



International Covenant on Civil and Political Rights

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Human Rights Committee

Follow-up progress report on individual communications*

A. Introduction

1. At its thirty-ninth session, the Human Rights Committee established a procedure and designated a special rapporteur to monitor follow-up on its Views adopted under article 5 (4) of the Optional Protocol to the Covenant. The Special Rapporteur for follow-up on Views prepared the present report in accordance with rule 101 (3) of the Committee's rules of procedure. The present report sets out information provided by States parties and by authors or their counsel that was received, or processed, by the end of February 2018.
2. At the end of the 122nd session, the Committee concluded that there had been a violation of the Covenant in 1,061 of the 1,282 Views that it had adopted since 1979.
3. At its 109th session, the Committee decided to include in its reports on follow-up to Views an assessment of the replies received from and action taken by States parties. The assessment is based on criteria similar to those applied by the Committee in the procedure for follow-up to its concluding observations.
4. At its 118th session, the Committee decided to revise its assessment criteria.

Assessment criteria (as revised during the 118th session)

Assessment of replies:

- A Reply/action largely satisfactory:** The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.
 - B Reply/action partially satisfactory:** The State party has taken steps towards the implementation of the recommendation, but additional information or action remains necessary.
 - C Reply/action not satisfactory:** A response has been received, but the action taken or information provided by the State party is not relevant or does not implement the recommendation.
 - D No cooperation with the Committee:** No follow-up report has been received after the reminder(s).
 - E Information or measures taken are contrary to or reflect rejection of the recommendation.**
5. At its 121st session, the Committee decided to revise its methodology and procedure for monitoring follow-up on its Views.

* Adopted by the Committee at its 122nd session (12 March–6 April 2018).



Decisions taken:

- Grading will no longer be applied in cases where the Views have been merely published and/or circulated.
- Grading will be applied for the State party's response on measures of non-repetition only if such measures are specifically included in the Views.
- The follow-up report will contain only information on cases that are ready for grading by the Committee, that is, where there is a reply from the State party and information provided by the author.

B. Follow-up information received and processed by the end of February 2018

1. Algeria¹

Communication No. 2157/2012, *Belamrania*

Views adopted:	27 October 2016
Violation:	Articles 2 (3), 6 (1) and 7
Remedy:	Effective remedy, including: (a) conducting a thorough and rigorous investigation into the alleged summary execution of Mohammed Belamrania; (b) providing his family with detailed information on the results of the investigation; (c) prosecuting, trying and punishing those responsible for the violations; and (d) providing the victim's family with appropriate compensation and redress. The State party should also ensure that it does not prevent the victims of offences such as torture, extrajudicial killing and enforced disappearance from exercising their right to an effective remedy.
Subject matter:	Summary execution
Previous follow-up information:	CCPR/C/121/3
Submissions from the author's counsel:	4 August 2017 and 21 November 2017

In a submission of 4 August 2017, in response to the State party's submission, the author's counsel maintains that the fact that the criminal proceedings against the author were launched at the initiative of the Wali of Jijel, the highest State official at the regional level, and not at the initiative of the judicial authorities, only confirms their political character. The author's counsel clarifies that the author has been formally accused of supporting two bloggers who were arrested on charges of incitement to terrorism but were acquitted by the court of Jijel on 22 March 2017 on the ground that the charges were inconsistent with the facts. Furthermore, the author's counsel informs the Committee that the documents seized from the author's home relate to an association of children of victims of enforced disappearance in the region and that the author's interrogation had mostly been focused on the complaint that he had brought before the Committee. The author's counsel maintains that the author's allegations of reprisals are well founded.

In a submission of 21 November 2017, the author's counsel adds that the author was brought before the court of Jijel on 15 November 2017, questioned mainly about his activities as a human rights defender and sentenced to five years in prison and to a fine. In addition, he

¹ The Special Rapporteur for follow-up on Views met with representatives of Algeria on 14 July 2017. The State party representatives agreed to request the Ministry of Justice to provide follow-up observations for each individual case in respect of which the dialogue remained open under the Committee's follow-up procedure.

was subjected to an additional sanction, namely, “deprivation of civil and political rights”, for three years.

On 22 December 2017, the Committee, acting through its Special Rapporteur for follow-up on Views and rapporteur on reprisals, sent a letter to the State party, transmitting the letter received from the author’s counsel and requesting clarifications within two weeks.

Submission from the State party: 11 January 2018

The State party informs the Committee that, on 18 July 2017 and 29 May 2018, it submitted information to the Committee and to a number of the special procedures of the Human Rights Council, respectively, regarding the case submitted on the author’s behalf by the non-governmental organization Alkarama.

The State party recalls its previous observations: on 28 November 2016, the criminal police of Jijel was informed by the Wali of Jijel that a citizen had publicly expressed support for a person accused of acts of terrorism outside the country and had glorified terrorism on Facebook. The investigations conducted under the authority of the public prosecutor revealed that the author was the account holder. It transpired that he had used that account to disseminate pictures and express support for terrorist organizations, including Da’esh, outside the country. The same page had included comments about two persons who had been charged in a case of glorification of terrorism and photos of terrorists wanted for prosecution.

