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Committee on Economic, Social and Cultural Rights

Follow-up progress report on individual communications*

1. Communication No. 5/2015, *Ben Djazia et al. v. Spain*

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| Date of adoption of Views: | 20 June 2017 |
| Contents of initial communication: | The authors were evicted for failure to pay the rent for their home, a rented room in an apartment in Madrid. In the authors' view, the eviction constituted a violation of article 11 (1) of the Covenant. They also claimed that the judicial proceedings had not observed all guarantees, since the courts had not evaluated the impact of the eviction. ¹ |
| Articles violated: | Article 11 (1), read alone and in conjunction with articles 2 (1) and 10 (1) of the Covenant. |
| Committee's recommendations in respect of the authors: | The State party is under an obligation to provide the author with an effective remedy, in particular: <ul style="list-style-type: none"> (a) In the event that the authors do not have adequate accommodation, to assess their current situation and, following genuine consultation with them, grant them public housing or another measure enabling them to enjoy adequate accommodation, taking into account the criteria established in these Views; (b) To award the authors financial compensation for the violations suffered; (c) To reimburse the authors for legal costs |
| Committee's general recommendations: | The State party has the following obligations: <ul style="list-style-type: none"> (a) To adopt appropriate legislative and/or administrative measures to ensure that, in judicial proceedings in relation to the eviction of tenants, defendants are able to object or lodge an appeal so that the judge might consider the consequences of eviction and its compatibility with the Covenant; (b) To adopt the necessary measures to resolve the lack of coordination between court decisions and the actions of social services which can result in an evicted person being left without adequate accommodation; (c) To take the necessary measures to ensure that evictions involving persons who do not have the means of obtaining alternative housing are carried out only |

* Adopted by the Committee at its 70th session (27 September–15 October 2021).

¹ See E/C.12/61/D/5/2015.



following genuine consultation with the persons concerned and once the State has taken all essential steps, to the maximum of available resources, to ensure that evicted persons have alternative housing, especially in cases involving families, older persons, children and/or other persons in situations of vulnerability;

(d) To develop and implement, in coordination with the autonomous communities and to the maximum of available resources, a comprehensive plan to guarantee the right to adequate housing for low-income persons, in keeping with general comment No. 4 (1991). This plan should provide for the necessary resources, indicators, time frames and evaluation criteria to guarantee these individuals' right to housing in a reasonable and measurable manner.

Previous decision:

At its sixty-sixth session, the Committee adopted its report on follow-up to communications. In that report, it considered that some initial action had been taken but that further action and additional information on the measures taken were still needed. It then decided to continue the follow-up procedure for the communication.² The Committee invited the State party to provide information within 90 days of the publication of that report on the measures taken in the light of recommendations (b) and (c) in respect of the authors and general recommendations (a), (b), (c) and (d) and, in particular, on the adoption of Royal Decree-Law No. 7/2019.

Submission from the State party:

By note verbale dated 6 February 2020, the State party submitted its response to the Committee's recommendations.

With regard to the recommendations in respect of the authors, the State party respectfully disagrees with the Committee's recommendations, considering that the fact that it has granted social housing is a sufficient measure of compliance. However, the State party reports that a petition for compensation is pending before the Community of Madrid.

With regard to the recommendations of a general nature, the State party notes that the State party's Ombudsman, in his report of 23 September 2019, reported on the adoption of Royal Decree-Law No. 7/2019, which reflects the Government's desire to move forward with its international commitments in the area of housing and which explicitly refers to the Views that are the subject of this section of the present report. In order to address emergency situations in the event of legitimate evictions and until access to adequate housing can be arranged, this decree-law provides for coordination between judicial decisions and the actions of social services and authorizes the judicial authorities to transfer, with the agreement of the defendants, their data to the social services office so that it can assess the possible situation of vulnerability. Royal Decree-Law No. 7/2019 also establishes an obligation to set the exact date and time of a removal. In addition, social services are required to establish the relevant vulnerability status and, if necessary, to suspend the procedure until the appropriate measures have been adopted within a maximum period of one month, or three months if the claimant is a legal person. The State party is

² E/C.12/66/3.

also continuing to work on extending the relevant cooperation protocols to include all the government services whose scope of authority relates to evictions.

