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

This report compiles information received since the 98th session of the Human Rights Committee, which took place from 8 to 26 of March 2010.

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

State party's submission

The Committee will recall that on 16 December 2009, the State party informed it that arrangements had been made to compensate the author, but despite efforts made, they had not been able to contact him. No further details were provided.

Author's comments

The Committee will also recall that on 25 February 2010, the author informed the Committee that the State party had failed to effectively implement the Views. Despite an initiative taken by the National Commission on Human Rights and Freedoms (NCHRF), the author had 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 had 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 was 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. He requested *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.

On 24 April 2010, the author provided the following new information. He stated that he had received a letter from the Minister of External Relations of the State party on 14 February 2010 in his European country of exile. According to this letter, a Commission composed of the Ministries of Justice, Territorial Administration and Decentralization, Finance, External Relations and the General Delegations of Police held a meeting on 17 February 2009. After deliberations, the Commission "proposed [to the author] the maximum sum of 30.000.000 FCFA (approx. 56,000 USD) as all the damages incurred on your person in order to come out with a final conclusion that will put an end to this file".

According to the author, the decision to grant him compensation is a positive sign of the State party's willingness to resolve the case. Nevertheless, such a proposition is not in accordance with the damages suffered by the author, given that he is still undergoing medical treatment, is suffering severe pain in his left ear and acute hearing difficulties, as well as pain in his left jaw, memory lapses and insomnia due to post traumatic stress disorder. For these reasons, *inter alia*, the author recalls that the State party is under an obligation to grant him effective reparation including *full* compensation for the injuries suffered. The State party was already informed in 2008 that he requests: that he be granted 500.000.000 FCFA (930,000 USD) for the general and special damages he suffered because of the violations of his human rights; that the State party pay for his medical treatment abroad; that the perpetrators be tried in court and punished according to the law; that all other threats against him by officials be promptly investigated and perpetrators be tried in court; and that the State party ensure his security.

He submits that there is clearly no indication of the State party's intention to initiate criminal proceedings seeking the prompt investigation, prosecution and conviction of the perpetrators, and to protect the author from threats and/or intimidation from members of the security forces. Even since the adoption of the Committee's Views in 2007, the author claims that the State party has failed to protect him from threats and/or intimidation from members of the security forces. For instance, from 2004 until 2007, he lodged more than ten complaints against police officers following arbitrary arrests, detention, ill-treatment and after having received death threats from security forces several times. To illustrate the persecution to which he has been subjected, the author cites a number of examples of violations of his human rights which took place in 2005, all of which were reported to the judiciary, yet no investigations have been carried out and the perpetrators still enjoy impunity.

Further action taken or required

The author's submissions were sent to the State party on 8 and 28 April 2010. The Committee may wish to wait for a response from the State party prior to making a decision in this case.

Committee's Decision The Committee considers the dialogue ongoing.

State party **SPAIN**

Cases **1101/2002, Alba Cabriada**

Views adopted on 1 November 2004

Issues and violations found Right to review - 14, paragraph 5

Remedy recommended An effective remedy. The author's conviction must be reviewed in accordance with article 14, paragraph 5, of the Covenant.

Due date for State party's response 1 May 2005

Date of State party's response No response received

Author's submission

On 2 April 2010, the author informed the Committee that the State party had not proceeded to review his sentence of 10 years in line with the Committee's recommendation. Neither has the State party amended its criminal law to comply with the requirements of article 14, paragraph 5. He requests the Committee to encourage the State party to fulfil its obligations under article 2 of the Covenant.

Further action taken or required

The author's submission was sent to the State party with a reminder for its comments on the Views.

Proposed Committee's Decision The Committee considers the dialogue ongoing

Cases **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's response 1 February 2010

Date of State party's response 27 January 2010

State party's comments

The Committee will recall the State party's submission in which it indicated that it had taken the following measures as a result of the Committee's Views:

The text of the Views had been included in the Information Bulletin of the Ministry of Justice dated 15 September 2009. This is a public journal for general distribution that can be consulted by anybody.

The Views were sent to all main judicial bodies and organs related to them, including the General Council of the Judicature, the Constitutional Court, the Supreme Court, the General Attorney's Office and the Ministry of Interior.

On 11 November 2009, the Minister of Foreign Affairs and other high officials at his Ministry met 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.

Author's comments

On 23 April 2010, the author commented upon the State party's submission. She commended the limited action taken by the State party in its attempts to implement its Views but expressed the view that its actions are insufficient. She submits that the State party should take the following steps.

