplement No. 40*, vol. I (A/50/40 (Vol. I)), annex V.

<sup>3</sup> See the Committee’s general comment No. 29 (2001) on derogation during a state of emergency, para. 13, *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40*, vol. I (A/56/40 (Vol. I)), annex VI.

<sup>4</sup> General comment No. 29, para. 11.

<sup>5</sup> General comment No. 24.

are in a position to engage the responsibility of the State party.<sup>6</sup> Such responsibility may also be incurred by a State party under some circumstances in respect of acts of semi-State entities.<sup>7</sup> The obligation also requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities.<sup>8</sup>

8. States parties are required to ensure that the rights contained in article 19 of the Covenant are given effect to in the domestic law of the State, in a manner consistent with the guidance provided by the Committee in its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant. It is recalled that States parties should provide the Committee, in accordance with reports submitted pursuant to article 40, with the relevant domestic legal rules, administrative practices and judicial decisions, as well as relevant policy level and other sectorial practices relating to the rights protected by article 19, taking into account the issues discussed in the present general comment. They should also include information on remedies available if those rights are violated.

## Freedom of opinion

9. Paragraph 1 of article 19 requires protection of the right to hold opinions without interference. This is a right to which the Covenant permits no exception or restriction. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses. No person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions. All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion.<sup>9</sup> The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1.<sup>10</sup>

10. Any form of effort to coerce the holding or not holding of any opinion is prohibited.<sup>11</sup> Freedom to express one's opinion necessarily includes freedom not to express one's opinion.

## Freedom of expression

11. Paragraph 2 requires States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19,

<sup>6</sup> See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 4, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III.

<sup>7</sup> See communication No. 61/1979, *Hertzberg et al. v. Finland*, Views adopted on 2 April 1982.

<sup>8</sup> General comment No. 31, para. 8; see communication No. 633/1995, *Gauthier v. Canada*, Views adopted on 7 April 1999.

<sup>9</sup> See communication No. 550/93, *Faurisson v. France*, Views adopted on 8 November 1996.

<sup>10</sup> See communication No. 157/1983, *Mpaka-Nsusu v. Zaire*, Views adopted on 26 March 1986; No. 414/1990, *Mika Miha v. Equatorial Guinea*, Views adopted on 8 July 1994.

<sup>11</sup> See communication No. 878/1999, *Kang v. Republic of Korea*, Views adopted on 15 July 2003.

paragraph 3, and article 20.<sup>12</sup> It includes political discourse,<sup>13</sup> commentary on one's own<sup>14</sup> and on public affairs,<sup>15</sup> canvassing,<sup>16</sup> discussion of human rights,<sup>17</sup> journalism,<sup>18</sup> cultural and artistic expression,<sup>19</sup> teaching,<sup>20</sup> and religious discourse.<sup>21</sup> It may also include commercial advertising. The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive,<sup>22</sup> although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20.

12. Paragraph 2 protects all forms of expression and the means of their dissemination. Such forms include spoken, written and sign language and such non-verbal expression as images and objects of art.<sup>23</sup> Means of expression include books, newspapers,<sup>24</sup> pamphlets,<sup>25</sup> posters, banners,<sup>26</sup> dress and legal submissions.<sup>27</sup> They include all forms of audio-visual as well as electronic and internet-based modes of expression.

### Freedom of expression and the media

13. A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society.<sup>28</sup> The Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function.<sup>29</sup> The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.<sup>30</sup> The public also has a corresponding right to receive media output.<sup>31</sup>

<sup>12</sup> See communications Nos. 359/1989 and 385/1989, *Ballantyne, Davidson and McIntyre v. Canada*, Views adopted on 18 October 1990.

<sup>13</sup> See communication No. 414/1990, *Mika Miha v. Equatorial Guinea*.

<sup>14</sup> See communication No. 1189/2003, *Fernando v. Sri Lanka*, Views adopted on 31 March 2005.

<sup>15</sup> See communication No. 1157/2003, *Coleman v. Australia*, Views adopted on 17 July 2006.

<sup>16</sup> See concluding observations on Japan (CCPR/C/JPN/CO/5).

<sup>17</sup> See communication No. 1022/2001, *Velichkin v. Belarus*, Views adopted on 20 October 2005.

