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Follow-up Progress Report of the Human Rights Committee on Individual Communications

This report compiles information received since the 97th session of the Human Rights Committee, from 12 to 30 of October 2009.

State party	**ALGERIA**
Cases	**MEDJNOUNE MALIK, 1297/2004**
Views adopted on	14 July 2006
Issues and violations found	Arbitrary arrest, failure to inform of reasons for arrest and charges against him, torture, undue pre-trial delay - articles 7; 9, paragraphs 1, 2 and 3; and 14, paragraph 3 (a) and (c), of the Covenant.
Remedy recommended	An effective remedy, which includes bringing Malik Medjnoune immediately before a judge to answer the charges against him or to release him, conducting a full and thorough investigation into the incommunicado detention and treatment suffered by Malik Medjnoune since 28 September 1999, and initiating criminal proceedings against the persons alleged to be responsible for those violations, in particular the ill-treatment. The State party is also required to provide appropriate compensation to Malik Medjnoune for the violations.
Due date for State party's response	16 November 2006
Date of State party's response	None
Date of author's comments	9 April 2007, 27 February 2008, 12 February 2009, 28 September 2009.

Author's submission

On 9 April 2007, the author informed the Committee that the State party had failed to implement its Views. Even since its Views 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 previously tortured in February and March 2002 for refusing to give evidence against the author i.e. to say that they saw 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 given 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 reiterates his allegation that the State party has not implemented the Views and states that since the Views were adopted nineteen other criminal cases have been heard by the court in Tizi-Ouzou. The author went on hunger strike again 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 reiterates 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.

Further action taken or required

In 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 Rapporteur, requested a meeting with a representative of the Permanent Mission during the 93rd session of the Committee (7 and 25 July 2008). Despite a formal written request for a meeting, the State party did not respond. A meeting was eventually scheduled for the 94th session but it did not take place.

The Committee decided that a further attempt to organise a follow-up meeting should be organised..

Committee's Decision	The Committee considers the dialogue ongoing.

State party	**BELARUS**
Cases	**SMANTSER ALEXANDER, 1178/2003**
Views adopted on	23 October 2008
Issues and violations found	Detention in custody - 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	Awaiting comments

State party's submission

The State party contests the Views and submits inter alia that the Courts acted with respect to the Belarus Constitution, and Criminal Procedural Code, as well as the Covenant. It denies that the author's rights under the Covenant were violated.

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 that a meeting between representatives of the State party and the Rapporteur on follow-up should be organised.

Committee's Decision	The Committee considers the dialogue ongoing.

Cases	**KORNEENKO and MILINKEVICH, 1553/2007**
Views adopted on	20 March 2009
Issues and violations found	Freedom of expression, freedom of communication of information and ideas about public and political issues, the freedom to publish political material, to campaign for election and to advertise political ideas - article 19, paragraph 2, and article 25 read together with article 26, of the Covenant.
Remedy recommended	An effective remedy, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author.
Due date for State party's response	12 November 2009
Date of State party's response	31 August 2009
Date of author's comments	Awaiting comments

State party's submission

The State party reiterates information and arguments previously provided prior to consideration of this case by the Committee and dispute the Committee's findings. In its view, the authors' trial was fair and the state party considers that the national courts acted with respect to the existing procedures.

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 that a meeting between representatives of the State party and the Rapporteur on follow-up should be organised.

Committee's Decision	The Committee considers the dialogue ongoing.

State party	CAMEROON
Cases	**PHILIP AFUSON NJARU, 1353/2005**
Views adopted on	19 March 2007
Issues and violations found	Physical and mental torture; arbitrary detention; freedom of expression; security of the person and right to a remedy - articles 7; 9, paragraphs 1, and 2, and 19, paragraph 2, in conjunction with article 2, paragraph 3 of the Covenant
Remedy recommended	Should ensure that: (a) criminal proceedings are initiated seeking the prompt prosecution and conviction of the persons responsible for the author's arrest and ill-treatment; (b) the author is protected from threats and/or intimidation from members of the security forces; and (c) he is granted effective reparation including full compensation.
Due date for State party's response	3 March 2007
Date of State party's response	16 December 2009
Date of author's comments	21 January 2010

State party's submission

On 16 December 2009, the State party informed the Committee that arrangements have been made to compensate the author, but despite efforts made of the past few months, they have not been able to get in contact with him. No further details are provided.