- (1) Issue the public apology that was specifically recommended by the Committee. She sets out the reasoning behind a public apology as opposed to one given behind closed doors, and suggests that this may be carried out by the posting Minister Rubacalba's letter of apology on the website of the Ministry of the Interior, by making a public statement in an appropriate forum and by issuing a press release to newspapers and media outlets with a wide circulation.
- (2) The author provides detailed suggestions on steps that may be implemented to prevent repetition, such as detailed instructions for stop-and-search, specific training of police, and non-discrimination standards for immigration checks. The author has communicated on several occasions on such issues and received responses from the Ministry of the Interior on training courses that are being undertaken but is of the view that they are too general in nature.
- (3) The State party should properly consider the payment of damages as an appropriate remedy that demonstrates the vigorous reaction required where race discrimination has occurred. In a letter to the State party dated 6 November 2009, the author requested 30,000 euros for moral and psychological injury and a further 30,000 euros towards the legal costs she incurred in the proceedings before the national tribunals. Her request was subsequently rejected on the basis that she had lost her case before the Spanish courts. She now urges the State party to consider alternative ways of effecting redress such as a discretionary payment of compensation.

Further action taken or required

The author's submission was sent to the State party on 27 April 2010.

Committee's Decision: The Committee decides that, given the measures taken by the State party in the form of apologies and wide distribution of the Committee's Views to implement the recommended remedies, the Committee does not find it necessary to consider this matter any further under the follow-up procedure.

State party	PARAGUAY
Cases	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 comments

The Committee will recall that on 2 October 2009, the State party denied that it had violated the Covenant. It submitted that the dismissal of three international mandates from Spain, requiring the children to be returned to their father, was done in accordance with Paraguayan legal provisions, which comply with international law. The conclusion has always been that the girls should remain in Paraguay with their mother. In 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. Thus, their transfer to Spain would mean uprooting them from their natural environment. Regarding the pending trial in Spain against Ms. Mendoza for fleeing the country, due process 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 Committee will also recall that the author refuted the information provided by the State party in its response to the Committee's Views. He claimed that it was untrue that his ex-wife was denied a visa and residence permit in Spain. Being his wife, she was entitled to live in Spain legally. However, due to her lack of interest, and even if it was a mere formality, she never completed the necessary paperwork in order to obtain such a permit.

His ex-wife had always refused to participate in any proceedings regarding the divorce and custody conducted in Spain. She also refused to comply with the decision of 27 March 2002 issued by a Paraguayan judge ordering that the children spend some time with their father. Furthermore, in 2002, the author and his ex-wife came before Judge J. Augusto Saldivar to agree on visiting arrangements. The author proposed to provide his daughters with all the necessary material support in kind and to be allowed to maintain regular contact with them. However, this proposal was rejected by his ex-wife.

As to the State party's claim that the author was summoned to appear before a Paraguayan judge as a result of the proceedings initiated by his ex-wife for not paying alimony/maintenance, he claimed that he never received any notification and that no letters in that respect were sent to his domicile in Spain, where he lives permanently.

The Paraguayan authorities have constantly refused to implement the decisions of the Spanish courts regarding custody of the children. On the question of alimony raised in the State party's response, the divorce decision does not oblige the author to pay any, in view of the fact that he obtained the custody of his daughters. Despite that, he regularly sends money and parcels to them through his ex-wife's family or the Spanish Embassy in Paraguay. Medical and school fees were paid by the Spanish Consulate, in view of the fact that they have Spanish nationality and are affiliated to the Spanish social security scheme.

State party's supplementary submission

On 21 May 2010, the State party provided new updated information to the Committee, following a note verbale from the Committee (see report from 98th session) requesting it to respond to the following, "Since the State party claims that its legislation allows the author to obtain visiting rights, the Committee requests the State party to provide detailed information on effective remedies still available to the author under such legislation".

Regarding the obligation to provide effective remedies to the author that could allow him to see his daughters, the State party reiterates that nothing stops the author from exhausting the legal avenues available in cases of this nature. However, it claims that the author's proceedings have slowed up due to his unwillingness to pursue the procedure. As a result of his inaction (more than six months and in accordance with article 172 of the Code of legal procedure), the legal processes initially undertaken have now expired. The State party then summarizes the proceedings initiated by the author in Paraguay (see Committee's Decision) and reiterates that the lack of rulings and decisions on the issues raised by Mr. Asensi have been due to his own negligence throughout the proceedings. Following the sentence n. 120 by the Supreme Court confirming the decision not to grant Mr. Asensi custody, there is no record of further legal proceedings, petitions or appeals having taken place.