<sup>18</sup> See communication No. 1334/2004, *Mavlonov and Sa'di v. Uzbekistan*, Views adopted on 19 March 2009.

<sup>19</sup> See communication No. 926/2000, *Shin v. Republic of Korea*, Views adopted on 16 March 2004.

<sup>20</sup> See communication No. 736/97, *Ross v. Canada*, Views adopted on 18 October 2000.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> See communication No. 926/2000, *Shin v. Republic of Korea*.

<sup>24</sup> See communication No. 1341/2005, *Zundel v. Canada*, Views adopted on 20 March 2007.

<sup>25</sup> See communication No. 1009/2001, *Shchetoko et al. v. Belarus*, Views adopted on 11 July 2006.

<sup>26</sup> See communication No. 412/1990, *Kivenmaa v. Finland*, Views adopted on 31 March 1994.

<sup>27</sup> See communication No. 1189/2003, *Fernando v. Sri Lanka*.

<sup>28</sup> See communication No. 1128/2002, *Marques v. Angola*, Views adopted on 29 March 2005.

<sup>29</sup> See communication No. 633/95, *Gauthier v. Canada*.

<sup>30</sup> See the Committee's general comment No. 25 (1996) on article 25 (Participation in public affairs and the right to vote), para. 25, *Official Records of the General Assembly, Fifty-first Session, Supplement No. 40*, vol. I (A/51/40 (Vol. I)), annex V.

<sup>31</sup> See communication No. 1334/2004, *Mavlonov and Sa'di v. Uzbekistan*.

14. As a means to protect the rights of media users, including members of ethnic and linguistic minorities, to receive a wide range of information and ideas, States parties should take particular care to encourage an independent and diverse media.

15. States parties should take account of the extent to which developments in information and communication technologies, such as Internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world. There is now a global network for exchanging ideas and opinions that does not necessarily rely on the traditional mass media intermediaries. States parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.

16. States parties should ensure that public broadcasting services operate in an independent manner.<sup>32</sup> In this regard, States parties should guarantee their independence and editorial freedom. They should provide funding in a manner that does not undermine their independence.

17. Issues concerning the media are discussed further in the section of this general comment that addresses restrictions on freedom of expression.

### **Right of access to information**

18. Article 19, paragraph 2, embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. Public bodies are as indicated in paragraph 7 of this general comment. The designation of such bodies may also include other entities when such entities are carrying out public functions. As has already been noted, taken together with article 25 of the Covenant, the right of access to information includes a right whereby the media has access to information on public affairs<sup>33</sup> and the right of the general public to receive media output.<sup>34</sup> Elements of the right of access to information are also addressed elsewhere in the Covenant. As the Committee observed in its general comment No. 16, regarding article 17 of the Covenant, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control his or her files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to have his or her records rectified. Pursuant to article 10 of the Covenant, a prisoner does not lose the entitlement to access to his medical records.<sup>35</sup> The Committee, in general comment No. 32 (2007) on article 14, set out the various entitlements to information that are held by those accused of a criminal offence.<sup>36</sup> Pursuant to the provisions of article 2, persons should be in receipt of information regarding their Covenant rights in general.<sup>37</sup> Under article 27, a State party's decision-making that may substantively compromise the way of life and

<sup>32</sup> See concluding observations on the Republic of Moldova (CCPR/CO/75/MDA).

<sup>33</sup> See communication No. 633/95, *Gauthier v. Canada*.

<sup>34</sup> See communication No. 1334/2004, *Mavlonov and Sa'di v. Uzbekistan*.

<sup>35</sup> See communication No. 726/1996, *Zheludkov v. Ukraine*, Views adopted on 29 October 2002.

<sup>36</sup> See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 33, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40, vol. I (A/62/40 (Vol. I)), annex VI*.

<sup>37</sup> General comment No. 31.

culture of a minority group should be undertaken in a process of information-sharing and consultation with affected communities.<sup>38</sup>

19. To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.<sup>39</sup> The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.

### Freedom of expression and political rights

20. The Committee, in general comment No. 25 (1996) on participation in public affairs and the right to vote, elaborated on the importance of freedom of expression for the conduct of public affairs and the effective exercise of the right to vote. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint.<sup>40</sup> The attention of States parties is drawn to the guidance that general comment No. 25 (1996) provides with regard to the promotion and the protection of freedom of expression in that context.

