



International Covenant on Civil and Political Rights

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Human Rights Committee

Follow-up progress report on individual communications*

A. Introduction

1. At its thirty-ninth session, the Human Rights Committee established a procedure and designated a special rapporteur to monitor follow-up to its Views adopted under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights. The Special Rapporteur for follow-up on Views prepared the present report in accordance with rule 106, paragraph 3, of the Committee's rules of procedure. The present report sets out information provided by States parties and by authors or their counsel, that was received, or processed, up until September 2018.
2. As at the end of the 124th session, the Committee had concluded that there had been a violation of the Covenant in 1,101 out of the 1,326 Views it had adopted since 1979.
3. At its 109th session, the Committee decided to include in its reports on follow-up to Views an assessment of the replies received from and action taken by States parties. The assessment is based on criteria similar to those applied by the Committee in the procedure for follow-up to its concluding observations.
4. At its 118th session, on 4 November 2016, the Committee decided to revise its assessment criteria.

Assessment criteria (as revised during the 118th session)

Assessment of replies:¹

- A **Response largely satisfactory:** The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.
- B **Action taken, but additional measures or information required:** The State party took steps towards the implementation of the recommendation but additional information or action remains necessary.
- C **Response received but actions or information not relevant or do not implement the recommendation:** The action taken or information provided by the State party does not address the situation under consideration.
- D **No follow-up report received after reminder(s):** No follow-up report has been received after the reminder(s).
- E **Information or measures taken are contrary to, or reflect rejection of, the Committee's recommendation.**

* Adopted by the Committee at its 125th session (4–29 March 2019).

¹ The full assessment criteria are available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf.



5. At its 121st session, on 9 November 2017, the Committee decided to revise its methodology and procedure for monitoring follow-up to its Views.

Decisions taken:

Grading will no longer be applied in cases where the Views have been merely published and/or circulated.

Grading will be applied for the State party's response on measures of non-repetition only if such measures are specifically included in the Views.

The follow-up report will contain only information on cases that are ready for grading by the Committee, that is, where there is a reply by the State party and information provided by the author.

B. Follow-up information received and processed up until September 2018

1. Algeria

Communication No. 2128/2012, *Kerrouche*

Views adopted:	3 November 2016
Violation:	Articles 2 (3), 7, 10, 14, 17 and 19
Remedy:	(a) Conduct a full and effective investigation, prosecute and punish the perpetrators, and provide appropriate measures of satisfaction; (b) review its national legislation, in particular article 144 of the Criminal Code, in order to bring it into conformity with article 19 of the Covenant; (c) adopt measures to prevent similar violations in the future.
Subject matter:	Criminal conviction for having reported acts of corruption
Previous follow-up information:	None
Submission from the author:	9 June 2018 ²

The author submits that no action has been taken so far by the authorities of the State party to address the Committee's findings. On 6 May 2017, on the basis of the Committee's findings and in accordance with article 531-4 of the Criminal Procedure Code, the author asked the Minister of Justice to review the Appeal Court's judgment No. 289 of 25 January 2006, under which he was sentenced to 18 months' imprisonment for contempt of court without having benefited from the guarantees set out in article 19 of the Covenant. On 18 July 2017, his request was rejected on the grounds that the Covenant was not incorporated in Algerian legislation. On 7 September 2017, the author sent a registered letter with acknowledgment of receipt to the President of the National Human Rights Council, requesting the implementation of the Committee's Views. He has not received any answer. On 2 May 2018, the author filed an application for rehabilitation with the prosecutor of Bouhanifia, in accordance with article 685 of the Criminal Procedure Code and on the basis of the Committee's findings, making reference to the Constitution, which provides in article 150 for the primacy of international law. On 17 May 2018, his request was rejected on the grounds that the court's judgment No. 289 had not been executed in the civil action. Indeed, Algerian courts have always refused to apply the provisions of instruments that are not part of domestic legislation and there is no judicial remedy for violations of the Covenant.

The author submits that the Algerian legal system is a monist system with primacy of international law, as provided by article 150 of the Constitution in which it is stated that "treaties ratified by the President of the Republic, under the conditions provided for in the Constitution, are above the law". The Covenant, to which Algeria acceded on 12 September

² Acknowledged to the author and transmitted to the State party on 10 July 2018, with a deadline for observations of 10 August 2018.

1989, is a source of law that is superior to national law in the hierarchy of norms. Nevertheless, in Algeria, judges are not entitled to apply directly the Covenant provisions without measures of transposition or legislative incorporation. The author concludes that he has never benefited from his fundamental rights provided under the Covenant and the Constitution.

In the absence of the State party's follow-up observations, a reminder was sent on 20 March 2019, with a deadline of 20 May 2019.

Committee's assessment:

- (a) Effective remedy: D
- (b) Legislation review: D
- (c) Non-repetition: D

Committee's decision: Follow-up dialogue ongoing, pending receipt of the State party's observations.

2. Australia

Communication No. 2172/2012, G.

Views adopted:	17 March 2017
Violation:	Articles 17 and 26
Remedy:	Provide the author with a birth certificate consistent with her sex; prevent similar violations in the future; revise its legislation to ensure compliance with the Covenant.
Subject matter:	Refusal to have the sex changed on the birth certificate of a married transgender person.
Previous follow-up information:	None
Submission from the State party:	14 June 2018 ³

The Views are to be published on the website of the Australian Attorney-General's Department.⁴

The Committee concluded that the State party had violated articles 17 and 26 of the Covenant in relation to denying transgender persons the ability to amend their sex on their birth certificate while married. The basis for the conclusion that there was a violation of article 17 was that the requirement that a person be unmarried at the time of their application to register a change of sex and to have a new birth certificate issued was an arbitrary interference with the author's right to privacy and family. The basis for the conclusion that there was a violation of article 26 was that the differential treatment between married and unmarried persons who had undergone a sex affirmation procedure and sought to amend the sex marker on their birth certificate was not based on reasonable and objective criteria, and therefore constituted discrimination on the basis of marital and transgender status.