The public prosecutor issued a warrant for the seizure of any documents and publications related to the Facebook account that were found at the author’s residence.

On 20 February 2017, the criminal police interviewed the author and took him into custody on the same day, at 6 p.m.

On 22 February 2017, at 8 a.m., the author was summoned by the public prosecutor of the court of Jijel, where he was charged with the promotion of terrorist attacks.

On the same day, following the hearing, in the presence of the author’s lawyer, the examining magistrate ordered the author’s pretrial detention.

The State party maintains that:

- (a) The allegations about the author’s arbitrary detention are unfounded, as his arrest by the criminal police was carried out in accordance with article 65 of the Code of Criminal Procedure;
- (b) The duration of his detention did not exceed 48 hours, despite the seriousness of the situation, which involved terrorist attacks and thus allowed for the extension of the duration of detention in custody for up to 240 hours (five periods of 48 hours);
- (c) The proceedings related to his detention complied with the law. Moreover, the examining magistrate had a period of four months from 22 February 2017 to conduct investigations. That period was renewable by decision of the magistrate;
- (d) The author enjoyed all the guarantees provided for under the law during the arrest, hearing and trial;
- (e) The State party notes that the author’s arrest and prosecution were not related to the case concerning his father or his alleged activities as a human rights defender but that they were carried out in the context of a criminal offence relating to the promotion of terrorism, which is prohibited by criminal law in Algeria.

Submission from the author’s counsel: 8 February 2018

In an email sent on 8 February 2018, the author’s counsel recalls that, on 15 November 2017, the author was sentenced to five years in prison for incitement to terrorism, a fine of 100,000 Algerian dinars and “deprivation of civil and political rights” for a period of three years. The author’s counsel adds that, on 5 February 2018, the author’s sentence was modified on appeal to one year’s imprisonment followed by a two-year suspended sentence and a fine of 100,000 Algerian dinars. The author’s counsel urges the Committee to intervene to have the State party put an end to the reprisals against his client and requests the Committee to have the State party take appropriate measures as guarantees of non-repetition, including

a review and reform of laws contributing to or allowing gross violations of international human rights law.

Committee's decision: Follow-up dialogue ongoing.

2. Algeria

Communications No. 992/2001, *Bousroual*; No. 1196/2003, *Boucherf*; No. 1327/2004, *Grioua*; No. 1328/2004, *Kimouche and Kimouche*; No. 1791/2008, *Boudjemai*; No. 1796/2008, *Zerrougui*; No. 1798/2008, *Azouz*; No. 1874/2009, *Mihoubi*; No. 1900/2009, *Mehalli et al.*; No. 1905/2009, *Khirani et al.*; No. 2259/2013, *El Boathi*; No. 1495/2006, *Madoui*; No. 1588/2007, *Benaziza et al.*; No. 1779/2008, *Mezine*; No. 1807/2008, *Mechani*; No. 1811/2008, *Djebbar and Chihoub*; No. 1831/2008, *Larbi*; No. 1889/2009, *Marouf*; 1899/2009, *Terafi*; No. 1781/2008, *Berzig*; No. 1806/2008, *Saadoun et al.*; and No. 1884/2009, *Aouali et al.*

Submission from the State party: 19 February 2018

During a meeting held on 14 July 2017 with the Special Rapporteur for follow-up on Views, a representative of the State party agreed to request the Ministry of Justice to provide follow-up observations for each of the individual cases in respect of which the dialogue remained open under the Committee's follow-up procedure. As a result, on 19 February 2018, the State party submitted information concerning 23 communications in the form of a table, which indicates: (a) the results of the search for those still missing as of December 2017; and (b) the compensation that families have received in line with the Charter for Peace and National Reconciliation.

The Committee notes that, in many cases, compensation had been received before the case was lodged with the Committee. The State party submits that, in some cases (namely, communications No. 1495/2006, No. 1588/2007, No. 1779/2008, No. 1807/2008, No. 1811/2008, No. 1889/2009 and No. 1899/2009), the authors have not claimed their right to compensation under the Charter. With regard to communications No. 1781/2008, No. 1806/2008 and No. 1884/2009, no information has been provided with regard to compensation. In all cases in which compensation was provided, it was provided in line with the Charter for Peace and National Reconciliation and not related to the implementation of the Committee's Views.

Committee's assessment:

- (a) Effective remedy: E;
- (b) Non-repetition: D.

Committee's decision: Suspend the follow-up dialogue with a finding of unsatisfactory implementation of the Committee's Views. For non-repetition, continue to follow up within the framework of the reporting procedure.

3. Australia

Communication No. 2216/2012, *C and R*

Views adopted:	28 March 2017
Violation:	Articles 2 (1), 14 (1) and 26
Remedy:	Effective remedy, including providing the author with full reparation for the discrimination suffered. In addition, the State party is under an obligation to take steps to prevent similar violations in the future and to review its laws in accordance with the Committee's Views.
Subject matter:	Prohibition of access to divorce proceedings for same-sex couples married abroad
Previous follow-up information:	None
Submission from the State party:	2 February 2018 ²

² The State party's follow-up observations were transmitted to the author on 19 February 2018.