### The application of article 19, paragraph 3

21. Paragraph 3 expressly states that the exercise of the right to freedom of expression carries with it special duties and responsibilities. For this reason two limitative areas of restrictions on the right are permitted, which may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (*ordre public*) or of public health or morals. However, when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. The Committee recalls that the relation between right and restriction and between norm and exception must not be reversed.<sup>41</sup> The Committee also recalls the provisions of article 5, paragraph 1, of the Covenant according to which “nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant”.

22. Paragraph 3 lays down specific conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be “provided by law”; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and

<sup>38</sup> See communication No. 1457/2006, *Poma v. Peru*, Views adopted on 27 March 2009.

<sup>39</sup> See concluding observations on Azerbaijan (CCPR/C/79/Add.38 (1994)).

<sup>40</sup> General comment No. 25 on article 25 of the Covenant, para. 25.

<sup>41</sup> See the Committee’s general comment No. 27 on article 12, *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40*, vol. I (A/55/40 (Vol. I)), annex VI, sect. A.

they must conform to the strict tests of necessity and proportionality.<sup>42</sup> Restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.<sup>43</sup>

23. States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.<sup>44</sup> Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19.<sup>45</sup> Journalists are frequently subjected to such threats, intimidation and attacks because of their activities.<sup>46</sup> So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers.<sup>47</sup> All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted,<sup>48</sup> and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.<sup>49</sup>

24. Restrictions must be provided by law. Law may include laws of parliamentary privilege<sup>50</sup> and laws of contempt of court.<sup>51</sup> Since any restriction on freedom of expression constitutes a serious curtailment of human rights, it is not compatible with the Covenant for a restriction to be enshrined in traditional, religious or other such customary law.<sup>52</sup>

25. For the purposes of paragraph 3, a norm, to be characterized as a “law”, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly<sup>53</sup> and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.<sup>54</sup> Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.

26. Laws restricting the rights enumerated in article 19, paragraph 2, including the laws referred to in paragraph 24, must not only comply with the strict requirements of article 19, paragraph 3, of the Covenant but must also themselves be compatible with the provisions, aims and objectives of the Covenant.<sup>55</sup> Laws must not violate the non-discrimination

<sup>42</sup> See communication No. 1022/2001, *Velichkin v. Belarus*, Views adopted on 20 October 2005.

<sup>43</sup> See the Committee’s general comment No. 22, *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40 (A/48/40)*, annex VI.

<sup>44</sup> See communication No. 458/91, *Mukong v. Cameroon*, Views adopted on 21 July 1994.

<sup>45</sup> See communication No. 1353/2005, *Njaru v. Cameroon*, Views adopted on 19 March 2007.

<sup>46</sup> See, for instance, concluding observations on Algeria (CCPR/C/DZA/CO/3); concluding observations on Costa Rica (CCPR/C/CRI/CO/5); concluding observations on Sudan (CCPR/C/SDN/CO/3).

<sup>47</sup> See communication No. 1353/2005, *Njaru v. Cameroon*; concluding observations on Nicaragua (CCPR/C/NIC/CO/3); concluding observations on Tunisia (CCPR/C/TUN/CO/5); concluding observations on the Syrian Arab Republic (CCPR/CO/84/SYR); concluding observations on Colombia (CCPR/CO/80/COL).

<sup>48</sup> Ibid. and concluding observations on Georgia (CCPR/C/GEO/CO/3).

<sup>49</sup> See concluding observations on Guyana (CCPR/C/79/Add.121).

<sup>50</sup> See communication No. 633/95, *Gauthier v. Canada*.

<sup>51</sup> See communication No. 1373/2005, *Dissanayake v. Sri Lanka*, Views adopted on 22 July 2008.

<sup>52</sup> See general comment No. 32.

<sup>53</sup> See communication No. 578/1994, *de Groot v. The Netherlands*, Views adopted on 14 July 1995.

<sup>54</sup> See general comment No. 27.