Author's comments

On 21 January 2010, the author informs the Committee that the State party has failed to effectively implement the Views. Despite an initiative taken by the National Commission on Human Rights and Freedoms (NCHRF), the author has not been provided any reparation. On 29 August 2008, he met with a member of the Ministry of Foreign Affairs, after which he sent her a proposal for the purpose of resolving his case. Meanwhile, out of fear for his safety, the author went into exile in 2008 and was subsequently granted political asylum in a European country. Since his arrival he has had contact by email with the same member of the Ministry, who informed him, on 27 April 2009, that there had been "a series" of inter-ministerial meetings concerning his case the last of which recommended that, "the Committee should meet with [the author] as soon as possible, that is in May [2009]". It is unclear, according to the author, which Committee was being referred to but given that he was not in the country at the time he would not have been able to attend. He never received any reply to requests for clarification. The author requests inter alia a meeting to be arranged with the Rapporteur for follow-up to Views and the representatives of the State party to ensure prompt and effective implementation.

Committee's Decision	The Committee considers the dialogue ongoing

Cases	**GORJI-DINKA, 1134/2002**
Views adopted on	17 March 2005

Issues and violations found	Right to vote and be elected; liberty of movement; arbitrary detention; inhuman treatment: segregation from convicted persons - articles 9, paragraph 1; 10, paragraphs 1 and 2 (a); 12, paragraph 1; and 25 (b) of the Covenant.
Remedy recommended	An effective remedy, including compensation and assurance of the enjoyment of his civil and political rights.
Due date for State party's response	18 July 2005
Date of State party's response	16 December 2009
Date of author's comments	Awaiting comments

State party's submission

The State party submits that the Committee's Views were made without having received any information from the State party and thus based solely on information provided by the author. It acknowledges that it did not respond to the three reminders for information from the Secretariat without providing any explanation why.

Further action taken or required

The Committee requested the Follow-up Rapporteur to write to the State party indicating that: as acknowledged by itself in it's submission, it was given the opportunity to respond to the author's claims prior to the adoption of the Views; that as reiterated in its General Comment no. 33 (CCPR/C/GC/33), 5 November 2008, on "The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights", it has an obligation under article 4 of the Optional Protocol to respond to such claims within six months; and that this case is now being considered under the follow-up procedure during which the Committee may not review its decision but engage with and assist the State party to arrive at an appropriate effective remedy as set out in its Views. The Committee requests the Rapporteur to enclose a copy of its General Comment no. 33, as a reminder of its obligations under the Optional Protocol.

Committee's Decision	The Committee considers the dialogue ongoing.

State party	**CANADA**
Cases	**DAUPHIN, 1792/2008**
Views adopted on	28 July 2009
Issues and violations found	Arbitrary and unlawful interference with the family, protection of the family - articles 17 and 23, paragraph 1, of the Covenant.
Remedy recommended	Effective remedy, including by refraining from deporting him to Haiti
Due date for State party's response	1 March 2010
Date of State party's response	8 October 2009

Date of author's comments	Awaiting comments

State party's submission

The State party notes with satisfaction the Committee's findings that several of the author's claims are inadmissible. As to the findings of violations of articles 17 and 23, the State party submits that it cannot accept the Committee's reasoning or interpretation of these articles. It does agree with the reasoning set out in the individual opinions attached to the Views. For these reasons, it concludes that it is not in a position to implement this case and given the danger represented by Mr. Dauphin the State party deported him to Haiti on 5 October 2009.

Further action taken or required

The Committee requested the Follow-up Rapporteur to write to the State party, deploring its decision to forcibly remove the author to Haiti despite the Committee's findings and recommendation to the contrary, reminding the State party of its obligations under article 2, paragraph 3 of the Covenant and enclosing a copy of its general comment on General Comment no. 33, as a reminder of such.

Committee's Decision	The Committee considers the dialogue ongoing.

State party	**COLOMBIA**
Cases	**ARHUACOS, 612/1995**
Views adopted on	29 July 1997
Issues and violations found	Arbitrary detention, torture, disappearance and death – Articles 7 and 9 of the Covenant in the case of the Villafañe brothers and of articles 6, 7 and 9 of the Covenant in the case of the three leaders Luis Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres.
Remedy recommended	Effective remedy, which includes compensation for loss and injury and urges the State party to expedite the criminal proceedings for the prompt prosecution and trial of the persons responsible for the abduction, torture and death of Mr. Luis Napoleón Torres Crespo, Mr. Angel María Torres Arroyo and Mr. Antonio Hugues Chaparro Torres and of the persons responsible for the abduction and torture of the Villafañe brothers
Due date for State party's response	26 November 1997
Date of State party's response	None
Date of author's comments	10 December 2009

Author's submission

The author submitted that the State Party took proper measures regarding Jose Vicente and Amado Villafañe. (No further details are provided in this regard) However, demands from families of Luis Napoleon Torres Crespo, Angel Maria Torres Arroyo and Antonio Hugues Chaparro Torres were dismissed. On 28 April 2009, the

Committee of Ministers decided that the responsibility of State agents had not been proven in the death of the three people concerned. This conclusion was arrived at following an administrative judgment exonerating the agents in question. The author submitted that the State party, in failing to implement the Views, disregarded provisions of the national law[1], which stipulates the need for domestic instances to take into consideration actions from international organs (in this case the Human Rights Committee) when assessing cases. He also makes reference to provisions of the Vienna Convention regarding treaty law, particularly the "pacta sunt servanda" principle.