The Committee's Views in the case are to be published on the website of the Attorney-General's Department of Australia.

On 9 September 2017, the Parliament of Australia adopted a number of legislative amendments to allow same-sex couples, including those in the author's circumstances, to marry and divorce. Those amendments directly address the Committee's Views.

The Marriage Amendment (Definition and Religious Freedoms) Act 2017 was adopted to amend the Marriage Act 1961. The right to marry in Australia is no longer dependent on sex or gender. The Marriage Act now provides for recognition of same-sex marriages and the option of divorce in the context of such marriages, including those entered into overseas. The Act also provides for consequential amendments to various other laws, including the Family Law Act 1975, and introduces transitional provisions relating to same-sex couples who were married in an overseas jurisdiction prior to 9 December 2017. As a result, individuals who entered into a same-sex marriage overseas before 9 December 2017 are currently able to divorce in Australia provided that the relevant requirements for divorce are met. Similarly, individuals who entered into a same-sex marriage after 9 December 2017 will be able to access divorce, provided that they meet the relevant requirements.

The sex or gender of the parties to a marriage entered into overseas no longer affects access to divorce in Australia. The requirements for access to divorce, including for marriages entered into overseas, are the same for both opposite-sex and same-sex marriages.

In relation to the requirements for divorce in the context of a marriage entered into overseas, the Family Law Act requires that the parties to the marriage have lived separately and apart for at least 12 months prior to filing the application for divorce and that there be no reasonable likelihood of reconciliation between them.

The State party notes that, on the basis of the information that the author provided to the Committee regarding the cessation of her relationship with her spouse, she will likely satisfy the requirements for access to divorce in Australia and can apply to the courts for a divorce if she so chooses.

Accordingly, the legislative changes in question have provided the author with access to divorce proceedings. The changes have wholly removed the difference in Australian law upon which the Committee's finding of a violation was based. As the changes apply to same-sex couples who entered into marriages overseas before 9 December 2017 as well as to those who did so after that date, they have ensured that no similar situation can occur in the future.

The changes have thus addressed the Committee's Views not only in respect of the author personally but also in relation to the recurrence of a similar situation in the future.

Committee's assessment:

- (a) Full reparation: C;
- (b) Non-repetition: A.

Committee's decision: Follow-up dialogue ongoing.

4. Australia³**Communication No. 1875/2009, M.G.C.**

Views adopted:	26 March 2015
Violation:	Article 9
Remedy:	Effective and appropriate remedy, including compensation. In addition, the State party is under an obligation to prevent similar violations in the future. In this connection, the State party should review its migration legislation to ensure conformity with the requirements of article 9 of the Covenant.
Subject matter:	Deportation to the United States of America
Previous follow-up information:	None
Submissions from the State party:	2 October 2015 and 12 June 2016

In accordance with the Committee's request, its Views in the case have been published on the website of the Attorney-General's Department of Australia.

The State party notes that it does not share the Committee's view that the detention of the author, despite having been carried out in accordance with the law, was arbitrary and in breach of article 9 (1) of the Covenant.

It reiterates that it is entitled to take measures, including detention, to control the entry of non-citizens to its territory and that such measures are consistent with the fundamental principle of sovereignty under international law. The Committee acknowledged in its Views that immigration detention for administrative purposes is not arbitrary per se. Australian law provides for the detention of non-citizens at the end of a term of criminal custody, to ensure their availability for removal in the event that they have no lawful basis to remain in Australia. Thus, the author's detention served a legitimate purpose.

The length of the author's immigration detention is related to legal proceedings that he instituted in connection with the cancellation of his spousal visa and the refusal of his protection visa application. In respect of both visa applications, the author had access to the highest levels of review, including the possibility of submitting applications to the High Court of Australia and for ministerial intervention. While litigation was ongoing, the author was not removed, but his detention was prolonged.

The State party notes that the Committee reached its conclusions regarding article 9 partially on the basis of its understanding that the authorities had failed to make an individual assessment of the need to keep the author in immigration detention. The State party objects, noting that, in fact, it did review the author's circumstances during his immigration detention, on four separate occasions. The competent minister has discretionary powers to intervene to grant a visa or make a determination regarding a person's community detention, if the competent minister believes that doing so would be in the public interest. The author's circumstances were considered for possible ministerial intervention under section 195A of the Migration Act on three occasions and under section 197AB on one occasion. Each time, the competent minister declined to intervene. Thus, the author's detention was reviewed on several occasions and, in substantive terms, his detention was in line with the requirements of article 9 (1) of the Covenant. Accordingly, the State party is not under an obligation to provide the author with a remedy or to conduct a review of its migration legislation.

Committee's assessment:

- (a) Adequate compensation: E;
- (b) Non-repetition: E.

³ The Special Rapporteur for follow-up on Views met with representatives of the State party on 18 July 2017.

Committee's decision: Suspend the follow-up dialogue, with a note of unsatisfactory implementation of the Committee's Views.

