State party

ANGOLA

Case	Carlos Diaz, 711/1996
Views adopted on	20 March 2000
Issues and violations found	No serious investigation of crimes committed by person in high position, harassment of the author and witnesses so that they cannot return to Angola, loss of property - Article 9, paragraph 1.
Remedy recommended	An effective remedy and to take adequate measures to protect his personal security from threats of any kind.
Due date for State party response	17 July 2000
Date of State party's response	12 January 2006
	The Committee will recall that the State party provided no information to the Committee prior to consideration of this case. The State party submits that the Optional Protocol came into force on 10 April 1992 rather than 9 February 1992 as stated in the communication. It provides detailed *ratione temporis* arguments on the inadmissibility of the claim relating to the murder of Ms. Carolina de Fátima da Silva Francisco. The Committee will recall that this claim was found to be inadmissible.
State party response	**As to the claim on the basis of which the Committee found a violation of article 9, the State party submits that the author did not exhaust domestic remedies and that therefore this claim should have been considered inadmissible. It submits that it is not clear from the author who is alleged to have threatened him – the government of Angola or the perpetrators of the crime - and if the author, when faced with said threats or fear, requested the protection of the competent government authorities and personal safety pursuant to legal requirements.** According to articles 20 and 22 of the Angolan Constitutional law, the personal and physical integrity of any citizen, including foreigners, is protected by law. The State party has structures in place to provide these services, make police available if it is considered appropriate, or place under police custody individuals who threaten or intimidate others. As to the prohibition of the author to enter Angola, the State party submits that Mr. Dias like any other foreign citizen may present himself to any Consular representative of Angola, present the documents required by law and apply for an entry visa, which will then be considered within the requirements of the law. The State party requests the Committee to reconsider this case.
Author's response	The State party's response was forwarded on 1 March 2006 to the author for comment but was returned unopened.
Committee's Decision	The Committee recalls that during the eighty-second and eighty-fourth sessions, the Special Rapporteur met with representatives of the State party, who provided the same arguments challenging the Committee's decisions as those above. The Committee regards the State party's response as unsatisfactory and considers the follow-up dialogue ongoing.
Case	Rafael Marques de Morais 1128/2002
Views adopted on	29 March 2005
Issues and violations found	Arbitrary arrest and detention, travel constraints and restricted right to freedom of expression with respect to comments made against the President - Articles 9, paragraphs 1, 2, 3, 4, and articles 12, and 19.
Remedy recommended	In accordance with article 2, paragraph 3, of the Covenant, the author is entitled to an effective remedy, including compensation for his arbitrary arrest and detention, as well as for the violations of his rights under articles 12 and 19 of the Covenant. The State party is under an obligation to take measures to prevent similar violations in the future.
Due date for State party response	1 July 2005
Date of State party's response	20 January 2006

The State party refers only to the author's argument in paragraph 2.14 of the Views on the issue of the Amnesty Law 7/00, of 15 December 2000. The author had complained that regardless of this amnesty, he was summoned to the Provincial Court and ordered to pay compensation of Nkz. 30,000 to the President, which he refused to pay, and legal costs, for which he paid. The State party argues that the law does not cover civil liability resulting from

State party response	amnestied crimes and that the author is thus obliged to pay compensation to the President as set out in the Supreme Court Appeal. According to the State party, "the basis of the case presented to the High Commissioner for Human Rights of the United Nations was therefore unfounded". The State party also transcribes the judgement of the Supreme Court in this case and requests the Committee to revise its decision.
Author's response	On 1 May 2006, the author's counsel commented on to the State party's response. They submit that the State party essentially reproduces the decision of the Supreme Court (which was already included in the file considered by the Committee) and then summarily requests the Committee to consider the case inadmissible. In light of the fact that the State party failed to respond to any requests for information from the Committee prior to consideration of this case, such a request at this stage is considered disrespectful. The State party fails to address the Committee's conclusions and should be reminded of its obligations to cooperate with the Committee. They request the Committee to continue to request information from the State party and suggest the following possible remedies: the publication of an apology; quashing of his criminal conviction and legal effects; adequate monetary compensation; the adoption of a series of legislative and administrative measures to bring its law and practices relevant to freedom of expression and due process rights in line with the requirements of international law.
Committee's Decision	The State party has failed to address the violations found or even to acknowledge the Committee's findings. It merely refers to the author's obligation under domestic legislation without acknowledging that the Committee found, inter alia, a violation of article 19 in this case for the restriction of the author's freedom of expression with respect to his criticism of the President.
State party	**AUSTRALIA**
Case	Winata, 930/2000
Views adopted on	**26 July 2001**
Issues and violations found	Removal from Australia of Indonesian parents of Australia-born child. Articles 17; 23, paragraph 1; 24, paragraph 1.
Remedy recommended	To refrain from removing the authors from Australia before they have had an opportunity to have their applications for parent visas examined, with due consideration given to the protection required by their child's status as a minor.
Due date for State party response	12 November 2001
Date of State party's response	2 September 2004
State party response	The State party advised that the authors remained in Australia and that it was considering how their situation could be resolved within existing Australian immigration laws. A detailed response would be provided to the Committee as soon as possible.
Author's response	On 5 September 2005 counsel informed the Committee that no action had been taken by the State Party to implement the Committee's recommendation. Mr. Winata and Ms. Li have not been deported but rather remain in limbo. They are still stateless and have been told that their application is still "in the queue".
Case	Madafferi, 1011/2001
Views adopted on	28 July 2004
Issues and violations found	Removal from Australia of Italian father of Australia-born children -Articles 10, paragraph, 1, 17, paragraph 1, in conjunction with articles 23 and 24, paragraph 1 of the Covenant
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective and appropriate remedy, including refraining from removing Mr. Madafferi from Australia before he has had the opportunity to have his spouse visa examined with due consideration given to the protection required by the children's status as minors. The State party is under an obligation to avoid similar violations in the future.
Due date for State party response	26 October 2004
Date of State party's response	June 2006
	As to the violation of article 10, paragraph 1, for the relocation of Mr. Madafferi to an immigration detention centre at risk to his mental health in June 2003, the State party advises that immigration detainees are treated with humanity and with respect for their inherent dignity as human persons. The Department of Immigration and Multicultural Affairs ("DIMA") works closely with experienced health professionals to ensure that the health care needs of detainees are appropriately met. Detainees have access to a wide range of health care services, including psychological/psychiatric services. The health care needs of each detainee are identified by qualified medical personnel as soon as possible after a person is placed in detention. The care and welfare of detainees with special

needs is a matter of particularly close oversight and management by both departmental and detention service provider staff within immigration detention facilities. Where necessary, detainees are referred to external advice and/or treatment.

In the present case, the author was transferred to an immigration detention centre for the following reasons: his flight risk had increased because he had exhausted his domestic avenues for judicial remedy and was facing the imminent prospect of removal from Australia; he had a previous history of avoiding DIMA whilst living in Australia unlawfully for 6 years; and to facilitate the administrative aspects of his removal from Australia.

State party response

The state of Mr. Madafferi's mental health (including as described in medical reports) was carefully weighed against these factors. However, the Australian Government considered that it was the prospect of removal from Australia, rather than the return to an immigration detention centre for a short period, which was having the greatest impact on Mr. Madafferi's mental health at this point in time. Taking all these factors into account, the Australian Government considers that the decision to detain Mr. Madafferi was based on a proper assessment of his circumstances and was proportionate to the ends sought. Mr. Madafferi's detention was in accordance with Australian domestic law and flowed directly from his status as an unlawful non-citizen.

The Australian Government wishes to advise the Committee that Mr. Madafferi was granted a spouse (migrant) permanent visa on 3 November 2005. This allows Mr. Madafferi to remain in Australia on a permanent basis, subject to the conditions of the visa. The decision to grant Mr. Madafferi a visa has been made in accordance with Australian domestic immigration law.

As to the Committee's view that the removal of Mr. Madafferi from Australia would constitute arbitrary interference with the family, contrary to article 17 (1), in conjunction with article 23, and article 24 (1) (in relation to the four minor children), the State party reiterates its submissions to the Committee on the admissibility and merits of Mr. Madafferi's communication with regard to these articles. It submits, inter alia, that article 17 does not confer on a non-citizen the right to live and raise children in a country in which he resides unlawfully. Nor is there a legitimate expectation on the part of a person residing unlawfully in a country of continuing to live in that country. Any removal of Mr. Madafferi would not have interfered with the privacy of the Madafferi family as individuals or their relationships with each other. Nor would Australia's actions with regard to Mr. Madafferi have been unlawful or arbitrary. Any decision to remove Mr. Madafferi from Australia would have been made in accordance with Australian law and would have been solely aimed at ensuring the integrity of Australia's migration system.

The State party's obligation to protect the family under article 23 of the Covenant does not mean that Australia is unable to remove an unlawful non-citizen just because that person has established a family with Australian nationals. Had Mr. Madafferi been removed from Australia, it would have resulted from his conduct in twice overstaying his Australian entry permit, his dishonesty when dealing with Australian immigration officials and his substantial criminal record.

Finally, the State party does not accept that Mr. Madafferi's removal would have amounted to a violation of article 24 as it would not have amounted to a failure to provide protection measures that are required by the Madafferi children's status as minors. Any long term separation of Mr. Madafferi from the Madafferi children would have occurred as a result of decisions made by the Madafferi family and not as a result of Australia's actions.

The State party does not accept the Committee's view that Australia is under an obligation to provide Mr. Madafferi with an effective and appropriate remedy.

Author's response By email on 16 June 2006, the author confirmed that he had been granted a permanent residence visa.

Committee's Decision While regretting the State party's refusal to accept its Views, the Committee regards the provision of a permanent residence visa to the author as a satisfactory remedy to the violations found.

Case Faure, 1036/2001

Views adopted on 31 October 2005

Issues and violations found Compatibility of "Work for Dole Programme" with the Covenant – articles 2, paragraphs 3 in conjunction with 8.

Remedy recommended While in accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, the Committee is of the view that in the present case its Views on the merits of the claim constitutes sufficient remedy for the violation found. The State party is under an obligation to ensure that similar violations of the Covenant do not occur in the future.

Due date for State party response 20 February 2006

Date of State party's response 7 February 2006

Australia welcomes the HRC finding that there was no violation of article 8 (3) of the ICCPR. However, regarding

State party response	the HRC's view that there was a breach of article 2, the Australian Government does not share the HRC's interpretation of article 2, and it notices that it is the first occasion on which the HRC has found that there can be a breach of article 2 in the absence of a breach of an article that contains a substantive guarantee. Australia refers to the HRC's jurisprudence (*Karen Noelia Llantoy Huamán v. Peru*, 1153/2003) and says that article 2 is an accessory right which lays down general obligations for States and that it cannot be invoked in isolation from other Covenant rights. Australia also recalls general comment No. 29, paragraph 14, and says it interprets the statement in line with its ordinary meaning, so that there must be a breach of a right before article 2 may be invoked to require a State to provide an effective remedy. Australia further adds that academic commentators have agreed with Australia's interpretation of article 2 (3) and quotes Joseph, Schultz and Castan. Australia states that its interpretation of article 2 is also in accordance with the HRC's decisions in *GB v. France* (348/1989) and *SG v. France* (347/1988). It quotes paragraph 3 of the individual opinion of three HRC members in *Kall v. Poland* (552/1993) in which it is affirmed that the HRC "has taken the view so far that [article 2 (3)] cannot be found to have been violated by a State unless a corresponding violation of another right under the Covenant has been determined". Australia further recalls that in paragraph 7.9 of *Andrew Rogerson v. Australia* (802/1998) the HRC found that "the provisions of article 2 of the Covenant, which lay down general obligations for States parties, cannot, in isolation, give rise to a claim in a communication under the Optional Protocol". Moreover, Australia stresses that in *Karen Noelia Llantoy Huamán v. Peru* (1153/2003), whose views were adopted the day before the present views, the HRC found a violation of article 2 only in conjunction with a violation of other substantive articles. Australia finally recalls that in *Dimitrov v. Bulgaria* (1030/2001), considered in the same sitting, the HRC found that, as the claim under article 14 was inadmissible *ratione materiae*, the claim under article 2 was unable to be sustained and was also inadmissible. Australia deems that the conclusion of the HRC in this case - that there has been a breach of article 2 in the absence of a breach of a substantive right which requires a remedy - departs from the HRC's previous jurisprudence. Applying the jurisprudence of *CF et al v. Canada* (113/1981) to the present case, Australia states it should not be obliged to provide a way of challenging the entire legislative structure for the Work of the Dole scheme as a preventive measure, but if there is a violation, there should be an effective remedy after that violation. Australia affirms that the complainant did have access to many domestic remedies which could provide her with redress. Australia further claims that the complainant could have sought judicial review of the decision of the Human Rights and Equal Opportunity Commission in the Federal Court or Federal Magistrates Court. Australia then comments on the HRC's Concluding Observations on Australia's third and fourth Reports where the HRC was concerned about the absence of a constitutional 'bill of rights' in Australia. Australia notes that there is no requirement for States parties to adopt the Covenant and other international human rights obligations in their entirety into their domestic law. The Australian Government says it does not support a bill of rights for Australia because the country already has a robust constitutional structure, an extensive framework of legislation protecting human rights and prohibiting discrimination, and an independent human rights institution, the Commission. The latter mechanism holds the legislative branch and Australian Government accountable against human rights standards and thereby substantively achieves the same outcome in this respect as would legislation that directly implements the Covenant. Australia adds that human rights are also protected and promoted by Australia's strong democratic institutions. **For these reasons, the Australian Government cannot accept the HRC's view that Australia has breached article 2.**
Author's response	In March 2006, the author commented that although the State party purported to accept the Views of the Committee in one paragraph of its response it specifically refused to accept its Views in a subsequent.
Committee's Decision	The Committee regrets the State party's refusal to accept the Committee's Views and considers the dialogue ongoing.
State party	**AUSTRIA**
Case	Karakurt, 965/2001
Views adopted on	4 April 2002
Issues and violations found	Racial discrimination in field of employment
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, consisting of modifying the applicable law so that no improper differentiation is made between persons in the author's situation and EEA nationals.
Due date for State party response	19 September 2002
Date of State party's	21 February 2006 (The State party had previously replied on 21 September 2002)