Further action taken or required

The State party was asked to respond to the author's submission within two months. Given that this is the first submission received by either party on the follow-up, the authors were requested to provide further information on what measures the State party has taken to provide a remedy to Jose Vicente and Amado Villafañe, which the authors state were satisfactory.

Committee's Decision	The Committee considers the dialogue ongoing.

State party	**CROATIA**
Cases	**DUŠAN VOJNOVIĆ, 1510/2006**
Views adopted on	30 March 2009
Issues and violations found	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, of the Covenant.
Remedy recommended	An effective remedy, including adequate compensation.
Due date for State party's response	7 October 2009
Date of State party's response	8 February 2010
Date of author's comments	Awaiting comments

State party's submission

With respect to the violation of article 17, the State party informs the Committee that, by decision of 23 April 2009, the competent Ministry allocated an apartment in Zagreb to the author which corresponds fully 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 introduced status as a protected lessee and the rights steaming from it are in essence identical to the status he had as a former holder of specially protected tenancy rights, including the rights of his family members. In this way, the State party submits it has provided appropriate compensation as recommended by the Committee.

While respecting the Committee's decision, the State party makes several remarks with

[1] Law 288 from 1996

respect to the findings therein. It objects 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 authors non-participation in one stage of the national proceedings was arbitrary, the State party submits 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 submits 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 elaboration 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 submits that they were not heard as they were not accessible to the court and their appearance would have implied additional unnecessary costs. It acknowledges that the proceedings were excessive and refers to the remedy of a constitutional complaint system which has been approved as effective by the ECHR.

Committee's Decision	The Committee considers the dialogue ongoing.

State party	**GERMANY**
Case	**M.G., 1482/2006**
Views adopted on	23 July 2008
Issues and violations found	Interference to privacy honour and reputation disproportionate and thus arbitrary - article 17, in conjunction with article 14, paragraph 1
Remedy recommended	An effective remedy including compensation.
Due date for State party's response	27 February 2009
Date of State party's response	13 February 2009 and 2 October 2009
Date of author's comments	Numerous submissions (incomprehensible and often offensive) prior to that of 4 February 2010

State party's response

On 13 February 2009, the State party had provided an update on this case before the Ellwangen Regional Court (Landgericht) and stated that the composition of the Chamber has completely changed since November 2005. On the issue of compensation, it submitted that the author had not filed any claims for compensation with the Federal Government. There had been a note requesting the payment of a clearly exaggerated sum for unsubstantiated costs from a Mr. Jürgen Hass who claimed to have been acting on the author's behalf, but had not produced any power of attorney, has an extensive criminal record in Germany and is currently residing in Paraguay. His note was therefore disregarded. The Views of the Committee have been translated into German. The Federal Ministry of Justice has sent the translated Views together with a legal analysis – to the effect that the Views require the courts generally to issue orders for an examination of someone's capacity to take part in the proceedings only after an oral

hearing - to the Ministries of Justice of the Länder, requesting them to inform the courts.

The Länder have informed the Federal Ministry of Justice that the Views have been made known to all the Higher Regional Courts, who in turn will distribute them to the lower courts. The Federal Courts of Justice have been informed likewise. In addition, the Views of the Committee have been published in German on the Website of the Federal Ministry of Justice.

On 2 October 2009, the State party stated that the Ellwangen Regional Court had scheduled an oral hearing on 5 March 2009, to which both parties were summoned. The Committee's Views were distributed and the parties were asked whether the disputed expert opinion which had been given without hearing the author could be used in the proceedings. The author applied for the appointment of a duty lawyer to represent her. Having been asked in accordance with article 78 (b) of the Code of Civil Procedure to show that she was unable to find a lawyer by herself she once again challenged all members of the Court for suspected bias. Thus, the hearing was cancelled. The challenges for bias were rejected by the competent chamber of the Court on 30 June 2009. The author filed a complaint against this decision to the Higher Regional Court who rejected the complaint on 16 September 2009. The files are now being sent back to the Ellwangen Regional Court for the scheduling of a new hearing.

Several other proceedings are pending and the judges concerned have declared that given the Committee's Views they regard it necessary to hear the author in person before deciding on the question of her capacity to take part in proceedings. Due to the fact that she is currently living in Paraguay and has no several instances refused to accept service of legal documents, these cases cannot proceed and have thus been suspended. In the State party's view it has thus implemented the Views.

Author's comments

On 4 February 2010, the author wrote to the Committee confirming that she is now living in Paraguay as well as further unintelligible/incomprehensible information.