5. Cameroon

Communication No. 1397/2005, *Engo*

Views adopted: 22 July 2009

Violation: Articles 9 (2) and (3), 10 (1) and 14 (2) and (3) (a)–(d)

Remedy: Effective remedy leading to the author's immediate release and the provision of adequate ophthalmological treatment. In addition, the State party is under an obligation to prevent similar violations in the future.

Subject matter: Prolonged detention of applicant without trial

Previous follow-up information: [CCPR/C/116/3](#) and [CCPR/C/121/3](#)

Committee's assessment:

- (a) Release: A;
- (b) Provision of adequate ophthalmological treatment: B;
- (c) Non-repetition: C.

Committee's decision: Close the follow-up dialogue, with a note of partially satisfactory implementation of the Committee's recommendations.

6. Democratic Republic of the Congo⁴

Communication No. 16/1977, *Mbenge et al.*

Views adopted: 25 March 1983

Violation: Articles 6 (2), 9 and 14 (3) (a), (b), (d) and (e)

Remedy: The State party is under an obligation to provide the victims with effective remedies, including compensation for the violations they have suffered, and to take steps to ensure that similar violations do not occur in the future.

Subject matter: Political persecution of Zairian citizens; political refugees

Previous follow-up information: None

Submission from the author: 29 May 2015

The author submits that the authorities of the Democratic Republic of the Congo do not have the political will to establish the rule of law. He reiterates that the State party does not respect the authority of the Committee, as its Views have not been implemented. He requests that the Prime Minister provide him with compensation in the amount of \$9 million and, in addition, a sum equal to the value of his real estate holdings in the Democratic Republic of the Congo in order to obtain restitution of his and his family's property.

⁴ The review of the fourth periodic report of the Democratic Republic of the Congo was held on 16 and 17 October 2017. Concerning Views under the Optional Protocol, see [CCPR/C/COD/CO/4](#), paras. 7 and 8.

Committee's assessment:

- (a) Compensation: D;
- (b) Non-repetition: D.

Committee's decision: Suspend the follow-up dialogue, with a note of unsatisfactory implementation of the Committee's Views.

7. Ecuador**Communication No. 2244/2013, *Dassum and Dassum***

Views adopted:	30 March 2016
Violation:	Article 14 (1)
Remedy:	Effective remedy, including making full reparation to the persons whose rights under the Covenant have been violated. Consequently, the State party should ensure that due process is followed in the relevant suits at law, in accordance with article 14 (1) of the Covenant.
Subject matter:	Criminal conviction and seizure of authors' assets
Previous follow-up information:	None
Submission from the State party:	1 December 2016

With reference to the Committee's recommendations for remedies in *Millán Sequeira v. Uruguay* (CCPR/C/10/D/6/1977), *Vlček v. Czech Republic* (CCPR/C/93/D/1485/2006), *Laptsevich v. Belarus* (CCPR/C/68/D/780/1997), *Belyazeka v. Belarus* (CCPR/C/104/D/1772/2008), *Busyo et al. v. Democratic Republic of the Congo* (CCPR/C/78/D/933/2000), *Dzhakishev v. Kazakhstan* (CCPR/C/115/D/2304/2013), *Foin v. France* (CCPR/C/67/D/666/1995) and *Maille v. France* (CCPR/C/60/D/689/1996), the State party concludes that the Committee requests remedies that are tailored exclusively to the violation found and that the Committee has been very specific in the past when it has wanted to ensure that victims receive compensation, which it did not do in its Views in communication No. 2244/2013.

Furthermore, the State party elaborates on the measures taken to give effect to the Committee's Views.

In their communication, the authors requested that the State party provide them with an effective remedy in the form of the consideration of their case by independent and impartial judges and that Legislative Decree No. 13 be declared ineffective. They claimed that Legislative Decree No. 13 prevented them from accessing justice. The Committee held that Legislative Decree No. 13, which prohibits the filing of an application for a constitutional remedy to challenge the decisions of the Deposit Guarantee Agency and provides for the dismissal of judges who process such applications, violates the right of the authors under article 14 (1) of the Covenant. The only violation found by the Committee was the fact that the authors had been prevented from filing applications for a constitutional remedy or other special protection in respect of the decision of the Deposit Guarantee Agency. The Committee, however, never expressed its views about the lawfulness of the decision in question. The Committee found that the State party had to provide an effective remedy by ensuring that the civil process complied with the guarantees under article 14 (1) of the Covenant and its Views.

Regarding the effectiveness of domestic remedies, the Administrative Disputes Act regulates acts such as the decision of the Deposit Guarantee Agency, and an administrative complaint would have been the proper way to dispute that decision. The State party complied with its obligation to provide effective remedies to the authors because, at the time of the events, the authors could have lodged an administrative complaint, which could have provided an effective remedy. In addition, following the proceedings before the administrative courts, the authors could have lodged an extraordinary appeal with the

National Court of Justice. Consequently, the authors had effective remedies at their disposal, but they failed to consider availing themselves of those remedies.

The State party informs the Committee that the Ministry of Justice, Human Rights and Religious Affairs and the Ministry of Foreign Affairs and Human Mobility disseminated the Views widely in the State party.

Consequently, the State party has complied with the Committee's Views and asks to have the case closed.