response	
	The Committee will recall that as set out in A/58/40, the State party had previously responded on 21 September 2002 and 6 August 2003. It had informed the Committee, that the Views had been widely published and that it was awaiting the outcome of two cases raising similar issues before the European Court of Human Rights and the European Court of Justice.
State party response	On 21 February 2006, the State party submitted that the Austrian legal system has been amended in accordance with the Committee's Views. The 1992 Chamber of Labour Act (*Arbeiterkammergesetz*) and the Industrial Relations Act (*Arbeitsverfassungsgesetz*) have been amended by Federal Law, Federal Law Gazette Vol. I, No. 4/2006 to the effect that - irrespective of their nationality - all workers are now entitled to stand for election to a chamber of labour and to a works council in Austria (see also the individual members' bill 607/A BlgNR XXII. GP).
Author's response	**None**
Case	Weiss, 1086/2002
Views adopted on	3 April 2003
Issues and violations found	Extradition to the United States - Article 14, paragraph 1, read together with article 2, paragraph 3.
Remedy recommended	To make such representations to the United States' authorities as may be required to ensure that the author does not suffer any consequential breaches of his rights under the Covenant, which would flow from the State party's extradition of the author in violation of its obligations under the Covenant and the Optional Protocol. To take appropriate steps to ensure that the Committee's requests for interim measures of protection will be respected.
Due date for State party response	8 August 2003
Date of State party's response	23 January 2006 (the State party had previously replied on 6 August 2003 and 4 August 2004)
State party response	The Committee will recall that, as set out in the interim report of the eighty-fourth session, the State party provided a copy of the Supreme Court judgement of 9 September 2003, which saw "no reasons to doubt the constitutionality, of the application of the extradition treaty between the Austrian and US governments". It has also stated that the litigation in the United States was ongoing. On 23 January 2006, the State party confirmed that the proceedings before the United States' courts were still pending. The author applied for habeas corpus by the court in Florida on the basis of his illegal extradition from Austria. This request was rejected by the court. An appeal is pending. The extradition of the author to the United States was rejected "on one count of indictment". He has, thus, the right to a corresponding reduction of sentence. However, the author is not applying for such a penalty reduction, but instead claims immediate release and reinitialization of the process. The United States Department of Justice as well as the court in Florida have explicitly recognized that, on the basis of the specificity of the extradition, there would have to be a reduction of the sentence but have not yet made a final decision on the author's claim. The State party will continue to supervise the course of the process in the United States.
Case	Perterer, 1015/2001
Views adopted on	20 July 2004
Issues and violations found	Equality before the courts - Article 14, paragraph 1
Remedy recommended	In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including payment of adequate compensation. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party response	
Date of State party's response	8 March 2006
State party response	The State party submits that the Views were published by the Federal Chancellery in English and in a non-official German version. The author made specific claims in a letter of 1 September 2004 vis-à-vis the Attorney-General's Department and after, his claims were dismissed, he brought a liability action and a "State liability action" against the federal authorities and the State of Salzburg in the Summer of 2005 with the Salzburg Regional Court. The federal authorities and the State of Salzburg submitted comments, rejecting his claims. His request for legal aid was granted at the second instance. Moreover, he also laid "an information" against the Senate of the Administrative Court determining his case, on which as far as the State party is aware no decision has yet been taken.

	It submits that the Ombudsman's Office, to which the author turned to in the early autumn of 2004, was trying to reach a consensus in the form of a settlement between the State of Salzburg (as the Austrian authority responsible for the violations) and the author thus acting in conformity with the case-law of the European Court of Human Rights. Against the background of the claims raised by the author, the Ombudsman's Office decided to make no further efforts for the time being.
State party	**BELARUS**
Case	Svetik, 927/2000
Views adopted on	**8 July 2004**
Issues and violations found	The limitation of the liberty of expression did not legitimately serve one of the reasons enumerated in article 19, paragraph 3. Therefore, the author's rights under article 19, paragraph 2, of the Covenant had been violated.
Remedy recommended	Effective remedy, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author.
Due date for State party response	18 November 2004
Date of State party's response	12 July 2005
State party response	As presented in its interim report from the eighty-fourth session, the State party had responded on 12 July 2005. It confirmed that the Supreme Court had studied the Committee's Views, but had not found any grounds to reopen the case. The author had been convicted not for the expression of his political opinions, but for his public call to boycott the local elections. Accordingly, the State party concluded that it cannot agree with the Committee's findings that the author is a victim of violation of article 19, paragraph 2, of the Covenant.
Author's response	On 19 February 2006, the author confirmed the outcome of the Supreme Court consideration of this case. His application did not reveal any new grounds for the annulment of previous court decisions, "notwithstanding the change of law and the examination of his case by the Human Rights Committee". He submits that he also appealed his case to the Constitutional Court (exact date not provided), requesting the annulment of the Supreme Court's judgement. By letter of 2 December 2004, the Constitutional Court informed him that it is not empowered to interfère with the work of ordinary jurisdictions. The author claims that the State party has not published the Committee's Views.
Further action taken	During the eighty-seventh session, on 24 July 2006, follow-up consultations were held with Mr. Lazarev, First Secretary of the Mission of Belarus, Mr. Ando, Special Rapporteur on the Follow-up to individual complaints and the Secretariat. Mr. Ando explained the follow-up procedure and his role as Rapporteur. He highlighted to Mr. Lazarev that the State party had only responded to the Committee's Views in two of the nine cases in which the Committee had found violations of the Covenant (Svetik, 927/2000 and Malakhovsky, 1207/2003). Mr. Lazarev explained that they had responded to the Working Group on Arbitrary Detention in the case of Bandazhewsky, 1100/2002, in which it informed the working group that the author had been released pursuant to an amnesty. He assured Mr. Ando that he would forward a copy to the secretariat. On the State party's response to Malakhovsky, in which the State party challenged the Committee's Views, Mr. Lazarev explained that this was a very famous case in Belarus and the issue of religious freedom is a very sensitive one. He stated that strict legislation on religious groups was introduced in the State party following several suicides of members of cults. Thus, the social context as well as the purely legal context should be recognized by the Committee, as well as, the practical implications for the State party of the Committee's Views. In this context, he expressed the need for more guidance from the Committee on the remedies expected with respect to its Views. The necessity to respond on the other seven cases in which the Committee found violations was impressed upon Mr. Lazarev and in particular the need to provide remedies to the authors of these violations. An effort to provide relief to the authors in these cases would demonstrate a positive attitude towards the Committee's work, as would a reconsideration of the State party's response to the Views in Svetik, 927/2000 and Malakhovsky, 1207/2003. Mr. Lazarev expressed his appreciation of the meeting with the Rapporteur and ensured him that he would relay the Rapportuer's concerns to his capital.
Case	Velichkin, 1022/2002
Views adopted on	20 October 2005
Issues and violations found	Freedom to impart information - article 19, paragraph 2
Remedy recommended	An effective remedy, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author.
Due date for State party	20 February 2006

response	
Date of State party's response	None
State party response	None
Author's response	On 10 February 2006, the author submits that the State party has not implemented the Committee's decision. He contends that on 9 January 2006, he complained to the Deputy Chairman of the Supreme Court, asking him to "send him the ruling of the Chairman of the Supreme Court annulling the judgem0ent of the Lenin District Court of Brest of 15 January 2001", in light of the Committee's Views. On 13 January 2006, the Supreme Court replied that his application had been examined but that no grounds were found to annul the District Court ruling of 15 January 2001, in which he was obliged to pay a fine.
Case	Bandajevsky, 1100/2002
Views adopted on	28 March 2006
Issues and violations found	Arbitrary arrest, unlawful detention, inhuman conditions of detention, court not established by law, no review - Articles 9 paragraphs 3, 4, 10, paragraph 1, 14, paragraphs 1 and 5.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Bandajevsky with an effective remedy, including appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party response	6 July 2006
Date of State party's response	On 29 August 2005, the State party replied to the Working Group on Arbitrary Detention. This information was not provided to the HRC until 24 July 2006.
State party response	It states that in accordance with the ruling of 5 August 2005 by the court of Diatlov region, Grodno oblast, the author was released early from serving the remaining of sentence of 18 June 2001.
Case	Malakhovsky and Pikul, 1207/2003
Views adopted on	12 August 2003
Issues and violations found	Refusal to register a religious organization - 18, paragraphs 1 and 3
Remedy recommended	Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the authors are entitled to an appropriate remedy, including a reconsideration of the authors' application in accordance with the principles, rules and practice in force at the time of the authors' request, and duly taking into account of the provisions of the Covenant.
Due date for State party response	10 November 2005
Date of State party's response	13 January 2006
State party response	The State party disagrees with the Committee's conclusion and reiterates its arguments made on the admissibility and merits of the case. It affirms that the court rejected the author's claims on the refusal of the Committee on Religions and Nationalities to register the Statute of the Krishna communities' association because of the absence of an approved legal address. The requirement to have a legal address for religious organizations and the limitations on the use of buildings for other religious purposes (invoked by the Committee in its Views in paragraphs 7.6 and 8) is set up by Belarusian law. Courts are judicial bodies and adopt decisions in the light of the legislation in force. The decision of the Court of the Central District of Minsk was taken on the basis of the legislation in force and evidence in the case, and is lawful and well-founded. Under article 17 of the Law on freedom of religion and religious organizations, statutes of religious organizations must provide information on their location. In addition, under article 50 (3) of the Civil Code of Belarus the names and location of legal persons, including religious organizations, must be reflected in their statutory documents. The use of habitation premises for non-residential purposes is made with the agreement of the local executive and administrative organs, in accordance with the rules of sanitary hygiene and fire safety (article 8, paragraph 4, Habitation Code of Belarus). The statutory documents, submitted for the registration of the association, referred to a house at No. 11 on Pavlov street in Minsk. This building was examined and infringements of the sanitary and fire safety regulations were established. This was confirmed by the documents presented to the court by the Sanitary-epidemiological service and the Emergency situations' service of the Central district of Minsk. It is for this reason, that this house's address could not be used as the legal address for the association. According to the State party, in these circumstances, the court had correctly concluded that the refusal to register the religious association was