<sup>55</sup> See communication No. 488/1992, *Toonen v. Australia*, Views adopted on 30 March 1994.

provisions of the Covenant. Laws must not provide for penalties that are incompatible with the Covenant, such as corporal punishment.<sup>56</sup>

27. It is for the State party to demonstrate the legal basis for any restrictions imposed on freedom of expression.<sup>57</sup> If, with regard to a particular State party, the Committee has to consider whether a particular restriction is imposed by law, the State party should provide details of the law and of actions that fall within the scope of the law.<sup>58</sup>

28. The first of the legitimate grounds for restriction listed in paragraph 3 is that of respect for the rights or reputations of others. The term “rights” includes human rights as recognized in the Covenant and more generally in international human rights law. For example, it may be legitimate to restrict freedom of expression in order to protect the right to vote under article 25, as well as rights under article 17 (see para. 37).<sup>59</sup> Such restrictions must be constructed with care: while it may be permissible to protect voters from forms of expression that constitute intimidation or coercion, such restrictions must not impede political debate, including, for example, calls for the boycotting of a non-compulsory vote.<sup>60</sup> The term “others” relates to other persons individually or as members of a community.<sup>61</sup> Thus, it may, for instance, refer to individual members of a community defined by its religious faith<sup>62</sup> or ethnicity.<sup>63</sup>

29. The second legitimate ground is that of protection of national security or of public order (*ordre public*), or of public health or morals.

30. Extreme care must be taken by States parties to ensure that treason laws<sup>64</sup> and similar provisions relating to national security, whether described as official secrets or sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of paragraph 3. It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.<sup>65</sup> Nor is it generally appropriate to include in the remit of such laws such categories of information as those relating to the commercial sector, banking and scientific progress.<sup>66</sup> The Committee has found in one case that a restriction on the issuing of a statement in support of a labour dispute, including for the convening of a national strike, was not permissible on the grounds of national security.<sup>67</sup>

31. On the basis of maintenance of public order (*ordre public*) it may, for instance, be permissible in certain circumstances to regulate speech-making in a particular public place.<sup>68</sup> Contempt of court proceedings relating to forms of expression may be tested

<sup>56</sup> General comment No. 20, *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40)*, annex VI, sect. A.

<sup>57</sup> See communication No. 1553/2007, *Korneenko et al. v. Belarus*, Views adopted on 31 October 2006.

<sup>58</sup> See communication No. 132/1982, *Jaona v. Madagascar*, Views adopted on 1 April 1985.

<sup>59</sup> See communication No. 927/2000, *Svetik v. Belarus*, Views adopted on 8 July 2004.

<sup>60</sup> *Ibid.*

<sup>61</sup> See communication No. 736/97, *Ross v. Canada*, Views adopted on 18 October 2000.

<sup>62</sup> See communication No. 550/93, *Faurisson v. France*; concluding observations on Austria (CCPR/C/AUT/CO/4).

<sup>63</sup> See concluding observations on Slovakia (CCPR/CO/78/SVK); concluding observations on Israel (CCPR/CO/78/ISR).

<sup>64</sup> See concluding observations on Hong Kong, China (CCPR/C/HKG/CO/2).

<sup>65</sup> See concluding observations on the Russian Federation (CCPR/CO/79/RUS).

<sup>66</sup> Concluding observations on Uzbekistan (CCPR/CO/71/UZB).

<sup>67</sup> See communication No. 518/1992, *Sohn v. Republic of Korea*, Views adopted on 18 March 1994.

<sup>68</sup> See communication No. 1157/2003, *Coleman v. Australia*.



against the public order (*ordre public*) ground. In order to comply with paragraph 3, such proceedings and the penalty imposed must be shown to be warranted in the exercise of a court's power to maintain orderly proceedings.<sup>69</sup> Such proceedings should not in any way be used to restrict the legitimate exercise of defence rights.

32. The Committee observed in general comment No. 22 (1993), that "the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations ... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition". Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination.

