



Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Follow-up progress report on individual communications*

A. Introduction

The present report is a compilation of information received from States parties and authors on measures taken to implement the Views and recommendations on individual communications submitted under the Optional Protocol to the International Covenant on Economic, Social and Cultural rights. The information has been processed in the framework of the follow-up procedure established under article 9 of the Optional Protocol and rule 18 of the rules of procedure under the Optional Protocol.

B. Communications

I.D.G. v. Spain (E/C.12/55/D/2/2014)

Views adopted:	17 June 2015
Contents of initial communication:	The home of the author of the communication had been the subject of mortgage enforcement proceedings. However, the author had not been personally notified of the decision to admit the enforcement proceedings: notification by public posting of notice had been used instead. The author claimed that she had not been apprised of the notification and had therefore been unable to come forward in person and mount a defence against the foreclosure application. The author considered that the notification by public posting in her case had constituted a violation of her rights under article 11 of the Covenant.
Article violated:	Article 11 of the Covenant
Committee's recommendations in respect of the author:	The State party has an obligation to provide the author with effective remedy, in particular: <ul style="list-style-type: none"> (a) Ensure that the auction of the author's property does not proceed unless she is guaranteed due procedural protection and due process, in accordance with the provisions of the Covenant and taking into account the Committee's general comment No. 4 (1991) on the right to adequate housing and general comment No. 7 (1997) on forced evictions; (b) Reimburse the author for the legal costs

* Adopted by the Committee at its sixty-eighth session (28 September–16 October 2020).



Committee's general recommendations:

incurred in the processing of the communication.

The State party has the following obligations:

(a) Ensure the accessibility of legal remedies for persons facing mortgage enforcement proceedings for failure to repay loans;

(b) Adopt appropriate legislative or administrative measures to ensure that notification by public posting of notice in mortgage enforcement proceedings is strictly limited to situations in which all means of serving notice in person have been exhausted, ensuring sufficient publicity and long enough notice for the affected person to have the opportunity to take full cognizance of the start of the proceedings and to be able to attend;

(c) Adopt appropriate legislative measures to ensure that the mortgage enforcement procedure and the procedural rules establish appropriate requirements and procedures to be followed before going ahead with the auction of a dwelling, or with eviction, in accordance with the Covenant and taking into account the Committee's general comment No. 7.

Previous decision:

At its sixty-sixth session, the Committee adopted a report on follow-up to communications (E/C.12/66/3), in which it considered that all the general recommendations and recommendation (a) in respect of the author had been largely implemented. The Committee decided to continue the follow-up procedure for recommendation (b) in respect of the author.

State party's submission:

In a note verbale dated 6 February 2020, the State party provided information on the steps taken to implement the Committee's recommendation (b) in respect of the author and requested that the follow-up to the Committee's Views be closed.

The State party submits that on 4 June 2018, the Madrid High Court of Justice adopted a final judgment declaring inadmissible the contentious-administrative appeal filed against the administration's decision to deny the author's lawyers' request for payment of 49,600 euros for legal costs plus interest for lateness. The judgment underlines that it is the author, and not her lawyers, who is entitled to request reimbursement of expenditures. It also notes that the request for reimbursement had been submitted by the lawyers "acting on their own name and right" and that there was no evidence that the author had paid any of the lawyers' fees.

Author's comments:

On 15 April 2020, the author sent her comments on the State party's submission. She submits that the request for reimbursement of the fees was not rejected on the merits, but was declared inadmissible for formal reasons, and that the State party is therefore not prevented from reimbursing her the legal costs. The author considers that the State party should proceed with the reimbursement ex officio and without further delay.

Committee's decision:

The Committee notes that the author's representatives claimed 49,600 euros from the State party, a claim that has been rejected because the lawyers are not entitled to claim reimbursement of those fees. The Committee notes that the author considers that the State party should reimburse her ex officio and without further delay. The Committee stresses that

I.D.G. v. Spain (E/C.12/55/D/2/2014)

the parties are justified in seeking the implementation of the Committee's recommendations, in good faith and in a reasonable manner at all times.