	lawful.
Author's response	**None**
Committee's Decision	The Committee notes that the State party's response on its Views is a reiteration of information provided prior to consideration. The State party submits that the courts' decisions were in compliance with domestic law but does not respond on the Committee's findings that the law itself has been found to be contrary to the rights protected under the Covenant. The Committee observes that the State party does not respond to its concerns.
State party	**BURKINO FASO**
Case	1159/2003
Views adopted on	28 March 2006
Issues and violations found	Inhuman treatment and equality before the Courts - Articles 7 and 14, paragraph 1.
Remedy recommended	The State party is required to provide Ms. Sankara and her sons an effective and enforceable remedy in the form, inter alia, of official recognition of the place where Thomas Sankara is buried, and compensation for the anguish suffered by the family. The State party is also required to prevent such violations from occurring in the future.
Due date for State party response	4 July 2006
Date of State party's response	30 June 2006
State party response	The State party states that it is ready to officially acknowledge Mr. Sankara's grave at Dagnoin, 29 Ouagadougou, to his family and reiterates its submission prior to the decision that he has been declared a national hero and that a monument is being erected in his honour. It submits that on 7 March 2006, the Tribunal of Baskuy in the commune of Ouagadougou ordered a death certificate of Mr. Sankara, deceased on 15 October 1987 (it does not mention the cause of death). Mr. Sankara's military pension has been liquidated for the benefit of his family. Despite offers by the State to the Sankara family to compensation from a fund set up on 30 March 2001 by the government for victims of violence in political life, Mr. Sankara's widow and children have never wished to receive compensation in this regard. On 29 June 2006, and pursuant to the Committees' Views to provide compensation, the government has assessed and liquidated the amount of compensation due to Ms. Sankara and her children as 43 4450 000 CFA (around US$ 843,326.951). The family should contact the fund to ascertain the method of payment. The State party submits that the Views are accessible on various governmental websites, as well as distributed to the media. Finally, the State party submits that the events which are the subject matter of these Views occurred 15 years ago at a time of chronic political instability. That since that time the State party has made much progress with respect to the protection of human rights, highlighted, inter alia, in its Constitution, by the establishment of a Minister charged with the protection of human rights and a large number of NGOs.
State party	**CANADA**
Case	Judge, 829/1998
Views adopted on	5 August 2002
Issues and violations found	Bearing in mind that the State party has abolished capital punishment, the decision to deport the author to a state where he is under sentence of death without affording him the opportunity to avail himself of an available appeal, was taken arbitrarily and in violation of article 6, paragraph 1, alone and read together with article 2, paragraph 3.
Remedy recommended	An appropriate remedy which would include making such representations as is possible to the receiving state to prevent the carrying out of the death penalty on the author.
Due date for State party response	12 November 2003
Date of State party's response	9 May 2006 (Previously responded on 8 August 2004 and 17 November 2003)
State party response	On 9 May 2006, and following the Special Rapporteur's request to the State party to provide an update from the United States authorities on the author's situation, the State party reiterated its response outlined in the Follow-up Report (CCPR/C/80/FU1) and the Annual Report (CCPR/C/81/CRP.1/Add.6). It added that on 18 January 2006, it had sent a diplomatic note to the United States reiterating its previous note and requesting an update on the status of Mr. Judge. The United States acknowledged receipt of the note and forwarded it to the Governor of

	Pennsylvania, for his consideration. To date the Government has not received a reply but to the best of its knowledge no date has been set for his execution. The State party requests that this case be removed from consideration under the follow-up procedure.
Author's response	In a letter received on 12 October 2005 the author had informed the Committee that no measures have been taken by Canada to implement the Committee's recommendation.
Case	Ominayak, 167/1984
Views adopted on	26 March 1990
Issues and violations found	Minority rights - Article 27
Remedy recommended	Historical inequities, to which the State party refers, and certain more recent developments threaten the way of life and culture of the Lubicon Lake Band, and constitute a violation of article 27 so long as they continue. The State party proposes to rectify the situation by a remedy that the Committee deems appropriate within the meaning of article 2 of the Covenant.
Due date for State party response	No record of date
Date of State party's response	25 November 1995
State party response	The Committee will recall that in a follow-up response of 25 November in 1995, the State party stated that the remedy was to consist of a comprehensive package of benefits and programmes valued at $45 million and a 95 square mile reserve. At the time, negotiations were still ongoing as to whether the Band should receive additional compensation.
Author's response	Many petitions have been received in the months of January and February 2006, from various individuals in France (relationship to authors unknown), requesting the Committee to follow-up on this case and claiming that the current situation of the Lubicon Lake Band is "intolerable".
Committee's Decision	Pursuant to the Committee's consideration of the State party's report, during the eighty-fifth session, the Committee adopted the following Concluding Observation with respect to this case: "The Committee is concerned that land claim negotiations between the Government of Canada and the Lubicon Lake Band are currently at an impasse. It is also concerned about information that the land of the Band continues to be compromised by logging and large-scale oil and gas extraction, and regrets that the State party has not provided information on this specific issue." (arts. 1 and 27). The Committee considered that "The State party should make every effort to resume negotiations with the Lubicon Lake Band, with a view to finding a solution which respects the rights of the Band under the Covenant, as already found by the Committee. It should consult with the Band before granting licences for economic exploitation of the disputed land, and ensure that in no case such exploitation jeopardizes the rights recognized under the Covenant." (CCPR/C/CAN/CO75).
Case	Waldman, 694/1996
Views adopted on	3 November 1999
Issues and violations found	Discrimination of funding in religious schools - Article 26.
Remedy recommended	Under article 2, paragraph 3 (a), of the Covenant, the State party is under the obligation to provide an effective remedy that will eliminate this discrimination.
Due date for State party response	5 February 2000
Date of State party's response	State party had responded on 3 February 2000 (see follow-up information in A/55/40, A/56/40, A/57/40, A/59/40)
State party response	In its note of 3 February 2000, the State party informs the Committee that matters of education fall under the exclusive jurisdiction of the provinces. The Government of Ontario has communicated that it has no plans to extend funding to private religious schools or to the parents of children that attend such schools, and that it intends to adhere fully to its constitutional obligation to fund Roman Catholic schools.
Committee's Decision	Pursuant to the Committee's consideration of the State party's report, during the eighty-fifth session, the Committee adopted the following Concluding Observation with respect to this case, "The Committee expresses concern about the State party's responses relating to the Committee's Views in the case of *Waldman v. Canada*, (communication No. 694/1996), Views adopted on 3 November 1999), requesting that and effective remedy by granted to the author eliminating discrimination on the basis of religion in the distribution of subsidies to schools (arts. 2, 18 and 26)."

The Committee considered that, "The State party should adopt steps in order to eliminate discrimination on the basis of religion in the funding of schools in Ontario." (CCPR/C/CAN/CO75).

Case	Mansour Ahani, 1051/2002
Views adopted on	23 March 2004
Issues and violations found	Removal to a country where the author risks torture and/or execution - Articles 7, 9, paragraph 4, 13.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including compensation. In the light of the circumstances of the case, the State party, having failed to determine appropriately whether a substantial risk of torture existed such as to foreclose the author's deportation, is under an obligation (a) to make reparation to the author if it comes to light that torture was in fact suffered subsequent to deportation, and (b) to take such steps as may be appropriate to ensure that the author is not, in the future, subjected to torture as a result of the events of his presence in, and removal from, the State party. The State party is also under an obligation to avoid similar violations in the future, including by taking appropriate steps to ensure that the Committee's requests for interim measures of protection will be respected.
Due date for State party response	3 November 2004
Date of State party's response	7 February 2006 (the State party had previously responded on 3 September 2004)
State party response	The Committee will recall, as set out in its 84th interim report, that the State party had contested the Committee's Views and submitted that it had not violated any of its obligations under the Covenant and neither interim measures requests nor the Committee's Views are binding on the State party. It provided detailed arguments disputing the Committee's findings. It disagreed that it should make any reparation to the author or that it has any obligations to take further steps in this case. Nevertheless, in October 2002, Canada indicated to Iran that it expects it to comply with its international human rights obligations, including with respect to the author. In addition, it stated that in order to simplify the process with respect to whether a person who is a danger to the security of Canada may be removed from Canada, the Canadian government now affords all such persons the same enhanced procedural guarantees. In particular, all documents used to form the danger opinion are now provided to the person redacted for security concerns and they are entitled to make submissions. On 7 February 2006, in response to the Secretariat for updated information on Mr. Ahani, the State party reiterated inter alia that the Canadian Embassy in Tehran visited Mr. Ahani in October 2002, and he did not complain of ill-treatment. That is October 2003, a Canadian representative spoke with his mother who said that he was well and since then the State party has had no further contact with him. The State party notes that Iran is a party to the ICCPR and as such it is bound to respect the rights set out in the Covenant. Canada considers that Iran would be in a better position to respond to any further requests from the Committee on the author status. In addition, there are special procedures, such as the Special Rapporteur on torture, that may be of assistance to Mr. Ahani if need be. On the basis of the foregoing, the State party requests that this case be removed from the agenda of the Committee's Follow-up procedure.
Committee's Decision	The Committee does not currently intend to consider this matter any further under the follow-up procedure, but will examine it at a later stage if the situation changes.
State party	**COLOMBIA**
Case	Jiménez Vaca, 859/1999
Views adopted on	25 March 2002
Issues and violations found	Security of person not deprived of their liberty - articles 6, paragraph 1, 9, paragraph 1, 12, paragraphs 1 and 4
Remedy recommended	An effective remedy, including compensation; take appropriate measures to protect the author's security so as to allow him to return to the country; carry out an independent inquiry into the attempt on the author's life and expedite the criminal proceedings against those responsible for it.
State party response	Follow-up consultations were held during the seventy-ninth session. See CCPR/C/80/FU1.
Author's response	By letter dated 26 September 2005 the author reiterates the information he had already provided on 4 March 2004, i.e. that, following the adoption of the Committee's Views, he filed a petition first to the Superior Court of the Judicial District of Bogotá and then to the Supreme Court alleging the lack of implementation of the Views. Both remedies were rejected. The Superior Court stated that: (i) the Committee's Views lacks legally binding character; (ii) the Committee of Ministers issued a non-favourable opinion on the issue of implementation; and iii) Colombia's government petitioned the Committee to reconsider its decision. The author adds that he also filed an appeal with the Constitutional Court which was rejected on 12 April 2005.

According to the Court, there was no evidence that the author was currently at risk of being a victim of violations of his rights to life and physical integrity, should he return to Colombia. There was no evidence either that the author had been prevented from using the appropriate domestic remedies in order to pursue those responsible for the facts alleged and obtain reparation. At the same time, the Court requested the Ministry for Foreign Affairs to inform the author about the mechanisms available in order to protect his life, should he receive threats in the future, and that the authorities would take the necessary measures in order to facilitate his return to the country.

The author asks the Committee to intervene with the State Party in order to obtain reparation for the violations found in the Committee's Views and guarantees that would allow him to return safely to his country.

State party	**CROATIA**
Case	Paraga, 727/1996
Views adopted on	4 April 2001
Issues and violations found	"Continuing effects"; pretrial delay and freedom of expression – Article 14, paragraph 3 (c)
Remedy recommended	Compensation
Due date for State party response	27 August 2001
Date of State party's response	26 January 2006 (State party had responded on 29 October 2002 and 2 December 2004)
State party response	The Committee will recall, as set out in its report from the eighty-fourth session, that on 2 December 2004, the State party had informed the Committee that the author's application, of 14 January 2003, for damages sustained during the time spent in custody from 22 November to 18 December 1991 had been rejected as untimely. The author had lodged an appeal to this decision and the case is currently before the County Court of Zagreb. **On 26 January 2006, the State party reiterated that the case has still not been considered.**
Author's response	On 30 January 2005, the author had confirmed that he had been refused compensation by the Municipal Court of Zagreb, and was in fact ordered to pay the State's legal costs. He has appealed this decision to the County Court of Zagreb, but nearly two years later the case has still not been heard.
State party	**THE CZECH REPUBLIC - GENERAL INFORMATION ON PROPERTY CASES**
Case	Property cases - Simunek et al. (516/1992), Adam (586/1994), Blazek (857/1999), Des Fours Walderode (747/1997), Brok (774/1997), Fabryova (765/1997), Pezoldova (757/1997), Czernin (823/1998), Marik (945/2000), Patera (946/2000)
Further action taken	On 18 October 2005, the special rapporteur on follow-up to communications, Mr. N. Ando, met with the Ambassador of The Czech Republic and Mr. Lukas Machon, from the Permanent Mission, regarding follow up to the Committee's Views on Czech cases. The Ambassador informed Mr. Ando that some governmental offices were willing to implement at least some of the recommendations regarding the property cases on an ad hoc basis. The Mission had requested the governmental commission in charge of dealing with individual cases submitted to international bodies, to provide the Committee with written information regarding developments in this respect. The Ambassador also indicated that, regarding some of the cases, no further legal remedies exist. In order for the alleged victims to be able to file new claims the restitution legislation should be modified in Parliament. The Ambassador provided the following information on each case: (1)Simunek et al. (516/1992): The authorities consider that the husband of Ms. Simunek could have recovered the couple's property in CZ, as he was a resident in the CZ Republic at the material time. It was the Ambassador's understanding that Ms. Simunek had benefited from proceedings and asked the Secretariat to provide the Mission with copy of the last letter sent to the Committee by Ms. Simunek. (2)Adam (586/1994): Government has not implemented the Views and recommendations of the Committee in any way. The State representatives said that domestic remedies have not been exhausted. Ex gratia compensation in this case is an avenue recommended to the Government. (3)Blazek (857/1999): follow-up reply to be submitted hopefully by the end of October. This is also a case in which an ex gratia payment is recommended to the Government. (4)Des Fours Walderode (747/1997): The Constitutional Court quashed the decision of the land authority (date not specified). Next decision of land authority once again negative. A procedure against renewed refusal of the land authority is still pending in the District Court. Author's wife has case pending in the European Court of HR. A Decision against the State party (probable violation of article 6 ECHR) is expected soon.