In conclusion, the State party considers that it has complied with the Committee's recommendations and requests that the follow-up to these Views be concluded.

Comments by the authors:

On 23 October 2020, the authors referred to the recommendations regarding themselves. The authors report that they lodged a financial claim with the Community of Madrid in June 2018, as recommended by the Ombudsman's Office, and that this claim is still pending. The authors consider that there is insufficient clarity regarding the mechanisms for seeking effective redress for a human rights violation.

The authors request that the State party be required to fulfil its obligation to provide redress.

Third-party interventions:

On 23 October 2020, the Civil Society Monitoring Group for the Implementation of the Committee's Views forwarded a statement concerning the follow-up to the general recommendations set forth in the Committee's Views.

The Monitoring Group clarifies that the Ombudsman has closed down the internal complaints mechanism that had been established following the complaint lodged by the Monitoring Group. It notes, however, that this does not mean that the Ombudsman considers that the Committee's recommendations have been complied with to a satisfactory extent.

The Monitoring Group considers that the measures provided for in Royal Decree-Law No. 7/2019 fall short of complying with the Committee's recommendations and analyses the extent to which that decree-law fulfils each of the Committee's general recommendations. First of all, it considers that the royal decree-law does not guarantee that the consequences of evictions or their compatibility with the Covenant can be considered in judicial proceedings. With regard to recommendation (a), the Monitoring Group contends that the decree-law does not direct judges to assess the proportionality of an eviction measure in each case. Furthermore, the Monitoring Group states that, even though the Supreme Court established that the principle of proportionality must be applied in such cases in its judgment No. 1797/2017 of 23 November 2017, this practice is, according to third parties, not widespread. With regard to recommendation (b), the Monitoring Group clarifies that, although the decree-law provides for coordination between social services and judicial authorities, evictions resulting from civil proceedings brought for unauthorized occupancy (without a rental contract) are outside the scope of this law. The third-party intervenor considers that recommendation (c) would require that the law establish an obligation to guarantee alternative housing for persons without resources. With regard to recommendation (d), the third-party intervenor considers that the measures provided for in the royal decree-law are not sufficient to meet the State's needs. The decree-law establishes that periodic reports are to be made on the housing stock and gives the Administration a right of first refusal in some sale contracts in order for it to be able to expand the social housing stock. Other welcome measures in the

decree-law include tax measures designed to discourage homeowners from having houses remain unoccupied. However, the third-party intervenor considers that the decree-law should have defined the term “empty housing” and recalls that Spain has lagged behind other neighbouring European countries with regard to social housing. On the subject of the affordability of housing, the decree-law includes positive measures, such as limiting rent increases, reducing the amount of the security deposit and establishing a rental reference index. However, the third-party intervenor regards these measures as being insufficient to prevent price increases in the State party and considers a binding price control mechanism to be essential.

In relation to the coordination protocols established between judicial bodies and social services, the third-party intervenor clarifies that these protocols apply only to foreclosure-driven evictions and evictions for non-payment of rent. Moreover, they do not apply to the entire territory of the State party, but only to 10 of the 17 autonomous communities. The third-party intervenor further notes that evictions of renters have increased steadily since 2015, and evictions in which no alternative housing has been arranged continue to take place in the State party, with 11,042 evictions having taken place since the beginning of 2020 and up to the date of writing of the intervenor’s statement. It is also observed that this figure includes numerous evictions that have been deferred because of the health crisis but that may be resumed at any time. The Monitoring Group affirms that the State party has made a commitment to build 20,000 social housing units in the coming years. The Group considers this to be a positive step, although it does not yet know the details of this plan. In addition, the third-party intervenor refers to the report of the Special Rapporteur on extreme poverty and human rights, which indicated that there is a deep mismatch between housing needs and the State party’s policy responses.