In this respect, the Committee considers that some of its recommendations may be implemented *ex officio*, whereas others may require some sort of action from the interested party. In the specific circumstances of this recommendation, its implementation, according to the State party's applicable law, required specific action from the author, taken in good faith and in a reasonable manner. In the current case, on 4 June 2018, the judicial authorities indicated to the author the channel that she would need to use to submit her claim and, according to the information before the Committee, the author has not yet submitted such a claim. The Committee therefore considers that, according to the information available, the State party has not opposed the reimbursement of the legal costs that the author could have reasonably paid in the processing of her communication to the Committee, and has made available to her a procedure to request such reimbursement. In conclusion, the Committee considers that the fact that this recommendation has not been implemented so far cannot be attributed to the State party.

The Committee recalls that, during its sixty-sixth session, it took the view that the implementation by the State party of the rest of the recommendations had been largely satisfactory and concluded its follow-up to those recommendations. In the light of the above, the Committee decides to conclude the follow-up to these Views, considering that their implementation has been largely satisfactory.

Trujillo Calero v. Ecuador (E/C.12/63/D/10/2015)

Views adopted:	26 March 2018
Contents of initial communication:	The author had for years been a voluntary affiliate of the social security system, since she had worked as an unpaid domestic worker, and had made monthly contributions from November 1981 onward, except for a period of eight months during which she had made no contributions. The author had later paid those contributions retroactively. On the basis of information provided by the social security services, in 2001, the author had applied for early special retirement, but the request had been rejected on the grounds that the minimum number of contributions had not been made, and that all the voluntary contributions made after the eight-month period during which she had not contributed had been invalid.
Articles violated:	Article 9 and articles 2 (2) and 3, read together with article 9, of the Covenant
Committee's recommendations in respect of the author:	The State party has an obligation to provide the author with effective remedy, in particular: <ul style="list-style-type: none"> (a) Provide the author with the benefits to which she is entitled as part of her right to a pension, taking into account the contributions that she made to the Ecuadorian Social Security Institute, or, alternatively, other equivalent social security benefits enabling her to have an adequate and dignified standard of living, bearing in mind the criteria established in the Committee's Views; (b) Award the author adequate compensation for

the violations suffered during the period in which she was denied her right to social security and for any other harm directly related to such violations;

(c) Reimburse the author for the legal costs reasonably incurred in the processing of the communication.

Committee's general recommendations:

The State party has the following obligations:

(a) Adopt appropriate legislative and/or administrative measures to ensure the right of all affiliates to request, seek and receive information on their right to social security, including their retirement pension or future retirement pension;

(b) Take the necessary measures to ensure that the Ecuadorian Social Security Institute or any other institution responsible for managing the social security system, including affiliates' contributions and retirement pensions, provides affiliates/beneficiaries with timely and appropriate information on, among other things, the validity of their contributions and any changes to their affiliation status;

(c) Take the necessary measures, including those of a legislative nature, to ensure that penalties imposed on affiliates of the Ecuadorian Social Security Institute or of any other institution responsible for managing the social security system are proportionate and do not constitute in practice an obstacle to obtaining a retirement pension;

(d) Provide affiliates of the Ecuadorian Social Security Institute or of any other institution responsible for managing the social security system with appropriate and timely administrative and judicial remedies for violations of the right to social security;

(e) Take relevant special legislative and/or administrative measures to ensure that in practice men and women enjoy the right to social security, including access to a retirement pension, on a basis of equality, including measures to eliminate the factors that prevent women engaged in unpaid domestic work from contributing to social security schemes;

(f) In the light of the views set out in paragraph 18 of the Committee's Views, formulate within a reasonable time, to the maximum of available resources, a comprehensive and complete non-contributory benefits plan.

State party's submission:

In a note verbale dated 6 December 2018, the State party provided information on the measures taken to implement the Committee's recommendations.

Regarding the recommendations in respect of the author, the State authorities have held several meetings with the author's representatives. On 6 September 2018, the Ecuadorian Social Security Institute informed the author that she met all requirements to benefit from an old-age retirement pension, but to enjoy that right she must stop making voluntary contributions to the social security system. The State party has calculated the material harm inflicted on the author, taking into account the interest rate, and has concluded that the author is owed \$122.11. Regarding other harm directly related to the violation of the author's rights, the State party notes that the Committee did not establish a specific amount for adequate compensation, but taking as a reference similar

violations found by the Inter-American Court of Human Rights,¹ the State party has concluded that the author is owed \$2,500. Regarding the legal costs incurred by the author, the State party considers that no reimbursement can be made since the author was represented by the Office of the Ombudsman of Ecuador, whose services are offered free of charge.