(5)Brok (774/1997): Compensation of the family was offered through a Government programme implemented for Holocaust victims. The author's family has accepted the compensation offered.

(6)Fabryova (765/1997): As in the case of Brok, except that the family of Ms. Fabryova has not been satisfied with the compensation offered under the compensation for Holocaust victims scheme. A new claim for restitution was filed.

(7)Pezoldova (757/1997): By letter of 25 July 2005, the State party notified the Committee that the Government had been advised that an ex gratia payment should be made to the author, representing, roughly, the recovery of costs of legal representation (FS 15 - 18000).

(8)Czernin (823/1998): Follow-up submission expected to be provided to the Committee by the end of October. Payment of an ex gratia compensation to the author is being considered, primarily because of the issue of delay in the adjudication of the author's request.

(9)Marik (945/2000): Follow-up reply not yet received. According to information received, Government will be requested to consider an ex gratia payment to the author.

In addition to the above property cases, follow-up information is also required with respect to case 946/2000 (Patera), regarding denial of contact between the author and his son. The Ambassador reported that proceedings are still on going. The author has filed a case before the European Court. His ex-wife won a case at the European Court on the issue of delay in the proceedings.

State party	**DEMOCRATIC REPUBLIC OF THE CONGO - GENERAL INFORMATION ON ALL VIEWS**
Cases	Mbenge (16/1977), Mpandanjila et al. (38/1983), Luyeye (90/1981), Muteba1 (124/1982), Mpaka Nsusu1 (157/1983), Miango (94/1985), Birindwa (241/1987), Tshisekedi (242/1987), Kanana (366/1989), Tshishimbi (542/1993), Gedumbe (641/1995), Adrien Mundyo Bisyo et al. (933/2000), Marcel Mulezi (962/2001).
State party's response	The State party has not responded to any of the Views of the Committee to date.
Committee's Decision	During its eighty-sixth session in March-April 2006, the Committee considered the State party's third periodic report. In its Concluding Observations it considered that, "While welcoming the delegation's assertion that the judges who wrote communication No. 933/2000 (*Busyo et al.*) can once again practice their profession freely and have been compensated for being arbitrarily suspended, the Committee remains concerned that the State party failed to follow up on its recommendations contained in many Views adopted under the Optional Protocol to the Covenant (such as the Views in case Nos. 366/1989 (*Kanana*), 542/1993 (*N'Goya*), 641/1995 (*Gedumbe*) and 962/2001 (*Mulezi*). The State party should follow up on the Committee's recommendations in the above-mentioned cases and submit a report thereon to the Committee as soon as possible. The State party should also accept a mission by the Committee's special rapporteur to follow up to the Views and discuss possible ways and means of implementing the Committee's recommendations, with a view to ensuring more effective cooperation with the Committee."
State party	**DENMARK**
Case	Byahuranga, 1222/2003
Views adopted on	1 November 2004
Issues and violations found	Deportation, torture, right to family life - Article 7
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including revocation and full re-examination of the expulsion order against him. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party response	8 March 2005
Date of State party's response	24 March 2006
State party response	The State party attached the Danish Refugee Board Decision of 10 November 2005 in which it was decided that although the author may be deported from Denmark, he cannot be forcibly returned to Uganda or deported to another country in which he is not protected against being set back to Uganda, pursuant to section 31 of the Aliens Act.
Committee's Decision	The Committee regards the State party's response as satisfactory and does not intend to consider this case any further under the follow-up procedure.
State party	**EQUATORIAL GUINEA - GENERAL INFORMATION**
Case	Primo Essono, 414/1990, Oló Bahamonde, 468/1991

Further action taken	On 24 March 2006, consultations were held with the Permanent Representative of Equatorial Guinea; Ekua Avomo, Counsellor Toribio, Professor Ando, and the secretariat. The meeting was called to discuss follow-up to the Committee's Views on communication Nos. 414 (Primo Essono), 484 (Bahamonde) and 1151 and 1152 (Ndong et al.). The State party representatives were not aware of the Committee's functions (which they seemed to mix up with those of the Commission), not of the above communications. The Ambassador argued that for the more recent cases, the Permanent Mission in Geneva was competent, not New York. He also claimed that the New York mission never received either the file or the Views on case Nos. 1151 and 1152. **On case No. 414, the Mission argued that the author had elected residence in Spain in the early 1990's that he had lived there for over 10 years before passing away. For case No. 484, it argued that Mr. Bahamonde has been a member of the Government in the 1980s, before leaving the country and requesting (and being granted) asylum in Europe (Spain). Even while in exile, he had carried out official missions for the government.** Professor Ando regretted the absence of any follow-up submissions on the above case, and reminder the State party of the need to make submissions while cases were pending, as well as in the follow-up context. Even the cursory information on case Nos. 414 and 484 that had just been given by the delegation would be useful in written form. The Ambassador was reminded that follow-up submissions should be sent to the Committee by the end of June, so that the followllup replies could be included in the annual report of the Committee for 2006. The Ambassador indicated that he would study the Views in the above cases and solicit a reply from the capital. In the meantime, he solicited a re-transmittal of the case file and the Views (including the transmittal note verbale) in case Nos. 1151 and 1152. Professor Ando indicated that he would report to the plenary on the meeting - the Ambassador replied that his comments should not be construed as indicating that Equatorial Guinea accepted the Views of the Committee in the above cases as correct, or that the Government agreed with the result.
State party	**GEORGIA**
Case	Ratiani, 975/2001
Views adopted on	21 July 2005
Issues and violations found	No right of appeal - Article 14, paragraph 5
Remedy recommended	Pursuant to article 2, paragraph 3 (a), of the Covenant, the author is entitled to an appropriate remedy. The State party is under an obligation to grant the author appropriate compensation, and to take effective measures to ensure that similar violations do not reoccur in the future.
Due date for State party response	27 October 2005
Date of State party's response	16 January 2005
State party response	The State party informs the Committee that it is taking active steps to amend its legislation to prevent future violations of the Covenant with respect to the right violated. In the meantime, it requested information on cases in which other States parties had amended legislation pursuant to the Committee's decisions.
Author's response	The author informs the Committee that the State party has failed to grant him a remedy and that in a letter to him dated 2 March 2006 the Consultant of the office of the Chairman of the Supreme Court stated that there is no legal ground for his rehabilitation according to the Criminal Procedure Code of Georgia for his criminal prosecution.
State party	**GREECE**
Case	Alexandros Kouidis, 1070/2002
Views adopted on	28 March 2006
Issues and violations found	Evidence given under duress - Article 14, paragraph 3 (g).
Remedy recommended	The State party is under an obligation to provide the author with an effective and appropriate remedy, including the investigation of his claims of ill-treatment, and compensation.
Due date for State party response	4 July 2006

Date of State party's response	3 July 2006
State party response	The State party submits that it has been translated and will be disseminated to the competent judicial authorities and posted on the website of the Legal Council of State. As to the remedy the State party refers to the possibility of recourse in article 105 of the Introductory Law to the Civil Code, to which the author is entitled in order to seek compensation to any damage incurred.
State party	**JAMAICA**
Case	Howell, 798/1998
Views adopted on	21 October 2003
Issues and violations found	Death row phenomenon, beatings after escape, inhuman treatment – articles 7 and 10, paragraph 1
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including compensation. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party response	4 February 2004
Date of State party's response	21 November 2005
State party response	The Committee will recall that the State party did not respond on admissibility and merits of this communication prior to consideration. It submits that, as to article 7, the Superintendent's Diary of the prison noted that on 5 March 1997 at about 5:10 am, five inmates, including Mr. Howell, were caught by the authorities cutting the bars in their cells in a bid to escape. The bid was foiled by the Correctional Officers on duty. An injury report dated 5 March 1997, indicated that the author was subdued while trying to escape and that he suffered injuries to his chin, left arm and back. As a result of a thorough and impartial investigation, the State party is satisfied that reasonable force was used to subdue the author on that day. The State points out that officials involved in the prison system are provided with appropriate training concerning the standards of humane treatment of such persons, including the use of force. This training is periodically reviewed and covers United Nations treaties, and resolutions as well as Jamaican legislation. As to article 10, paragraph 1, the State party submits that information extracted from the institution's hospital escort book reveals that for the period under review, the author attended the following external facilities for treatment: Spanish Town Dental Surgery (29 September 1997), Spanish Town Hospital (4 October 1997), Dental Office, Burke Road, Spanish Town (5 November 1997). Thus, as far as the State is concerned, the author received adequate dental and medical care. As to the conditions of detention, it submits that there continue to be several mechanisms in place for investigating and monitoring such conditions. These mechanisms, which are periodically reviewed, are both internal and external. Internally, investigations are first of all carried out by the Superintendent of the Correctional Centre where the inmate is housed, then by the Department of Correctional Services' Inspectorate Unit. Externally, there are various avenues. The Inspectorate Unit has the responsibility of inspecting cells, the interior and exterior of the buildings, staff restrooms, trade areas and all other facilities, records and equipment at every correctional institution. The Unit continues to monitor conformity to the requisite standards of order, cleanliness, adequacy of space, bedding, lighting, ventilation along with the impact of morale and programmes. As necessary, the Inspectorate also makes recommendations for improvements. The Corrections Act also provides for Boards of Visiting Justices and Boards of Visitors to visit the various Correctional Centres, interview inmates, observe conditions and to make recommendations to the Commissioner of Corrections and/or the responsible Minister for corrective actions to be taken. The State party maintains its position that the authors' rights were not violated and its view that he could have sought redress through the Jamaican courts. If he could not have afforded legal representation he could have applied for legal aid.
Author's response	None
Committee's Decision	The Committee notes that the State party's response is essentially its comments on admissibility and merits which should have been provided prior to consideration of the Views. It notes that the State party was reminded to provide its submission on two occasions. As is the jurisprudence of the Committee, in the event that a State party fails to provide any observations on the matter before it, due weight must be given to the author's allegations, to the extent that they have been substantiated. The Committee regards the State party's response as unsatisfactory and considers the follow-up dialogue ongoing.
State party	**KOREA**

Case	Mr. Jeong-Eun Lee, 1119/2002
Views adopted on	20 July 2005
Issues and violations found	Criminal prosecution for having joined student council – article 22, paragraph 1.
Remedy recommended	An effective remedy, including appropriate compensation. The Committee recommends that the State party amend article 7 of the National Security Law, with a view to making it compatible with the Covenant. The State party is under an obligation to ensure that similar violations do not occur in the future.
Due date for State party response	10 November 2005
Date of State party's response	29 November 2005
State party response	The State party submits that the author's "civil and political rights", which were temporarily suspended pursuant to his conviction, have been restored. In addition, the Committee's Views were published in "the official gazette" and were then forwarded to national judicial institutions for information. As to the revision of the National Security Law, several bills to revise or annul the law have been presented before the National Assembly and are currently under consideration. The Government regrets the Committee's decision to consider this case despite the State party's reservation to article 22. The Committee members will recall its finding on this issue in the Views as follows: "As regards the alleged violation of article 22 of the Covenant, the Committee notes that the State party has referred to the fact that relevant provisions of the National Security Law are in conformity with its Constitution. However, it has not invoked its reservation *ratione materiae* to Article 22 that this guarantee only applies subject "to the provisions of the local laws including the Constitution of the Republic of Korea." Thus, the Committee does not need to examine the compatibility of this reservation with the object and purpose of the Covenant and can consider whether or not article 22 has been violated in this case."
State party	**LIBYAN ARAB JAMAHIRIYA**
Case	El Ghar, 1107/2002
Views adopted on	29 March 2004
Issues and violations found	Refusal by the State party to issue the author with a passport - Article 12, paragraph 2.
Remedy recommended	The State party is under an obligation to ensure that the author has an effective remedy, including compensation. The Committee urges the State party to issue the author with a passport without further delay.
Due date for State party response	4 February 2005
State party response	None
Author's response	The Committee will recall, as set out in the 84th report, that by letter dated 23 June 2005, the author referred to the State party's failure to implement the Committee's Views. On 21 February 2006, the author informed the Committee that after many meetings with the Libyan consulate in Morocco, in which she was accused, inter alia, of having committed treason against the State party by bringing her case before the Committee, it still does not appear likely that she will receive her passport. The author informed the Secretariat in October 2005 that the Libyan consulate in Casablanca still refused to issue her passport. In June 2006, she informed the Secretariat by phone that she had been promised her passport. On 7 July 2006, she informed the Secretariat that she had received her passport, but that she had not received any compensation.
State party	**NORWAY**
Case	1155/2003, Leirvag
Views adopted on	3 November 2004
Issues and violations found	Failure to allow exemptions from teaching of 'life stance' subject in schools is a violation of article 26 - Parental right to provide education to their children - article 18, paragraph 4.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective and appropriate remedy that will respect the right of the authors as parents to ensure and as pupils to receive an education that is in conformity with their own convictions. The State party is under an obligation to avoid similar violations in the future.