Comments from the authors' counsel: 7 August 2017

According to the authors' counsel, the State party's interpretation of the Committee's recommendation regarding reparations is one-sided and arbitrary and reduces the reparations to the provision of a judicial remedy, which cannot be seen as a complete remedy for the violations. Apart from being erroneous and confusing, the State party's interpretation reveals a lack of knowledge of international principles on reparations.

Since the authors' due process rights under article 14 of the Covenant were violated, the Committee found that the State party had an obligation to provide them with an effective remedy.

Express reference was made in the Committee's Views to the irregularities that occurred during the seizure of the authors' assets. The Committee stated that, during the seizure, the authors' rights under article 14 (1) and (2) were violated. According to the authors' counsel, the only appropriate form of reparation would be to completely reverse the effects of the illegal acts of the State party. The State party in fact bears an international obligation to provide full reparation to the authors, which should take the form of restitution, indemnification and satisfaction, on either an individual or a joint basis.

The applicable standards have been established by different regional and universal organs, and the development of international law on the matter has been captured in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. On the other hand, the harmonization of reparations for violations of human rights is a matter that has recently been considered by the Committee. Consequently, the authors' counsel asks the Committee to make clear to the State party that full reparation for the harm caused has to be comprehensive.

When the Committee has found in the past that property has to be returned to the victims, it has done so through the measure of satisfaction. In some cases of bad faith, however, States parties have shown ignorance of the concept of full reparation. Full reparation has to translate into the restitution of the goods that were seized; it is not a mere formality. The State party's first act should therefore be the restitution of all the civil rights that were forfeited.

The authors' counsel requests the Committee to declare that the State party has not complied with its Views and to urge the State party to provide full reparation for the violations of the victims' rights, in particular the restitution of property seized in violation of due process by means of, inter alia, successive arbitrary acts, culminating in Legislative Decree No. 13.

Committee's assessment:

- (a) Full reparation: C;
- (b) Ensuring that due process is followed in the relevant suits at law: C.

Committee's decision: Follow-up dialogue ongoing.

8. France⁵**Communication No. 1620/2007, J.O.**

Views adopted:	23 March 2011
Violation:	Article 14 (2) and (5), read in conjunction with article 2
Remedy:	Effective remedy, including a review of the author's criminal conviction and appropriate compensation. In addition, the State party is under an obligation to ensure that similar violations do not occur in the future.
Subject matter:	Allegation of abuse of criminal procedure and conviction for a non-existent offence
Previous follow-up information:	A/69/40 (Vol. I) ; CCPR/C/113/3 ; and the State party's reply from 2015
Submissions from the author:	7 March 2016 and 10 July 2017

In his submissions of 7 March 2016 and 10 July 2017, the author notes the continued inaction by the State party in implementing the Committee's Views and introducing legislative changes. He recalls the various steps that he undertook with a view to obtaining a retrial, including his third request, on 14 November 2014, before the Court of Cassation under article 622 of the Code of Criminal Procedure, which allows for a retrial on the basis of newly discovered elements, such as the Committee's Views. However, as that provision does not provide for an automatic right to a retrial, as would have been the case for a judgment of the European Court of Human Rights, the author is of the view that his application for a retrial cannot be considered an effective remedy.

In December 2015, the author's request for a retrial was rejected on the basis of a conclusion that the Covenant and the Optional Protocol thereto were not legally binding on France. According to the author, that is an obvious violation of article 55 of the Constitution of France, which stipulates that international treaties, once ratified, take precedence over French law. In addition, the Court ruled that a failure by the French courts to respect the presumption of innocence was not a reason to justify a retrial.

Since his criminal conviction in 2001, now more than 15 years ago, the author has failed to find new employment as a senior finance executive and has been without work for most of that time, being able to find only temporary work.

Consequently, even though his criminal conviction has been expunged, the author claims that the expungement is of no comfort, as his professional career has been destroyed over a period of more than 18 years and his family life devastated.

The author submits a letter of 21 March 2017 from the Ministry of Foreign Affairs of France in response to his letter of 24 February 2017. The consistent position of the State party as regards the Committee's recommendation for a review of the author's criminal conviction remains unchanged. The State party explains that, under the Code of Criminal Procedure, decisions of the Human Rights Committee, unlike judgments of the European Court of Human Rights, which have jurisdictional value, do not constitute a basis for reviewing convictions that have become final.

In his submission of 10 July 2017, the author again affirms that the State party has consistently refused to offer him an effective remedy and has confirmed repeatedly that the Committee cannot impose its recommendations on it. He calls for action to be taken to prevent the State party from becoming a member of the Human Rights Council.

⁵ The case was also discussed during a meeting, held on 18 July 2012, between the Special Rapporteur for follow-up on Views and a representative of the Permanent Mission of France to the United Nations Office and other international organizations in Geneva.

Committee's assessment:

- (a) Review of the author's criminal conviction and appropriate compensation: E;
- (b) Non-repetition: E.

Committee's decision: Suspend the follow-up dialogue, with a note of unsatisfactory implementation of the Committee's Views.