Regarding the Committee's general recommendations, the State party submits that it provides detailed and personalized information to users of the Ecuadorian Social Security Institute through its offices, and that affiliates may access their history of affiliation on the web. Furthermore, there are information campaigns on the media and social media. Affiliates may also request information by telephone using the Institute's hotline. Regarding the penalties imposed on affiliates, the State party submits that there are mechanisms in place to verify the facts before such penalties are imposed.²

The State party also submits that citizens have access to administrative and judicial remedies to appeal decisions by the Ecuadorian Social Security Institute. On 7 July 2018, the new Code of Administrative Procedure entered into force, under which the periods of time for resolving administrative appeals were shortened. Individuals may appeal administrative decisions within 10 days of notification, and the appeal must be resolved within one month. This appeal may have a suspensive effect on the previous decisions when requested within three days and when there is a risk of irreparable or hardly reparable harm. Furthermore, there are judicial remedies available to citizens, in particular remedies of constitutional protection, in cases of alleged violations of human rights, whereby citizens may also request interim measures to avoid or cease a human rights violation.

The State party has also taken measures to ensure that women and men have equal access to social security schemes. The Ecuadorian Social Security Institute has a continuing exchange of information with the Ministry of Economic and Social Inclusion to ensure adequate granting of pensions. The Institute also has a web page specifically dedicated to providing unpaid domestic workers with information and assistance.³ On 20 April 2015, the State party adopted the Organic Act on Labour Justice and Recognition of Work in the Home, which underlines the fact that domestic workers carry out an essential function for society as a whole and are mainly women.

The State party clarifies that it offers both contributory and non-contributory retirement pensions. Non-contributory retirement pensions are managed by the Ministry of Economic and Social Inclusion. The State party also provides universal health care free of charge to all citizens.

The State party submits that it has taken all the measures necessary to grant the author the benefits to which she is entitled as part of her retirement and to compensate her for

¹ See Inter-American Court of Human Rights, "*Cinco Pensionistas*" vs. *Perú*, Application No. 12.034, Judgment, 28 February 2003, and *Acevedo Buendía y otros* ("*Cesantes y Jubilados de la Contraloría*") vs. *Perú*, Application No. 12.357, Judgment, 1 July 2009.

² The State party refers to official letter No. IESS-DG-2018-0712-OF, dated 15 November 2018, annex III.

³ The State party refers to official letter No. IESS-DG-2018-0712-OF.

the harm suffered. The State party cannot reimburse the legal costs, since the services provided by the Office of the Ombudsman are free of charge. The State party also submits that it has taken all the steps necessary to comply with the Committee's general recommendations.

Author's comments:

On 3 July 2020, the author sent her comments on the State party's submission. The author submits that she and her representatives met with representatives of the Ecuadorian Social Security Institute, and she was informed that she could be granted a monthly pension of \$272, which corresponds to 70 per cent of the minimum wage. The author contends that this amount does not enable her to have an adequate and dignified standard of living, free from exploitation and physical and psychological ill-treatment. Furthermore, according to the author, this calculation still does not include the contributions made between August 1989 and February 1995, which were nullified. On 26 December 2018, the author was informed that, even if the nullified contributions were included in the calculation, the pension for persons having contributed for a period of 21 to 30 years amounted to \$270. The author submits that she is currently still making voluntary contributions to the Ecuadorian Social Security Institute. Regarding the compensation offered by the authorities, the author submits that she does not agree with the amount. The author has submitted to the authorities bills showing the expenses that she has incurred, in particular health-related expenses, as the author has had to use private health insurances and has been making payments, as a voluntary affiliate, to the social security system. These expenses amount to more than \$20,000, as the author suffers from diabetes and other illnesses. The author is currently receiving financial help from her family to cover these expenses. Regarding her legal expenses, the author submits that, even if the author has not had to pay legal expenses, the Office of the Ombudsman has incurred expenses and has provided the authorities with bills for legal fees. Furthermore, the author has incurred legal expenses during the domestic proceedings amounting to around \$4,000.