The State party is pleased to advise the Committee that on 7 December 2017, the Australian Parliament legislated to permit same-sex couples to marry in Australia. The legislation came into force on 9 December 2017. These amendments address in part the Committee's views with respect to the author. The State party anticipates that it will be in a position to fully address the Committee's views before the end of 2018.

On 9 December 2017, the Marriage Amendment (Definition and Religious Freedoms) Act 2017 amended the Marriage Act 1961 to provide marriage equality in Australia. The Marriage Amendment (Definition and Religious Freedoms) Act 2017 amended the definition

³ Acknowledged to the State party and transmitted to counsel for comments on 19 March 2019, with a deadline of 20 May 2019.

⁴ See www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Humanrightscommunications.aspx.

of marriage in section 5 (1) of the Marriage Act 1961 so that the right to marry in Australia was no longer determined by sex or gender.

The Marriage Amendment (Definition and Religious Freedoms) Act 2017 also made consequential amendments to various other Commonwealth statutes, including amendments to the Sex Discrimination Act 1984. Schedule 2 of the Marriage Amendment (Definition and Religious Freedoms) Act 2017 included amendments that will repeal the exemption in subsection 40 (5) of the Sex Discrimination Act 1984. The consequence of this repeal is that refusals to make, issue and alter official records of a person's sex (such as a birth certificate) on the basis that the person is married, even if the refusal is required to be made under state or territory legislation, will no longer be exempt from protections against discrimination in division 2 of the Sex Discrimination Act 1984. As a result, such refusals will be unlawful and could be the subject of a complaint of discrimination under the Sex Discrimination Act 1984.

Repealing subsection 40 (5) is intended to provide a catalyst for states and territories to amend laws that require a person to be unmarried in order to alter the record of their sex (this includes all states and territories other than the Australian Capital Territory and South Australia). Schedule 2 of the Marriage Amendment (Definition and Religious Freedoms) Act 2017 will not enter into force until 9 December 2018. Commencement has been delayed for 12 months in order to provide states and territories that have such laws with the opportunity to amend their legislation, and associated policies and procedures, to allow people who are married to change the sex marker on their official records.

It is anticipated that, prior to the commencement of the amendments to the Sex Discrimination Act 1984, all Australian states and territories will repeal laws requiring officials to refuse to make, issue or alter an official record of a person's sex because the person is married.

With respect to the author's particular circumstances, on 6 June 2018 the Parliament of New South Wales passed the Miscellaneous Acts Amendment (Marriages) Bill 2018, which makes amendments to part 5A of the Births, Deaths and Marriages Registration Act 1995 (New South Wales). The Miscellaneous Acts Amendment (Marriages) Act 2018 removes the requirement for a person to be unmarried in order to alter the record of that person's sex. Upon commencement of the 2018 Act, the author will be able to apply to alter the register of her sex notwithstanding her marriage status, provided she meets the requirements in part 5A of the Births, Deaths and Marriages Registration Act 1995.

The State party considers that the changes to its laws will address the Committee's Views, not only with respect to the author personally, but also by taking steps to prevent a similar situation from occurring in the future.

Committee's assessment:

- (a) Provision of a new birth certificate: No information
- (b) Non-repetition: A

Committee's decision: Follow-up dialogue ongoing, pending receipt of counsel's comments on the State party's observations.

3. Australia

Communication 2094/2011, F.K.A.G. et al.

Views adopted:	26 July 2013
Violation:	Articles 7, 9 (1), (2) and (4), 10 (1), 17 (1), 23 (1) and 24 (1)
Remedy:	Provide the authors with an effective remedy, including release under individually appropriate conditions, rehabilitation and appropriate compensation; take steps to prevent similar violations in the future; review the country's migration legislation to ensure its conformity with the requirements of articles 7 and 9 (1), (2) and (4) of the Covenant.

Subject matter: Indefinite detention of persons in immigration facilities
 Previous follow-up information: A/69/40
 Submission from the State party: 7 April 2017⁵

The State party gave careful consideration, in good faith, to the Committee's Views and provided its response to the Views on 17 December 2014. As the State party has provided a final response to adverse Views, it considers those matters to be finalized.

The State party wishes to further update the Committee on the status of the authors. The Australian Security Intelligence Organisation issued the two remaining authors in detention, authors 27 and 30, with qualified security assessments on 28 November 2016 and 21 December 2016 respectively. The Department of Immigration and Border Protection is considering placement of the authors into the community.

The State party reiterates that it is entitled to take measures, including detention, to uphold its national security. Consistent with its international obligations, the State party has policies and processes in place to ensure that any such detention is non-arbitrary and continues only for so long as there are grounds to justify it.

Committee's assessment:

- (a) Release, rehabilitation and adequate compensation: B
- (b) Non-repetition: E

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

4. Australia

Communication No. 2279/2013, Z.

Views adopted: 5 November 2015
Violation: Articles 14 (1), 17, 23 and 24
Remedy: Effective remedy, including to ensure regular contact between the author and his son and to provide adequate compensation to the author. The State party is also under an obligation to prevent similar violations in the future.
Subject matter: Removal of child from Poland to Australia without the father's consent
Previous follow-up information: Available from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F119%2F3&Lang=en
Submission from the State party: 5 July 2016,⁶ resubmitted 21 February 2017 (confidential)
 The State party requested its submission not to be published, due to restrictions under its domestic law.
Submissions from the author: Numerous submissions between 11 November 2016 and 23 February 2017⁷

In the period 2016–2018, the author submitted follow-up comments on several occasions. He refutes the State party's arguments and resubmits the evidence already presented to the Committee during the examination of his communication, to demonstrate

⁵ Acknowledged to the State party and transmitted to counsel for information on 19 March 2019.

⁶ Acknowledged to the State party and transmitted to the author on 1 September 2016.

⁷ Acknowledged to the author and transmitted to the State party on 17 March 2017.

that the Views are justified, despite the State party's disagreement with the Committee's findings.