Further action taken or required

Given the receipt of a large number of unintelligible submissions from the author since the Views, the Committee decided to write to her with a specific request to respond to the points raised by the State party, including with respect to her refusal to accept service of legal documents. If no comprehensible response is received, and given the actions taken to date by the State party to implement this case, the Committee will consider whether to pursue this matter any further under the follow-up procedure.

Committee's Decision	The follow-up dialogue is ongoing.

State party	**KYZGYZ REPUBLIC**
Case	**ELDIYAR UMETALIEV and ANARKAN TASHTANBEKOVA, 1275/2004**
Views adopted on	30 October 2008
Issues and violations found	Responsibility of State party for death of victim and lack of a remedy - Eldiyar Umetaliev's rights under article 6, paragraph 1, and of the authors' rights under article 2, paragraph 3, read together with article 6, paragraph 1, of the Covenant.

Remedy recommended	An effective remedy in the form, *inter alia*, of an impartial investigation in the circumstances of their son's death, prosecution of those responsible and adequate compensation.
Due date for State party's response	
Date of State party's response	11 September 2009
Date of author's comments	Awaiting comments

State party's submission

The State party provides information from the General Prosecutor's Office, the Ministry of Finance, of Internal Affairs and the Supreme Court. All of the information provided relates to events and decisions which occurred prior to the Committee's Views but to which the Committee were not made aware.

The following information was provided:

Mr. A. Umetaliev brought an action before the Aksyisk District Court against the State party for damages of 3 780 000 som and moral damages of 2 000 000 som for the death of his son E. Umetaliev. On 13 July 2005, the Aksyisk District Court refused to satisfy the sum of 3 780 000 som but was provided 1 000 000 som for moral damages.

The author's claim before the Supreme Court under the supervisory review procedure was dismissed on 26 November 2004.

The authors currently receive social allowances under, the Law on State Allowances in the Kyrgyz Republic, which provides for social assistance to family who lost individuals who were their main source of income. Moreover, according to the law, such individuals receive additional social allowances that amount to triple the size of the "guaranteed minimal monthly consumption standard". Under the Law of the Kyrgyz Republic, "On state social aid for the family members of the descendants and victims of the events of 17-18 March 2002 in Aksyisk District of Zhalalabatsk Region of Kyrgyz Republic", which was adopted on 16 October 2002 (№ 143), additional social support is provided to the author's family.

On 29 March 2008, the criminal case of E. Umetaliev was registered as a separate proceeding by the investigator and was forwarded to the Chief Investigation Department of the Ministry of Internal Affairs of the Kyrgyz Republic. On 22 April 2008, the case was forwarded to the Department of Internal Affairs in the Zhalalabadsk Region for further investigation. On 15 April 2009, the South Department of the Prosecutor General's Office entrusted this case to the Interregional Department of Ministry of Internal Affairs. The investigation is ongoing.

Proceedings were instituted against a number of officials of the republic. Mr .Dubanaev was tried by the Court Martial of the Bishkek Garrison, under Art.304 Part 4, 30-315 of the Criminal Code but on 23 October 2007 was acquitted due to failure of evidence. In the same verdict, Kudaibergenov Z. was found guilty, under Art.305 Part 2 Paragraph.5 of the Criminal Code, and Tokobaev K. under Art.305 Part 2 Paragraph 5 and Art.315 of the Criminal Code, and each of them were sentenced to 5 years of a suspended sentence with a probation period of 2 years. Moreover, Kudaibergenov was deprived from taking an executive position in the Prosecutor General's Office for the subsequent 5 years. On 20 May 2008, the Court reviewed the sentences of both Kudaibergenov Z. and Tokobaev K., reducing them to 4 years and the probation period to 1 year. (The State party does not provide an explanation of the reasons behind the convictions. – articles only – but it would appear that Art.304 Part 4 relates to Abuse of Office that

caused grave consequences, Art.305 Part 2 (5) Excess of authority or official powers that caused grave consequences and Art.315 Forgery in Office)

Committee's Decision	The follow-up dialogue is ongoing.

State party	**NEW ZEALAND**
Cases	**DEAN, 1512/2006**
Views adopted on	17 March 2009
Issues and violations found	Article 9, paragraph 4
Remedy recommended	Effective remedy
Due date for State party's response	27 October 2009
Date of State party's response	23 October 2009
Date of author's comments	Awaiting comments

State party's submission

In its response to the Committee's Views in Communication No.1090/2002 (Rameka v. New Zealand), the State party advised that it would make provision for prisoners sentenced to preventive detention to request parole consideration at any point after the expiry of the otherwise applicable finite sentence. While not taking issue with the Committee's finding of violation of article 9, paragraph 4 in this case, the Government notes that the Committee's understanding that Mr Dean was not eligible for parole consideration for three years from 2002 to 2005 in fact concerned a shorter period of one year and seven months, from June 2002 to February 2004.