9. Ireland**Communications No. 2324/2013, *Mellet*, and No. 2425/2014, *Whelan***

Views adopted:	31 March 2016 and 17 March 2017
Violation:	Articles 7, 17 and 26
Remedy:	Effective remedy, including providing the authors with adequate compensation and making available to them any psychological treatment they need. In addition, the State party is under an obligation to take steps to prevent similar violations in the future. To that end, the State party should amend its law on voluntary termination of pregnancy, including, if necessary, its Constitution, to ensure compliance with the Covenant, ensuring effective, timely and accessible procedures for pregnancy termination in Ireland, and take measures to ensure that health-care providers are in a position to supply full information on safe abortion services without fearing they will be subjected to criminal sanctions.
Subject matter:	Termination of pregnancy in a foreign country; access to termination of pregnancy
Previous follow-up information:	CCPR/C/119/3 and (concerning communication No. 2324/2013, <i>Mellet</i>) CCPR/C/121/3
State party's observations:	6 November 2017

The State party presents its position concerning communication No. 2425/2014. In Ireland, termination of pregnancy is regulated by constitutional and statute law and, in particular, by article 40 (3) (3) of the Constitution, commonly known as the Eighth Amendment, which reads: "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees by its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right."

In 1992, in its judgment in *Attorney General v. X*, the Supreme Court gave an authoritative judgment on the question of how the right to life of the pregnant woman was to be balanced against the right to life of the unborn in cases where pregnancy places the mother's life at risk. The Court held that the test to be applied was that, if it was established, as a matter of probability, that there was a real and substantial risk to the life, as opposed to the health, of the mother that can only be avoided by a termination of her pregnancy, such termination was permissible.

The Protection of Life During Pregnancy Act 2013 restates the general prohibition on abortion in Ireland while regulating access to lawful termination of pregnancy in accordance with *Attorney General v. X* and the judgment of the European Court of Human Rights in *A, B and C v. Ireland*. Its purpose is to confer procedural rights on a woman who believes she has a life-threatening condition, so that she can have certainty as to whether she requires such treatment.

A fetus with a condition that is incompatible with life but is capable of being born alive and surviving even for a very short period is protected by article 40 (3) (3) of the

Constitution. Consequently, Ireland is precluded from offering termination of pregnancy services in its territory to women in positions similar to Ms. Whelan (absent a qualifying risk to the life of the pregnant woman).

The Regulation of Information (Services outside the State for Terminations of Pregnancy) Act 1995 was passed following a referendum in 1992, resulting in the addition of two new paragraphs to article 40 (3) (3) of the Constitution. One of those paragraphs provides: “This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another State.”

The 1995 Act regulates the manner in which information about services for the termination of pregnancy lawfully provided abroad could be sought and obtained in Ireland. While health professionals are precluded by the terms of the 1995 Act from advocating or promoting termination of pregnancy, they are not in any way precluded from giving full information to a woman with regard to the state of her health, the effect of the pregnancy thereon and the consequences to her health and life if the pregnancy continues, and the decision as to whether in all circumstances the pregnancy should be terminated is left to the mother. The health professional can give the pregnant woman all the information necessary to enable her to make an informed decision about her pregnancy.

In relation to health services, the Health Service Executive published the National Standards for Bereavement Care following Pregnancy Loss and Perinatal Death in 2016.

The purpose of the Standards is to enhance bereavement care services for parents who experience a pregnancy loss or perinatal death. The Standards cover all pregnancy loss situations, from early pregnancy loss to perinatal death, as well as situations in which there is a diagnosis of a fetal anomaly that will be life-limiting or may be fatal. Those services are available to all parents who have suffered bereavement, irrespective of when the bereavement occurred.

The Standards make it explicit that, following termination in Ireland or abroad, women, parents and families are invited to meet with the Bereavement Service Team and are afforded the same level of bereavement care that is given to families that continued with a pregnancy. Access to such services may be provided within maternity services or in another community-based setting.

There are some cases in which women may opt for a termination without having first contacted a maternity service. In those instances, the women or couples may access post-abortion counselling services through the Health Service Executive Crisis Pregnancy Programme. It should be noted that post-abortion counselling services and support are also available through the Crisis Pregnancy Programme network of services. Part of the targeted improvement process for the Health Service Executive will be to improve referral links between hospitals and such services.

The National Standards referred to above reiterate that women who receive a diagnosis of a fatal fetal abnormality and choose to terminate their pregnancy should be provided with up-to-date information on and the contact details of services available abroad and clinical services as required to discuss the diagnosis.

The State party acknowledges that the lack of access in Ireland to termination of pregnancy in cases of fatal fetal abnormality has caused significant distress to many, including Ms. Whelan. To address that situation would require a change to article 40 (3) (3) of the Constitution, and such a change would require careful consideration of the social, policy and legal issues involved.

The State party established a citizens’ assembly, in line with the commitment laid down in the Programme for a Partnership Government dated May 2016, to consider a number of matters, including constitutional reform. Under the Assembly’s terms of reference, it was directed to first consider the Eighth Amendment of the Constitution (article 40 (3) (3)) and to submit its conclusions on the matter to the Houses of the Oireachtas, the Irish parliament, for further debate.