The author recalls, with respect to the violation of articles 17 and 23 of the Covenant, that the Western Australia Central Authority did not adhere to the Hague Convention on the Civil Aspects of International Child Abduction, of 1980, or the Family Law (Child Abduction Convention) Regulations 1986, and nor did it accept the High Court decision in establishing a country of habitual residence, and that the State party did not respect the international law of State jurisdiction, in that it did not recognize the Polish court's final order in relation to child custody made in the divorce proceedings. In addition, the Australian court deciding on child custody proceedings between January and May 2014 already had before it a final custody court order made in divorce proceedings heard in a Polish court, and thus violated the *res judicata* principle. The Australian Central Authority and the Australian Family Court should have immediately and permanently stayed the Australian court proceedings, after they had received the father's response to the mother's custody application, but also after the Western Australia Central Authority had received from Poland the application lodged under the Hague Convention, or at least immediately after the father had provided the Australian Central Authority and the Family Court of Western Australia with the Polish Circuit Court final order. The Attorney General of Australia had no option but to return the child to Poland in accordance with the Polish court's decision and with the Committee's recommendations, and/or to appeal the Full Court order made in the Hague Convention proceedings to a High Court of Australia.

The author repeats that government officials of the State party took an active role in the removal of the child from Poland by issuing an "emergency passport" on the basis only of the accusations of the mother and without the father's knowledge or consent. The officials did not verify the allegations and thus the author characterizes their actions as arbitrary. The author objects to the fact that there was no examination of the father before the Full Court either, during the appeal court hearing in relation to the abduction and the habitual residence of the child, for confirmation of the mother's allegedly false allegations of violence and child abuse. According to the author, the Court by-passed its own jurisprudence that, in conducting an "individual analysis" to establish the country of habitual residence, the parent left behind should also have been cross-examined. The author recalls the finding by the Committee that this behaviour constituted "specific interference" with family life, infringing the right of a parent and a child to maintain personal relations and regular contacts. Thus, the State party violated articles 17 (1) and 23 (1) of the Covenant, as found in paragraphs 7.2–7.4 of the Committee's Views.

The author suggests that, in future Hague Convention applications, where there is suspicion of an Australian government official having contributed to the child's abduction, the parent left behind should have the right to be offered an independent State lawyer paid for by the Australian Central Authority, so that the accusations of the applicant parent can be cross-examined.

In the light of the above, the author reiterates the argumentation in para. 7.5 of the Committee's Views with respect to the "best interests of the child", according to which the State party failed to adequately take those interests into account and to take such measures of protection as required by the minor, thus violating article 24 (1) of the Covenant.

Furthermore, the author highlights paragraph 7.6 of the Committee's Views, according to which the Hague Convention proceedings "were plagued with undue delays", amounting to a violation of article 14 (1) of the Covenant.

The author recalls that the State party has failed to provide him with restitution for the parental time lost, from the time of abduction until the time when father and son could be reunited, as well as with adequate compensation.

With respect to the alleged non-exhaustion of domestic remedies, the author notes that he and his son appealed before the High Court, and that the appeal was rejected by the Australian Central Authority, despite several requests by the author as well as by the Polish Central Authority. On 24 December 2013, the Western Australia Central Authority dismissed the author's Hague Convention application for access and contact after having deliberated on it for almost two years, thus adding to the unlawful retention of his son in Australia and

further contributing to his son's alienation, which amounted to child abuse, and to even further abuse of his son's human rights.

The author informs the Committee that he has transmitted its Views to the Ombudsman of Western Australia, requesting implementation by the State party. The Ombudsman has rejected the request, on the procedural ground that the complaint was delayed. The author had submitted his complaint to the Ombudsman before the issuance of the Views as well, but it had then been rejected because of a parallel submission to the Australian Human Rights Commission, in 2014. The author has also forwarded the Views, requesting implementation, to the Prime Minister and to the Attorney General of Australia and the Attorney General of Western Australia, with no success.

On 24 November 2017, the author filed another Hague Convention application, for access to and contact with his child. The Polish Central Authority (the Ministry of Justice) submitted that application to the Australian Central Authority on behalf of the author on 5 December 2017. The author presents an email from the Australian authorities of 26 April 2018, which informed him that the State party finally rejected the application, claiming that there was a valid "country profile" for Australia, that is, there were guidance procedures on processing Hague Convention applications, which the State party had followed. Thus, the Australian authorities maintain their view that the author should seek assistance from an Australian court to enforce the access orders of the Family Court of Western Australia. However, the author alleges that this "country profile" has never been approved by the majority of States parties to the Hague Convention.

The author concludes that more than eight years have passed since his son, who was 5 years old at the time, was arbitrarily/unlawfully removed from the parental care of the father and his home in Poland, to Australia. The author has not been able to communicate with his son for more than seven years, despite the State party being fully aware of this.

On 20 September 2018, the author resubmitted his comments, reiterated his main arguments and continued to claim that the State party has failed to implement the Committee's Views.

In addition, in the period between August 2016 and May 2018, third parties submitted letters in support of the author. On 31 August 2016 and 1 March 2017, the Permanent Mission of Poland to the United Nations Office and other international organizations in Geneva made queries about the implementation of the case. Four of the supporters were themselves fathers of children who were facing a similar problem before family courts of Australia, claiming that Australian family courts had a long history of parental alienation by awarding sole custody to the alienating parent following one-sided allegations of domestic violence or similar accusations, thus leading to a total loss of contact between the minor and the parent, without even considering the situation of the accused parent to confirm the validity of the accusations of the parent who filed the complaint.

Committee's assessment:⁸

(a) Effective remedy, including to ensure regular contact between the author and his son and to provide adequate compensation to the author: E

Committee's decision: Follow-up dialogue ongoing, pending receipt of the State party's observations on the author's numerous submissions.

5. Cameroon

Communication No. 2764/2016, *Zogo*

Views adopted: 8 November 2017

Violation: Articles 2 (3), 7, 9 (1), (3), (4) and (5), 11, 14 (1), (2), (3) (c) and (5), 15 (1), 16 and 26

⁸ This assessment is based on the submission by the State party, dated 5 July 2016, and resubmitted on 21 February 2017, which the State party requested not to be published, due to restrictions under domestic law.