Due date for State party response	6 February 2005
Date of State party's response	March 2006 during consider of its fifth periodic report (Previously responded on 4 February 2005).
State party response	During the discussion of the fifth periodic report, the State party confirmed that the proposed amendments to the Education Act, set out in the State party response to the Committee of 4 February 2005, had been adopted and entered into force on 17 June 2005. The new exemption rules provide as follows: on the basis of written notification from parents, pupils can be exempted from attending teaching which they, on the basis of their own religion or philosophy of life, consider to constitute the practice of another religion or expression of adherence to another philosophy of life or which they find offensive or objectionable. It is not necessary to provide reasons for giving a notification of exemption. Pupils who are 15 years of age or older may themselves give written notification of exemption. The right to be excused from parts of the teaching applies to all subjects and multi‐subject projects. When the school receives a notification of exemption, it must ensure that the pupil in question is actually excused. The school must also provide exempted pupils with individually adapted teaching within the syllabus. Pupils cannot be exempted from the knowledge requirements of the syllabus. If a school refuses a notification of exemption on these grounds, it must handle the case in accordance with the rules on individual decisions, which are contained in the Norwegian Public Administration Act, and give a right to appeal the decision. A new syllabus for CKREE was adopted and entered into force in August 2005. It implements the changes made in section 2-4 of the Education Act, ensuring that the religions and outlooks on life are dealt with in the same qualitative manner when setting targets for pupils' competence. Christianity has only been given quantitative preference, due t its influence on the historical and cultural background in Norway. Several measures have been introduced to ensure compliance with the new syllabus. A new CKREE textbook for teachers was sent to all schools in August 2005. In addition, to the syllabus, it contains guidance on how to teach the subject. In its "policy platform" the State party states that it will reconsider the objects clause (section 1-2 of the Education Act).
Authors' comments	**On 15 April 2005, the authors state that the State party's submission of February 2005 does not contain enough substance to determine how the mentioned changes in regulations and curricula will be carried out. They refer to a more detailed version of the remedies proposed in the "hearing document" of the Ministry of Education and Research of 8 February 2005, which has been sent to many organizations and institutions for comment by 29 March 2005. It states that a translated version of this document should be requested of the State party. The government's consideration of comments received has not yet been made public and a recommendation for Parliament concerning amendments of the Education Act has not yet been presented. Although the measures submitted by the State party have not been clarified, the author's preliminary view is that the proposed amendments do not fulfil the obligations under article 2 of the Covenant. They state, inter alia, that: the amendment to section 2-4 will not in itself solve the problem of an object clause which gives the prerogative to one particular religion; there will be no "qualitatively equal" treatment as the CKREE subject is based on the storytelling tradition, which is only appropriate for teaching Christianity and other religions but not for life stances with for instance a humanist outlook; and that the government does not intend to change the character/general profile of the CKREE subject as practising belief. As to the exemption, the authors note that the State party accept that such a right is necessary in order to avoid further violations of the Covenant but that the proposed simplification procedure does not entail substantial changes to parents' rights since the school has the prerogative to determine whether or not the parent's conviction on this issue is "reasonable". In the authors' view the best way to have implemented the Committee's decision would have been to fully revise the CKREE subject in a way that considers the freedom of religion for all students - regardless of faith or personal conviction as to life stance.**
Committee's Decision	During the consideration of the fifth periodic report of the State party at theeighty-sixth session (March/April 2006),the Committee stated the following: "4.The Committee commends the prompt response and the measures taken by the State party to remedy the infringements on religious freedom identified in the Committee's Views in communication No. 1155/2003, including the adoption of amendments to the Education Act." (CCPR/C/NOR/CO/5). The Committee considers the State party's response satisfactory and does not intend to consider this case any

	further under the follow-up procedure.
State party	**PERU**
Case	Vargas Mas, 1058/2002
Views adopted on	26 October 2005
Issues and violations found	Arbitrary detention, torture and inhuman and degrading treatment, faceless judges - Articles 7, 9, paragraph 1, 10, paragraph 1, and 14 of the Covenant.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy and appropriate compensation. In the light of the long period he has already spent in detention, the State party should give serious consideration to terminating his deprivations of liberty, pending the outcome of the current proceedings. Such proceedings must comply with all the guarantees required by the Covenant.
Due date for State party response	6 February 2006
Date of State party's response	25 May 2006
State party response	The State party informs the Committee that a new trial is under way (in accordance with its obligation to provide an effective remedy). It notes, however, that it is for the Judiciary to determine whether the complainant can be released pending the adoption of a new decision.
Author's response	None
Further action taken	On 3 May 2006 (during the session of the Committee against Torture), a member of the Secretariat had an informal meeting with Mr. José Burneo, Executive Secretary of the National Human Rights Council of Peru and Mr. Patricio Rubio, legal advisor at the Human Rights Directorate of the Ministry for Foreign Affairs. Messrs. Burneo and Rubio were in Geneva for the examination of Peru's periodic report to CAT. The purpose of the meeting was to transmit the HRC's concern at the lack of response from the State party to the Committee's Views. Mr. Burneo said that his Office was in charge of coordinating the responses to the International bodies on individual complaints. However, in view of the huge amount of cases pending before the Inter-American Commission (about 1500) and the peremptory deadlines they are subjected to, his Office tends to give priority to them. He would nevertheless look into the Committee's Views (copy of which I gave to him) and try to prepare a response. Regarding the *K.N.L.H.* case, he said that the absence of response was deliberate, as the question of abortion was extremely sensitive in the country. His Office was nevertheless thinking of drafting a bill allowing the interruption of pregnancy in cases of anencephalic foetus. Mr. Burneo referred to the question of reparation regarding cases of persons who have been found innocent after being sentenced under the Anti-terrorist decrees, a lot of whom have spent many years in prison. Some of the cases dealt with by the Committee fall in this category. Mr. Burneo said that the existing legislation was unsatisfactory to deal with this issue and, as a result, no compensation or other forms of reparation was provided to the victims.
Case	Quispe Roque, 1125/2002
Views adopted on	21 October 2005
Issues and violations found	Arbitrary detention, faceless judges - Articles 9, and 14
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is required to furnish the author with an effective remedy and appropriate compensation. In the light of the long period that he has already spent in prison and the nature of the acts of which he is accused, the State party should consider the possibility of terminating his deprivation of liberty, pending the outcome of the current proceedings against him. Such proceedings must comply with all the guarantees required by the Covenant.
Due date for State party response	1 February 2006
Date of State party's response	25 May 2006
State party response	The State party informs the Committee that a new trial is under way (in accordance with its obligation to provide an effective remedy). It notes, however, that it is for the Judiciary to determine whether the complainant can be released pending the adoption of a new decision.
Author's response	None
Further	

Further action taken	See summary of consultations with the State party above.
Case	Carranza Alegre, Marlem, 1126/2002
Views adopted on	28 October 2005
Issues and violations found	Arbitrary detention, torture and inhuman and degrading treatment, faceless judges - Articles 2 , paragraph 1, 7, 9, 10, and 14.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is required to furnish the author with an effective remedy and appropriate compensation. In the light of the long period she has already spent in detention and the nature of the acts of which she stands accused, the State party should give serious consideration to terminating her deprivation of liberty, pending the outcome of the current proceedings. Such proceedings must comply with all the guarantees required by the Covenant.
Due date for State party response	6 February 2006
Date of State party's response	25 May 2006
State party response	The State party informs the Committee that the author was acquitted by decision of the Supreme Court of 17 November 2005 and released. It noted that the "Consejo Nacional de Derechos Humanos" (national human rights council) was currently examining the granting of a compensation.
Author's response	By letters dated 13 February and 8 May 2006 the author informed the Committee that on 17 November 2005 the Supreme Court decided her acquittal and that she has been released. She intends to contact the Ministry of Justice in connection with the Committee's recommendation that she should be provided with compensation.
Further action taken	See summary of consultations with State party above.
Case	K.N.L.H, 1153/2003
Views adopted on	24 October 2005
Issues and violations found	Abortion, right to a remedy, inhuman and degrading treatment and arbitrary interference in ones private life, protection of a minor - Articles. 2, 7, 17, 24.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is required to furnish the author with an effective remedy, including compensation. The State party has an obligation to take steps to ensure that similar violations do not occur in the future.
Due date for State party response	9 February 2006
Date of State party's response	7 March 2006
State party response	Publication of a Report by the national human rights Council (Consejo Nacional de Derechos Humanos), based on the *K.N.L.H* case. The report proposes the amendment of articles 119 and 120 of the Peruvian Criminal Code or the enactment of a special law regulating therapeutic abortion. The National human rights council has required the Heath Ministry to provide information as to whether the author has been compensated and granted an effective remedy. No such information results from the letters sent by the Health Ministry in reply to the National Human Rights Council.
Further action taken	See summary of consultations with State party above.
State party	**PHILIPPINES**
Case	Cagas, 788/1997
Views adopted on	23 October 2001
Issues and violations found	Right to be tried without undue delay, right to presumption of innocence, and unreasonable delay in pretrial detention - Articles 9, paragraph 3, 14, paragraph 2, 14, paragraph 3 (c)
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, which shall entail adequate compensation for the time they have spent unlawfully in detention. The State party is also under an obligation to ensure that the authors be tried promptly with all the guarantees set forth in article 14 or, if this is not possible, released.
Due date for State party response	9 May 2002

Date of State party's response	10 February 2006 (The State party had replied on 19 August 2004)
State party response	The Committee will recall that, as set out in its 84th report, the State party submitted that it had not provided information on the merits of this case, prior to consideration by the Committee, as it believed the case to be inadmissible. It then proceeded to respond on the merits. On 3 June 2005, and in response to counsel's submission, the State party informed the Special Rapporteur that on 18 January 2005, the Regional Trial Court of Pili, Camarines Sur, had pronounced its judgement. The accused Cagas, Butin, and Astilero were all found guilty by the trial court of multiple murder, qualified by treachery, for the killing of Dr. Dolores Arevalo, Encarnacion Basco, Arriane Arevalo, Dr. Analyn Claro, Marilyn Oporto and Elin Paloma. Cagas and Antillero were sentenced to *reclusion perpetua* for each of the murders. Butin died before the rendering of the final judgement. On 10 February 2006, the State party submitted that the accused Cagas and Astillero appealed the decision to the Court of Appeal where it remains pending. It submits that the rendition of the judgement was made in accordance with the Committee's recommendation. However, it is not in a position to award the authors with compensation while the case is still before the Court of Appeal. It reiterates that the payment of compensation, under the Republic Act No. 7309, is for those who have been unjustly deprived of their liberty and would hinge on the acquittal of the accused. The corresponding compensation for the time spent in prison would then be determined by the Board of Claims which is under the State party's Department of Justice.
Author's response	None
Case	Carpo, 1077/2002
Views adopted on	28 March 2003
Issues and violations found	Death sentence - Article 6, paragraph 1.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective and appropriate remedy, including commutation. The State party is under an obligation to avoid similar violations in the future.
Due date for State party response	12 August 2003
Date of State party's response	31 May 2006 (had replied on 5 October 2004)
State party response	On 5 October 2004, the State party had submitted the following. As to the finding of a violation of article 6, paragraph 2, the Committee's finding that the offence of murder entails a very broad definition, "requiring simply the killing of another individual", is incorrect and there exists in the State party's penal code a clear distinction between different types of unlawful killings. Thus, the State party cannot be held liable for arbitrary deprivation of life on the basis of such an unfounded conclusion. It also submitted that it cannot be concluded that the imposition of the death penalty was made by automatic imposition of article 48 of the Revised Penal Code. Such a conclusion rests on the false assumption that article 48 provides for the mandatory imposition of the death sentence in cases where a single act results in several unlawful killings. It was argued that there is no indication in the phraseology of this provision which indicates that the term "maximum period" alludes to the penalty of death. Article 48 merely prescribes that if one single act results in two or more offences, the penalty for the most serious crime will be imposed i.e. a penalty lower that the aggregate of the penalties for each offence, if imposed separately. Similarly, the State party submitted that there is nothing in this provision which authorizes local courts to disregard the personal circumstances of the offender as well as the circumstances of the offence in considering cases which involve complex crimes. In its view, no persuasive basis was laid down to justify the conclusion that the imposition of the death penalty upon the authors was made "without regard being able to be paid to the authors' personal circumstances or the circumstances of the particular offence". **Finally, as to the conclusion that the authors did not receive a real review in the Supreme Court, which practically foreclosed the presentation of any new evidence, the State party submitted that this Court is not a "trier" of facts and is not obliged to repeat the** proceedings before the trial courts. A review by the Supreme Court is meant to ensure that the conclusions of the trial court are consistent with prevailing laws and procedures. In addition, it added that there is nothing on record to show that the authors were going to present new evidence not previously considered by the trial court. On 31 May 2006, the State party submitted that the four authors were granted executive clemency. Their death