Committee’s decision:

The Committee takes note of the State party’s disagreement with the Committee’s recommendations regarding compensation for the violations suffered and reimbursement of reasonably incurred expenses and of the fact that an action in which it is claimed that the State bears pecuniary liability is still pending. The Committee therefore continues to consider that some satisfactory measures have been taken in respect of its recommendations in relation to the authors but that as yet no response has been received and no satisfactory action has been taken in relation to recommendations (b) and (c).

With regard to its general recommendations, the Committee takes note of the advances represented by the implementation of Royal Decree-Laws Nos. 7/2019, 11/2020 and 37/2020,³ which have opened the way for a dialogue and coordination between social services and legal authorities and for a fuller consideration of the socioeconomic vulnerability of persons who may be subject to eviction by judicial authorities. The Committee considers that these measures may contribute to compliance with its recommendations (a) and (b) but notes that some of these measures are applicable only

³ Mentioned in the next section of this report (communication No. 37/2018).

during the state of alert and that the number of evictions is still very high.

The Committee takes note of the budgetary and administrative support provided for the State Housing Plan 2018–2021,⁴ although the assistance has not yet reached all sectors of citizens in need. The Committee also welcomes the initiative for the adoption of a housing law. The Committee considers that these measures can contribute to the follow-up to recommendations (c) and (d) and encourages the State party to continue to make progress in this regard.

On the basis of all the information received, the Committee considers that some initial action has been taken but that further action and additional information on the measures taken are still needed. The Committee decides to continue the follow-up procedure for this communication and invites the State party to provide information on the measures taken in the light of recommendations (b) and (c) in respect of the authors and of all of its general recommendations. The Committee asks that the requested information be sent within 90 days of the publication of the present document and that the Committee be periodically informed when progress is made in respect of its recommendations.

2. Communication No. 37/2018, *López Albán et al. v. Spain*

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| Date of adoption of Views: | 11 October 2019 |
| Contents of initial communication: | The author and her children were evicted from the house that they were occupying without legal title; no alternative housing was provided. The author's application for housing had previously been rejected, as persons who are occupying a dwelling without authorization are not eligible to apply for housing. After the eviction, the author and her children were moved to two different shelters. ⁵ |
| Articles violated: | Article 11 of the Covenant |
| Committee's recommendations in respect of the author: | <p>The State party is under an obligation to provide the author with an effective remedy, in particular:</p> <p>(a) If the author and her children are not currently in adequate housing, to reassess their state of need and their level of priority on the waiting list, taking into account the length of time that their application for housing has been on file with the Community of Madrid, starting from the date on which they applied, with a view to providing them with public housing or taking some other measure that would enable them to live in adequate housing, bearing in mind the criteria set out in the present Views;</p> <p>(b) To provide the author and her children with financial compensation for the violations suffered;</p> <p>(c) To reimburse the author for the legal costs reasonably incurred in submitting the communication.</p> |
| Committee's general recommendations: | <p>The State party has the following obligations:</p> <p>(a) To establish a legal framework regulating the eviction of people from their homes that incorporates a requirement for the judicial authorities to conduct an</p> |

⁴ Ibid.

⁵ See E/C.12/66/D/37/2018.

analysis of the proportionality of the aim pursued by the measure relative to its consequences for the persons to be evicted and of its compatibility with the Covenant in all cases, including when the properties are occupied without legal title;

(b) To ensure that persons subject to an eviction order are able to challenge the decision or lodge an appeal with a view to having the judicial authorities assess the proportionality of the aim pursued by the measure relative to its consequences for the persons to be evicted and its compatibility with the Covenant in all cases, including when the properties are occupied without legal title;

(c) To adopt the necessary measures to ensure that all persons have equal access to the social housing stock by removing any unreasonable condition that might exclude persons at risk of indigence. In particular, the State should end the practice of automatically excluding persons who are occupying a property without legal title because they are in a situation of necessity;

(d) To take the necessary measures to ensure that evictions involving persons who do not have the means of obtaining alternative housing are carried out only following genuine consultation with the persons concerned and once the State has taken all essential steps, to the maximum of available resources, to ensure that evicted persons have alternative housing, especially in cases involving families, older persons, children or other persons in situations of vulnerability;

(e) To develop and implement, in coordination with the autonomous communities and to the maximum of its available resources, a comprehensive plan to guarantee the right to adequate housing for low-income persons, in keeping with the Committee's general comment No. 4. This plan should establish the resources, measures, indicators, time frames and evaluation criteria necessary to guarantee these individuals' right to housing in a reasonable and measurable manner;

(f) Establish a protocol for complying with requests for interim measures issued by the Committee and inform all relevant authorities of the need to respect such requests in order to ensure the integrity of the procedure.