Remedy:	The State party is under an obligation to provide the author with an effective remedy. This requires States parties to provide full redress to persons whose rights under the Covenant have been violated. The State party is required, inter alia, to: (a) immediately release Mr. Zogo Andela pending his trial; (b) bring Mr. Zogo Andela to trial without delay; and (c) provide Mr. Zogo Andela with appropriate compensation for the violations that he has suffered. The State party also has an obligation to take measures to ensure that similar violations do not occur in the future.
Subject matter:	Criminal proceedings for misappropriation of public funds; prolonged detention
Previous follow-up information:	None
Follow-up information from the	17 and 21 September 2018 ⁹ author's counsel and his son:

The author's counsel and his son submitted that the author remained in prison and they had grave concerns about his health. The author suffers from various illnesses and his state of health has been worsening for several weeks. He has not yet been able to see a medical specialist, despite his repeated requests to the judicial and penitentiary authorities (the Prison Regulator, the Minister of Justice and the Attorney General of the Special Criminal Court) as well as those made by the prison doctor and his counsel.

On 13 September 2018, the author had a serious nosebleed that requires a thorough examination. On 14 September 2018, new correspondence was sent by counsel on this matter to the Minister of Justice, to no avail. On 29 October 2018, the author is summoned to appear before the Special Criminal Court.

On 25 October 2018, the Special Rapporteur for follow-up to Views met with a representative of the Permanent Mission of Cameroon to the United Nations Office and other international organizations in Geneva to enquire about the author's health and the measures taken by the State party to implement the Committee's Views. The delegation informed the Special Rapporteur that the State party would respond by the deadline of 3 December 2018.

In the absence of the State party's follow-up observations, a reminder was sent on 20 March 2019, with a deadline of 20 May 2019.

Committee's assessment:

- (a) Release, pending trial: D
- (b) Trial without delay: D
- (c) Appropriate compensation: D
- (d) Non-repetition: D

Committee's decision: Follow-up dialogue ongoing, pending receipt of the State party's observations.

6. Côte d'Ivoire

Communication No. 1759/2008, *Traoré*

Views adopted:	31 October 2011
Violation:	Articles 2 (3), 6 (1), 7, 9 and 10 (1)
Remedy:	The State party is under an obligation to provide the author with an effective remedy by: (a) ensuring a

⁹ Acknowledged to the author and transmitted to the State party on 2 October 2018, with a deadline for observations of 3 December 2018.

thorough and diligent investigation into the torture and ill-treatment suffered by the author and his cousins and into the enforced disappearance of the author's cousins, as well as the prosecution and punishment of those responsible; (b) providing the author with detailed information on the results of its investigation; (c) immediately releasing Chalio and Bakary Traoré if they are still being detained; (d) if Chalio and Bakary Traoré have died, returning their remains to their relatives; and (e) providing the author and either Chalio and Bakary Traoré or their immediate families with reparation, including in the form of adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

Subject matter: The arbitrary arrest and detention, torture and holding in inhuman conditions of one person, and the enforced disappearance of his cousins who were accused of political dissent

Previous follow-up information: None

Comments by the author's counsel: 29 March 2018¹⁰

The World Organization against Torture, the largest international coalition of non-governmental organizations fighting against torture and other ill-treatment, requests that the Committee follow up with the Government of Côte d'Ivoire on the implementation of its 31 October 2011 decision concerning communication No. 1759/2008, submitted by the World Organization against Torture on behalf of Zoumana Sorifing Traoré.

Mr. Zoumana Traoré was arbitrarily arrested in the night between 22 and 23 September 2002 by Ivorian security forces. He was held incommunicado and subjected to torture, including cigarette burns, beatings, a severe injury to his eye, the amputation of his right toe, and electric shocks, in an attempt to extort a confession from him on his involvement in the attempted coup of 19 September 2002. Two of his cousins, Chalio and Bakary Traoré, were arrested and charged with the same accusations, and were also subjected to torture. While Mr. Zoumana Traoré was released on 22 April 2003, his cousins vanished without a trace. To date, no government agent has been prosecuted for the disappearance of Mr. Chalio Traoré and Mr. Bakary Traoré, and no compensation has been provided to their relatives.

The World Organization against Torture recalls that in its Views, the Committee found (in para. 7.8) that the information before it disclosed a violation of articles 7, 9 and 10 (1), and article 2 (3) read in conjunction with articles 7, 9 and 10 (1), of the Covenant, vis-à-vis the author. The Committee was also of the view that articles 6 (1), 7, 9 and 10 (1) of the Covenant, alone and read in conjunction with article 2 (3), had been breached with regard to the author's cousins, Mr. Chalio Traoré and Mr. Bakary Traoré. The Committee also found as follows (in para. 7.9): In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy by: (a) ensuring a thorough and diligent investigation into the torture and ill-treatment suffered by the author and his cousins and into the enforced disappearance of the author's cousins, as well as the prosecution and punishment of those responsible; (b) providing the author with detailed information on the results of its investigation; (c) immediately releasing Mr. Chalio Traoré and Mr. Bakary Traoré if they are still being detained; (d) if Chalio and Bakary Traoré have died, returning their remains to their relatives; and (e) providing the author and either Mr. Chalio Traoré and Mr. Bakary Traoré or their immediate families with reparation, including in the form of adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

¹⁰ Acknowledged to counsel on 22 March 2019 and transmitted to the State party on 25 March 2019, with a second reminder to the State party to provide its follow-up observations, by 27 May 2019.

More than seven years after the Committee's decision and 16 years since the initial event, the author still has not received any compensation for the torture he suffered. This persists despite the World Organization against Torture's past attempts – all unsuccessful – to contact the Permanent Mission of Côte d'Ivoire to the United Nations Office and other international organizations in Geneva and to send the author's file to the National Commission for Reconciliation and Compensation of Victims and the National Programme for Social Cohesion in order for him to be identified as a victim and receive reparation. The author is still physically and psychologically suffering from the torture inflicted over 16 years ago; thus, compensation is essential for his reintegration and rehabilitation, in addition to being formally required by the Committee.

The World Organization against Torture therefore requests that the Committee follow up with the Ivorian authorities on behalf of the victim to ensure that the Committee's decision is implemented and that the author receives reparation, including in the form of adequate compensation.