	sentences were reduced to *reclusion perpetua*, a lengthy form of imprisonment. However, the Philippine Revised Penal Code, provides that any person sentenced to *reclusion perpetua* shall be pardoned after 30 years.
Further action taken	On 21 July 2005, the Special Rapporteur had held follow-up consultations with a representative of the State party. He noted that two follow-up replies remained outstanding and that other replies might be construed as not being satisfactory, constituting in reality belated merits submissions rather than follow-up submissions. The State party representatives pledged to secure follow-up information in the outstanding cases (1167/2003, Ramil Rayos, and 1110/2002, Rolando) and to seek confirmation as to whether there would be additional follow-up submissions in the other cases, notably in the cases of Wilson (868/1999) and Piandiong (869/1999).
Committee's Decision	In light of the commutation of the author's sentence, the Committee does not intend to consider this matter any further under the follow-up procedure unless the situation changes.
Case	Pagdawayon, 1110/2002
Views adopted on	3 November 2004
Issues and violations found	Death penalty, unfair trial, arbitrary arrest - Articles 6, paragraph 1, 9, paragraphs 1, 2, 3, and 14, paragraph 3 (d).
Remedy recommended	Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee concludes that the author is entitled to an appropriate remedy including commutation of his death sentence. The State party is under an obligation to avoid similar violations in the future.
Due date for State party response	7 March 2005
Date of State party's response	31 May 2006 (had replied on 27 January 2006)
State party response	On 27 January 2006, the State party had submitted that the Committee's finding that the author is entitled to commutation of his sentence was referred to the Department of Justice on 1 August 2005, to the Executive Secretary and to the Chief Presidential Legal Counsel on 19 January 2006. It recalled that this decision rests in the hand of the President and that all death penalty cases upon completion are automatically forwarded by the Supreme Court to the office of the President for the exercise of his pardoning power. On 31 May 2006, the State party submitted that the author was granted executive clemency. His death sentence was reduced to *reclusion perpetua*, a lengthy form of imprisonment. However, the Philippine Revised Penal Code, provides that any person sentenced to *reclusion perpetua* shall be pardoned after 30 years.
Author's response	None
Committee's Decision	In light of the commutation of the author's sentence, the Committee does not intend to consider this matter any further under the follow-up procedure unless the situation changes.
Case	Rayos, 1167/2003
Views adopted on	27 July 2004
Issues and violations found	Death penalty, unfair trial - Articles 6, paragraph 1 and 14, paragraph 3 (b).
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective and appropriate remedy, including commutation of his death sentence. The State party is under an obligation to avoid similar violations in the future.
Due date for State party response	5 December 2004
Date of State party's response	31 May 2006 (had replied on 27 January 2006)
State party response	**On 27 January 2006, the State party had submitted that the Committee's finding that the author is entitled to commutation of his sentence was referred to the Department of Justice on 1 August 2005 and to the Executive Secretary and the Chief Presidential Legal Counsel on 19 January 2006. It recalled that this decision rested in the** hand of the President and that all death penalty cases upon completion are automatically forwarded by the Supreme Court to the office of the President for the exercise of his pardoning power. On 31 May 2006, the State party submitted that the author was granted executive clemency. His death sentence was reduced to *reclusion perpetua*, a lengthy form of imprisonment. However, the Philippine Revised Penal Code, provides that any person sentenced to *reclusion perpetua* shall be pardoned after 30 years.
Author's	None

response	None
Committee's Decision	In light of the commutation of the author's sentence, the Committee does not intend to consider this matter any further under the follow-up procedure unless the situation changes.
Case	Wilson, 868/1999
Views adopted on	30 October 2003
Issues and violations found	Mandatory death penalty for rape after unfair trial - "most serious" crime. Compensation after acquittal - Articles 7, 9, paragraphs 1, 2, and 3, 10, paragraphs 1, and 2.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. In respect of the violations of article 9 the State party should compensate the author. As to the violations of articles 7 and 10 suffered while in detention, including subsequent to sentence of death, the Committee observes that the compensation provided by the State party under its domestic law was not directed at these violations, and that compensation due to the author should take due account both of the seriousness of the violations and the damage to the author caused. In this context, the Committee recalls the duty upon the State party to undertake a comprehensive and impartial investigation of the issues raised in the course of the author's detention, and to draw the appropriate penal and disciplinary consequences for the individuals found responsible. As to the imposition of immigration fees and visa exclusion, the Committee takes the view that in order to remedy the violations of the Covenant the State party should refund to the author the moneys claimed from him. All monetary compensation thus due to the author by the State party should be made available for payment to the author at the venue of his choice, be it within the State party's territory or abroad.
Due date for State party response	10 February 2004
Date of State party's response	27 January 2006 (It had replied on 12 May 2005)
State party response	The Committee will recall that, as set out in its 84th report, the State party submitted that it was "disinclined" to accept the Committee's findings of facts, more particularly its assessment of evidence. It submitted that the findings rested on an incorrect appreciation of the facts and contested the finding that the compensation provided was inadequate. It submitted that the author failed to discharge the burden of proof; ex parte statements made by the complainant are not considered evidence and do not constitute sufficient proof of the facts alleged. An investigation conducted by the City jail Warden of the Valenzuela City Jail, where the author was confined, disputed all allegations made by the author. The author had failed to provide specific acts of harassment to which he was supposedly subjected to while in prison and did not identify the prison guards who allegedly extorted money from him. As the author had already flown home while the communication was pending before the Committee he could not have feared for his security by naming those who had allegedly ill-treated him. It reiterated its submission that the author failed to exhaust domestic remedies. Finally, it considered that the compensation provided is adequate that the author had not yet sent an authorized representative to claim the checks on his behalf and that by insisting that the State party make available to the complainant all monetary compensation due to him, "the Committee might have exceeded its competency and caused great injustice to the State party".
Author's response	On 27 January 2006, the State party submits that the Views were sent to the Department of Justice and the Department (DOJ) of Interior and Local Government (DILG) for appropriate action last 10 August 2005. DOJ exercises supervision over the Bureau of Immigration while DILG exercises supervision over city jails. An investigation was carried out in 2005 by the City Jail Warden of the Valenzuela City Jail where Mr. Wilson was confined. The investigation revealed the following: (1) The Valenzuela City Jail has no "cages" in which the author could have been confined upon his arrest; and (2) There is no record of a serious shooting incident of an inmate which supposedly occurred ensuring the author's detention and which supposedly traumatised the author. According to the investigation results, the only incident on record was a non-fatal shooting on 17 June 1996 of an inmate who was shot by his jail guard when the former tried to escape form detention. Finally, it submits that the author failed to provide specific acts of harassment to which he was supposedly subjected while in prison and failed to identify the prison guards and officials who allegedly harassed and extorted money from him. On 9 February 2006, the author submitted that the procedure currently under consideration is that of follow-up and that therefore it is inappropriate to resubmit arguments on the merits. He requests information on the current status of follow-up in this case. On 3 May 2006, the author's counsel responded to the State party's response of 27 January 2006. He submits that the State party's response is inappropriate as 1. it was limited to an investigation only and 2. the investigation conducted was not prompt, comprehensive and/or impartial. Neither the City of Jail Warden, which conducted the investigation nor the DILG which oversaw it, can be considered an external and therefore impartial mechanism. In addition, it is not possible to assess the promptness and effectiveness of the investigation as the authorities never informed the complainant about the investigation, including when it would take place and why the investigation was closed. Counsel points to treaty body jurisprudence as well as jurisprudence of the ECHR for the proposition that a complainant should be invited to take part in such an investigation and to receive information about its progress and outcome. As to the conduct of the investigation, Counsel submits that it is clear that the author's complaints were disregarded. The claim that the author failed to provide specific acts of harassment or to identify the persons who subjected him to harassment is an attempt to reduce the State party's duty to conduct a thorough investigation – it is

precisely the purpose of such investigations to establish such facts. In any event, these claims are untrue and Counsel refers to the communication itself in which the author sets out in detail his complaints.

Counsel highlights that failure of the State party to provide information about the compensation with regard to the breaches of articles 7, 9 and 10 as well as the refunding of the moneys claimed from the author as immigration fees and with respect to the guarantees of nonIrepetition. Counsel also highlights the authors concerns with the measures the State party should take to prevent similar violations in the future.

State party **RUSSIAN FEDERATION**

Case	Platonov,1218/2003
Views adopted on	1 November 2005
Issues and violations found	Judicial control pretrial detention - Article 9, paragraph 3
Remedy recommended	Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the author is entitled to an effective remedy, including appropriate compensation. The State party is also under an obligation to take effective measures to ensure that similar violations do not recur.
Due date for State party response	1 February 2006
Date of State party's response	10 March 2006

State party response

The State party recalls the facts of the case. As to the Committee's findings, the State party observes, first, that the Constitution of the Russian Federation of 1993 contains a similar provision of article 9, paragraph 3, of the Covenant. Under its provision, "Arrest, detention and custody shall be allowed only by an order of a court." (article 22). According to the State party, the Committee has thus correctly noted in its Views that under the Criminal Procedure Code of the Russian Soviet Socialist Republic (still into force in 1999), detention was ordered not by a court, but by an investigator with the approval of a prosecutor. However, by Law of 23 May 1993, two new articles were introduced in the Criminal Procedure Code (220-1 and 220-2). Pursuant to their provisions, decisions of detention/ to extend detention could be appealed to court. Mr. Platonov, as a detainee, had thus the right to challenge his detention in court. However, neither he nor his lawyer presented any claim to court in this respect; the Committee has correctly declared this claim unsubstantiated.

The State party further explains that on 22 November 2001, it adopted a new Criminal Procedure Code (CPC) that entered into force on 1 July 2002. Pursuant to its article 108, custody (as a preventive measure) is applicable only under a court decision. In addition, such preventive measures can only be applied against suspects or accused in relation to crimes punished by more than two years of imprisonment. Thus, the State party has established court control over the lawfulness and justification of detention.

The State party adds that the new CPC also introduced the following time limits for custody.

1.The general rule is that in the case of investigation of a criminal case, custody cannot exceed two months. In the event that the preliminary investigation needs to be prolonged, and in the absence of reasons to free the accused, custody may be prolonged up to six months. Custody may be prolonged up to twelve months in relation to certain grave crimes, such as murder, terrorism, etc. All decisions to prolong custody are taken exclusively by a court. Only in exceptional cases, in relation to particularly grave crimes, an investigator (acting with the authorisation of the Prosecutor General) may request the Court to extend custody up to 18 months.

2.Article 225 of the CPC provides court control over pretrial detention of accused whose cases are examined by a court.

The State party concludes that thus the Committee's recommendations are fully implemented. According to the State party, the CPC of the Russian Federation fully complies with both the requirements of ICCPR and the Russian Constitution in this relation.

The new criminal procedure legislation established a right to rehabilitation, including a right to compensation (chapter 18 CPC). Article 133 of the CPC provides a right to compensation for everyone who has been unlawfully subjected to coercive measures with respect to a criminal case. The list of coercion measures is given by chapters 12-14 of the CPC, and includes also arrest, detention as a suspect, and custody.

The State party concludes that the author's allegations were substantially examined during the pretrial investigation and in court, and were not confirmed.