Regarding the general recommendations, the author submits that, even if there have been efforts to increase the information provided to affiliates, the practice remains that it is only once a person has retired and submits a request for a retirement pension that their fulfilment of the requirements is examined. This means that citizens often have to wait for a long period and may find, too late, that some of the contributions that they have made are invalid. The author submits that the validity of contributions must be established at the moment when they are paid, not when a pension is requested. This problem has been pointed out by the Constitutional Court, which has considered it illogical that the Ecuadorian Social Security Institute does not take responsibility for its own oversight when receiving affiliations.⁴

The author submits that the Views have not yet been implemented, in particular the recommendations in respect of the author.

Committee's decision:

The Committee notes that, according to the information

⁴ Constitutional Court, Case No. 0578-14-EP, Judgment No. 287-16-Sep-CC.

provided by the parties, the State party met with the author and offered her a monthly pension of \$272, which corresponds to 70 per cent of the minimum wage in the State party. The Ecuadorian Social Security Institute submits that, even considering the 305 contributions made, the monthly pension owed would amount to \$270. The Committee welcomes the negotiations taking place regarding the author's pension. It particularly welcomes the fact that the author has been offered a social security benefit and considers that this measure could amount to satisfactory compliance with recommendation (a) with respect to the author. However, the Committee notes that the author contends that this pension would not enable her to have an adequate and dignified standard of living. The Committee considers that the author has not substantiated that contention. The Committee encourages the State party and the author to continue their exchanges in good faith to reach an agreement over the author's monthly pension, and requests the author to provide an estimate of the minimum pension that would enable a person to have an adequate and dignified standard of living in the State party and the reasons for the calculation.

The Committee notes that the State party has offered the author compensation of \$2,500. The Committee welcomes this measure and considers that it could amount to satisfactory compliance with recommendation (b) with respect to the author. However, the Committee notes that the author does not agree with this amount and has submitted to the authorities bills showing expenses incurred that are directly linked to the violation found in the Committee's Views, and that she has made specific claims that these expenses amount to more than \$20,000. The Committee encourages the parties to continue their dialogue in good faith to reach an agreement on adequate compensation for the author. The Committee requests the parties to inform it of the content and outcome of such negotiations, and requests in particular the author to provide further information regarding the content of her claims and their direct relation to the violations.

The Committee notes the State party's submission that it cannot reimburse the author's legal costs, since she was represented by the Office of the Ombudsman, whose services are provided free of charge. The author submits that the Office of the Ombudsman has incurred legal costs representing her, and that she has incurred costs during the domestic proceedings amounting to around \$4,000. The Committee recalls that it recommended the reimbursement of legal costs incurred by the author herself. Since the author was represented by the Office of the Ombudsman free of charge, the Committee considers that the State party cannot be expected to reimburse the costs incurred by that Office. Regarding the costs incurred by the author during the domestic proceedings, the Committee recalls that its recommendation refers to the costs incurred in the processing of the communication before the Committee, and invites the author to seek reimbursement within the context of her request for compensation for the violation suffered and harms directly related to that violation.

Regarding its general recommendations, the Committee notes the State party's submission that there are several channels of information for affiliates of the social security scheme. The author explains, however, that the practice remains that affiliates are informed about the validity of their contributions

only after they have requested their retirement pension. The Committee recalls that the lack of clarity regarding the validity of contributions before one requests a pension creates legitimate expectations and can potentially have devastating consequences for a person's life plan, as was the case for the author (E/C.12/63/D/10/2015, para. 16.3). An essential element of its recommendation, therefore, is the provision of information on the validity of contributions before a person takes life-changing decisions, such as the decision to retire. The Committee considers that the State party has not yet taken all the measures necessary to provide timely and appropriate information to affiliates in relation to their rights to social security (general recommendations (a) and (b)). The Committee notes the State party's submission that it ensures that the imposition of penalties on affiliates is done on the basis of verified facts. However, the Committee recalls that in its general recommendation (c), it has recommended that the State party ensure that all penalties imposed are proportionate and do not constitute an obstacle to obtaining a retirement pension, such as the denial of a pension after a six-month period without contributions (E/C.12/63/D/10/2015, para. 17.1). The Committee considers that the State party has not yet taken all the measures necessary to implement that recommendation. The State party also submits, in a general manner, that it has adopted new legislation providing clearer and more efficient administrative remedies, and that it has put in place coordination to ensure the adequate granting of pensions for women. The Committee considers that it does not have enough information to conclude whether the State party has taken all the measures necessary to implement its general recommendations (c), (d) and (e), and it requests the State party to provide further details regarding the concrete measures adopted that specifically contribute to those recommendations. Lastly, the Committee notes the State party's submission that it offers both contributory and non-contributory pensions. However, the question as to whether the non-contributory pension scheme is new or was pre-existing remains unclear, as does its scope. The Committee therefore requests the State party to provide further information on which segments of the population are covered by the non-contributory scheme and on the overall coverage of both the contributory and the non-contributory schemes over the population as a whole.