Committee's assessment:¹¹

(a) Ensuring a thorough and diligent investigation into the torture and ill-treatment suffered by the author and his cousins and into the enforced disappearance of the author's cousins, as well as the prosecution and punishment of those responsible: D

(b) Providing the author with detailed information on the results of its investigation: D

(c) Providing reparation, including in the form of adequate compensation: D

Committee's decision: Follow-up dialogue ongoing, pending receipt of the State party's observations.

7. Czechia

Communication No. 757/1997, *Pezoldova*

Views adopted:	25 October 2002
Violation:	Article 26 read in conjunction with article 2
Remedy:	The State party is under an obligation to provide the author with an effective remedy, including an opportunity to file a new claim for restitution or compensation; the State party should review its legislation and administrative practices to ensure that all persons enjoy both equality before the law as well as the equal protection of the law.
Subject matter:	Confiscation of property; discrimination.
Previous follow-up information:	A/60/40, A/61/40 and A/62/40
State party's submission:	17 May 2017 ¹²

On 17 May 2017, the State party reiterated that implementation reports had been submitted in 2005 and 2007. The State party refers to these reports and does not deem it necessary to comment on the implementation process in more detail. The conclusions presented in the 2005 report remain highly relevant. The properties in question were not confiscated under Decree No. 12/1945 as asserted by the author, but were transferred to the State by virtue of Act No. 143/1947. Thus the restitution legislation adopted in Czechoslovakia after 1990 was not applicable to the author's case and her restitution claim had no legal basis. This conclusion was reiterated by national courts in a number of legal proceedings initiated by the author.

¹¹ The State party did not respond following the adoption of the Views, even though a reminder was sent in 2014.

¹² Acknowledged to the State party and transmitted to counsel for information on 21 March 2019.

Furthermore, the Committee's Views referred to the alleged denial of access by the author to pertinent archived documents. The Committee was informed, already in the first implementation report, that the State party had learned during the implementation of the Views that the author's assertions regarding denial of access to such documents were highly dubious.

The State party admits that Act No. 143/1947 under which the family's property was transferred *ex lege* to the State constitutes a totally unusual measure from the perspective of our time. However, it is not possible to assess this measure against today's standards. It was adopted in the post-war period, and in any case before 1966 when the Covenant was signed, as well as before 1993 when the First Optional Protocol entered into force for the State party. Assessment of events occurring at that time is outside the Committee's competence *ratione temporis*.

Committee's assessment:

(a) Effective remedy, including an opportunity to file a new claim for restitution or compensation: E

(b) Review its legislation and administrative practices to ensure that all persons enjoy both equality before the law as well as the equal protection of the law: E

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

8. Denmark

Communication No. 2469/2014, *E.U.R.*

Views adopted: 1 July 2016

Violation: Article 7

Remedy: The State party is under an obligation to proceed to a review of the decision to forcibly remove the author to Afghanistan, taking into account the State party's obligations under the Covenant and the Committee's Views. The State party is also requested to refrain from expelling the author while his request for asylum is being reconsidered.

Subject matter: Deportation to Afghanistan

Previous follow-up information: None

Submission from the State party: 1 February 2017¹³

The State party informs the Committee that, on 12 August 2016, the Danish Refugee Appeals Board reopened the author's asylum case for a review at an oral hearing of the Board before a new panel in order to reconsider the author's application for asylum in the light of the Committee's views. The Board reconsidered the author's application for asylum at a hearing on 15 December 2016. Prior to the Board hearing, the author's counsel submitted a new brief on the case, dated 13 October 2016, and at the hearing, the author was allowed to make statements before the Board, assisted by his counsel. The Board has allowed the author a full reconsideration of his asylum case, taking into account the State party's obligations under the International Covenant on Civil and Political Rights and the Committee's Views. The Board considered it a fact that the author had worked as an interpreter for forces of the United States of America for a period up until May 2011. However, the Board found that the author could not be granted residence under section 7 of the Aliens Act for that reason alone. The author made inconsistent and unlikely statements regarding several essential circumstances. The Board found that the document from the Kandahar police authorities could not be accorded any value. Thus, the author has not demonstrated that it is probable that he would be at a specific and individual risk of persecution if he were returned to his

¹³ Acknowledged to the State party and transmitted to counsel for information on 1 April 2019.

country of origin. In its decision of 15 December 2016, the Board upheld the decision of the Immigration Service¹⁴ and the author was ordered to leave Denmark within seven days of the Board's decision being served.

The Views of the Committee in cases against Denmark involving the Board are reported in the Board's annual report, which is distributed to all members of the Board and includes a chapter on cases brought before international bodies. The annual report is available on the Board's website. The Board and the Danish Ministry of Foreign Affairs have also made the Committee's Views publicly available on their individual websites (www.flm.dk and www.um.dk). In the light of the prevalence of the English language in Denmark, the State party sees no reason for a full translation into Danish.

The State party submits that it has fully complied with the Committee's Views.

Committee's assessment: Effective remedy: A

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

9. Denmark

Communication No. 2530/2015, *F. and G.*

Views adopted: 16 March 2017

Violation: Article 7

Remedy: The State party is under an obligation to review the authors' claims, taking into account the State party's obligations under the Covenant and the Committee's Views. The State party is also requested to refrain from expelling the authors to Egypt while their requests are under reconsideration.

Subject matter: Deportation to Egypt

Previous follow-up information: None

Submission from the State party: 21 December 2017¹⁵

The Danish Refugee Appeals Board decided on 10 July 2017 to reopen the authors' asylum cases for review at an oral hearing before a new panel in order to reconsider their applications for asylum in the light of the Committee's Views. The Board also decided to suspend the time limit for their departure. On 19 October 2017, the Board made two decisions: one relating to the application lodged by G and the three accompanying children and one relating to the application lodged by F. The Board has allowed both authors a full reconsideration of their asylum cases, taking into account the obligations of Denmark under the International Covenant on Civil and Political Rights and the Committee's Views.