SPAIN - GENERAL INFORMATION ON CASES RELATING TO ARTICLE 14, PARAGRAPH 5

State party	**SPAIN - GENERAL INFORMATION ON CASES RELATING TO ARTICLE 14, PARAGRAPH 5, VIOLATIONS**
Date of State party's response	28 February 2006 (Response to a letter from the Secretariat on the implementation of law 19/2003 dated 7 December 2005)
State party response	The State party submits that: Law 19/2003 was approved on 23 December 2003; It generalizes the second instance in Spain; Its purposes were: (1) to reduce the caseload of the Second Chamber of the Supreme Court, and (2) to resolve the dispute which arose as a result of the Committee's Views adopted on 20 July 2000, in which the Committee asserted that the system of cassation was in violation of the Covenant; To became operative, the amendments of Law 19/2003 require the passing of implementing legislation, i.e., the approval of the "Comprehensive Law by which: Procedural Law is put in conformity with the Comprehensive Law 6/1985, of 1 July, on the Judicial Branch; the remedy of cassation is reformed and the second instance is generalized". This draft law is currently at the Chamber of Deputies, and its discussion by the Commission on Justice will take place next February (sic); Once approved, the new law will bring about the generalization of second instance in Spain. The system of appeal will be as follows: (a)Judgements handed down by Criminal judges and Provincial Courts (*Audiencias Provinciales*): appeal to the Provincial Courts and the Criminal and Civil Chamber of the Superior Tribunal in each autonomous community, respectively; (b)Judgements handed down by Criminal judges and Provincial Courts, within the framework of simplified proceedings (*procedimiento abreviado*): appeal to the Criminal Chamber of the National Court (*Sala de lo Penal de la Audiencia Nacional*) and to the Chamber of Appeals of the National Court (*Sala de Apelación de la Audiencia Nacional*); (c)Judgements of the Provincial Courts concerning ordinary proceedings: appeal to the Criminal and Civil Chamber of the Superior Tribunal in each autonomous community; (d)Judgements of the Second Chamber of the National Court: appeal to the Chamber of Appeals of the National Court; (e)Judgements of the Second Chamber of the Supreme Court: appeal to the Chamber of Appeals of the Supreme Court; (f)Judgements of the Criminal and Civil Chambers of the Superior Tribunal in each autonomous community: appeal to the Chamber envisaged in future article 846 bis 3 of the new law; (g)Judgements of the President of Provincial Courts, when the latter act as Courts of Jury (Tribunal de Jurado): appeal to the Criminal and Civil Chambers of the Superior Tribunal in each autonomous community; To sum up, the entry into force of the amendments envisaged in Law 19/2003, will take place with the approval of the "Comprehensive Law by which: Procedural Law is put in conformity with the Comprehensive Law 6/1985, of 1 July, on the Judicial Branch; the remedy of cassation is reformed and the second instance is generalized."
Case	Gómez Vásquez, 701/1996
Views adopted on	20 July 2000
Issues and violations found	Denial of an effective appeal against conviction and sentence for the most serious crimes (incomplete judicial review) - Article 14, paragraph 5.
Remedy recommended	Effective remedy, author's conviction must be set aside unless it is subjected to review in accordance with article 14, paragraph 5.
Due date for State party response	14 November 2000 - The State party has previously responded.
State party	On 16 November 2004, the State party submits that on 14 December 2001, the Plenary of the Supreme Court decided to dismiss the application to have the author's conviction quashed. This is a landmark decision of the

response	Supreme Court on the compatibility of the Spanish cassation with the requirements of article 14, paragraph 5, of the Covenant.
Author's response	By letter of 5 April 2006, counsel informs the Committee that a draft amendment act is under way, which will tackle "the issue of the second instance" for persons sentenced by the "Audiencia Provincial" or "Audiencia Nacional". Counsel claims that, since this amendment shall only apply to decisions adopted after its entry into force, cases like Gómez Vázquez and Sineiro will not get the benefit of it. By letter of 17 April 2006, counsel insists that the State party has not complied with the Committees Views and as a proof thereof, he notes that the victim has been refused pardon and is still serving his sentence.
Case	Ruiz Agudo, 864/1999
Views adopted on	31 October 2002
Issues and violations found	A delay of 11 years in the judicial process at first instance and of more than 13 years until the rejection of the appeal violates the author's right under article 14, paragraph 3 (c), of the Covenant, to be tried without undue delay.
Remedy recommended	An effective remedy, including compensation for the excessive length of the trial. The State party should adopt effective measures to prevent proceedings from being unduly prolonged and to ensure that individuals are not obliged to initiate a new judicial action to claim compensation.
Due date for State party response	9 February 2003
Date of State party's response	
State party response	None
Author's response	On 1 August 2005, counsel transmitted to the Committee copy of the judgement, dated 24 June 2005, by which the *Audiencia Nacional* ordered the payment of 600 euros to the author as reparation for the misfunctioning of the judicial system of which he was a victim. Such judgement was the result of the administrative appeal filed by the author in order to obtain the implementation of the Committee's recommendations. The author claims that the amount of the reparation ordered by the *Audiencia* is merely symbolic and cannot be considered sufficient.
Case	Terón, 1073/2002
Views adopted on	5 November 2004
Issues and violations found	Although the State party's legislation provides in certain circumstances for the trial of an individual, because of his position, by a higher court than would normally be the case, this circumstance alone cannot impair the defendant's right to review of his conviction and sentence by a court. Article 14, paragraph 5.
Remedy recommended	An effective remedy, including adequate compensation.
Due date for State party response	9 February 2005
State party response	None
Author's response	By letters dated 7 March 2005 and 11 July 2005, counsel informed the Committee that no measures had been taken to implement the Committee's recommendations.
Case	Hill, 526/1993
Views adopted on	2 April 1997
Issues and violations found	The author's were not given any food during the first five days of police detention; they were not granted release on bail; their right to defend themselves was not respected; their right to have their conviction and sentence reviewed was denied to them - Articles 9, paragraph 3; 10; 14, paragraphs 3 (c) and 5.
Remedy recommended	An effective remedy, entailing compensation.
Due date for State party response	On 9 October 1997, the State party had provided information on the possibility of seeking compensation.
Date of State party reply	2 November 2005 (Latest information)
	The Committee will recall that, as set out in its 84th report, the State party submitted, on 16 November 2004, that the author filed an application to have his conviction and sentence quashed. The Constitutional Court dismissed the application, but indicated that the author should file an appeal. The author filed an appeal with the Second Chamber of the Supreme Court, which on 25 July 2002 decided to set aside the decision of the appellate court (Supreme

State party response	Court) and again rejected the author's original appeal (cassation). This second judgement of the Supreme Court, unlike the previous judgement duly analyzed the evidence, prior to rejecting the appeal (cassation). The author filed an appeal (*amparo*) with the Constitutional Court which is still pending. He also filed a suit in law against the Ministry of Justice for wrongful administration of justice. This claim was dismissed and an appeal with the National Court is still pending. On 2 November 2005, the State party submitted that Mr. Hill was retried by the Supreme Court, which upheld his conviction. Although there is an *amparo* before the Constitutional Court still pending, his extradition could take place at any time.
Author's response	As the Committee will recall from its 85th report, on 10 October 2005, Mr. Michael Hill had informed the Committee that his brother Brian had been arrested on 8 October 2005 in Lisbon on an international arrest warrant issue by the court in Valencia which had tried the two brothers in the early 1990s. Allegedly, the arrest warrant was related to the facts at the basis of the concluded case. It stemmed from the contention that the authors absconded from Spain immediately upon their conditional release from custody. This information was transmitted to the State party, for comments.
State party	**SRI LANKA**
Case	Jayawardena, 916/2000
Views adopted on	22 July 2002
Issues and violations found	Death Threats against Member of Parliament - Article 9, paragraph 1.
Remedy recommended	"an appropriate remedy"
Due date for State party response	22 October 2002
Date of State party's response	9 September 2004
State party response	The Committee will recall, as set out in the 83rd and 84th reports that, pursuant to the Committee's Views, the State party made further inquiries of the author. Since he had been unable to identify the persons who had allegedly threatened him, no further legal action was taken. Nevertheless, the Government had agreed to provide additional protection for him if and when it became necessary. No such requests for additional protection had been made by him. Following the author's response of 18 October 2004, the State party submitted further comments on 24 March 2005. It stated that the deployment of security personnel for VIPs by the Police is effected on the basis of circular instructions issued by the Inspector General of Police. Accordingly, a Member of Parliament is entitled only to two security personnel. However, in consideration of his request, two additional security personnel were provided to him, increasing the total strength of his security staff to four.
Author's response	The Committee will recall, as set out in the 84th that, on 18 October 2004, the author responded to the State party's submission. He stated that the State party had taken no steps to investigate his complaints of death threats. He had requested additional security from the State party but had not received a positive response, in fact his security has been reduced. The President had not taken any steps to withdraw or to rectify the allegations which she made against him. He submitted that he was again elected as a Member of Parliament at the elections held in April 2004. As the then shadow Minister of Rehabilitation, Resettlement and Refugees, he made representations regarding the violations of human rights of opposition Members of Parliament. For this reason, he alleged that his life has become more vulnerable. He requested the Committee to inform the President of Sri Lanka to provide him with additional security as requested, as early as possible, and to continue to investigate his complaints. On 10 January 2006, the author informed the Committee that Mr. Pararajasingham, a Member of Parliament from the Tamil National Alliance (TNA), was killed on 24thDecember by an unidentified gunman. He had been canvassing with the author to find a peaceful settlement to the ethnic conflict in Sri Lanka. The author submits that there were reliable reports that Mr. Pararajasingham was targeted by the Karuna group (an anti-LTTE group in the Eastern Province). The author believes that the same group has targeted him and requests the Committee to take "appropriate action to protect his life".
Case	**Fernando, 1189/2003**
Views adopted on	31 March 2005
Issues and violations found	Unfair trial – Article 9, paragraph 1.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an adequate remedy, including compensation, and to make such legislative changes as are necessary to avoid similar violations in the future. The State party is under an obligation to avoid similar violations in the future.

Due date for State party response	28 July 2005
Date of State party's response	8 August 2005
	It submits that at the time the State party became a party to the Optional Protocol it was not envisaged that the competence of the Committee would extend to a consideration, review or comment of any judgement given by a competent Court in Sri Lanka, in particular on findings of fact and on sentences imposed by such Court upon a full consideration of evidence placed before it. It submits that as the independence of the judiciary is guaranteed under the Constitution the Government has no control over the judicial decisions given by a competent Court, nor can it give directions with regard to future judgements of such Court.
State party response	While respecting the Views of the Committee, the State party is unable to consider the payment of compensation to any persons on the basis of a conviction and sentence passed by a competent court in Sri Lanka. Payment of compensation on the basis of the conviction and sentence would be tantamount to undermining the authority of the Supreme Court, which convicted and sentenced the author and would be construed as an interference with the independence of the judiciary. Likewise, the State party cannot prevent similar judgements of this nature as it has no control over future decisions or judgements of the Court, nor can it give directions to the Supreme Court in relation to any future judgements. Thus, the State party submits that it is unable to give effect to the Views of the Committee as set out in paragraph 11 ofthe Views. With regard to the need for legislation change, the State party informs the Committee that it will refer the matter to the Law Commission of Sri Lanka for its consideration.
Author's response	The author provides a detailed commentary of 20 pages on the State party's response. He contests the State party's argument that the Views are not binding. He refers to the customary law principle of *pacta sunt servada* enshrined in Article 26 of the Vienna Convention on the Law of Treaties confirming that every treaty is binding on states parties and must be performed by them in good faith. In addition, the State party acceded to the Optional Protocol, which gives the Committee authority to consider individual complaints, without reservations. As the State party did not make any reservations to the ICCPR (in particular article 2) or OP, it cannot argue that the Views have no application to the domestic legal context in the absence of specific legal provisions in its national law. He provides a significant amount of research on Sri Lankan jurisprudence (provided on request) to demonstrate that international obligations are buttressed by judicial incorporation of international human rights standards in a growing body of jurisprudence in Sri Lanka since the late eighties. From another standpoint, the relevance of international legal standards has also been firmed by the Directive Principles of State Policy, which though non-justiciable in Sri Lanka's constitutional context, has a direct impact on legal policy in the country. Article 27 (15) of these Principles mandate the State to "… endeavor to foster respect for international law and treaty obligations in dealings among nations". As to the argument on the independence of the judiciary, the author points to the Committee's GC on article 2, and to the Committee's Views. He provides jurisprudential to demonstrate that it is a long standing principle of international law that the State is regarded as a unity and that its internal divisions, whether these are territorial, organizational or other, cannot be invoked in order to avoid its international responsibility. In addition, he argues that complying with international obligations is not an interference with independence of the judiciary, which would take place if the government, of its own motion, seeks to undermine a legal judgement or similar judicial act. The fact that the Committee's decisions stand to be implemented through the executive does not mean that, from the perspective of independence of the judiciary, these are decisions of the executive. The payment of compensation does not qualify as interference with the independence of the judiciary, as defined by article 161 (1) of the State party's Constitution. Interpreting one provision of a Constitution requires accommodation between all of its provisions. As to the argument on the impossibility of the State party preventing such decisions, the author submits that it is legitimate for the otherbranches of government, particular the legislature, to set standards which the judiciary should apply, through the adoption of laws. It would also be legitimate for such laws to regulate contempt of court. As to the information that the State party has forwarded the Views to the Law Commission for "consideration", the author states that this will not be sufficient to meet its obligations as it will only result in a process which has already proved to be futile. It is submitted that this part of the response is a violation of its obligations in as much as the commitment envisaged therein envisaged a specific undertaking on the part of the State party, in this instance to enact a Contempt of Court Act. Such law is alleged to be pressing as contempt is currently interpreted and applied by the domestic courts in an extremely restrictive manner (jurisprudence provided).
Committee's Decision	The Committee regards the State party's response as unsatisfactory and considers the follow-up dialogue ongoing.
Case	Joseph, 1249/2004
Views adopted on	21 October 2005
Issues and violations found	Discrimination on religious grounds – Articles 18, paragraph 1 and 26.
Remedy recommended	The State party is under an obligation to provide the authors with an effective remedy giving full recognition to their rights under the Covenant. The State party is also under an obligation to prevent similar violations in the future.
Due date for	