Mr Dean has since appeared before the New Zealand Parole Board in June 2005, June 2006, November 2006, September 2007, March 2008, March 2009 and September 2009. Several other scheduled hearings during this period have been adjourned at the request of Mr Dean and/or his counsel. Parole has been declined on each occasion on the basis that Mr Dean continued to pose an undue risk to the community and had chosen not to undertake necessary rehabilitation plans. At the most recent hearing in September 2009, he did not seek parole but requested a further hearing in February 2010, as he is pursuing specialised rehabilitative arrangements with the Principal Psychologist of his rehabilitation programme.

In conclusion, the State party submits that the systemic measures instituted in February 2004 ensure non-repetition of the violation. These measures have afforded Mr Dean an immediate opportunity to review his continued detention, which has been reviewed on a number of subsequent occasions, and remains under review. These measures constitute an appropriate remedy for the violation suffered.

Committee's Decision	The Committee considers the dialogue ongoing.

State party	**NORWAY**
Case	**A. K. H. A. , 1542/2007**
Views adopted on	17 July 2008
Issues and violations found	Review of conviction and sentence - article 14,

	paragraph 5
Remedy recommended	Effective remedy, including the review of his appeal before the Court of Appeals and compensation.
Due date for State party's response	2 March 2009
Date of State party's response	27 February 2009, 28 May 2009, 2 July 2009, 11 September 2009
Date of author's comments	24 March , 2 June, 20 July and 17 November, 2009

State party's response

The Committee has already been informed (A/64/40) of a submission received from the State party on 27 February 2009, stating that the Supreme Court had concluded that all the Court of Appeal's decisions on denial of leave to appeal shall include reasons for its decision and that the Criminal Procedure Act shall be amended accordingly. In addition, the Ministry of Justice paid a total of NOK 194 100 to the plaintiff's counsel, which partly covers the counsel's work on the case before the Committee (NOK 184 100) and partly translation expenses (NOK 10 000). Following a request for additional compensation from the author for damages for non-economic loss, on 28 October 2008 the Attorney General informed the author that the claim for additional compensation cannot be settled until the author's application for leave to appeal has been tried by the courts once again. On 27 December 2008, the Norwegian Criminal Cases Review Commission decided to reopen the Appeals Selection Committee of the Supreme Court's decision of 19 July 2006 in the author's case.

Author's comments

On 24 March 2009, the author had welcomed the measures taken so far by the State party but submitted that he had not been awarded full compensation in accordance with the Committee's decision. He argued that he should be entitled to compensation for the human rights violation in itself, irrespective of the outcome of his application for review.

State party's further comments

On 28 May 2009, the State party informed the Committee that on 26 January 2009, the Appeal Committee of the Supreme Court decided that the decisions of the Borgarting Appeal Court of 1 June 2006, to deny the appeal from the author in the criminal case against him, should be quashed, and that his appeal shall be tried again by one of the other courts of appeal, Gulating Appeal Court. In the State party's view, the economic losses that the author claims to be caused "by the human rights violations" , were not caused by the Borgarting Appeals Court's failure to give reasons for its denial of appeal, but rather by the fact that the author was convicted by the district court and has served his time in prison. Whether this conviction was correct or erroneous is till a pending issue, but will, in due course, be decided by the Gulating Appeal Court. If his is acquitted then he has been subject to unwarranted prosecution, at which point he will have the right to both pecuniary and non-pecuniary losses. If his conviction is confirmed, neither it nor his time in prison has been unwarranted. However, even so, he may file a claim for compensation for pecuniary and/or non-pecuniary losses pursuant to a special rule in the Criminal Procedure Act. The State party makes reference to the Committee's general comment no.31 for the proposition that remedies do not have to be in the form of pecuniary compensation.

Author's further comments

On 2 June 2009, the author reiterated that the State party's decision to date to pay compensation only for legal expenses does not fulfil the Committee's requirement for "compensation" set out in its Views. The claims for compensation the author may make under the Criminal Procedure Act are tied to a different set of circumstances and do not relate to the violation of his rights under article 14 of the Covenant.

State party's supplementary submission

On 2 July 2009, the State party provides new information to the effect that upon renewed review of the authors' appeal of 3 February 2006 and further submissions from counsel, the judgement of 11 January 2006 was set aside by the Gulating Appeal Court. It found that the district court's judgement left doubt as to whether the court had applied the correct standard of proof and furthermore pointed to certain procedural errors. The case was remitted for new trial to the Sarpsborg District Court.

Author's further comments

On 30 July 2009, the author reiterates inter alia that he has not received any compensation for pecuniary loss as a result of the violations of his rights and that the State party's suggestion that he claim compensation through the Criminal Procedure Act is inappropriate and unrelated to the violation of his rights under article 14 of the Covenant.