The Board could not accept either the statement of G or the statement of F as being factual. The Board has emphasized in this respect that, during the asylum proceedings, both authors gave inconsistent statements on several crucial points. They responded vaguely and evasively to a number of questions, with the result that the course of events described by them appears incoherent and seems not to reflect their own experience. Also, the authors' statements have been inconsistent with each other. The Board found no basis for adjourning the case pending an examination of F for signs of torture, nor for remitting the case to the Immigration Service for reconsideration. According to the background information available, the general conditions for Coptic Christians in Egypt cannot independently justify residence under section 7 of the Aliens Act.

Consequently, the Board upheld the decision of the Immigration Service.¹⁶ The Board ordered the authors and their children to leave Denmark within seven days of the date on

¹⁴ The State party provided the full wording of the Board's decision of 15 December 2016 as an annex.

¹⁵ Acknowledged to the State party and transmitted to counsel for information on 21 March 2019.

¹⁶ The State party provided the full wording of the Board's decisions of 19 October 2017 as an annex.

which the decision was served on the authors. At the material time of the State party's follow-up observations, the decisions of 19 October 2017 have not yet been served on the authors and an alert has been recorded in respect of the authors in the internal system of the police.

The Views of the Committee in cases against Denmark involving the Board are reported in the Board's annual report, which is distributed to all members of the Board and includes a chapter on cases brought before international bodies. The annual report is available on the Board's website. The Board and the Danish Ministry of Foreign Affairs have also made the Committee's Views publicly available on their individual websites (www.flm.dk and www.um.dk). In the light of the prevalence of the English language in Denmark, the State party sees no reason for a full translation into Danish.

The State party therefore submits that due effect has been given to the Views of the Committee.

Committee's assessment: Effective remedy: A

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

10. Denmark

Communication No. 2601/2015, *M.S.*

Views adopted: 27 July 2017

Violation: Articles 6 (1) and 7

Remedy: The State party is under an obligation to review the author's case, taking into account the State party's obligations under the Covenant and the Committee's Views. The State party is also requested to refrain from expelling the author while his request for asylum is being reconsidered.

Subject matter: Deportation to Iraq

Previous follow-up information: None

Submission from the State party: 12 February 2018¹⁷

The State party submits that it is standard practice that the Danish Refugee Appeals Board reopens all cases in which criticism has been raised by the Committee. The relevant case is then heard by an entirely new panel consisting of members who have not previously been involved in the hearing of the case. The Board reconsidered the application for asylum of the author at a hearing on 6 December 2017. Prior to that hearing, the author's counsel had submitted two new briefs on the case, dated 17 and 22 November 2017 respectively, and at the hearing the author was allowed to make statements before the Board, assisted by counsel.

The Board found that the author had failed, in connection with the new consideration of his application, to provide essential new information on circumstances that were sufficiently specific, recent and serious to constitute information substantiating the assertion that, if he were returned to Iraq, he would be at risk of persecution falling within the Convention relating to the Status of Refugees, of 1951 (see section 7 (1) of the Aliens Act), or at risk of the death penalty or of torture or inhuman or degrading treatment or punishment falling within section 7 (2) of the Aliens Act. It has also been taken into account in the assessment that a number of the circumstances relied upon by the author are merely the applicant's own assumptions, including about his continuing fear of abuse due to his desertion in 2002 under the previous regime, about the circumstances surrounding the death of his sister, and about the consequences of being a columnist in Denmark, if he were returned to Iraq. The Board thus concluded that the circumstances relied upon by the author, whether assessed individually or collectively, could not justify the granting of residence in Denmark under the relevant provisions. Consequently, the Board upheld the decision of the

¹⁷ Acknowledged to the State party and transmitted to counsel on 22 March 2019.

Immigration Service.¹⁸ The Board ordered the author to leave Denmark within seven days of the date on which the decision was served on the author.

The Views of the Committee in cases against Denmark involving the Board are reported in the Board's annual report, which is distributed to all members of the Board and includes a chapter on cases brought before international bodies. The annual report is available on the Board's website. The Board and the Danish Ministry of Foreign Affairs have also made the Committee's views publicly available on their individual websites (www.fln.dk and www.um.dk). In the light of the prevalence of the English language in Denmark, the State party sees no reason for a full translation into Danish.

The State party submits that it has fully complied with the Committee's Views.

Committee's assessment: Effective remedy: A

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

11. Lithuania

Communication No. 2155/2012, *Paksas*

Views adopted: 25 March 2014

Violation: Article 25 (b) and (c)

Remedy: Effective remedy, including revision of the lifelong prohibition of the author's right to be a candidate in presidential elections or to be a prime minister or minister. Additionally, the State party is under the obligation to take steps to avoid similar violations in the future.

Subject matter: Restrictions to the right to participate in public life

Previous follow-up information: CCPR/C/113/3

Submissions from the author's counsel: 26 March 2016¹⁹ and 30 May 2018²⁰

The author's counsel informs the Committee that the State party has taken no effective steps to implement the Committee's Views, for lack of political will.

Mr. Paksas remains a political figure, the leader of the opposition, and there is no political majority in Parliament to implement the Views. The author's counsel is of the opinion that it is the courts of Lithuania that should execute the Views, as opposed to there being a change to the Constitution through an act of parliament as the State party suggested. The author's counsel reiterates that the voting rights of Lithuania to elect members of the Committee should be suspended.

On 30 May 2018, the author's counsel informed the Committee that as of the date of his letter, the Committee's Views had still not been implemented. The author is still not eligible to be a candidate in parliamentary or presidential elections. The State party has not disseminated the Committee's Views.

The author's counsel also informs the Committee that the State party has not taken any measures to remedy the damage suffered by the author and that it has not amended its legislation to avoid similar violations recurring in the future. He requests the Committee to grade the State party's replies with an E.

Committee's assessment:

(a) Revision of the lifelong prohibition of the author's right to be a candidate in presidential elections or to be a prime minister or minister: D

¹⁸ The State party provided the full wording of the Board's decision of 6 December 2017 as an annex.

¹⁹ Acknowledged to counsel and transmitted to the State party on 16 February 2017.

²⁰ Acknowledged to counsel and transmitted to the State party for observations on 26 March 2019.