The Committee therefore considers that its recommendations have not yet been implemented and decides to continue the follow-up procedure for the communication. The Committee invites the State party to provide information on the measures taken in the light of its recommendations. In particular, it requests the State party to provide further details regarding all of its general recommendations and recommendations (a) and (b) in respect of the author, as specified above. The information should reach the Committee within 90 days of the publication of the present document. The Committee will transmit the information received by the State party to the author for her comments, in particular in relation to recommendations (a) and (b) in respect of the author, as requested above.

S.C. and G.P. v. Italy (E/C.12/65/D/22/2017)

Views adopted:	7 March 2019
Contents of initial communication:	The authors, for medical reasons, had undergone in vitro fertilization. The authors alleged that S.C. had been compelled to accept the transfer of an embryo into her uterus against her will, and that they had been prevented from donating their embryos to be used in scientific research. The authors submitted that the State party had violated their rights under articles 10, 12 (1) (2) (c) and (d) and 15 (1) (b), (2) and (3), all read in conjunction with article 2 (1), of the Covenant.
Articles violated:	Article 12 alone and read in conjunction with article 3 of the Covenant.
Committee's recommendations in respect of the authors:	The State party has an obligation to provide the author with effective remedy, in particular: <ul style="list-style-type: none"> (a) Establish the appropriate conditions to enable the authors' right to access in vitro fertilization treatments with trust that their right to withdraw their consent to medical treatments will be respected; (b) Ensure that S.C. is protected from any unwanted medical intervention and that her right to make free decisions regarding her own body is respected; (c) Award S.C. adequate compensation for the physical, psychological and moral damages suffered; (d) Reimburse the authors for the legal costs reasonably incurred in the processing of the communication.
Committee's general recommendations:	The State party has the following obligations: <ul style="list-style-type: none"> (a) Adopt appropriate legislative and/or administrative measures to guarantee the right of all women to take free decisions regarding medical interventions affecting their bodies, in particular ensuring their right to withdraw their consent to the transfer of embryos into their uterus; (b) Adopt appropriate legislative and/or administrative measures to guarantee access to all reproductive treatments generally available and to allow all persons to withdraw their consent to the transfer of embryos for procreation, ensuring that all restrictions to access to these treatments comply with the criteria provided in article 4 of the Covenant.
State party's submission:	In a note verbale dated 26 September 2019, the State party provided information on various policies adopted in relation to the use of medically assisted procreation technology, which were aimed at protecting the rights of the persons benefiting from such technology. A number of these policies are not directly related to the recommendations in hand, but concern other aspects of the use of medically assisted procreation. The State party submits that the National Institute of Health collects and disseminates the information necessary to enable transparency with respect to the techniques used for medically assisted procreation. The Institute also records data relating to consent to the use of medically assisted procreation, and to the suspension and withdrawal of consent. <p>The State party recalls the decisions adopted by the Constitutional Court that have modified the legislation regulating the use of medically assisted procreation</p>

(E/C.12/65/D/22/2017, paras. 2.2–2.4).

The State party submits that the Minister of Justice and the Minister of Health adopted Decree No. 265, published on 17 February 2017, which contains specific rules on the expression of the will (informed consent) to use medically assisted procreation techniques, in accordance with article 6 (3) of Law 40/2004 (E/C.12/65/D/22/2017, para. 2.2). It further states that Tuscany Region, through its regional bioethics commission, recently approved a series of formal requirements for informed consent concerning some uses of medically assisted procreation technology, which will soon be completed.