Submission from the State party:

By note verbale dated 2 June 2021, the State party submitted its response to the Committee's recommendations.

In relation to recommendation (a) with respect to the author, the State party reports that the author's application of 11 September 2019 has been accepted and that the author is in the 12th place on the waiting list for four-bedroom housing. In addition, as indicated in the attached social services report, the author and her children are sharing a dwelling with relatives in which her family unit occupies two of the bedrooms; the State party therefore considers that they have alternative housing. The State party submits that it respectfully disagrees with recommendations (b) and (c) in regard to the author, as it considers that the admission of the author's application for housing and her placement on the waiting list by means of a procedure which incorporates all the legal guarantees and which upholds the principle of equality

among all applicants is a sufficient measure for the purpose of compliance with the Views.

With regard to the general recommendations, the State party reports that, in the context of the health emergency caused by the coronavirus disease (COVID-19), measures have been taken to prevent it from having an economic impact on the most vulnerable persons' right to adequate housing. First of all, a moratorium on mortgage payments has been adopted for those people who have difficulties in making their payments. In addition, a series of measures have been adopted under Royal Decree-Laws Nos. 11/2020 and 37/2020 to strike a balance between tenants and landlords and to address the vulnerability created by the health crisis. The State Housing Plan 2018–2021 has been amended to include a rental aid programme to soften the impact of the health crisis and an assistance programme for victims of gender-based violence, people subject to eviction, homeless people and other vulnerable persons. The amendment of 9 April 2020 enables the autonomous communities to speedily offer rental aid of up to 900 euros per month for a six-month period, and this subsidy can be combined with any other form of assistance, as necessary. Funding for the plan has also been increased from 346 million euros to 446 million euros. Initiatives are also being promoted that will increase the stock of social rental housing.

In addition, the State party also reports that a law on the right to adequate housing is being drafted.

Comments by the author:

On 2 July 2021, the author submitted her comments concerning the State party's observations on the recommendations in respect of the author.

The author notes that she lives in overcrowded conditions in the house that she shares with another family. In addition, the dwelling is also subject to an eviction process. Successive extensions have been obtained, but their living situation is highly uncertain. Her housing application was accepted more than two years ago now, but in that time she has not moved up on the waiting list. Furthermore, the author recalls that her application was accepted only because, as a result of the eviction, she was no longer occupying a dwelling without authorization to do so, but the date that it bears does not, as requested by the Committee, correspond to the date on which she first applied for the dwelling and was refused because she was occupying another dwelling without authorization. Nor has she been contacted at any point about the provision of financial redress or a defrayal of reasonably incurred legal expenses. In this respect, the author considers that the State party is rejecting the Views as a source of obligation as a whole.

In relation to the general recommendations, the author endorses the comments presented by the third-party intervenor.

Third-party interventions:

On 2 July 2021, the Civil Society Monitoring Group for the Implementation of the Committee's Views forwarded a statement concerning the follow-up to the general recommendations set forth in the Views.

The Monitoring Group notes that the decision has been posted on the website of the Ministry of Justice but also notes that the website pathway that leads to the document

is difficult to follow and requires specific knowledge of the website.

It also points out that the Social Housing Agency of the Community of Madrid has awarded only 5,335 dwellings between 2008 and 2020, which falls far short of what is needed in that region, which receives between 7,000 and 8,000 applications each year. In relation to the author's housing application, the Monitoring Group draws attention to the fact that no concrete action has been taken following the issuance of the Views regarding housing for the author and her children despite the fact that the Supreme Court, in its 2018 judgment, recognized that the State is under an inescapable obligation to provide individual redress and that treaty body recommendations are binding.