33. Restrictions must be "necessary" for a legitimate purpose. Thus, for instance, a prohibition on commercial advertising in one language, with a view to protecting the language of a particular community, violates the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression.<sup>70</sup> On the other hand, the Committee has considered that a State party complied with the test of necessity when it transferred a teacher who had published materials that expressed hostility toward a religious community to a non-teaching position in order to protect the right and freedom of children of that faith in a school district.<sup>71</sup>

34. Restrictions must not be overbroad. The Committee observed in general comment No. 27 (1999) that "restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected...The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law".<sup>72</sup> The principle of proportionality must also take account of the form of expression at issue as well as the means of its dissemination. For instance, the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.<sup>73</sup>

35. When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.<sup>74</sup>

36. The Committee reserves to itself an assessment of whether, in a given situation, there may have been circumstances which made a restriction of freedom of expression necessary.<sup>75</sup> In this regard, the Committee recalls that the scope of this freedom is not to be assessed by reference to a "margin of appreciation"<sup>76</sup> and in order for the Committee to carry out this function, a State party, in any given case, must demonstrate in specific

<sup>69</sup> See communication No. 1373/2005, *Dissanayake v. Sri Lanka*.

<sup>70</sup> See communication No. 359, 385/89, *Ballantyne, Davidson and McIntyre v. Canada*.

<sup>71</sup> See communication No. 736/97, *Ross v. Canada*, Views adopted on 17 July 2006.

<sup>72</sup> General comment No. 27, para. 14. See also communications No. 1128/2002, *Marques v. Angola*; No. 1157/2003, *Coleman v. Australia*.

<sup>73</sup> See communication No. 1180/2003, *Bodrozic v. Serbia and Montenegro*, Views adopted on 31 October 2005.

<sup>74</sup> See communication No. 926/2000, *Shin v. Republic of Korea*.

<sup>75</sup> See communication No. 518/1992, *Sohn v. Republic of Korea*.

<sup>76</sup> See communication No. 511/1992, *Ilmari Lämsä et al. v. Finland*, Views adopted on 14 October 1993.

fashion the precise nature of the threat to any of the enumerated grounds listed in paragraph 3 that has caused it to restrict freedom of expression.<sup>77</sup>

### **Limitative scope of restrictions on freedom of expression in certain specific areas**

37. Among restrictions on political discourse that have given the Committee cause for concern are the prohibition of door-to-door canvassing,<sup>78</sup> restrictions on the number and type of written materials that may be distributed during election campaigns,<sup>79</sup> blocking access during election periods to sources, including local and international media, of political commentary,<sup>80</sup> and limiting access of opposition parties and politicians to media outlets.<sup>81</sup> Every restriction should be compatible with paragraph 3. However, it may be legitimate for a State party to restrict political polling imminently preceding an election in order to maintain the integrity of the electoral process.<sup>82</sup>

38. As noted earlier in paragraphs 13 and 20, concerning the content of political discourse, the Committee has observed that in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high.<sup>83</sup> Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant.<sup>84</sup> Moreover, all public figures, including those exercising the highest political authority such as heads of State and government, are legitimately subject to criticism and political opposition.<sup>85</sup> Accordingly, the Committee expresses concern regarding laws on such matters as, lese-majesty,<sup>86</sup> *desacato*,<sup>87</sup> disrespect for authority,<sup>88</sup> disrespect for flags and symbols, defamation of the head of State<sup>89</sup> and the protection of the honour of public officials,<sup>90</sup> and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration.<sup>91</sup>

39. States parties should ensure that legislative and administrative frameworks for the regulation of the mass media are consistent with the provisions of paragraph 3.<sup>92</sup> Regulatory systems should take into account the differences between the print and broadcast sectors

<sup>77</sup> See communications No. 518/92, *Sohn v. Republic of Korea*; No. 926/2000, *Shin v. Republic of Korea*.

<sup>78</sup> See concluding observations on Japan (CCPR/C/JPN/CO/5).

<sup>79</sup> Ibid.

<sup>80</sup> See concluding observations on Tunisia (CCPR/C/TUN/CO/5).

<sup>81</sup> See concluding observations on Togo (CCPR/CO/76/TGO); concluding observations on the Republic of Moldova (CCPR/CO/75/MDA).

<sup>82</sup> See communication No. 968/2001, *Kim v. Republic of Korea*, Views adopted on 14 March 1996.

<sup>83</sup> See communication No. 1180/2003, *Bodrozic v. Serbia and Montenegro*, Views adopted on 31 October 2005.

<sup>84</sup> Ibid.

<sup>85</sup> See communication No. 1128/2002, *Marques v. Angola*.

<sup>86</sup> See communications Nos. 422-424/1990, *Aduayom et al. v. Togo*, Views adopted on 30 June 1994.