Justice Mary Laffoy of the Supreme Court chaired the Citizens' Assembly, comprising 99 citizens randomly chosen from the population. The Assembly held a series of meetings to consider the Eighth Amendment of the Constitution between 15 October 2016 and 23 April 2017. During that time, the Assembly gathered facts in relation to the issue and listened to experts in the medical, legal and ethical fields and to advocates' views on the topic. The Assembly considered the issue of fatal fetal abnormalities as part of its deliberations.

The Citizens' Assembly submitted its report on the Eighth Amendment to the Houses of the Oireachtas on 29 June 2017. It recommended that the Eighth Amendment be replaced with a provision that explicitly authorized the Oireachtas to legislate to address termination of pregnancy, any rights of the unborn and any rights of the woman. The Assembly also made recommendations as to what should be included in such legislation; specifically, it recommended a number of reasons for which termination of pregnancy should be lawful in Ireland and any gestational limits that should apply.

The Assembly's report is now being considered by a special Joint Oireachtas Committee, which has been formally established by Dáil Éireann and Seanad Éireann (the two Houses of the Oireachtas) for that purpose.

The remit of the Joint Committee on the Eighth Amendment of the Constitution is to consider the Citizens' Assembly report and recommendations on the Eighth Amendment of the Constitution and communicate its conclusions and recommendations to both Houses of the Oireachtas within three months of its first public meeting, which was held on 20 September 2017. The Committee is therefore due to report on or before 20 December 2017.

The Government has agreed to hold a referendum on the Eighth Amendment to the Constitution in May or June 2018, subject to the timely passage of a constitutional amendment bill on the matter by the Houses of the Oireachtas.

In terms of individual measures, in acknowledgement of the Committee's Views, the State party has offered Ms. Whelan the sum of €30,000 on an ex gratia basis. In addition, the State party has directed the Health Service Executive to ensure that Ms. Whelan has timely access to all appropriate psychological services provided by it. A liaison person has been appointed by the Health Service Executive in this regard, and his contact details have been forwarded to Ms. Whelan.

The Committee's Views have been published both on the website of the Department of Foreign Affairs and Trade and on the website of the Department of Health.

Submission from the authors' counsel: 19 December 2017

The authors' counsel submitted an update regarding the measures taken by Ireland to implement the Committee's Views in the two cases.

The update provides information on the extent to which the State party has implemented the measures outlined by the Committee. The submission updates the previous submission to the Committee, dated 31 July 2017, regarding the measures taken by the State party in the two cases.

Although the individual remedies of compensation and psychological support are important for the author, Ms. Whelan has clearly stated that the remedial measures involving law reform are indispensable to repairing and redressing the pain and suffering inflicted on her by the State party as a result of its legal prohibition on abortion. She has outlined that it was her hope, in bringing her case, to help bring about a change in the State party's laws so that other women would have a choice to end their pregnancy in Ireland and not be forced to carry the pregnancy to term or to travel abroad to access health-care services, as had been her experience.

For Ms. Whelan, remedial measures to guarantee non-repetition have always been the most important component of the reparative measures due to her under article 2 (3) (a) of the Covenant. The provision of individual remedies by the State party must not be allowed to detract from the priority placed by Ms. Whelan on the requisite law reform measures specified in detail by the Committee.

In November 2017, the State party took significant steps in relation to the provision of compensation to Ms. Whelan and has provided access to necessary psychological treatment. As outlined in the State party's report to the Committee, in November 2017, the Government paid Ms. Whelan an *ex gratia* award of €30,000 "in acknowledgment of the Committee's Views". The Government instructed the Health Service Executive to provide Ms. Whelan with access to any psychological counselling and support services that she may wish to access for such period of time as is deemed necessary by Ms. Whelan and her clinician.

The authors' counsel welcomes the important steps taken by the State party and considers that, in accordance with the Committee's assessment criteria, such steps are satisfactory in complying with the State party's obligation, as outlined by the Committee, to provide Ms. Whelan with adequate compensation and access to psychological counselling.

However, in respect of the third, pivotal aspect of its remedial obligations, the State party has not yet complied with the requirements set out by the Committee.

In its response to the Committee's Views in communication No. 2425/2014, the State party has reaffirmed its opinion that it is currently precluded from legalizing access to abortion in any circumstances other than where the life of a pregnant woman is subject to a real and substantial risk and is precluded from providing termination of pregnancy services to women in Ireland, including in situations such as those faced by Ms. Whelan and Ms. Mellet, because of article 40 (3) (3) of the Constitution of Ireland (the Eighth Amendment).

The only way in which the Constitution of Ireland can lawfully be changed is through a referendum of the electorate. The Government can ask the Oireachtas to approve a text for constitutional revision at any time and, once the text has parliamentary approval, it can be put before the electorate in a referendum. That was the mechanism by which article 40 (3) (3) was added to the Constitution of Ireland in 1983 and is the only way in which it can be removed.

The authors' counsel notes that, in its response to the Committee, the State party points to its establishment of a citizens' assembly to consider possible changes to the Constitution in a number of areas, including with regard to the Eighth Amendment.

However, the establishment of the Citizens' Assembly was not a result of the Committee's Views in either case, nor was it a step taken in acknowledgement of the remedial obligations set out in the Committee's Views in those cases.