(b) Non-repetition: D

Committee's decision: Follow-up dialogue ongoing, pending receipt of the State party's observations on counsel's submissions.

12. Spain

Communication No. 2008/2010, Aarrass

Views adopted:	21 July 2014
Violation:	Article 7
Remedy:	Effective remedy, including (a) adequate compensation; and (b) taking all possible steps to cooperate with the Moroccan authorities in order to ensure effective oversight of the author's treatment in Morocco.
Subject matter:	Extradition to Morocco
Previous follow-up information:	CCPR/C/113/3, CCPR/C/115/3 and CCPR/C/118/3, and see https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f116%2f3&Lang=en
Submission from the State party:	12 June 2017 ²¹

The Spanish administration is in charge of the implementation of the Committee's Views. The State party has taken steps to provide information on the Views and to disseminate them, including notifying the Spanish human rights institutions.

On 20 July 2015, the author's legal representatives initiated a complaint in Spain for State liability. The State party admits that, although the time limit provided under Spanish legislation of six months to reply passed without any resolution, the complaint of non-response by the administration was rejected. However, this denial does not absolve the State party of adopting a decision.

On 21 December 2016, the author's representative submitted a judicial claim against the State Administration, requesting the Administrative Chamber of the *Audiencia Nacional* to grant him compensation of €3,245,879.73. The State party notes that this procedure is pending and that once there is a final decision, it will inform the Committee in a timely manner.

The Ministry of External Affairs and Cooperation is responsible for the measures of cooperation with the Moroccan authorities to monitor the treatment that Mr. Aarrass is receiving. After referring to its previous follow-up report, of 25 February 2015, the State party provides additional information submitted by the Ministry of External Affairs and Cooperation. On 23 February 2017, the Secretary of the Embassy of Spain in Rabat in charge of human rights issues met with the Director of the Division on Human Rights and Humanitarian Issues of the Ministry of External Affairs and Cooperation of Morocco. This meeting concluded with a report that was sent on 31 March 2017 to the Embassy of Spain, stating that in October 2016 Mr. Aarrass was transferred to the Tiflet 2 prison, where he enjoys all his rights in line with the international and national regulations and standards regarding detention. The transfer was carried out in line with the regulations. The author was able to notify his sister about the transfer as soon as he arrived at the Tiflet 2 prison. The author is in an individual cell with ventilation and natural light, in compliance with the health requirements. In common with the rest of the prison population in Moroccan detention centres, Mr. Aarrass has been granted a specific time to walk and is allowed to take a shower daily. He can also receive visits from his family, every time his relatives come to the prison. The most recent family visits took place on 2 and 27 February 2017. He also meets regularly with his lawyers and receives mail, books and magazines. He receives appropriate meals, prepared by an external company that meets the requirements. In addition, his visitors can

²¹ Acknowledged to the State party and transmitted to counsel for comments on 24 October 2019.

bring him some food. His medical condition is closely checked by professionals in the detention centre. Since his arrival in the centre, he has been visited by a doctor seven times in the centre and four times in Khemisset Hospital. Since the day of his detention, he has undergone 110 medical examinations in the detention centre and 8 outside the centre. He has access to all the telephones in the establishment that are available to detainees and made 204 telephone calls in 2014, 240 in 2015 and 222 in 2016.

On 3 March 2017, the Secretary of the Embassy of Spain in Rabat met with the President of the National Human Rights Council, who confirmed that Mr. Aarrass had been transferred to the new prison and that his detention regime did not have a disciplinary nature. On 22 November 2016, 6 January 2017 and 28 February 2017, the National Human Rights Council visited the Tiflet 2 detention centre to follow up on the detention conditions of Mr. Aarrass. The National Human Rights Council made recommendations to the General Delegation for Prison Administration and Reintegration, requesting improvement of the author's detention conditions. On 7 April 2017, the General Delegation advised that the management of the detention centre had placed other detainees in the hall where the author's cell was located, thus putting an end to the isolation he had been enduring. He was allowed to walk with other prisoners instead of only taking individual walks. Given that his family lives far away, he was granted more time during the family visits, and some measures have been taken to allow him to follow a specific diet, in view of the report made by the prison's physician.

The State party concludes by asking the Committee to close the follow-up procedure as the State party has adopted sufficient measures, to the extent possible, given that the author is not under its jurisdiction.

Committee's assessment:

(a) Adequate compensation: No information

(b) Taking all possible steps to cooperate with the Moroccan authorities in order to ensure effective oversight of the author's treatment in Morocco: A

Committee's decision: Follow-up dialogue ongoing, pending receipt of counsel's comments on the State party's observations, including on the issue of adequate compensation.

13. Netherlands

Communications Nos. 2326/2013 and 2362/2014, *N.K. and S.L.*

Views adopted: 18 July 2017

Violation: Article 17

Remedy: The State party is under an obligation, inter alia, to provide the author with adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

Subject matter: Mandatory collection of DNA of convicted minors

Previous follow-up information: None

Submission from the State party: 3 April 2018²²

The State party recalls the Committee's view that the mandatory collection of cellular material from convicted minors and processing of their DNA profiles is not proportionate to the legitimate aim of prevention and investigation of serious crimes.

The Committee's Views prompted the Government to reassess the rules on the mandatory collection of DNA material from convicted minors. In a letter dated 3 April 2018, the Minister of Justice and Security informed the House of Representatives of the Dutch Parliament of two planned changes with respect to the mandatory collection of DNA samples

²² Acknowledged to the State party and transmitted to counsel for comments on 26 August 2019 (for communication No. 2326/2013) and on 25 March 2019 (for communication No. 2362/2014).

from convicted minors and the processing of their DNA profiles. The amendment to the DNA Testing Act in respect of convicted minors is intended: (a) to limit the mandatory collection of cellular material on the basis of the length of the alternative sanction; and (b) to limit the retention period applicable to their biometric, judicial and criminal record data – the period will be halved.²³

The change to the rules will result in less interference with the right to privacy of convicted minors. The intention is to halve the retention periods for DNA profiles of minors in the DNA database. Another change that has been proposed is to discontinue the practice of collecting cellular material from convicted minors sentenced to an alternative sanction of less than 40 hours. In situations of this kind, the State party does not consider it proportionate to include the DNA profile of a convicted minor in the DNA database. In cases where a minor is sentenced to an alternative sanction of 40 hours or more, or where an alternative sanction of less than 40 hours is linked to a suspended custodial sentence, the State party does however consider the collection of DNA material and processing of a DNA profile to be proportionate. This is because such cases involve serious offences and circumstances.