<sup>87</sup> See concluding observations on the Dominican Republic (CCPR/CO/71/DOM).

<sup>88</sup> See concluding observations on Honduras (CCPR/C/HND/CO/1).

<sup>89</sup> See concluding observations on Zambia (CCPR/C/ZMB/CO/3).

<sup>90</sup> See concluding observations on Costa Rica (CCPR/C/CRI/CO/5).

<sup>91</sup> Ibid., and see concluding observations on Tunisia (CCPR/C/TUN/CO/5).

<sup>92</sup> See concluding observations on Viet Nam (CCPR/CO/75/VNM) and concluding observations on Lesotho (CCPR/CO/79/Add.106).

and the Internet, while also noting the manner in which various media converge. It is incompatible with article 19 to refuse to permit the publication of newspapers and other print media other than in the specific circumstances of the application of paragraph 3. Such circumstances may never include a ban on a particular publication unless specific content, that is not severable, can be legitimately prohibited under paragraph 3. States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations.<sup>93</sup> The criteria for the application of such conditions and licence fees should be reasonable and objective,<sup>94</sup> clear,<sup>95</sup> transparent,<sup>96</sup> non-discriminatory and otherwise in compliance with the Covenant.<sup>97</sup> Licensing regimes for broadcasting via media with limited capacity, such as audiovisual terrestrial and satellite services should provide for an equitable allocation of access and frequencies between public, commercial and community broadcasters. It is recommended that States parties that have not already done so should establish an independent public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses.<sup>98</sup>

40. The Committee reiterates its observation in general comment No. 10 (1982) that “because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression”. The State should not have monopoly control over the media and should promote plurality of the media.<sup>99</sup> Consequently, States parties should take appropriate action, consistent with the Covenant, to prevent undue media dominance or concentration by privately controlled media groups in monopolistic situations that may be harmful to a diversity of sources and views.

41. Care must be taken to ensure that systems of government subsidy to media outlets and the placing of government advertisements<sup>100</sup> are not employed to the effect of impeding freedom of expression.<sup>101</sup> Furthermore, private media must not be put at a disadvantage compared to public media in such matters as access to means of dissemination/distribution and access to news.<sup>102</sup>

42. The penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government<sup>103</sup> can never be considered to be a necessary restriction of freedom of expression.

43. Any restrictions on the operation of websites, blogs or any other Internet-based, electronic or other such information dissemination system, including systems to support such communication, such as Internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and

<sup>93</sup> See concluding observations on Gambia (CCPR/CO/75/GMB).

<sup>94</sup> Concluding observations on Lebanon (CCPR/CO/79/Add.78), para. 25.

<sup>95</sup> See concluding observations on Kuwait (CCPR/CO/69/KWT); concluding observations on Ukraine (CCPR/CO/73/UKR).

<sup>96</sup> See concluding observations on Kyrgyzstan (CCPR/CO/69/KGZ).

<sup>97</sup> See concluding observations on Ukraine (CCPR/CO/73/UKR).

<sup>98</sup> See concluding observations on Lebanon (CCPR/CO/79/Add.78).

<sup>99</sup> See concluding observations on Guyana (CCPR/CO/79/Add.121); concluding observations on the Russian Federation (CCPR/CO/79/RUS); concluding observations on Viet Nam (CCPR/CO/75/VNM); concluding observations on Italy (CCPR/C/79/Add.37).

<sup>100</sup> See concluding observations on Lesotho (CCPR/CO/79/Add.106).

<sup>101</sup> See concluding observations on Ukraine (CCPR/CO/73/UKR).

<sup>102</sup> See concluding observations on Sri Lanka (CCPR/CO/79/LKA); and concluding observations on Togo (CCPR/CO/76/TGO).

<sup>103</sup> See concluding observations on Peru (CCPR/CO/70/PER).

systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.<sup>104</sup>

44. Journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere, and general State systems of registration or licensing of journalists are incompatible with paragraph 3. Limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events. Such schemes should be applied in a manner that is non-discriminatory and compatible with article 19 and other provisions of the Covenant, based on objective criteria and taking into account that journalism is a function shared by a wide range of actors.