In June 2017, the Citizens' Assembly issued its recommendations for constitutional and legal reform to the Oireachtas. By a majority vote (87 per cent), it recommended that the Eighth Amendment should not be retained in full in the Constitution. The Citizens' Assembly also made recommendations as to the form that future legislation on abortion should take. A clear majority (64 per cent) voted that abortion should be legal on a woman's request without restriction as to reason, at least in the first trimester. A clear majority also voted for the legalization of abortion in a range of additional circumstances, including risk to a woman's health (78 per cent), sexual assault (89 per cent), fatal fetal impairment (89 per cent), severe fetal impairment (80 per cent) and socioeconomic reasons (72 per cent).

The recommendations of the Citizens' Assembly have since been considered by a special parliamentary committee, the Joint Oireachtas Committee on the Eighth Amendment, made up of 21 Members of the Oireachtas from all parties. On 13 December 2017, that Committee completed its deliberations and, by a majority vote, recommended that the Eighth Amendment be repealed. It also made recommendations regarding the future legalization of abortion, including on a woman's request without restriction as to reason within 12 weeks of pregnancy, as well as in situations of risk to health and fatal fetal impairment.

While a constitutional referendum is being discussed for mid-2018, the holding of the referendum must first receive parliamentary approval. Specifically, the Government can submit a text for constitutional revision to the Oireachtas for approval but cannot put such a text before the electorate in a referendum without prior parliamentary approval. Furthermore, there is no obligation on the Oireachtas to accept the recommendations of the Joint Oireachtas

Committee. It thus remains unclear what the terms of a referendum would be and what legislative reform would be proposed and subsequently adopted.

Consequently, many concrete steps remain to be taken before the State party can comply with the Committee's instruction to amend the law on the voluntary termination of pregnancy, including, if necessary, the Constitution, in order to ensure effective, timely and accessible procedures for pregnancy termination in Ireland. It remains uncertain whether relevant law reform will be carried out and, if it is, what form it will take. Only when law reform has occurred will it be possible to assess whether the State party has effectively enacted reparative measures as outlined in the Committee's Views in the two cases. Only when the State party's laws ensure effective, timely and accessible procedures for pregnancy termination within Ireland, as outlined by the Committee, will the State party discharge its remedial obligations in respect of the human rights violations endured by the authors.

In the absence of any new information in the State party's reply to the Committee of 7 November 2017 regarding the Committee's Views in communication No. 2425/2014, the authors' counsel reiterates that the Government's intention to examine the Regulation of Information Act to assess whether its provisions need to be strengthened or clarified in no way amounts to a commitment to undertake relevant legal reforms. Nor does the Government's position indicate whether any potential future reforms would meet the requirement outlined by the Committee in its Views that measures be taken "to ensure that health-care providers are in a position to supply full information on safe abortion services without fearing being subjected to criminal sanctions". The authors' counsel thus considers that the State party's action with regard to that aspect of its remedial obligations also remains unsatisfactory.

In the light of those considerations, the authors' counsel requests the Committee to maintain close scrutiny of the State party's implementation of its Views in the two cases under the follow-up procedure until effective law reform measures that meet the requirements outlined by the Committee have been adopted.

Committee's assessment:

- (a) Compensation: A;
- (b) Non-repetition: B.

Committee's decision: Follow-up dialogue ongoing.

10. Ukraine

Communication No. 1412/2005, *Butovenko*

Views adopted:	19 July 2011
Violation:	Article 7, read alone and in conjunction with article 2 (3); article 9 (1); article 10 (1); and article 14 (1) and (3) (b), (d), (e) and (g)
Remedy:	Effective remedy, including a review of the author's conviction that would comply with the fair trial guarantees of article 14 of the Covenant, impartial, effective and thorough investigation of the author's claims under article 7, prosecution of those responsible, and full reparation, including appropriate compensation. In addition, the State party is under an obligation to prevent similar violations in the future.
Subject matter:	Sentence of life imprisonment after torture and unfair trial
Previous follow-up information:	None
Submissions from the State party:	1 August 2017

The State party submits that national legislation does not provide for the possibility of reviewing national court decisions on the basis of the Committee's Views. It refers to article 445 (1) (4) of the Code of Criminal Procedure, according to which a finding by an international court recognized by Ukraine that Ukraine has violated its international obligations is a ground for a review by the Supreme Court. In that regard, on 26 December 2011, a national court ruled that the author's application should be rejected, as the Committee's Views do not constitute a court decision for the purposes of article 445 of the Code of Criminal Procedure. The author's claim has thus been returned to him, without examination.

Author's comments: The State party's observations were sent to the author, for information, on 22 February 2018.

Committee's assessment:

- (a) Review of the author's conviction that would comply with the fair trial guarantees of article 14 of the Covenant: E;
- (b) Impartial, effective and thorough investigation of the author's claims under article 7 and prosecution of those responsible: E;
- (c) Full reparation, including appropriate compensation: E;
- (d) Non-repetition: E.

Committee's decision: Suspend the follow-up dialogue, with a note of unsatisfactory implementation of the Committee's Views.