State party's further submission

On 11 September 2009, the State party submitted a letter dated 26 August 2009 from the Norwegian prosecution authority to the Sarpsborg District Court whereby the author's case was remitted for a new trial.

Author's further submission

On 17 November 2009, the author confirms that on 26 August 2009 he was indicted anew. On 9 October 2009, the prosecution authority denied the author's request to dismiss this indictment. He argues that for a variety of reasons and given that he had already served the sentence of the quashed conviction, little would be gained by forcing him to endure a new trial. The prosecution authority informed him what sentence would be imposed if he gave them an unreserved confession, which the author argues he cannot do. He reiterates his arguments on failure to receive compensation.

Further action taken or required

Given that the author's appeal has been considered by the domestic authorities as recommended in the Committee's Views, the only remaining issue to which the Committee intends to direct its attention is one of compensation. The State party has provided compensation for pecuniary loss relating to legal expenses and the author will be able to claim compensation for non-pecuniary loss in the event that it is decided that he was erroneously convicted, however the author argues that he should be entitled to compensation for the finding of a violation of the Covenant in itself regardless of the final decision on his case. The Committee decides to consider this question in the context of a larger question on compensation.

Committee's Decision	The follow-up dialogue is ongoing.

State party	PARAGUAY
Case	**ASENSI, 1407/2005**
Views adopted on	27 March 2009
Issues and violations found	Protection of the family including minor children - articles 23 and 24, paragraph 1.
Remedy recommended	Effective remedy, including the facilitation of contact between the author and his daughters.
Due date for State party's response	6 October 2009
Date of State party's response	2 October 2009
Date of author's comments	30 November 2009

State party's response

On 2 October 2009, the State party denies that it has violated the Covenant. It submits 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 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 Asuncion, have Paraguayan citizenship and have lived most of their lives in Paraguay. Under this perspective, 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 guaranties have not been granted.

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 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 agents, it's reported that the girls live in good conditions and have expressed their wish to remain with their mother, as several documents attached will prove.

Author's comments

The author refutes the information provided by the State party in its response to the Committee's Views. He claims it is 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 has 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 in order 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 his daughters. However, this proposal was rejected by his ex-wife.

The State party claims that the author was summoned to appear before a Paraguayan judge as a result of the proceedings initiated by his ex-wife against him for not paying alimony/maintenance. The author 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 are paid by the Spanish Consulate, in view of the fact that they have Spanish nationality and are affiliated to the Spanish social security scheme.

Further action taken or required

Given the fact that this case involves access to minors, and that the State party refuses to implement the decision including granting access to the father, the Committee requested the Rapporteur on Follow-up to Views to organise a meeting with the State party to ensure that the Committee's grave concern on this matter is relayed to the State party.

The Committee also decided to forward a note verbale to the State party requesting a written reply to the following question, "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".

Committee's Decision	The follow-up dialogue is ongoing.

State party	**PERU**
Case	**ANGELA POMA POMA, 1457/2006**
Views adopted on	27 March 2009
Issues and violations found	Right to enjoy own culture and lack of remedy - article 27 and article 2, paragraph 3 (a), read in conjunction with article 27
Remedy recommended	An effective remedy and reparation measures that are commensurate with the harm sustained.
Due date for State party's response	6 January 2010
Date of State party's response	22 January 2010
Date of author's comments	Awaiting comments

State party's submission

The State Party provides general information on the running of the wells in question. It

states that, as a result of the dry season, characterized by intermittent rains, it's become mandatory to exploit the underground waters of the Ayro aquifer in order to satisfy the demand of the population in Tacna. Five wells are being exploited simultaneously to avoid shortages in water supply. Measures have been taken to preserve the Community bogs, and to distribute water evenly among the Peasant Community of Ancomarca. The State party submitted that a Commission has visited the highest part of the basin where the wells are located, verifying the proper hydraulic allocations of each well in 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 has been explained across the country through several workshops, prioritizing peasants' communities. Further complementary provisions of this law are currently 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 to ensure 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. Thus, the State party submits that by these actions further problems like those featured in this case will not arise again.

Committee's Decision	The follow-up dialogue is ongoing.

State party	**PHILIPPINES**
Cases	**LUMANOG and SAMTOS, 1466/2006**
Views adopted on	20 March 2008
Issues and violations found	Undue delay with respect to review of conviction and sentence to higher tribunal - 14, paragraph 3 (c)
Remedy recommended	Effective remedy, including the prompt review of their appeal before the Court of Appeals and compensation for the undue delay.
Due date for State party's response	20 October 2008
Date of State party's response	11 May 2009, 24 November 2009
Date of author's comments	2 July 2009

State party's submission

The State party explains what action has been taken to date since the case in question as 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 3rd 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 submits that the State party has failed to publish the Views to date and has failed to address the issue of undue delay in the proceedings. It has 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 *reculsion perpetua*, life imprisonment to death as embodied in the 2004 ruling in People vs. Mateo. As to the remedy, the State party has 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 submit that their case, which has been ready for consideration by the Supreme Court since 5 May 2008, has 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 informs the Committee that this case has been joined with other cases and thus will be decided jointly. 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.