45. It is normally incompatible with paragraph 3 to restrict the freedom of journalists and others who seek to exercise their freedom of expression (such as persons who wish to travel to human rights-related meetings)<sup>105</sup> to travel outside the State party, to restrict the entry into the State party of foreign journalists to those from specified countries<sup>106</sup> or to restrict freedom of movement of journalists and human rights investigators within the State party (including to conflict-affected locations, the sites of natural disasters and locations where there are allegations of human rights abuses). States parties should recognize and respect that element of the right to freedom of expression that embraces the limited journalistic privilege not to disclose information sources.<sup>107</sup>

46. States parties should ensure that counter-terrorism measures are compatible with paragraph 3. Such offences as “encouragement of terrorism”<sup>108</sup> and “extremist activity”<sup>109</sup> as well as offences of “praising”, “glorifying”, or “justifying” terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression. Excessive restrictions on access to information must also be avoided. The media plays a crucial role in informing the public about acts of terrorism and its capacity to operate should not be unduly restricted. In this regard, journalists should not be penalized for carrying out their legitimate activities.

47. Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression.<sup>110</sup> All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice.<sup>111</sup> In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and

<sup>104</sup> See concluding observations on the Syrian Arab Republic (CCPR/CO/84/SYR).

<sup>105</sup> See concluding observations on Uzbekistan (CCPR/CO/83/UZB); concluding observations on Morocco (CCPR/CO/82/MAR).

<sup>106</sup> See concluding observations on the Democratic People’s Republic of Korea (CCPR/CO/72/PRK).

<sup>107</sup> See concluding observations on Kuwait (CCPR/CO/69/KWT).

<sup>108</sup> See concluding observations on the United Kingdom of Great Britain and Northern Ireland (CCPR/C/GBR/CO/6).

<sup>109</sup> See concluding observations on the Russian Federation (CCPR/CO/79/RUS).

<sup>110</sup> See concluding observations on the United Kingdom of Great Britain and Northern Ireland (CCPR/C/GBR/CO/6).

<sup>111</sup> Ibid.

penalties. Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party.<sup>112</sup> States parties should consider the decriminalization of defamation<sup>113</sup> and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.<sup>114</sup>

48. Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances set out in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as articles 2, 5, 17, 18 and 26, *inter alia*. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.<sup>115</sup>

49. Laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on States parties in relation to the respect for freedom of opinion and expression.<sup>116</sup> The Covenant does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events. Restrictions on the right of freedom of opinion should never be imposed and, with regard to freedom of expression, they should not go beyond what is permitted in paragraph 3 or required under article 20.

### **The relationship between articles 19 and 20**

50. Articles 19 and 20 are compatible with and complement each other. The acts that are addressed in article 20 are all subject to restriction pursuant to article 19, paragraph 3. As such, a limitation that is justified on the basis of article 20 must also comply with article 19, paragraph 3.<sup>117</sup>

51. What distinguishes the acts addressed in article 20 from other acts that may be subject to restriction under article 19, paragraph 3, is that for the acts addressed in article 20, the Covenant indicates the specific response required from the State: their prohibition by law. It is only to this extent that article 20 may be considered as *lex specialis* with regard to article 19.

<sup>112</sup> Ibid.

<sup>113</sup> See concluding observations on Italy (CCPR/C/ITA/CO/5); concluding observations on the former Yugoslav Republic of Macedonia (CCPR/C/MKD/CO/2).

<sup>114</sup> See communication No. 909/2000, *Kankanamge v. Sri Lanka*, Views adopted on 27 July 2004.

<sup>115</sup> See concluding observations on the United Kingdom of Great Britain and Northern Ireland – the Crown Dependencies of Jersey, Guernsey and the Isle of Man (CCPR/C/79/Add.119). See also concluding observations on Kuwait (CCPR/CO/69/KWT).

<sup>116</sup> So called “memory-laws”, see communication No. 550/93, *Faurisson v. France*. See also concluding observations on Hungary (CCPR/C/HUN/CO/5) para. 19.

<sup>117</sup> See communication No. 736/1997, *Ross v. Canada*, Views adopted on 18 October 2000.

52. It is only with regard to the specific forms of expression indicated in article 20 that States parties are obliged to have legal prohibitions. In every case in which the State restricts freedom of expression it is necessary to justify the prohibitions and their provisions in strict conformity with article 19.

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