The State party submits that the Committee's Views have been published on the website of the Interministerial Committee for Human Rights (<https://cidu.esteri.it>), including a translation into Italian. The Views will also be included in the report submitted to Parliament.

The State party notes that the authors have not resumed their civil proceedings before the Court of Florence following the decision of the Constitutional Court.

Authors' comments:

On 4 June 2020, the authors sent their comments on the State party's submission. The authors submit that the facts presented by the State party predate the adoption of the Views by the Committee and do not indicate any implementation of the Committee's recommendations. The authors claim that the State party has not taken steps to implement the recommendations, and, on the contrary, has taken measures that further prejudice the rights of the authors.

The authors state that on 3 June 2020, they sent a letter to various bodies of the domestic authorities requesting the implementation of the Views.

Regarding the recommendations in respect of the authors, on 12 January 2017 the Council of Ministers adopted Decree No. 502 on new essential levels of assistance, under which the age limit for women seeking reproductive assistance from the National Health Service was set at 46 years. The authors stress that the decree sets no limit for men. Regions are allowed to set an age limit that is lower than the national limit. Since Tuscany, the authors' region, has set a limit of 43 years old, the female author, born in 1969, cannot undergo in vitro fertilization subsidized by the National Health Service. Furthermore, this decree does not include pre-implantation genetic diagnosis, which is essential in order for the author, as carrier of a genetic disorder, to make use of in vitro fertilization while avoiding the risk of traumatic abortion (E/C.12/65/D/22/2017, paras. 2.1–2.5). In their letter to the authorities, the authors requested the Ministry of Health to remove the age limit and include pre-implantation genetic diagnosis in the essential levels of assistance. Lastly, the authors state that they have not yet received any compensation, but that in their letter to the authorities they requested 20,000 euros in compensation for S.C. and 5,000 euros for reimbursement of legal fees.

Regarding the general recommendations, the authors submit that there is no willingness to amend Law 40/2004 and it remains unchanged, but that access to medically assisted procreation has been further restricted under Decree No. 502. In particular, the authors submit that it is still impossible for

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anybody to withdraw their consent to the transfer of embryos. The authors indicate that the Committee's Views have been invoked in a case pending before the Court of Perugia.

The authors consider that the publication of the Views on the website of the Interministerial Committee for Human Rights, along with a translation into Italian, does not constitute wide distribution of the Views to all sectors of the population.

Committee's decision:

The Committee notes the authors' submission that the measures presented by the State party do not indicate any implementation of the recommendations. Regarding the recommendations aimed at ensuring that all women, including the author, are able to withdraw their consent to medical interventions, in particular in the context of medically assisted procreation, the Committee notes the State party's submission that it has adopted a decree on the expression of informed consent, and that a series of formal requirements for such consent have been approved in the authors' region. The Committee notes that no further details were provided and that the authors assert that they do not yet have access to medically assisted procreation without fearing unwanted medical interventions. The authors refer to other facts relating to their access to subsidized in vitro fertilization. The Committee will limit itself to assessing the implementation of the recommendations contained in its Views. The Committee considers that these recommendations have not yet been implemented, and requests the State party to provide further information on the measures adopted to implement them.

The Committee further notes that the authors have, in a recent letter to the domestic authorities, requested compensation and reimbursement of the legal costs reasonably incurred in the processing of the communication, as recommended by the Committee. The Committee has had no indication that a response has been received to this request as yet.

The Committee therefore considers that its recommendations have not yet been implemented and decides to continue the follow-up procedure for the communication. The Committee invites the State party to provide information on the measures taken in the light of its recommendations. In particular, it requests the State party to provide further details on Decree No. 265 and the measures adopted by Tuscany Region, and on any other measures that may contribute to protecting the right of all women to withdraw their consent to the transfer of embryos into their uterus. The information should reach the Committee within 90 days of the publication of the present document.

The Committee notes that the State party has published the Views and has translated them into Italian. The Committee notes that the authors consider that this publication does not amount to wide distribution of the Views. The Committee welcomes the publication and translation of its Views, and encourages the State party to continue the distribution of the Views through channels that will reach all sectors of the population.