Further action taken or required

The Committee decided to request the State party to respond specifically to the authors' arguments in particular on the issue of the continued delay in their appeal, highlighting that it has now been 10 years (8 years at the time of the Committee's decision) since their conviction and sentence and they are still waiting for their appeal to be heard.

Committee's Decision	The follow-up dialogue is ongoing.

State party	**RUSSIAN FEDERATION**
Case	**AMIROV, 1447/2006**
Views adopted on	2 April 2009
Issues and violations found	Ill-treatment and failure to investigate - article 6 and article 7, read in conjunction with article 2, paragraph 3, of the Covenant, and a violation in respect of the author of article 7.
Remedy recommended	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.
Due date for State party response	19 November 2009
Date of State party's response	10 September 2009
Date of author's comments	Awaiting comments

State party's response

The State party submitted that following the Committee's decision, the authors' 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 should have been carried out to

determine how the victim had died had not been taken. 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 will ensure that the investigation is re-opened. In addition, it is 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 deplores the fact that the State party did not submit 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 an 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 submits 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 he is critical about the investigative attempts to establish the cause of death without doing so. The author also refers to shortcomings pointed out by the Committee in its Views, which were not addressed in the decision of 8 July 2009. He expresses 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 remedies in the course of the new investigation. The author deplores 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 also failed to indicate what specific measures have been taken to prevent similar violations in the future and whether the Views have been made public. The author has received no information on the checks that were suppose to take place with respect to his allegations of ill-treatment in 2004 and has never been contacted in this regard.

For all these reasons, the author submits that he has not been provided with an effective remedy.

Further action taken/required

The Committee recalled that on 26 October 2009, the Special Rapporteur on Follow-up to Views met with representatives from the Russian Mission. Details of this meeting will be published in the next annual report A/65/40.

The Committee requested the Rapporteur to write to the State party with a request to respond to the specific points raised by the author, in particular with respect to the exhumation of the author's wife's body.

Committee's Decision	The follow-up dialogue is ongoing.

State party	**SPAIN**
Case	**WILLIAMS LECRAFT, 1493/2006**
Views adopted on	27 July 2009
Issues and violations found	Discrimination on the basis of racial profiling - article 26, read in conjunction with article 2, paragraph 3,
Remedy recommended	An effective remedy, including a public apology
Due date for State party response	1 February 2010

Date of State party's response	27 January 2010
Date of author's comments	Awaiting comments

State party's submission

The State party indicates that it has taken the following measures as a result of the Committee's Views:

The text of the Views has 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 Mrs. 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 Mrs. 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 Mrs. 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.

Committee's Decision	The follow-up dialogue is ongoing.

State party	**TAJIKISTAN**
Cases	**(1) UMED IDIEV, 1276/2004**
	(2) GULRAKAT SATTOROVA, 1200/2003
Views adopted on	31 March 2009, 30 March 2009
Issues and violations found	Death penalty, torture, compelled to confess guilt, no legal representation, arbitrary arrest and detention and equality of arms with respect to the calling of witnesses - Article 7; article 9, paragraphs 1 and 2; article 14, paragraphs 3 (d), (e), and (g); and a violation of article 6, paragraph 2, read together with article 14, paragraph 3 (d), (e) and (g).
	Torture and ill-treatment and confession through torture – articles 7, 14, 3 (g).
Remedy recommended	An effective remedy, including initiation and pursuit of criminal proceedings to establish responsibility for the ill-treatment of the author's son and a payment of adequate compensation.
	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
Due date for State party's response	12 November 2009 for both cases
Date of State party's response	12 October 2009 for both cases
Date of author's comments	Awaiting comments

State party's submission

The State party reiterates the information provided in its submission on admissibility and merits with respect to the facts and substances of both cases. It denies that it has violated any of the author's rights and considers that the national courts correctly evaluated the law and facts of this case.

Further action taken/required

Given the State party's failure to implement these cases, the Committee decided to request the Rapporteur to organise a meeting with representatives of the State party.

Committee's Decision	The follow-up dialogue is ongoing.

Cases	**SAYBIBI KHUSEYNOVA and PARDAKHON BUTAEVA 1263/2004 & 1264/2004**
Views adopted on	20 October 2008
Issues and violations found	Torture, confession under torture, effective legal representation, equality of arms - article 7, read together with article 14, paragraph 3(g) and article 14, paragraph 3 (b), with respect to Messrs. Khuseynov and Butaev and a violation of article 14, paragraph 3 (e), with respect to Mr. Butaev.
Remedy recommended	An effective remedy, including adequate compensation
Due date for State party's response	11 May 2009
Date of State party's response	13 March 2009
Date of author's comments	Awaiting comments

State party's submission

The State party denies that it has violated any of the author's rights and considers that the national courts correctly evaluated the law and facts of this case.