The State party reiterates its suggestion of the establishment of a regime under which the author will have access to his daughters. In accordance with national legislation (Law 1680/2001) art. 95: legal arrangements will enforce the right of the child to remain in

contact and see the members of his family with whom he does not live. Thus, the State party suggests that:

- 1) It acts as a mediator between the parties, in concordance with national legislation. Indeed, the Office of Mediation of the Judiciary Branch is available at no cost for the parties to resolve their dispute.
- 2) Upon reaching an agreement, it can be confirmed by the Children's' Judge. The State party notes that preliminary talks have already begun with Mrs. Mendoza's lawyer, who will make this suggestion to his client.
- 3) In the event one of the parties fails to show up at the mediation meetings, there is still the possibility of Mr. Asensi requesting the initiation of new proceedings, for which he could be represented by someone of his choice from the Paraguayan consulate in Madrid or Barcelona, preventing him from having to come to Paraguay himself.
- 4) It also notes that he has all the legal recourses available to him, such as the visitation rights (art. 95), proceedings to suspend home custody (art. 70 to 81) among others.

The State party clarifies its position on several issues:

- 1) Although it is committed to addressing the violations established by the Committee in regard to articles 23 and 24, it claims that Mr. Asensi's lawyer's has a lack of will in finding a compromise that would allow the complainant to see his daughters under a legal regime.
- 2) Regarding the legal proceedings against Mrs. Mendoza in Spain, on the grounds of removal of minors, it notes that there is an extradition request from Spain against her. In this regard, the Supreme Court ruled on 7 April 2010 that, "having not complied with the pre-requisite of "double incrimination"¹ according to both Spanish and Paraguayan Law, and in accordance with the extradition treaty, the request was denied." The most likely equivalent piece of Paraguayan legislation that would allow for the Spanish request to be considered is not acceptable² because Mrs. Mendoza is the mother and has custody over the girls.
- 3) Regarding custody claims, the State party asserts that the decision has been made and that the complainant should understand that the Committee is not a fourth instance of appeal nor it's within its mandate to review the facts and evidences.
- 4) As to the claim for compensation, the State party refuses to comply with his demands, as there was never any mention of financial reparation in the Committee's ruling.

The State party confirms its commitment to raise awareness in workshops organized by the Supreme Court to future judges on the importance of abiding by the Committee's rulings.

Further action taken or required

¹ For the extradition request to be acceptable, alleged punishable actions have to exist in both legal regimes. The State party maintains under Paraguayan law that there is no equivalent to what the Spanish authorities are accusing Mrs. Mendoza of.

² There is a law in Paraguay that punishes the one person who removes the children of a parent who has custody over them. But in this case, as Mrs. Medoza is actually the mother, and according to the State party had custody over them, "double incrimination" is unfounded.

The State party's most recent submission was sent to the authors for their comments. The Committee may wish to await receipt of comments prior to making a decision on this matter.

Committee's Decision The Committee considers the dialogue ongoing.

State party	UKRAINE
Cases	A. Aliev, 781/1997
Views adopted on	7 August 2003
Issues and violations found	Unfair trial, no right to legal representation - articles 14, paragraphs 1 and 3 (d).
Remedy recommended	Since the author was not duly represented by a lawyer during the first months of his arrest and during part of his trial, even though he risked being sentenced to death, consideration should be given to his early release.
Due date for State party's response	1 December 2003
Date of State party's response	17 August 2004

State party's comments

The Committee will recall the State party's submission in which it stated that the author's case was examined by the General Prosecutor, who established that Aliev was properly convicted as charged on 11 April 1997 and sentenced to death. On 17 July 1997, the Supreme Court confirmed the conviction and sentence. The author's claim that he was denied access to counsel for a five month period during the investigation was concocted. He was arrested on 28 August 1996 and was interrogated in the presence of his lawyer. The criminal investigation into the author's case was conducted with the participation of his lawyer, who was involved at all relevant stages, including during the trial. After the conviction, Aliev and his lawyer appealed to the Supreme Court. The State party claimed that the author was advised of the Supreme Court hearing but for unknown reasons he failed to appear. The case file materials refute the claims by Aliev that he was subjected to "unlawful means of investigation", or that any violations of criminal procedure law took place. There is no evidence to suggest otherwise, and Aliev made no such complaints at the time. It was only at his appeal that Aliev started to make claims about having been forced by the police to make a confession. In accordance with the amnesty on the death penalty in force, Aliev's sentence was commuted to life imprisonment. In the circumstances, the State party claims that there is no basis to alter the findings of the relevant judicial bodies.

Author's comments

On 10 April 2010, the author responded to the State party's submission. He reiterated information previously provided prior to consideration of his case by the Committee, including a detailed account of the facts of his case, and of the inconsistencies in the State party's account of those facts. As to follow-up, he confirms that the State party has done nothing to implement the Views and that he remains in prison.

Further action taken or required

The Committee may request the Special Rapporteur to arrange a meeting with the State party.

Committee's Decision

The Committee decides that, due to the consideration given by the State party to the author's case as recommended by the Committee and due to the significant lapse of time since the adoption of the Views, the Committee does not find it necessary to consider this matter any further under the follow-up procedure.

[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.]