In the case of S.L. (communication No. 2362/2014), his cellular material and DNA profile will, in case of a new conviction, continue to be held in the DNA database. On 16 December 2013, he was sentenced by the single judge trying criminal cases to a 100-hour community service order (or 50 days' imprisonment) for contravening article 311 of the Criminal Code (specifically, the case involved a break-in at a business/office premises). The judgment of the single judge became final and not subject to appeal, on 31 December 2013, as S.L. had not sought a legal remedy. S.L. was already an adult on the date that the offence was committed. Under the DNA Testing (Convicted Persons) Act, this conviction provides the basis for an order by the Public Prosecutor to generate a DNA profile for inclusion in the DNA database.

The State party will compensate S.L. for the costs and expenses he has incurred in the proceedings before the Committee, amounting to €129. This award is a recognition of the fact that S.L. has availed himself of his right to bring proceedings against the State party under the Optional Protocol to the Covenant, in which the Committee found in his favour.

In his letter mentioned above, of 3 April 2018, the Minister of Justice and Security forwarded the Committee's Views to Parliament.

Finally, the State party will include a summary of the Committee's Views and of the State party's response to them in its annual report to Parliament on international human rights complaints procedures against the Netherlands. The annual reports are publicly available and widely disseminated to interested parties.

Committee's assessment:

- (a) Compensation: B
- (b) Non-repetition: B

Committee's decision: Follow-up dialogue ongoing, pending receipt of counsel's comments on the State party's observations.

14. Uruguay

Communication No. 1757/2008, *Barindelli Bassini et al.*²⁴

Views adopted: 24 October 2011

Violation: Article 26 read in conjunction with article 2

²³ Currently, depending in part on the gravity of the offence, the retention periods applicable to the cellular material and DNA profiles of convicted persons – whether they are minors or adults – are roughly 20, 30 and 80 years.

²⁴ There were three joint communications, Nos. 1637/2007, 1757/2008 and 1765/2008, however the information is provided only in respect of communication No. 1757/2008.

Remedy: The State party must recognize that reparation is due to the authors,²⁵ including appropriate compensation for the losses suffered.

Subject matter: Discrimination against civil servants on the ground of age

Previous follow-up information: A/68/40 (Vol. I)

Submissions from the State party: 14 and 27 September 2016²⁶

The State party informs the Committee that article 246 of Act No. 16.170 of 28 December 1990 has been amended by article 333 of Act No. 18.719 of 27 December 2010. Consequently, among other things, Ms. Barindelli Bassini was automatically reinstated in the position she had held previously. The amendment has also provided for compensation for loss of earnings for civil servants adversely affected by the repealed article 246 of Act No. 16.170.

The State party also submits that if Ms. Barindelli Bassini wishes to claim another kind of compensation, she can submit an application before a court of law to seek other reparation.

Committee's assessment:

- (a) Reparation: B
- (b) Appropriate compensation for the losses suffered: No information

Committee's decision: Follow-up dialogue ongoing, pending receipt of counsel's comments on the State party's observations.

15. Zambia

Communication No. 821/1998, *Chongwe*

Views adopted: 25 October 2000

Violation: Articles 6 (1) and 9 (1)

Remedy: The State party is under the obligation to provide the author with an effective remedy and (a) to take adequate measures to protect his personal security and life from threats of any kind; and (b) to carry out independent investigations into the shooting incident and to expedite criminal proceedings against the persons responsible for the shooting; and (c) if the outcome of the criminal proceedings reveals that persons acting in an official capacity were responsible for the shooting and hurting of the author, the remedy should include damages for the author. The State party is under an obligation to ensure that similar violations do not occur in the future.

Subject matter: Attempted murder of the opposition alliance Chairman by the police

Previous follow-up information: A/66/40 (Vol. I)

Submission from the author: 20 September 2017²⁷

The author has received no remedy from the State party since he was shot by State agents at Kabwe on 23 August 1997, 21 years ago. The governors of Zambia under the leadership of Edgar Chagwa Lungu have chosen to defy the judgments of the High Court dated 24 March 2016 and of the Supreme Court dated 23 June 2017. Although the Supreme

²⁵ To the seven authors of the three joint communications.

²⁶ Acknowledged to the State party and transmitted to the author for comments on 20 April 2018.

²⁷ Acknowledged to the author and transmitted to the State party for observations on 14 September 2018.

Court, which is the highest judicial body in the State party, decided in favour of the author, the State party is in contempt of both the Supreme Court and the National Assembly. Under section 21 (3) of the State Proceedings Act, it is mandatory for the Government to pay the compensation ordered by the Court. The Government has refused to comply with its own law. The author states that his case must be among the oldest ones before the Committee. He provides a copy of his letter to the President written in reference to a decision by the Supreme Court of 23 June 2017 dismissing an appeal brought by Zambia against the High Court decision of 24 March 2016. The author submits that he has not been paid additional damages of \$2,500,000. On 23 October 2009, an agreement between the author and the State party settled the amount at \$6,743,118 and this amount was later confirmed by the Supreme Court as due and payable by the State party to the author. Under established jurisprudence, once the highest court has determined the matter, the matter cannot be the subject of renegotiation. In Zambia, the President has no power to review a decision of the Supreme Court, and by instructing State agents to renegotiate the amount established in the judgment, the executive is defeating the course of justice and the principle of the separation of powers.

Committee's assessment:

- (a) Adequate measures to protect the author's personal security and life from threats of any kind: No information
- (b) Carry out independent investigations into the shooting incident, and criminal proceedings against the persons responsible for the shooting: E
- (c) Full reparation, including appropriate compensation: C

Committee's decision: Follow-up dialogue ongoing, pending receipt of the State party's observations on the author's submission.