The Monitoring Group acknowledges that the State has made a very notable housing policy effort compared with previous years. However, it notes that the applicability of most of the measures is linked to the state of emergency declared in response to the health crisis. With regard to general recommendations (a) and (b), the current laws and regulations have indeed been amended to allow the judicial authorities to request a report on a person's social or economic vulnerability status and to suspend eviction orders until alternative accommodation is provided, but that measure will remain in force only during the state of alert. Even if the influence of the health crisis is not taken into account, the number of evictions is still very high. While there were 54,006 evictions in 2019, in 2020 there were 29,406, which is more than half and is still a very high figure given the fact that 2020 was when the health crisis arose. In addition, the new law does not make a review of the proportionality of the eviction measure mandatory.

In relation to general recommendation (c), the Monitoring Group reports that the Ombudsman has expressly requested the Community of Madrid to repeal the provision according to which anyone occupying a dwelling without legal title cannot apply for social housing. The Community of Madrid has rejected that request, however. This restriction is in addition, according to the Monitoring Group, to a growing stigmatization in social discourse of persons who occupy a dwelling without having legal title to it, without any distinction being made between the various reasons that may have led people to find themselves in that situation. This has even led to the advocacy of the unlawful use of force against people who occupy a dwelling without legal title to it, and this discourse is being encouraged by some political forces. In this context, the failure to comply with this recommendation as set out in the Views is all the more serious.

With regard to general recommendation (d), although there is, as the State party points out, a plan for the autonomous communities to deploy aid in connection with evictions in certain cases, that aid is not yet available throughout the country, and the Autonomous Community of Madrid, where the author resides, is one of the regions in which there is still no administrative channel for applying for such aid. In any case, these would be one-off rental subsidies, which would address only part of the problem. The Monitoring Group recalls that the Special

Rapporteur on extreme poverty and human rights prepared a report following his visit to Spain in which he specifically expresses concern about the housing crisis in the State party.

With regard to general recommendation (f), on the implementation of the Committee's requests for interim measures, the Monitoring Group states that not only has no action been taken in this regard, but Circular 1/2020 of 22 October 2020 from the State Legal Service, on the legal nature of the decisions issued by the United Nations human rights treaty bodies, states that the Committee's requests for interim measures are not binding.

Committee's decision:

The Committee notes that the author and her children reside in a shared dwelling where they occupy two bedrooms and that they do not have security of tenure, as the dwelling is subject to eviction proceedings. The Committee also notes that the social housing authorities classify the author's family unit as one requiring a four-bedroom dwelling, which is why her application has not yet been acted upon, since the availability of such dwellings is quite limited. The Committee also takes note of the fact that the application of the author, who is still on the waiting list, does not bear the date of the original application, which was rejected, but that of a later application. The Committee also notes that the State party disagrees with the Committee's other recommendations. The Committee therefore considers that the State party's response is not indicative of a satisfactory implementation of its recommendations in relation to the author and her children.

With regard to its general recommendations, the Committee takes note of the advances represented by the implementation of Royal Decree-Laws Nos. 7/2019, 11/2020 and 37/2020,⁶ which have opened the way for a dialogue and coordination between social services and legal authorities and for a fuller consideration of the socioeconomic vulnerability of persons who may be subject to eviction by judicial authorities. The Committee considers that these measures may contribute to compliance with its recommendations (a) and (b) but notes that some of these measures are applicable only during the state of alert and that the number of evictions is still very high.

The Committee takes note of the budgetary and administrative support provided for the State Housing Plan 2018–2021, although the assistance has not yet reached all sectors of citizens in need. The Committee also welcomes the initiative for the adoption of a housing law. The Committee considers that these measures can contribute to the follow-up to recommendations (d) and (e) and encourages the State party to continue to make progress in this regard.