State party response	29 January 2006
Date of State party's response	22 June 2006
State party response	The State party submits that it must respect and act in accordance with the Constitution of the Republic and within the framework of its domestic legal system. It is not in a position to act contrary to any decision given by any court in Sri Lanka. The Supreme Court is the highest court in Sri Lanka and its determination is final and binding both on the Government of Sri Lanka, and the Parliament. Therefore, there is no remedy that could be afforded by the Government to the authors. However, in the event that the same Bill or even a similar Bill is represented in Parliament and the constitutionality of such Bill is challenged, the Government can apprise the Supreme Court of the Views.
State party	**SURINAME - GENERAL INFORMATION ON ALL CASES**
Case	Baboeram et al., 146/1983 and Kamperveen, Riedewald, Leckie, Demrawsingh, Sohansingh, Rahman, Hoost, 148 - 154/1983
Views adopted on	4 April 1984
Issues and violations found	Arbitrary execution - Article 6, paragraph 1
Remedy recommended	The Committee therefore urges the State party to take effective steps (i) to investigate the killings of December 1982; (ii) to bring to justice any persons found to be responsible for the death of the victims; (iii) to pay compensation to the surviving families; and (iv) to ensure that the right to life is duly protected in Suriname.
Due date for State party response	5 June 1991
Date of State party's response	The State party had responded on 27 August 1997
State party response	It acknowledges in principle that appropriate compensation should be given to the victims of human rights violations, including the authors' families, and that the Government will initiate "a nation-wide discussion on all aspects of human rights (political and economic)". The results of these consultations would be forwarded to the Committee as soon as they become available.
Further action taken	On 14 March 2006, Messrs. Ando and Rivas Posada, Kristen Boon and a member of the Secretariat had a follow-up meeting with the ambassador of Suriname, Ewald Wensley Limon. Follow-up to the concluding observations of 2004, notably on the priority concerns expressed in paragraphs 8, 11 and 14, and the status of implementation, or lack thereof, of the Views in case Nos. 146 and 148 to 154/1983 (*Baboeram et al. v. Suriname*) was discussed. Both Mr. Rivas Posada and Mr. Ando stressed the bona fide duty on the Surinamese government to provide meaningful follow-up replies on the concluding observations of 2004 and on the Views in the above case. Especially in the case of the Views on *Baboeram et al.*, the follow-up discussion had been going on for many years. Ambassador Limon indicated that a team of 'legal experts' in the capital had been tasked with working on human rights issues before international bodies, and that this team was working on follow-up issues. In addition, the *MAHUINA* case [mentioned during the discussion on the second report in 2004] was currently pending beforethe Inter-American Commission on Human Rights, and considerable ground of relevance to the victims of past human rights violations was covered in this case (e.g. compensation to victims). The Ambassador indicated that he would solicit follow-up replies from the authorities in Paramaribo by the end of June, but at the same time indicated that he could not guarantee that a reply would be forthcoming in time for inclusion in the next annual report (A/61/40).
State party	**TAJIKISTAN**
Case	Aliboev, 985/2002
Views adopted on	18 October 2005
Issues and violations found	Death penalty, unfair procedure - Articles 6, paragraph 2, 7, 14, paragraph 1, 3 (d), (g), and 14, paragraph 5.
Remedy recommended	Under article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an appropriate remedy, including appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party	1 February 2006

response	
Date of State party's response	2 February 2006
State party response	The Committee will recall that, as set out in its 84th report, on October 2004 the Secretariat had met with a Tajik delegation in the context of individual complaints, during which the issue of follow-up to Views was considered. The delegation confirmed that up to 2002, information sent to the Mission in New York was not forwarded to its capital. By note verbale of 2 February 2006, the State party affirmed that the OHCHR notes verbales mentioned in the Committee's decision (dated respectively 11 July 2001, 5 November 2001, 19 December 2002, and 10 November 2004) had never been received by the State party's Ministry of Foreign Affairs.
Author's response	None
Case	Boymurodov, 1042/2001
Views adopted on	20 October 2005
Issues and violations found	Unfair trial resulting in death penalty, denial of legal access, torture, uneven criminal procedure - Articles 7, 9, paragraph 3, 14, paragraph 3, (a) and (g).
Remedy recommended	Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the author's son is entitled to an appropriate remedy, including adequate compensation.
Due date for State party response	1 February 2006
Date of State party's response	None
State party response	None
Author's response	By letter of 1 February 2006, Mr. Abdulkarim Boymumodov, the father of Mustafakul Boymurodov, recalls the facts of the case - his son was initially sentenced to death following an unfair trial, with use of torture during the preliminary investigation - and claims that nothing has happened since the adoption of the Committee's Views. He affirms that he had filed a complaint with the Supreme Court, which is still pending. The Supreme Court informed him that it had received the Committee's Views.
State party	**UZBEKISTAN**
Case	Siragev, 907/2000
Views adopted on	1 November 2005
Issues and violations found	Death penalty after unfair trial - articles 7 and 14, 3 (b)
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Siragev with an effective remedy. The Committee notes that violation of article 6 was rectified by the commutation of Mr. Siragev's death sentence. The remedy could include consideration of a further reduction of his sentence and compensation. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party response	7 February 2006
Date of State party's response	23 January 2006
State party response	The State party informed the Committee that the Supreme Court of Uzbekistan examined the Committee's Views. It considers that Siragev's sentence is correct, taking into account the totality of the evidence against him. The investigation and court's proceedings of the criminal case were held in accordance with the provisions of the criminal procedure legislation. The Court explains that it cannot agree with the contention that the author was subjected to physical measures of pressure during the preliminary investigation. The Supreme Court "categorically" disagrees with the contention that the commutation of the author's death sentence was made to disguise irregularities that occurred during the court trial. The State party adds that the sentence was commuted as the author repented for the crimes committed. Pursuant to Presidential Amnesty Decrees, Siragev's sentence was reduced, and he was release, in application of the principles of humanism and justice, and also taking into account the author's positive behavior in prison.
Author's response	On 5 December 2005, the author's mother informed the Committee that her son's death sentence had been commuted and that he was supposed to be released on 8 December 2005. She thanked the Secretariat and the Committee for the action taken.

Committee's Decision	In light of the commutation of the author's sentence, the Committee does not intend to consider this matter any further under the follow-up procedure unless the situation changes.
State party	**ZAMBIA**
Case	Chongwe, 821/1998
Views adopted on	25 October 2000
Issues and violations found	Articles 6, paragraph 1, and 9, paragraph 1 - Attempted murder of the chairman of the opposition alliance.
Remedy recommended	Adequate measures to protect the author's personal security and life from threats of any kind. The Committee urged the State party to carry out independent investigations of the shooting incident, and to expedite criminal proceedings against the persons responsible for the shooting. 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 to Mr. Chongwe.
Due date for State party response	8 February 2001
Date of State party's response	28 December 2005
State party response	The Committee will recall that, as set out in the FU report from 10 March 2003, the State party had responded on 10 October and 14 November 2001. It contended that the Committee had not indicated the quantum of damages payable and provided copies of correspondence between its Attorney-General and the author, in which the author was provided assurances that the State party would respect his right to life and invited him to return to its territory. As to the issue of compensation, the Attorney-General indicated to the author that this would be dealt with at the conclusion of further investigations into the incident, which had been hindered by the author's earlier refusal to cooperate. By letter of 28 February 2002, the State party noted that the domestic courts could not have awarded the quantum of damages sought, that the author had fled the country for reasons unrelated to the incident in question, and that, while the Government saw no merit in launching a prosecution, it was open to the author to do so. By note verbale of 13 June 2002, the State party reiterated its position that it was not bound by the Committee's decision as domestic remedies had not been exhausted. The author chose to leave the country of his own will, but remained at liberty to commence proceedings even in his absence. In any event, the new President had confirmed to the author that he was free to return. Indeed the State hoped that he would do so and then apply for legal redress. Mr. Kaunda, who was attacked at the same time as the author, is said to be a free citizen carrying on his life without any threat to his liberties. On 28 December 2005, the State party provide the following information. It stated that it had offered the author 60,000 US dollars on a without prejudice basis. The author had rejected the offer, which is more than adequate under Zambian law, particularly in light of the fact that Zambia is one of the 49 countries classified by the United Nations as Least Developed Countries. In spite of the offer, the author is still at liberty to commence legal proceedings in the Zambian Courts over this matter. As an act of good faith, the Zambian government will waive the statue of limitations of his case and allow this matter to be heard in courts of law.
Author's response	**The Committee will recall that, as set out in the March 2003 Follow-Up Report Follow-up, the author had referred to the State party's failure to provide him with a remedy on 5 and13 November 2001.** In March 2006 (letter undated), the author responded to the State party's submission. It appears that the author returned to Zambia in 2003. He submits that he does not intend to make any new claims in the Zambian courts. Although he recognizes the efforts being made by the judiciary to improve he states that the problems are not yet solved. Thus, he would have no confidence that a claim would be handled appropriately by the courts. To begin such a complaint nearly 10 years after the incident would be useless. It would be impossible to conduct such an investigation on his own and would fear for his safety in doing so. In any event, he is not interested in finding the particular "minion of the Zambian Government" who tried to kill him. The author submits that the State party has not implemented the Views and has not provided him with security. He submits that the government made no effort to help him and his family resettle from Australia back to Zambia and refers to the offer of compensation as "petty cash" which he is obliged to receive on a "like it or lump it basis". He says that he has no intention of negotiating with the Zambian government on the basis of the State party's response of 28 December 2005.
Committee's Decision	To be considered by the Committee during the eighty-eighth session.
Case	1132/2002, Chisanga
Views	18 October 2005

adopted on	18 October 2005
Issues and violations found	Right to life, ineffective remedy on appeal and ineffective remedy with respect to commutation - articles 14, paragraph 5 together with articles 2; 7; 6, paragraph 2; and 6, paragraph 4 together with article 2.
Remedy recommended	To provide the author with a remedy, including as one necessary prerequisite in the particular circumstances, the commutation of the author's death sentence.
Due date for State party response	9 February 2006
Date of State party's response	17 January 2006
State party response	As to the author's sentence, the State party says that it had provided the HRC with the Supreme Court Judgement dated 5 June 1996 which upheld the sentence of death for aggravated robbery and also convicted the accused to an additional 18 years on the count of attempted murder. Therefore, Zambia's view is that, if the sentence clearly indicates two different counts and two different sentences given for each count respectively, there can be no confusion. The State party quotes from section 294 of its Penal Code and affirms that the Supreme Court cannot reduce the sentence of death if it finds that the offence contained in Section 294 (2) - namely felony of aggravated robbery where the offensive weapon or instrument is a firearm, or where the offensive weapon or instrument is not a firearm and grievous harm is done to any person in the course of the offence - was committed. Besides, Zambia acknowledges the "possibility" that the complainant may have been transferred from death row to the long term section of the prison. Zambia explains that this constitutes "deterrent sentencing", that is to say, the convict is required to perform the shorter sentence before being subjected to the more severe one when sentenced on more than one count. Zambia affirms that "deterrent sentencing" is a recognized form of punishment under the common law system and that, therefore, Zambian courts are within their mandates when imposing such sentences. According to the State party, the alleged confusion by the complainant was contrived in bad faith and is meant to disparage Zambia's well established and respected judicial system. The State party affirms that the right to appeal in its judicial system is not only guaranteed under the Constitution but is also effectively implemented, because in the offences of treason, murder and aggravated robbery (carrying the death penalty) an accused person is, without discrimination, automatically granted the right to appeal to the Supreme Court by the High Court. Regarding the communication of the Master of Supreme Court that purportedly reduced the complainant's sentence, Zambia says that the communication may have been conveying the sentence by the Supreme Court for the count of attempted murder. The State party states that the accused was taken to the long term section of the prison to serve the 18-year sentence for attempted murder. It adds that there is no record that the author was taken back to death row after 2 years and requests him to prove this allegation. The State party considers that what constitutes one of the most serious crimes is a subjective test and depends upon a given society. Zambia claims that, in the State of Zambia, crimes of murder or aggravated robbery are widespread and, therefore, not to consider them as serious crimes defeats fundamental rights such as the right to life, security and liberty of the person. Zambia further states that the HRC's suggestion that since the victim did not die the complainant should not be sentenced to death is an affront to the very essence of human rights. The State party submits that there is on Presidential decree giving amnesty to all prisoners on death row. What the President is said to have declared publicly is that he will not sign any death warrant during his term. Zambia further affirms that prisoners can still apply for clemency according to the terms of the Constitution. Such applications are dealt with by the "Committee on the Prerogative of Mercy" chaired by the vice President. Zambia finally states that no death sentence has been carried out since 1995, and that there is a moratorium on the death penalty in Zambia.
Author's response	None
Committee's Decision	The Committee notes that the State party's argument on admissibility should have been included in its comments on the communication prior to consideration by the Committee. The Committee regards the State party's response as unsatisfactory and considers the follow-up dialogue ongoing.