Further action taken/required

Given the State party's failure to implement these cases, the Committee decided to request the Rapporteur to organise a meeting with representatives of the State party.

Committee's Decision	The follow-up dialogue is ongoing.

State party	UZBEKISTAN
Cases	**(1) ISAEVA and KARIMOV, 1163 2203** **(2) SALIKH MUHAMMED, 1382/2005** **(3) ISKIYAEV YURI, 1418/2005**
Views adopted on	(1) 20 March 2009 (2) 30 March 2009 (3) 20 March 2009
Issues and violations found	(1) Torture, and ill-treatment for purposes of extraction confession – articles 7 and article 14, paragraph 3 (g). (2) Right to be tried in his presence and to defend himself in person or through legal assistance, adequate time and facilities for the preparation of his defence, defence through legal assistance of his own choosing, opportunity to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf - articles 14, paragraph 3 (a), 3 (b), 3 (d) and 3 (e). (3) Torture and inhuman and degrading treatment - Articles 7 and 10, paragraph 1.
Remedy recommended	(1) an effective remedy, including compensation and initiation and pursuit of criminal proceedings to establish responsibility for the author son's ill-treatment, and his re-trial (2) effective remedy, including adequate compensation (3) effective remedy, including initiation and pursuit of criminal proceedings to establish responsibility for the author's ill-treatment, and payment of appropriate compensation to the author. The Committee reiterates that the State party should review its legislation and practice to ensure that all persons enjoy both equality before the law and equal protection of the law.
Due date for State party's response	12 November 2009 – for all cases
Date of State party's response	16 November 2009
Date of author's comments	Awaiting comments

State party's submission

The State party contests the Committee's findings in all of these cases and reiterates its version of the facts as provided in its submission on admissibility and merits. It explains that after a preliminary investigation and a careful examination of all materials relevant to the case it considers that the national courts correctly evaluated the law and facts of these cases.

Further action taken/required

Given the State party's failure to implement these cases, the Committee decided to request the Rapporteur to organise a meeting with representatives of the State party.

Committee's Decision The follow-up dialogue is ongoing.

State party	**ZAMBIA**
Case	**CHISANGA, 1132/2002**
Views adopted on	18 October 2005
Issues and violations found	Right to life, ineffective remedy on appeal and ineffective remedy with respect to commutation - articles 14, paragraph 5 together with articles 2, 7, 6, paragraph 2, and 6, paragraph 4, together with article 2.
Remedy recommended	To provide the author with a remedy, including as a necessary prerequisite in the particular circumstances, the commutation of the author's death sentence.
Due date for State party's response	9 February 2006
Date of State party's response	17 January 2006, 17 November 2009
Date of author's comments	Awaiting comments

State party's response

The Committee will recall that on 17 January 2006, the State party had provided its follow-up response, in which it argued extensively on the admissibility of the communication (see annual report A/61/40). It also submitted that the President had declared publicly that he would not sign any death warrants during his term in office. No death sentence has been carried out since 1995, and there is a moratorium on the death penalty in Zambia.

Author's comments

On 12 November 2008, the author's wife informed the Committee that in August her husband's death sentence had been commuted to life imprisonment. Both his wife and the author himself have been petitioning the office of the President from 2001 to 2007 requesting a pardon and ask the Committee for its assistance in this regard.

State party's response

On 17 November 2009, the State party clarified that on 29 July 2007, the author's death sentence was commuted to life imprisonment under article 59 of the Constitution which relates to the President's prerogative of mercy.

Further action taken/required

The Committee recalled that it had decided (annual report A/61/40), that the State party's arguments on admissibility which it set out in its response on 17 January 2006, should have been included in its comments on the communication prior to consideration by the Committee, that it regarded the State party's response as unsatisfactory and considered the follow-up dialogue ongoing.

Committee's Decision	The Committee decides that, given confirmation both from the author and the State party that the author's death sentence has been commuted to life imprisonment, the Committee does not consider it necessary to consider this matter any further under the follow-up procedure.

Supplementary information[2]

In the following cases, the Committee was reminded by the authors that the State party has failed to respond at all to the Committee's Views: Weerawansa v. Sri Lanka, Communication no. 1406/2005, Views adopted on 17 March 2009, Bandaranayake v. Sri Lanka, Communication no. 1376/2005, Views adopted on 24 July 2008 and Teron v. Spain, Communication no. 1073/2002, Views adopted on 5 November 2004.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

[2] This information is not provided in the usual format to reduce the size of the report.