The Committee notes that the State party has not reported any progress with regard to recommendations (c) and (f) concerning the denial of social housing to persons occupying a property without legal title and compliance with the Committee's requests for interim measures, respectively. The Committee is concerned at the content of Circular 1/2020 of the State Legal Service, which states

⁶ Mentioned in the previous section of this report (communication No. 5/2015).

that requests for interim measures issued by the Committee in accordance with article 5 (1) of the Optional Protocol are not binding. The Committee recalls that any State party that fails to take such interim measures is failing to fulfil its obligation to respect in good faith the procedure for individual communications established in the Optional Protocol and is depriving the Committee of its ability to provide an effective remedy to persons claiming to be victims of a violation of the Covenant.⁷

On the basis of all the information received, the Committee considers that some initial action has been taken but that further action and additional information on the measures taken are still needed. The Committee decides to continue the follow-up procedure for this communication and invites the State party to provide information on the measures taken in relation to all its recommendations, both in respect of the author and those of a general nature. The Committee asks that the requested information be sent within 90 days of the publication of the present document and that the Committee be periodically informed when progress is made in respect of its recommendations.

3. **Communication No. 22/2017, S.C. and G.P. v. Italy**

Date of adoption of Views: 7 March 2019

Contents of initial communication: The authors, for medical reasons, had undergone in vitro fertilization. They allege that S.C. was compelled to accept the transfer of an embryo into her uterus against her will and that they have been prevented from donating their embryos to be used in scientific research. They submit that the State party has violated their rights under articles 10, 12 (1) and (2) (c) and (d), and 15 (1) (b), (2) and (3), all read in conjunction with article 2 (1), of the Covenant.⁸

Articles violated: Article 12, read alone and read in conjunction with article 3 of the Covenant.

Committee's recommendations in respect of the authors: The State party is under an obligation to provide the authors with an effective remedy, in particular:

- (a) To 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) To 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) To award S.C. adequate compensation for the physical, psychological and moral damages suffered;
- (d) To 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:

- (a) To adopt appropriate legislative and/or administrative measures to guarantee the right of all

⁷ *S.S.R. v. Spain* (E/C.12/66/D/51/2018), para. 7.7.

⁸ See E/C.12/65/D/22/2017.

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) To 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.

Previous decision:

At its sixty-eighth session, the Committee adopted its report on follow-up to communications. In that report, it considered that its recommendations had not yet been implemented and decided to continue the follow-up procedure for the communication.⁹ The Committee invited the State party to provide information on the measures taken in the light of its recommendations. In particular, it requested the State party to provide further details on Decree No. 265, the measures adopted by Tuscany Region and 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.

Submission from the State party:

By note verbale dated 2 April 2021, the State party submitted additional information regarding its response to the Committee's recommendations.

The State party again reported that the Committee's Views have been published and will be forwarded to Parliament for discussion.

The State party also listed a number of legal provisions adopted prior to the issuance of the Committee's Views relating to assisted reproduction and the donation of human tissues and cells, without detailing their content or explaining their relevance to the present case. With reference to the decree of the Region of Tuscany adopted on 11 August 2020, the State party affirmed that the consent given by individuals to medical interventions in relation to assisted reproduction does not preclude the provision of personalized information to all patients. Thus, the existence of a signed consent form does not relieve physicians of their obligation to provide adequate, prompt and effective information to patients. Consent forms should therefore be considered to be a tool for assisted reproduction clinics, but a tool which may be modified.

Comments by the authors:

On 7 June 2021, the authors submitted their comments on the State party's observations.

The authors note that the State party's submission makes no reference to any rules adopted after the publication of the Views and that the rules that are listed had already been mentioned in the State party's previous report. Furthermore, they explain that the correspondence that they sent on 3 June 2020 to a number of authorities, including several members of the Council of Ministers, has remained unanswered, as has the letter sent by civil society regarding the Committee's Views.

⁹ E/C.12/68/3.

The authors consider that the State party is ignoring the Committee's recommendations and request the Committee to urge the State party to take its obligations to all parties to the Covenant, the Committee and the authors seriously.

Committee's decision:

The Committee notes that the State party has not taken any new concrete measures that would indicate that it has put into effect any of the Committee's recommendations, either in respect of the authors or those of a general nature.

The Committee therefore considers that the State party's response is not satisfactory, as the Committee's recommendations have not yet been applied, 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. The Committee asks that the requested information be sent within 180 days of the publication of the present document and that the Committee be periodically informed when progress is made in respect of its recommendations.
